REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1051** (CTA Case Nos. 8054, 8117 & 8139)
	Present:
- versus -	**DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN** *JJ.*
MANULIFE DATA SERVICES, INC., Respondent.	**Promulgated:** JUN 18 2015 1:35 p.m.

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RESOLUTION

UY, *J.*:

For resolution is the **"MOTION FOR RECONSIDERATION"** filed on December 18, 2014 by the Commissioner of Internal Revenue (CIR), with the **"COMMENT/OPPOSITION (RE: MOTION FOR RECONSIDERATION DATED 16 DECEMBER 2014)"** filed on February 20, 2015 by Manulife Data Services Inc. (Manulife), seeking the reconsideration and setting aside of Our Decision promulgated on November 17, 2014, the dispositive portion of which reads:

> **"WHEREFORE,** in the light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision

dated May 8, 2013 and Resolution dated July 24, 2013, promulgated by the Court in Division in the consolidated cases of CTA Case Nos. 8054, 8117 and 8139, are hereby **AFFIRMED** *in toto*.

SO ORDERED."

In support of her Motion, the CIR raises the following grounds, to wit:

1. The Court *En Banc* erred when it considered respondent's judicial claim for the First Quarter of 2008 as timely filed.

2. The Court *En Banc* erred when it exercised jurisdiction over respondent's claim for tax refund/credit.

3. The Court *En Banc* erred when it partially granted respondent's claim for tax refund/credit of alleged unutilized input VAT for the First and Fourth Quarters of 2008.

In support of the first ground, the CIR points out that assuming that the Commissioner of Internal Revenue, in issuing BIR Ruling No. DA-489-03, made an erroneous interpretation of a difficult question of law, particularly the reckoning of the prescriptive period for input value-added tax refund or credit, it is a long and firmly settled rule of law that the Government is allegedly not bound by the errors committed by its agents. According to the CIR, in the performance of its governmental functions, the State cannot be estopped by the neglect of its agents and officers.

Anent the second ground, the CIR stresses that the Court cannot exercise jurisdiction over respondent Manulife's claim for tax refund/credit since the judicial claims were prematurely filed, in violation of the doctrine of exhaustion of administrative remedies. According to the CIR, well settled is the rule that exhaustion of available administrative remedies is a condition precedent before taking judicial action; and that it is a doctrine of long standing and courts have clear guidelines on the matter.

With regard to the third ground, the CIR avers that Manulife failed to prove that it has submitted its complete supporting documents with petitioner, to warrant the granting of the refund/tax credit application and to reckon the commencement of the 120-day period for the CIR to decide on the said application. The Commissioner invokes the provisions of Revenue Memorandum

Circular (RMC) No. 29-2009. In addition, the CIR asserts that Manulife's claim for refund/credit is subject to administrative investigation/examination by petitioner; and that pending the closure of this investigation, no grant of refund may be given to Manulife based on the claim filed.

On the other hand, in its Comment/Opposition, Manulife contends that the CIR did not present additional legal and factual arguments that were not discussed in the assailed Decision. Allegedly, the grounds and defenses raised by the CIR are mere rehash and identical to what were raised in her Petition for Review dated 23 August 2012, in her Answer and Partial Motion for Reconsideration dated 27 May 2013. Manulife likewise points out that the Court *En Banc* ruled upon all grounds raised by the CIR in the assailed Decision point-by-point painstakingly explaining why all of the CIR's arguments have no merit. Thus, according to Manulife, for utter lack of merit as it is mere rehash or reiterations of the arguments sufficiently passed upon and decided by this Court and the Court in Division, respondent prays that the instant Motion be dismissed outright.

THE COURT *EN BANC*'S RULING

Petitioner's Motion for Reconsideration lacks merit.

A cursory reading of the instant *Motion for Reconsideration* shows that the arguments raised therein are exactly the same as those stated in her Petition for Review dated August 27, 2013, which the Court *En Banc* has sufficiently passed upon and exhaustively discussed in the assailed Decision. Nevertheless, We shall address the CIR's arguments anew, if only to reinforce Our discussions in the same Decision.

There is equitable estoppel as expressly authorized under Section 246 of the NIRC of 1997

With respect to the first ground, the CIR insists that the Government is not bound by the errors committed by its agents; specifically, in the issuance of BIR Ruling No. DA-489-03.

The High Court, however, has already ruled otherwise.

In *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*[1] (or the "*San Roque* case"), the Supreme Court ruled as follows:

> "There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through *a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> xxx xxx xxx
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> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." *(Underscoring supplied)*

Based on the foregoing jurisprudential pronouncement, the Supreme held that, from the time of its issuance on 10 December 2003 up to its reversal by this Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company, Inc.*[2] (or the *Aichi* case) on 6 October 2010, a taxpayer can rely on BIR Ruling No. DA-489-03, a general interpretative rule, which provided that the taxpayer-claimant may already file a judicial claim for refund/tax credit with this Court notwithstanding that the 120-day mandatory period under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997 had not yet lapsed.

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[1] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[2] G.R. No. 184823.

Being a general interpretative rule, the CIR is barred from questioning this Court's assumption of jurisdiction on the ground that the 120-day mandatory period under Section 112(C) of the NIRC of 1997 had not yet lapsed since estoppel had already set in as expressed authorized under Section 246 of the NIRC of 1997.

Nevertheless, as aforementioned, the Supreme Court clarified that taxpayers can only rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in the *Aichi* case, where it was held that the 120-day period under Section 112(C) of the NIRC of 1997 is mandatory and jurisdictional.

Clearly, petitioner's argument is without basis.

The rule on exhaustion of administrative remedies is <u>not</u> absolute.

Anent the CIR's argument that there was failure on the part of respondent to observe the rule on exhaustion of administrative remedies, the same is untenable.

In *Banco De Oro, et al. vs. Republic of the Philippines, et al.* (hereinafter referred to as the "*BDO* case"),[3] the Supreme Court said:

> "... The remedy within the administrative machinery must be resorted to first and pursued to its appropriate conclusion before the court's judicial power can be sought.
>
> **Nonetheless, jurisprudence allows certain exceptions to the rule on exhaustion of administrative remedies:**
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> > **[The doctrine of exhaustion of administrative remedies] is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded ... <u>when there is estoppel on the part of the administrative</u>**

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[3] G.R. No. 198756, January 13, 2015.

> **agency concerned ...**" *(Emphasis and underscoring supplied)*

Considering that in this case, there is equitable estoppel on the part of the CIR, Manulife need not wait for the exhaustion of the 120-day period under Section 112.

In *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*,[4] the Supreme Court held:

> "There is, however, an exception to the mandatory and jurisdictional nature of the 120+30 day period. The Court in *San Roque*[5] noted that the BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated that the 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.' This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers. Since the CIR has exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the Tax Code, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day period was mandatory and jurisdictional.
>
> Accordingly, the **general rule** is that the 120+30 day period is mandatory and jurisdictional from the effectivity of the 1997 NIRC on January 1, 1998, up to the present. As an **exception**, judicial claims filed from December 10, 2003 to October 6, 2010 need not wait for the exhaustion of the 120-day period." *(Underscoring supplied)*

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[4] G.R. No. 197525, June 4, 2014.

[5] Referring to the *San Roque* case (G.R. Nos. 187485, 196113 & 197156, February 12, 2013).

Manulife is deemed to have submitted complete documents upon the filing of its administrative claims for refund.

The CIR once again avers that Manulife failed to submit complete supporting documents with its application for refund and without such complete documents, she cannot decide on said administrative claims; thus, it necessarily follows that the filing of Manulife's judicial claims with the Court *a quo* were premature.

We do not agree. The CIR's reasoning is specious.

At the outset, it must be emphasized that, whether or not Manulife submitted complete supporting documents in its application for refund, the CIR can always decide on a refund claim in view of the recognized principle that the **CIR ought to know the records of all taxpayers**[6].

Be that as it may, records clearly show that Manulife attached several documents in support of its entitlement for refund in its administrative claims filed on December 4, 2009 and February 26, 2010.[7]

In the case of *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,*[8] the Supreme Court ruled that upon the filing of the administrative claim, it is presumed that the taxpayer had attached thereto complete documents in support of its application. The High Court reasons:

> "xxx absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's**

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[6] *BPI-Family Savings Bank. Inc. vs. Court of Appeals, et al.,* G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.
[7] Exhibits "C" and "C-3".
[8] G.R. No. 184266, November 11, 2013.

> **administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively.**" *(Emphasis supplied).*

The Supreme Court made a similar pronouncement in the fairly recent case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[9] which was cited in the assailed Decision.

In view of this presumption and there being no contrary evidence presented by the CIR, the documents submitted by Manulife together with its administrative claims are deemed complete documents. Thus, the CIR's 120-day period to decide on Manulife's administrative claims commenced to run from the filing of said administrative claims. And considering that Manulife's judicial claims were filed after the expiration of the said 120-day period, save in the case of CTA Case No. 8054 which falls within the exception, the CIR is clearly mistaken to claim that the filing of the consolidated cases *a quo* were prematurely made.

Revenue Memorandum Circular No. 29-2009 is not conclusive upon the courts.

The CIR further contends that Manulife's judicial claims for refund or credit should be denied for failure to comply with the requirements set forth under Items III and IV of RMC No. 29-2009.

The CIR's reliance on items III and IV of RMC No. 29-2009 is manifestly misplaced.

The circular in question must be considered merely as an administrative interpretation of the law which in no case is binding on the courts.[10] In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*,[11] the Supreme Court held:

> "It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the

[9] G.R. Nos. 198729-30, January 15, 2014

[10] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 144653, August 28, 2001.

[11] G.R. No. 112024. January 28, 1999.

Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement**." *(Emphasis supplied)*

In addition, in the *BDO* case, the Supreme Court further said:

"It may be granted that the interpretation of the Commissioner of Internal Revenue in charge of executing the 1997 National Internal Revenue Code is an authoritative construction of great weight, **<u>but the principle is not absolute and may be overcome by strong reasons to the contrary</u>. If through misapprehension of law an officer has issued an erroneous interpretation, the error must be corrected when the true construction is ascertained.**

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In *Commissioner of Internal Revenue v. Michel J. Lhuiller Pawnshop, Inc.*,[12] this Court nullified Revenue Memorandum Order (RMO) No. 15-91 and RMC No. 43-91, which imposed a 5% lending investor's tax on pawnshops. **It was held that 'the [Commissioner] cannot, in the exercise of [its interpretative] power, issue administrative rulings or circulars not consistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.**'" *(Emphasis and underscoring supplied)*

Clearly, items III and IV of RMC No. 29-2009, which provides for instances when the 120-day under Section 112(C) shall be suspended, cannot be given any effect because Section 112(C) of the NIRC of 1997, as amended, is clear and plain as to the running of the 120-day period for the CIR to decide on the administrative claim. To

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[12] 453 Phil. 1043 (2003) [Per C.J. Davide, Jr., First Division].

be sure, Section 112(C) does not provide any instance when the 120-day period may be suspended nor does it authorize the CIR to stop or toll the same.

Even if We assume that RMC No. 29-2009 is valid and binding upon the Court, there is no showing that Manulife failed to comply with the conditions and requirements set forth therein. It must be noted that in the consolidated cases *a quo*, the CIR did not present any controverting evidence and merely elected to submit the case for decision without offering evidence in support of its allegations. As pointed out in Our assailed Decision, records do not show whether the BIR ever conducted an audit or verification of Manulife's administrative claims. Assuming further that such audit or verification was conducted; there is likewise no showing of the existence of any of the instances enumerated in item III when suspension of the 120-day period will occur.

All told, whether or not Manulife complied with the requirements set forth in RMC No. 29-2009, particularly items III and IV thereof, has no controlling significance in the instant case.

A pending administrative investigation does not prevent this Court from granting a tax refund or issuance of a tax credit certificate.

Lastly, We cannot subscribe to the CIR's contention that Manulife's claims for refund or issuance of tax credit cannot be granted on account of the pending administrative investigation. It must be stated that once a judicial claim for refund has been timely filed, the Court *a quo* acquires exclusive jurisdiction to decide whether or not Manulife is indeed entitled thereto based on the evidence presented and formally offered by the party litigants during trial. As aptly found by the Court in Division, Manulife was able to substantiate its claim for refund or credit of unutilized input VAT for the 1st to 4th quarters of 2008, *albeit* partially, in the amount of ₱8,294,312.44.

While it is true the CIR is still mandated to evaluate internally the administrative claim even after the expiration of the 120-day period and a judicial claim is filed consistent with the *San Roque* case, said investigation is only for the purpose of opposing the taxpayer's judicial claim, or even for purposes of determining if the

BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must necessarily continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial.[13]

Verily, as a court vested with judicial power to review by appeal the inaction of the CIR in cases involving tax refunds[14], the Court *a quo* cannot be divested of its jurisdiction specifically conferred to them by law simply because the administrative claim is still pending investigation before the BIR.

WHEREFORE, all the foregoing considered, the instant Motion for Reconsideration filed by the CIR is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[13] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.,* supra.
[14] Section 7(a)(2), Republic Act No. 1125, as amended, by R.A. No. 3457 and further amended by R.A. No. 9282 and R.A. No. 8503.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice