

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

CTA EB No. 1057

(CTA Case Nos. 7913, 7977 & 8018)

Present:

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:

OCT 28 2014

[Signature] 4:05 p.m.

X-----X

DECISION

UY, J.:

This Petition for Review¹ filed on September 16, 2013 seeks the reversal and setting aside of the Decision dated June 13, 2013² and Resolution dated August 6, 2013³, in the consolidated cases docketed as CTA Case Nos. 7913, 7977 & 8018, entitled “Manulife

¹ EB Docket, pp. 4 to 13.

² EB Docket, pp. 15 to 42; Ponencia of Associate Justice Lovell R. Bautista, and concurred by Associate Justice Amelia R. Contangco-Manalastas.

³ EB Docket, pp. 44 to 46.

[Signature]

Data Services, Inc. (Philippines), Petitioner, vs. Commissioner of Internal Revenue, Respondent”, both promulgated by the Special Third Division of this Court (or “Court in Division”), the dispositive portions of which respectively read:

Decision dated June 13, 2013:

“**WHEREFORE**, given the for[e]going, the Petition for Review is hereby **PARTLY GRANTED**. Respondent is hereby **ORDERED** to issue a Tax Credit Certificate to petitioner in the reduced amount of **Four Million Eight Hundred Ninety Eight Thousand Fifty Three and 35/100 pesos (P4,898,053.35)** for its unutilized/unapplied input VAT for the 1st to 4th Quarters of 2007.

SO ORDERED”.

Resolution dated August 6, 2013:

“**WHEREFORE**, petitioner’s ‘Motion for Partial Reconsideration (Re: Decision of 13 June 2013)’ and respondent’s ‘Motion for Partial Reconsideration (Re: Decision promulgated on 13 June 2013)’ are hereby **DENIED** for lack of merit.

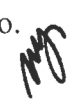
SO ORDERED”.

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (or CIR) vested with the power to decide tax cases, including claims for refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes, pursuant to Section 4 of the National Internal Revenue Code (NIRC). She holds office at the BIR National Office, Bureau of Internal Revenue (BIR) Building, Agham Road, Diliman, Quezon City.⁴

Respondent Manulife Data Services, Inc. (or Manulife) is a foreign corporation duly registered with and authorized by the

⁴ Par. 3, Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), Division Docket, Vol. 1 (CTA Case No. 7913), p. 283; Par. 4, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 7977), p. 444; and Par. 2, Petition for Review dated December 28, 2009 vis-à-vis Par. 1, Answer dated February 3, 2010, Division Docket (CTA Case No. 8018), pp. 1 and 43.



Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarters (ROHQ) in the Philippines as evidenced by SEC License No. FS2006030505.⁵

As an ROHQ, respondent is engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific Region and in other foreign markets, as expressly stipulated in its SEC License.⁶ It is a value-added tax (VAT) registered entity as of March 9, 2006 as evidenced by BIR Certificate of Registration Nos. OCN 3RC00033082 and OCN 3RC0000421626.⁷

THE FACTS

The antecedent cases subject of the instant Petition for Review are as follows:

CTA Case No. 7913

On February 27, 2009, Manulife filed with the BIR's Revenue District Office No. 38 an application for issuance of tax credit certificate (TCC), representing its excess/unutilized input VAT for the first (1st) and second (2nd) Quarters of taxable year 2007 (in the amount of ₱3,578,830.856).⁸

Upon the belief that the prescriptive period under Section 229 of the NIRC will be tolled with respect to its claim for refund of unutilized input VAT for the 1st and 2nd quarters of taxable year 2007, Manulife filed with the Court in Division (Former Second Division) a Petition for Review on April 14, 2009.⁹ The case was docketed as **CTA Case No. 7913**.

⁵ Par. 1, Stipulation of Facts, JSFI, Division Docket, Vol. 1 (CTA Case No. 7913), p. 282; Par. 1, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 7977), p. 443; and Par. 1, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 8018), p. 497.

⁶ Par. 2, Stipulation of Facts, JSFI, Division Docket, Vol. 1 (CTA Case No. 7913), p. 282; Par. 2, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 7977), p. 443; and Par. 2, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 8018), p. 497.

⁷ Par. 4, Stipulation of Facts, JSFI, Division Docket, Vol. 1 (CTA Case No. 7913), p. 283; Par. 3, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 7977), pp. 443 to 444; and Par. 3, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 8018), p. 497.

⁸ Par. 5, Stipulation of Facts, JSFI, Division Docket, Vol. 1 (CTA Case No. 7913), p. 283.

⁹ Par. 10, Petition for Review dated April 13, 2009, Division Docket, Vol. 1 (CTA Case No. 7913), p. 4.



The CIR filed her Answer¹⁰ on June 3, 2009, interposing the following Special and Affirmative Defenses:

- “7. The claim for refund is still under examination by the [CIR]’s Bureau;
8. The burden of proof is upon [Manulife] to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
9. The grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon [Manulife] to show with clear and unambiguous provision of law supporting the same.
11. The prevailing law on the existence, authority and powers of this Honorable Court is now embodied in Republic Act No. 9282.”

Pursuant to the Order dated January 13, 2010, CTA Case No. 7913 was transferred from the former Second Division to the Third Division, both of this Court.¹¹

CTA Case No. 7977

On June 2, 2009, Manulife filed with the BIR’s RDO No. 38 an application for issuance of a TCC for its excess/unutilized input VAT for the third (3rd) Quarter of taxable year 2007 (in the amount of ₱1,458,274.42).¹²

Thereafter, similarly upon the belief that the prescriptive period under Section 229 of the NIRC will be tolled with respect to its claim for refund of unutilized input VAT for the 3rd quarter of 2007, Manulife filed with the Former Second Division of this Court (or “Former Second Division”) a Petition for Review on September 30, 2009.¹³

¹⁰ Division Docket, Vol. 1 (CTA Case No. 7913), pp. 108 to 113.

¹¹ Division Docket, Vol. 1 (CTA Case No. 7913), p. 477.

¹² Par. 5, Stipulation of Facts, JSFI, Division Docket (CTA Case No. 7977), p. 444.

¹³ Par. 10, Petition for Review dated September 29, 2009, Division Docket (CTA Case No. 7977), p. 4.



The case was docketed as **CTA Case No. 7977**.

The CIR raised, in her Answer¹⁴ filed on October 26, 2009, the following Special and Affirmative Defenses, to wit:

“4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

5. [Manulife’s] claim for the issuance of tax credit certificate is subject to administrative investigation/examination by [the CIR’s] Bureau.

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

7. Moreover, in order to validly claim for tax credit/refund, it is imperative for [Manulife] to prove its compliance with the following, viz:

a. The registration requirements of a value-added taxpayer under the pertinent provisions of the 1997 NIRC, as amended, and its implementing revenue regulations.

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).

c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of such claim.

d. That the input taxes of P1,458,274.42 allegedly representing unutilized input VAT from its purchases of goods and services were:

- i. paid by petitioner;
- ii. attributable to its zero-rated or effectively zero-rated sales; and,

¹⁴ Division Docket (CTA Case No. 7977), pp. 80 to 84. 

- iii. such input taxes paid should not have been applied against any output tax.
- e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of P1,458,274.42 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the 1997 NIRC, as amended.

8. In an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax credit/refund.

9. Finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (*Philippine Geothermal, Inc. vs Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favour on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*)."

Pursuant to the Order dated January 11, 2010, CTA Case No. 7977 was transferred from the Former Second Division to the Court in Division.¹⁵

CTA Case No. 8018

On August 7, 2009, Manulife filed with the BIR's RDO No. 38 an application for issuance of a TCC for its excess/unutilized input VAT for the fourth (4th) Quarter of 2007 in the amount of ₱2,265,841.03.¹⁶

Subsequently, upon the same belief that the prescriptive period under Section 229 of the NIRC will be tolled with respect to its claim

¹⁵ The transfer was pursuant to CTA Administrative Circular No. 01-2010, dated January 5, 2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals", Division Docket (CTA Case No. 7977), p. 464.

¹⁶ Exhibit "PPP".

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for refund of unutilized input VAT for the 4th quarter of 2007, Manulife filed with the Court in Division (former First Division) a Petition for Review on December 29, 2009.¹⁷ The case was docketed as **CTA Case No. 8018**.

In her Answer¹⁸, the CIR interposed the following Special and Affirmative Defenses, viz:

- “4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of tax exemption;
5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action. In the instant case, the petitioner failed to present proof that the sales of the petitioner are subject to VAT at the rate of 0%. In addition, Petitioner must prove that the compensation or consideration which it received for the services rendered were actually paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
6. The petitioner should prove its legal basis for claiming the amount being refunded.”

Consolidation of CTA Case Nos. 7913, 7977 and 8018

On December 2, 2009, in CTA Case No. 7977, Manulife moved for the consolidation thereof with CTA Case No. 7913.¹⁹ The said motion was granted by the Court in Division in the Resolution dated March 17, 2010.²⁰ Thus, CTA Case No. 7977 was ordered consolidated with CTA Case No. 7913, which bears the lower docket number.

Subsequently on May 7, 2010, Manulife again moved for the consolidation of CTA Case No. 8018 with CTA Case Nos. 7913 and

¹⁷ Par. 9, Petition for Review dated December 28, 2009, Division Docket (CTA Case No. 8018), p. 4.

¹⁸ Division Docket (CTA Case No. 8018), pp. 43 to 45.

¹⁹ Motion for Consolidation dated December 1, 2009, Division Docket (CTA Case No. 7977), pp. 427 to 429.

²⁰ Division Docket (CTA Case No. 7977), p. 468.



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7977.²¹ On June 21, 2010, the former First Division of this Court issued a Resolution granting said motion, and ordered the consolidation of CTA Case No. 8018 with CTA Case Nos. 7913 and 7977.²² Accordingly, the trial of the said three (3) cases proceeded before the Third Division of this Court.

During trial, Manulife presented testimonial and documentary evidence. Except for Exhibits “NN-2-e”, “JJ-6” and “GGG-11-b”, all of Manulife’s exhibits were admitted, pursuant to the Resolutions dated October 10, 2011²³ and January 17, 2012²⁴.

On April 23, 2012, the CIR manifested in open court that since the BIR has not yet terminated the examination of Manulife’s records, she will no longer present evidence and is submitting the case for decision.²⁵

Thereafter, on April 30, 2012, the Court in Division ordered both parties to submit their respective memorandum within thirty (30) days from notice thereof.²⁶ Manulife submitted its Memorandum on June 7, 2012,²⁷ while the CIR did not file her Memorandum.

In the Resolution dated June 13, 2012,²⁸ the consolidated cases were deemed submitted for decision.

On June 13, 2013, the Court in Division rendered the assailed Decision, partially granting the refund claim of Manulife in the reduced amount of ₱4,898,053.35, representing unutilized/unapplied input VAT for the 1st to 4th quarters of 2007. The CIR was ordered to issue a TCC in the said amount.

Both parties filed their respective Motions for Partial Reconsideration of the assailed Decision, on July 3, 2013, in the case of Manulife,²⁹ and on July 4, 2013, in the case of the CIR.³⁰

²¹ Division Docket (CTA Case No. 8018), pp. 468 to 496.

²² Division Docket (CTA Case No. 8018), pp. 516 to 517.

²³ Division Docket, Vol. 2 (CTA Case No. 7913), pp. 916 to 918.

²⁴ Division Docket, Vol. 2 (CTA Case No. 7913), pp. 936 to 938.

²⁵ Minutes of Hearing held on April 23, 2012, Division Docket, Vol. 2 (CTA Case No. 7913), p. 950.

²⁶ Resolution dated April 30, 2012, Division Docket, Vol. 2 (CTA Case No. 7913), p. 952.

²⁷ Division Docket, Vol. 2 (CTA Case No. 7913), pp. 961 to 1006.

²⁸ Division Docket, Vol. 2 (CTA Case No. 7913), p. 1008.

²⁹ Division Docket, Vol. 2 (CTA Case No. 7913), pp. 1042 to 1048.

³⁰ Division Docket, Vol. 2 (CTA Case No. 7913), pp. 1078 to 1083.



On August 6, 2013, the Court in Division denied both motions via the assailed Resolution dated August 6, 2013,³¹ for lack of merit.

Hence, the instant Petition for Review is filed on September 16, 2013 before the Court *En Banc*, praying that the Decision dated June 13, 2013 and Resolution dated August 6, 2013, be reversed and set aside, and a new decision be rendered denying Manulife's claim for tax refund/credit in its entirety.

In the Resolution dated October 30, 2012,³² Manulife was ordered by the Court *En Banc* to file a Comment, not a motion to dismiss, to the instant Petition for Review. In compliance thereto, Manulife filed its *Comment/Opposition (Re: Petition for Review dated September 12, 2013)* on December 2, 2013.³³

On December 23, 2013, both parties were directed to file their respective memorandum.³⁴ Manulife filed its Memorandum on February 13, 2014,³⁵ while the CIR filed her Memorandum on February 18, 2014.³⁶ Thereafter, the instant case was considered submitted for decision on March 12, 2014.³⁷

Hence, this Decision.

THE ISSUES

In the instant Petition for Review, the issues raised for the consideration of the Court *En Banc* are as follows:

**"WHETHER THE SPECIAL THIRD DIVISION OF
THE HONORABLE COURT ERRIED WHEN IT
CONSIDERED RESPONDENT'S JUDICIAL
CLAIMS FOR THE FIRST TO FOURTH
QUARTERS OF 2007 AS TIMELY FILED**

³¹ Division Docket, Vol. 2 (CTA Case No. 7913), pp. 1099 to 1101.

³² EB Docket, pp. 52 to 53.

³³ EB Docket, pp. 59 to 66.

³⁴ Resolution dated December 23, 2013, EB Docket, pp. 69 to 70.

³⁵ EB Docket, pp. 73 to 82.

³⁶ EB Docket, pp. 83 to 97.

³⁷ Resolution dated March 12, 2014, EB Docket, pp. 101 to 102.



**WHETHER THE SPECIAL THIRD DIVISION OF
THE HONORABLE COURT ERRED WHEN IT
EXERCISED JURISDICTION OVER
RESPONDENT'S CLAIM FOR TAX REFUND/
CREDIT**

**WHETHER THE SPECIAL THIRD DIVISION OF
THE HONORABLE COURT ERRED WHEN IT
PARTIALLY GRANTED RESPONDENT'S
CLAIM FOR TAX REFUND/CREDIT OF
ALLEGED UNUTILIZED INPUT VAT FOR THE
FIRST TO FOURTH QUARTERS OF 2007".**

Succinctly put, the sole issue for Our resolution is whether or not respondent timely filed its judicial claim for refund/credit of unutilized/unapplied input VAT for the 1st to 4th Quarters of taxable year 2007.

Petitioner's Arguments:

The CIR argues that the Court in Division erred in considering Manulife's judicial claims for the 1st to 4th quarters of 2007 as timely filed, since the Government cannot be and must not be estopped in matters involving taxation. According to the CIR, the errors of certain administrative officers should never be allowed to jeopardize the Government's financial position, especially in the case at bar where the amount involves millions of pesos, the collection whereof, if justified, stands to be prejudiced just because of bureaucratic lethargy.

Furthermore, the CIR contends that, based on Section 112(C) of the NIRC of 1997, as amended, she has one hundred twenty (120) days from submission of the complete supporting documents to decide the claim for refund; and thus, it is imperative that a taxpayer must first submit complete supporting documents before the 120-day period should commence. The CIR adds that she cannot decide the claim for refund without the taxpayer submitting its complete supporting documents. The CIR then concludes that since Manulife failed to submit to petitioner the required complete supporting documents, the filing of the Petitions with the Court in Division is premature.

Moreover, still in connection with the submission of complete documents by Manulife, the CIR invokes Items III and IV of Revenue



Memorandum Circular No. (RMC) 29-2009, dealing with the compliance of refund claimants of certain conditions/requirements upon audit/verification of the claim, before a refund is granted "in proper cases"; and the effect of non-compliance, which is the denial of the said claim.

Lastly, the CIR avers that Manulife's claim for refund/credit is subject to administrative investigation/examination by the CIR; and pending the closure of this investigation, no grant of refund may be given to Manulife based on the claim filed.

Respondent's Counter-Arguments:

Manulife asserts that the Court in Division was correct in ruling that its judicial claim for refund for the 1st to 4th quarters of taxable year 2007 was seasonably filed following the recent pronouncements of the Supreme Court in *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*³⁸ (or the "San Roque case"), and other related cases.

In addition, Manulife points out that the Court in Division did not err when it exercised jurisdiction over its claim and when it partially granted its claim; that the CIR failed to present any evidence to substantiate its allegation that Manulife did not submit complete supporting documents during the administrative investigation; that Manulife has the required documents available to the CIR if only the latter is conscientious enough to conduct its investigation to validate the application for refund; and that the cases cited by the CIR in support of its position that no grant of refund may be given pending the termination of the administrative investigation do not apply to the instant case.

THE COURT *EN BANC*'S RULING

We find no merit in the instant Petition for Review.

The 120+30-day periods under Section 112 of the NIRC of 1997, as amended, are mandatory and jurisdictional. However, there are exceptions to this rule.

³⁸ G.R. Nos. 187485, 196113 & 197156, February 12, 2013.



Section 112 of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,³⁹ the pertinent provisions of which read as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* -

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) hereof.**

In case of full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.**

xxx xxx xxx. (*Emphasis supplied*)

From the foregoing, it is clear that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file their administrative claim within two years from the close of the taxable quarter when the sales were made. After that,

³⁹ AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with this Court within thirty (30) days.⁴⁰

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company, Inc.* (or the “Aichi case”),⁴¹ which was promulgated on October 6, 2010, the Supreme Court ruled that the said 120+30-day periods are mandatory and the non-observance thereof is fatal to the filing of a judicial claim with this Court. In the *Aichi* case, the Supreme Court explained that if after the 120-day mandatory period, the CIR fails to act on the application for tax refund or credit of creditable input VAT, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within thirty (30) days. Thus:

“Section 112(D)⁴² of the NIRC clearly provides that the CIR has ‘120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],’ within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer’s recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to [the] CTA within 30 days.

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There is nothing in Section 112 of the NIRC to support respondent’s view. Subsection (A) of the said provision states that ‘any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales.’ The phrase ‘within two (2) years x x x apply for the issuance of a tax credit certificate or refund’ refers to applications for refund/credit filed with

⁴⁰ *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 197760, January 13, 2014.

⁴¹ G.R. No. 184823, October 6, 2010.

⁴² Now Section 112(C) of the NIRC of 1997, as amended by RA 9337.



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the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D)⁴³ of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A) and (B)**' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D)⁴⁴ of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D)⁴⁵ of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA. (Underscoring supplied)

In the *San Roque* case, however, the Supreme Court clarified that the mandatory and jurisdictional nature of the 120+30-day periods does not apply to claims for refund that were prematurely filed during the intervening period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, until October 6, 2010, when the doctrine in the *Aichi* case was adopted. The exception to the mandatory and jurisdictional nature of the 120+30-day periods are premised on the fact that prior to the promulgation of the *Aichi* case, there was a general interpretative rule laid down in BIR Ruling No. DA-489-03, where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with this Court. The Supreme Court held 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

⁴³ Now subsection (C).

⁴⁴ Now Section 112(C) of the NIRC of 1997, as amended by RA 9337.

⁴⁵ Now Section 112(C) of the NIRC of 1997, as amended by RA 9337.



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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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

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)

In the very recent case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*,⁴⁶ the Supreme Court has come up with an outline of the doctrines enunciated in the *San Roque* case, to wit:

“For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit of unutilized creditable input VAT. They are as follows:

⁴⁶ G.R. No. 197525, June 4, 2014. 

1. When to file an administrative claim with the CIR:

a. General rule – Section 112(A) and *Mirant*⁴⁷

Within 2 years from the close of the taxable quarter when the sales were made.

b. Exception – *Atlas*⁴⁸

Within 2 years from the date of payment of the output VAT, if the administrative claim was filed from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).

2. When to file a judicial claim with the CTA:

a. General rule – Section 112(D)⁴⁹; *not* Section 229

- i. **Within 30 days from the full or partial denial of the administrative claim by the CIR; or**
- ii. **Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC)**

b. Exception – BIR Ruling No. DA-489-03

The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*). (Emphases and underscoring supplied)

⁴⁷ Referring to the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008.

⁴⁸ Referring to the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.

⁴⁹ Now Section 112(C), NIRC of the 1997, as amended by RA 9337.



The pertinent dates involved in the consolidated cases *a quo* are summarized below:

<i>Period</i>	<i>Filing date of administrative claim</i>	<i>Last day of the 120-day period under Section 112(C) from date of filing of administrative claim in case of inaction</i>	<i>Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals</i>	<i>Filing date of Petition for Review</i>
1 st Quarter 2007	February 27, 2009	June 27, 2009	July 27, 2009	April 14, 2009 (CTA Case No. 7913)
2 nd Quarter 2007				
3 rd Quarter 2007	June 2, 2009	September 30, 2009	October 30, 2009	September 30, 2009 (CTA Case No. 7977)
4 th Quarter 2007	August 7, 2009	December 5, 2009	January 4, 2010	December 29, 2009 (CTA Case No. 8018)

Based on the foregoing table vis-à-vis the doctrinal pronouncements in the *San Roque* case, Manulife’s judicial claims were all timely filed with the Courts *a quo*.

Manulife’s judicial claim for the 4th quarter of 2007 was timely filed, since it complied with the mandatory and jurisdictional 120+30-day periods under Section 112(C) of the NIRC of 1997.

With regard to the judicial claims for the 1st, 2nd and 3rd quarters of 2007, Manulife filed said judicial claims after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before October 6, 2010, the date when the *Aichi* case was promulgated. Thus, even though the said judicial claims were prematurely filed without waiting for the expiration of the 120-day mandatory period, the Courts *a quo* may still take cognizance of CTA Case Nos. 7913 and 7977 as they were filed within the period exempted from the 120+30-day mandatory periods.

BIR Ruling No. DA-489-03 provides a valid claim for equitable estoppel under Section 246 of the NIRC of 1997.

Petitioner avers that assuming that the CIR, in issuing BIR Ruling No. DA-489-03, made an erroneous interpretation of a difficult question of law, particularly the reckoning of the prescriptive periods for input VAT refund or credit, it is a long and firmly settled rule of law that the Government is not bound by the errors committed by its

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agents. According to the CIR, in the performance of its government functions, the State cannot be estopped by the neglect of its agents and officers.

We disagree.

Admittedly, the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.⁵⁰ The rule on non-estoppel of the government is not designed to perpetrate an injustice.⁵¹

In the *San Roque* case, the Supreme Court ruled that BIR Ruling DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the NIRC of 1997, viz:

“BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states 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.’** Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

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

⁵⁰ *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117982, February 6, 1997.

⁵¹ *Leca Realty Corporation vs. Republic of the Philippines; Republic of the Philippines vs. Bank of the Philippine Island et al.*, G.R. Nos. 155605 & 160179, September 27, 2006.



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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.

Section 4 of the Tax Code, a *new* provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:

Sec. 4. Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code 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. Section 246 provides as follows:

Sec. 246. Non-Retroactivity of Rulings.— Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:



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(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.
(Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only the Commissioner because this Section expressly states, '**Any** revocation, modification or reversal' without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayer similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR vs. Philippine Health Care Providers, Inc.*:⁵²

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer.** Hence,

⁵² G.R. No. 168129, April 24, 2007.



where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.

This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.*, and *Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**

More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer. (Emphasis supplied)"

Accordingly, BIR Ruling No. DA-489-03 effectively shielded the filing of Manulife's judicial claim for the 1st, 2nd and 3rd quarters of 2007 from the vice of prematurity. Since the said BIR Ruling provides a basis for equitable estoppel, the CIR cannot now question the Court in Division's exercise of jurisdiction over the consolidated cases *a quo* on the basis of the rule on non-estoppel of the government.

Submission of complete supporting documents at the administrative level.

Petitioner avers that respondent failed to prove that it submitted complete supporting documents with its application for refund and thus, the 120-day period within which petitioner must act on respondent's administrative claim has yet to commence.

Petitioner's argument is devoid of merit.



As can be gleaned from its administrative claims filed on February 27, 2009, June 2, 2009, and August 7, 2009, Manulife is deemed to have already submitted the “complete documents” upon the said filing. The fact of the submission of those complete documents is shown in the said administrative claims themselves, to wit:

**Administrative claim filed on
February 27, 2009 (Letter dated
February 26, 2009):⁵³**

“We hereby submit, on behalf of MDSI, an application for the issuance of a tax credit certificate covering the unapplied/excess input VAT in the amount of **PESOS: Three Million Five Hundred Seventy-Eight Thousand Eight Hundred Thirty Pesos and Eighty-Six Centavos (Php 3,578,830.86)** for the period 1 January to 31 (sic) June 2007. We attach herewith the following documents in support of our application:

1. Three (3) duly signed copies of BIR Form 1914;
 2. Article of Incorporation of MDSI (photocopy);
 3. BIR Certificate of Registration and annual registration payment for 2007 and 2009 (photocopy);
 4. 2007 Annual Income Tax Return (photocopy);
 5. 2007 Audited Financial Statement (photocopy);
 6. Monthly VAT Returns (photocopies);
 - a. January VAT Return, original and amended;
 - b. February VAT Return, original and amended;
 - c. April VAT Return, original and amended;
 - d. May VAT Return, original and amended;
 7. Quarterly VAT Returns (photocopies);
 - a. 1st Quarter VAT Return, original and amended;
 - b. 2nd Quarter VAT Return;
 8. Summary List of Zero-Rated Sales for the 1st to 2nd Quarters of 2007;
 9. Summary List of Local Purchases for the 1st to 2nd Quarters of 2007;
 10. Sworn Certification of MDSI showing the amount of Zero-Rated Sales, Taxable Sales and Exempt Sales for the 1st to 2nd Quarter of 2007; and
 11. Certification from the Department of Finance that MDSI has not filed a similar claim for refund with the Bureau of Internal Revenue, Bureau of Customs and Board of Investments for the period 1 January 2007 to 31 December 2007.
 12. MDSI Official Receipts Nos. 31 to 65 for the 1st to 2nd Quarters of 2007 (photocopies);
 13. MDSI Sales Invoices Nos. 35-40, 42, 44-62, 64-74, 76-100 for the 1st to 2nd Quarters of 2007 (photocopies).
- 

⁵³ Exhibit “C”.

14. Purchase invoices and official receipts evidencing VAT-able purchase of goods and services for the 1st to 2nd Quarters of 2007 (photocopies).” (*Underscoring supplied*)

Administrative claim filed on June 2, 2009 (Letter dated June 2, 2009):⁵⁴

“We hereby submit, on behalf of MDSI, an application for the issuance of a tax credit certificate covering the unapplied/excess input VAT in the amount of **PESOS: One Million Four Hundred Fifty Eight Thousand Two Hundred Seventy Four and Forty Two Centavos (Php 1,458,274.42)** for the period 1 July to 30 September 2007. We attach herewith the following documents in support of our application:

1. Three (3) duly signed copies of BIR Form 1914;
2. Article of Incorporation of MDSI (photocopy);
3. BIR Certificate of Registration and annual registration payment for 2007 and 2009 (photocopy);
4. 2007 Annual Income Tax Return (photocopy);
5. 2007 Audited Financial Statement (photocopy);
6. Monthly VAT Returns (photocopies);
 - a. July VAT Return;
 - b. August VAT Return;
7. 3rd Quarterly VAT Return (photocopy);
8. Summary List of Zero-Rated Sales for the 3rd Quarter of 2007;
9. Summary List of Local Purchases for the 3rd Quarter of 2007;
10. Sworn Certification of MDSI showing the amount of Zero-Rated Sales, Taxable Sales and Exempt Sales for the 3rd Quarter of 2007;
11. Certification from the Department of Finance that MDSI has not filed a similar claim for refund with the Bureau of Internal Revenue, Bureau of Customs and Board of Investments for the period 1 January 2007 to 31 December 2007.
12. MDSI Official Receipts Nos. 66 to 100 for the 3rd Quarter of 2007 (photocopies);
13. MDSI Sales Invoices Nos. 101 to 149 for the 3rd Quarter of 2007 (photocopies).
14. Purchase invoices and official receipts evidencing VAT-able purchase of goods and services for the 3rd Quarter of 2007 (photocopies).” (*Underscoring supplied*)

Administrative claim filed on August 7, 2009 (Letter dated August 7, 2009):⁵⁵

⁵⁴ Exhibit “LLL”.

⁵⁵ Exhibit “PPP”.



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"We hereby submit, on behalf of MDSI, an application for the issuance of a tax credit certificate covering the unapplied/excess input VAT in the amount of **PESOS: One Million Four Hundred Fifty Eight Thousand Two Hundred Seventy Four and Forty Two Centavos (Php 1,458,274.42)** for the period 1 July to 30 September 2007. We attach herewith the following documents in support of our application:

1. Three (3) duly signed copies of BIR Form 1914;
2. Article of Incorporation of MDSI (photocopy);
3. BIR Certificate of Registration and annual registration payment for 2007 and 2009 (photocopy);
4. 2007 Annual Income Tax Return (photocopy);
5. 2007 Audited Financial Statement (photocopy);
6. Monthly VAT Returns (photocopies);
 - a. October VAT Return;
 - b. November VAT Return;
7. 4th Quarterly VAT Return (photocopy);
8. VAT Return for the 2nd Quarter of 2009 (photocopy);
9. Summary List of Zero-Rated Sales for the 4th Quarter of 2007;
10. Summary List of Local Purchases for the 4th Quarter of 2007;
11. Sworn Certification of MDSI showing the amount of Zero-Rated Sales, Taxable Sales and Exempt Sales for the 4th Quarter of 2007;
12. Certification from the Department of Finance that MDSI has not filed a similar claim for refund with the Bureau of Internal Revenue, Bureau of Customs and Board of Investments for the period 1 January 2007 to 31 December 2007;
13. MDSI Official Receipts Nos. 66 to 142 for the 4th Quarter of 2007 (photocopies);
14. MDSI Sales Invoices Nos. 159 to 182 and 184-214 for the 4th Quarter of 2007 (photocopies).
15. Purchase invoices and official receipts evidencing VAT-able purchase of goods and services for the 4th Quarter of 2007 (photocopies).
16. Citibank Customer Advice for the 4th Quarter of 2007 (Photocopies)
17. Service Agreements of MDSI with The Manufacturers Life Insurance Co., John Hancock Life Insurance Co. (USA), and Manulife (International) Limited." (*Underscoring supplied*)

Thus, the reckoning of the 120-day period respectively commenced from the filing of the foregoing administrative claims.

In view of the submission of the said documents, there is no basis for the CIR to assert that she "*cannot decide the claim for*



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*refund without the taxpayer submitting its complete supporting documents.*⁵⁶

Conversely, the submission of complete supporting documents is presumed, pursuant to the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*.⁵⁷ In the said case, the Supreme Court said:

“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, absent any evidence to the contrary.”⁵⁸

And even assuming that We can ignore the foregoing presumption and find that Manulife did not present or attached the “*complete supporting documents*” in its administrative claims, the CIR can always decide a refund claim, in view of the recognized principle that the **CIR ought to know the records of all taxpayers**, as respectively held in *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*⁵⁹ and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*⁶⁰, to wit:

“The Bureau of Internal Revenue, for its part, failed to controvert petitioner’s claim. In fact, it presented no evidence at all. Because it ought to know the tax records of all taxpayers, the CIR could have easily disproved petitioner’s claim. To repeat, it did not do so.”
(Emphasis supplied)

⁵⁶ Petition for Review (at p.7), EB Docket, p. 10.

⁵⁷ G.R. Nos. 198729-90, January 15, 2014.

⁵⁸ Read also *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 184266, November 11, 2013), wherein the Supreme Court ruled as follows:

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

⁵⁹ G.R. No. 122480, April 12, 2000.

⁶⁰ G.R. No. 180042, February 8, 2010.



“Since he ought to know the tax records of all taxpayers, petitioner CIR could have easily disproved the claimant’s allegations.” *(Emphasis supplied)*

Moreover, taking into consideration the clear provision of the aforequoted Section 112(C) of the NIRC of 1997, as amended by RA 9337, and since the CIR ought to know the tax records of all taxpayers, she cannot validly invoke Items III and IV of RMC 29-2009.

The efficacy of RMC 29-2009.

For easy reference, quoted hereunder are the said provisions of RMC 29-2009, viz:

“III. Period Within Which Refund or Tax Credit of Input Taxes Shall be Made

Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents. For the purpose of defining ‘proper cases’ in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

- a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
- b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Officer (RO) for audit/verification;
- c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and



- d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, *i.e.*, failure to present the accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.

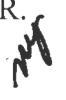
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IV. Effect of Non-submission of Documents or Non-compliance with Audit/Verification Requirements in Support of the Application for Claim for Tax Refund/Credit

Application of tax refund/TCC shall be denied where the taxpayer/claimant failed to submit complete supporting documents or failed to comply with the audit/verification requirements as stated in Items III.a to III.d hereof, where applicable, after three (3) notifications from the processing/investigating office. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant. *(Italics and underscoring supplied)*

Revenue Memorandum Circulars, such as RMC 29-2009, are considered administrative rulings which are issued from time to time by the CIR.⁶¹ While administrative issuances have the force and

⁶¹ *Asia International Auctioneers, Inc. vs. Parayno, et al.*, G.R. No.163445, December 18, 2007; *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.



effect of law,⁶² said Circulars cannot prevail over the clear and plain language of the Tax Code.⁶³ In this connection, it must be emphasized that Section 112(C) of the NIRC of 1997, as amended by RA 9337, is clear and plain as to the running of 120-day period. It does not provide for any instance where the same may be stopped or tolled; nor does it authorize the CIR to stop or toll the same.

Furthermore, for being clear and plain, it is not necessary to interpret said Section 112 (C). A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.⁶⁴ In this connection, it must be stressed that in *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*,⁶⁵ the Supreme Court said:

“As mentioned at the outset, Section 102(b)(2) of the Tax Code is very clear. **Therefore, no statutory construction is needed. Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon.**” (*Emphasis and underscoring supplied*)

In addition, to accept the notion that the CIR may stop the running of the 120-day period under Section 112(C) of the NIRC of 1997, as amended by RA 9337, would render nugatory the ruling of the Supreme Court, in the *Aichi* case, that the 120-day period is crucial in filing an appeal with this Court. To reiterate, the High Court said:

“xxx. The second paragraph of Section 112(D)⁶⁶ of the NIRC envisions two scenarios: **(1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period.** In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. **As we**

⁶² *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

⁶³ *Security Bank Corporation (formerly Security Bank and Trust Company) vs. Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

⁶⁴ *Amores vs. House of Representatives Electoral Tribunal, et al.*, G.R. No. 189600, June 29, 2010.

⁶⁵ G.R. No. 152609, June 29, 2005.

⁶⁶ Now Section 112(C) of the NIRC of 1997, as amended by RA 9337.



see it then, the 120-day period is crucial in filing an appeal with the CTA. (*Emphasis and underscoring supplied*)

Thus, even conceding that the construction of a statute by the CIR is to be given great weight, the courts, which include this Court, are **not** bound thereby if such construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws.⁶⁷

But even assuming that Items III and IV of RMC 29-2009 is valid and binding upon this Court, it must be emphasized that there is no showing that Manulife did not comply with the conditions or requirements stated therein. At this juncture, it must already be stated that in the consolidated cases *a quo*, the CIR never presented any evidence at all to present its case or to rebut Manulife's evidence.⁶⁸

A cursory reading of the said Items III and IV of RMC 29-2009 would reveal that the taxpayer/claimant must comply with the conditions or requirements stated therein only "*upon audit/verification of his/its claim*". In this case, it was not clearly shown that an audit or verification of Manulife's administrative claims was ever conducted by the BIR.

But even if We further assume that such audit or verification has been conducted, it is clear that the stoppage or suspension of the 120-day period will respectively occur only in the following instances: (1) "*from the date of notification to the taxpayer*" of his/its supposed failure to comply; or (2) when during the audit or verification, a question of law arises and the issue is referred to the BIR's Legal Division or the Legal Service. In the case at bar, neither of the said instances was ever shown to exist.

Correspondingly, whether or not We consider Items III and IV of RMC 29-2009 as valid and binding upon this Court, the same is of no moment.

⁶⁷ *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009.

⁶⁸ Refer to the Minutes of Hearing held on April 23, 2012, Division Docket, Vol. 2 (CTA Case No. 7913), p. 950.



A pending administrative investigation does not prevent the granting of refund or issuance of TCC by this Court.

Lastly, We cannot subscribe to CIR's contention that pending the closure of the supposed investigation of Manulife's claim, no grant of refund may be given to Manulife.

The CIR is clearly mistaken.

Without doubt, when a judicial claim is timely filed consistent with the *San Roque* case, the CIR must still continue the investigation of the administrative claim. Thus, in the *San Roque* case, the Supreme Court said:

"...if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.

On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes 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 proceedings."

Nevertheless, the continuation of the investigation of the said administrative claim does not prevent this Court from deciding an appeal of a refund claim. In fact, under RMC 49-2003, which has the



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force and effect of a law,⁶⁹ recognizes the scenario where this Court is able to release a decision ahead of the BIR. Said BIR issuance provides:

“In cases where the taxpayer has filed a ‘Petition for Review’ with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on the case separately.** While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite of the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon initiative of either the Legal Office or the

⁶⁹ *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, supra (footnote no. 62).



Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office.” (*Emphases supplied*)

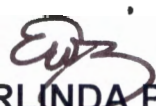
Thus, the CIR is in error to argue that the pendency of an administrative investigation of Manulife’s claim prevents the granting of a refund by the Court in Division.

But even granting that RMC 49-2003 does not exist, or is amended or repealed later on, the same is of no consequence.

As a court vested with judicial power, which includes the duty “to settle actual controversies involving rights which are legally demandable and enforceable”,⁷⁰ the Courts *a quo* cannot be divested of their jurisdiction specifically conferred to them by law from deciding a properly and timely filed appeal, for the simple reason that the administrative claim is still pending investigation before the BIR.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated June 13, 2013 and Resolution dated August 6, 2013, promulgated by the Court in Division in the consolidated cases of CTA Case Nos. 7913, 7797 and 8018, are hereby **AFFIRMED** *in toto*.

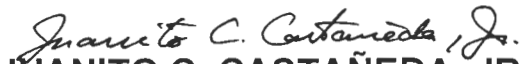
SO ORDERED.

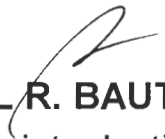

ERLINDA P. UY
Associate Justice

WE CONCUR:

(*On Wellness Leave*)
ROMAN G. DEL ROSARIO
Presiding Justice

⁷⁰ Section 1, Article VIII of the 1987 Constitution, in relation to Section 1 of RA 1125, as amended by RA 9282.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

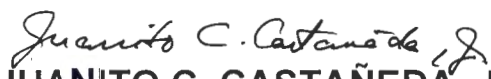

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice