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2009, respectively, are likewise **REVERSED** and **SET ASIDE** insofar as it held **Abelardo P. Samson, Olga Samson and Aurelio Villaflor, Jr.** solidarily liable for illegal dismissal.

We **REVERSE** our ruling in *Manlimos v. NLRC* insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation, and that the dismissal of the affected employees is lawful even absent a just or authorized cause.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Del Castillo and *Mendoza, JJ.,* no part. Concurred in the Court of Appeals Decision (CA-G.R. SP No. 97510).

Villarama, Jr., J., on leave.

EN BANC

[G.R. No. 187485. October 8, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN ROQUE POWER CORPORATION,** *respondent.*

[G.R. No. 196113. October 8, 2013]

TAGANITO MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[G.R. No. 197156. October 8, 2013]

PHILEX MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; THE DOCTRINE OF OPERATIVE FACT IS AN EXCEPTION TO THE GENERAL RULE THAT A VOID LAW OR ADMINISTRATIVE ACT CANNOT BE THE SOURCE OF LEGAL RIGHTS OR DUTIES SUCH THAT A JUDICIAL DECLARATION OF INVALIDITY MAY NOT NECESSARILY OBLITERATE ALL THE EFFECTS AND CONSEQUENCES OF A VOID ACT PRIOR TO SUCH DECLARATION; APPLICATION OF THE DOCTRINE OF OPERATIVE FACT.— The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." The doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration. x x x For the operative fact doctrine to apply, there must be a **"legislative or executive measure,"** meaning **a law or executive issuance,** that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid. In the present case, however, there is no such law or executive issuance that has been invalidated by the Court except BIR Ruling No. DA-489-03.

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2. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND OR TAX CREDIT; NO ADMINISTRATIVE PRACTICE ALLOWING SIMULTANEOUS FILING OF CLAIMS FOR TAX REFUND OR CREDIT; PRIOR TO ISSUANCE OF BIR RULING NO. DA-489-03, THE 120+30 DAY PERIODS WERE CONSIDERED MANDATORY AND JURISDICTIONAL.— To justify the application of the doctrine of operative fact as an exemption, San Roque asserts that "the BIR and the CTA **in actual practice** did not observe and did not require refund seekers to comply with the120+30 day periods." **This is glaring error because an administrative practice is neither a law nor an executive issuance. Moreover, in the present case, there is even no such administrative practice by the BIR as claimed by San Roque**. x x x. Before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, there was ***no*** administrative practice by the BIR that supported simultaneous filing of claims. Prior to BIR Ruling No. DA-489-03, the BIR considered the 120+30 day periods mandatory and jurisdictional. **Thus, prior to BIR Ruling No. DA-489-03, the BIR's actual administrative practice was to contest simultaneous filing of claims at the administrative and judicial levels, until the CA declared in *Hitachi* that the BIR's position was wrong. The CA's *Hitachi* decision is the basis of BIR Ruling No. DA-489-03 dated 10 December 2003 allowing simultaneous filing. From then on taxpayers could rely in good faith on BIR Ruling No. DA-489-03 even though it was erroneous as this Court subsequently decided in *Aichi* that the 120+30 day periods were mandatory and jurisdictional.**

3. ID.; ID.; ID.; FOR THE DOCTRINE OF OPERATIVE FACT TO APPLY, THERE MUST BE A RULE OR RULING ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE THAT IS RELIED UPON BY THE TAXPAYER IN GOOD FAITH, FOR AN ADMINISTRATIVE PRACTICE, NOT FORMALIZED INTO A RULE OR RULING, WILL NOT SUFFICE BECAUSE THE SAME MAY NOT BE UNIFORMLY AND CONSISTENTLY APPLIED.— The doctrine of operative fact is an argument for the application of equity and fair play. In the present case, we applied the doctrine of operative fact when we recognized

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simultaneous filing during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when this Court promulgated *Aichi* declaring the 120+30 day periods mandatory and jurisdictional, thus reversing BIR Ruling No. DA-489-03. The doctrine of operative fact is in fact incorporated in Section 246 of the Tax Code x x x. Under Section 246, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. **There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or ruling, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency.**

4. **ID.; ID.; ID.; SECTION 246 OF THE TAX CODE, BEING AN EXEMPTION TO STATUTORY TAXATION, MUST BE APPLIED STRICTLY AGAINST THE TAXPAYER CLAIMING SUCH EXEMPTION.—** Since the law has already prescribed in Section 246 of the Tax Code how the doctrine of operative fact should be applied, there can be no invocation of the doctrine of operative fact other than what the law has specifically provided in Section 246. In the present case, the rule or ruling subject of the operative fact doctrine is BIR Ruling No. DA-489-03 dated 10 December 2003. Prior to this date, there is no such rule or ruling calling for the application of the operative fact doctrine in Section 246. Section 246, being an exemption to statutory taxation, must be applied strictly against the taxpayer claiming such exemption.

5. **REMEDIAL LAW; JUDGMENTS; THE DECISIONS OF THE COURT OF TAX APPEALS OR COURT OF APPEALS ARE SPECIFIC RULINGS APPLICABLE ONLY TO THE PARTIES TO THE CASE AND NOT TO THE GENERAL PUBLIC, HENCE, THEY DO NOT FORM PART OF THE LAW; DECISIONS OF LOWER COURTS DO NOT HAVE ANY VALUE AS PRECEDENTS AND ARE NOT BINDING**

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ON THE SUPREME COURT.— San Roque insists that this Court should not decide the present case in violation of the rulings of the CTA; otherwise, there will be adverse effects on the national economy. In effect, San Roque's doomsday scenario is a protest against this Court's power of appellate review. San Roque cites cases decided by the CTA to underscore that the CTA did not treat the 120+30 day periods as mandatory and jurisdictional. However, CTA or CA rulings are not the executive issuances covered by Section 246 of the Tax Code, which adopts the operative fact doctrine. CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of this Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents. Obviously, decisions of lower courts are not binding on this Court. **To hold that CTA or CA decisions, even if reversed by this Court, should still prevail is to turn upside down our legal system and hierarchy of courts, with adverse effects far worse than the dubious doomsday scenario San Roque has conjured.**

6. ID.; APPEALS; ANY ISSUE, WHETHER RAISED OR NOT BY THE PARTIES, BUT NOT PASSED UPON BY THE COURT, DOES NOT HAVE ANY VALUE AS PRECEDENT.— San Roque cited cases in its Supplemental Motion for Reconsideration to support its position that retroactive application of the doctrine in the present case will violate San Roque's right to equal protection of the law. However, San Roque itself *admits* that the cited cases never mentioned the issue of premature or simultaneous filing, nor of compliance with the 120+30 day period requirement. **We reiterate that "[a]ny issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent." Therefore, the cases cited by San Roque to bolster its claim against the application of the 120+30 day period requirement do not have any value as precedents in the present case.**

7. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; THE COMMISSIONER OF INTERNAL REVENUE MAY DELEGATE THE POWERS VESTED IN HIM TO ANY OR SUCH SUBORDINATE OFFICIALS WITH THE

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RANK EQUIVALENT TO A DIVISION CHIEF OR HIGHER, SUBJECT TO SUCH LIMITATIONS AND RESTRICTIONS AS MAY BE IMPOSED UNDER RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER.— In asking this Court to disallow Taganito's claim for tax refund or credit, the CIR repudiates the validity of the issuance of its own BIR Ruling No. DA-489-03. "Taganito cannot rely on the pronouncements in BIR Ruling No. DA-489-03, being a mere issuance of a Deputy Commissioner." Although Section 4 of the 1997 Tax Code provides that 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," Section 7 of the same Code does not prohibit the delegation of such power. Thus, "**[t]he Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

LEONEN, *J., concurring and dissenting opinion:*

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE INTERPRETATIONS MADE THROUGH REVENUE REGULATION OR BY OPINION BY A DEPUTY COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE CONTRARY TO THE PROVISIONS OF THE LAW ARE *ULTRA VIRES*.— [T]he text of Section 112 (C) [of the 1997 tax code] is clear. It puts all taxpayers on notice. The interpretations made through Revenue Regulation or by Opinion by a Deputy Commissioner of the Bureau of Internal Revenue contrary to the provisions of the law are clearly *ultra vires* and should not be countenanced. If We sanction these acts, it undermines the operative value of the statute as written. It rewards erroneous interpretation and unduly grants discretion to the Commissioner of Internal Revenue, which may be abused given the pressure from million-peso claims for tax refunds.

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2. ID.; ID.; SECTION 112 (C) THEREOF; APPEAL TO THE COURT OF TAX APPEALS IS MADE ONLY AFTER THE 120-DAY PERIOD FROM THE DATE OF SUBMISSION OF COMPLETE DOCUMENTS TO SUPPORT THE REFUND OR TAX CREDIT CERTIFICATE WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITHIN THE 120-DAY PERIOD FROM THE TIME THE CLAIM HAS BEEN DENIED OR ONLY PARTIALLY GRANTED.— There is no room for any other interpretation of the text [of Section 112 (c) of the 1997 tax code] except that resort to an appeal with the Court of Tax Appeals is made (a) only after the 120-day period from the date of submission of complete documents to support the refund or tax credit certificate with the Commissioner of Internal Revenue or (b) within the 120-day period from the time the claim has been denied or only partially granted.

3. STATUTORY CONSTRUCTION; WHEN THE COURT INTERPRETS LAW, IT DECLARES WHAT A PARTICULAR PROVISION HAS ALWAYS MEANT; IT DOES NOT CREATE NEW OBLIGATIONS FOR IT HAS NO POWER TO LEGISLATE.— [T]he *Aichi* doctrine as confirmed in *San Roque* should be applied to all undecided Value Added Tax or VAT refund cases, regardless of the period when the claim for refund was made. When this Court interprets law, it declares what a particular provision has always meant. We do not create new legal obligations. We do not have the power to legislate. Interpretations of law made by courts necessarily always have a "retroactive" effect. Once We determine that a previous interpretation of the law is erroneous, We cannot, at the same time, continue to give effect to such erroneous interpretation because Ours is the duty to uphold the true meaning of the law.

4. ID.; A CONSTRUCTION PLACED UPON THE LAW BY THE COMMISSIONER OF INTERNAL REVENUE EVEN IF IT HAS BEEN FOLLOWED FOR YEARS, IF FOUND TO BE CONTRARY TO LAW, MUST BE ABANDONED.— A construction placed upon the law by the Commissioner, even if it has been followed for years, if found to be contrary to law, must be abandoned. To say that such interpretation established by the administrative agency has effect would be to say that this Court has the power to control or suspend the

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effectivity of laws. We cannot hold ourselves hostage to an erroneous interpretation. To say that equity should be considered because it has been relied upon by taxpayers would mean to underestimate or, worse, make the ordinary beneficiaries of the use of our taxes invisible. We cannot use equity only to favor large taxpayers.

5. ID.; ID.; AN ERRONEOUS APPLICATION AND ENFORCEMENT OF THE LAW BY PUBLIC OFFICERS DO NOT PRECLUDE A SUBSEQUENT CORRECT APPLICATION OF THE STATUTE, AND THE GOVERNMENT IS NEVER ESTOPPED BY MISTAKE OR ERROR ON THE PART OF ITS AGENTS.— Settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents." Similar with Our duty of upholding the Constitution when it is in conflict with a statute, it is Our duty to uphold a statute when it is in conflict with an executive issuance. We ensure that clear provisions of law are not undermined by the Commissioner of Internal Revenue.

6. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); SECTION 4 THEREOF; THE COMMISSIONER OF INTERNAL REVENUE CANNOT LEGISLATE GUIDELINES CONTRARY TO LAW IT IS TASKED TO IMPLEMENT; HENCE, ITS INTERPRETATION IS NOT CONCLUSIVE AND WILL BE IGNORED IF JUDICIALLY FOUND TO BE ERRONEOUS.— [S]ection 4 of the Tax Code expressly grants to the Commissioner of Internal Revenue the power to interpret tax laws x x x. However, the Commissioner of Internal Revenue cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

7. ID.; ID.; TAX REFUNDS/TAX CREDITS; TAXPAYERS DO NOT HAVE VESTED RIGHTS OVER TAX REFUNDS FOR REFUNDS MUST BE PROVEN AND ITS APPLICATION RAISED IN THE RIGHT MANNER AS REQUIRED BY THE STATUTE; VESTED RIGHT, EXPLAINED; DOCTRINE OF OPERATIVE FACT, EXPLAINED.— The

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doctrine of operative fact cannot be an excuse for Us to renege on this constitutional duty. This doctrine only refers to rights that have already been vested due to reliance on a statute or executive act that was eventually declared unconstitutional or invalid. In *Benguet Consolidated Mining Co. v. Pineda,* vested right is defined as follows: Vested right is "some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy." x x x "Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested." There are no vested rights in procedure. Taxpayers do not have vested rights over tax refunds. Refunds need to be proven and its application raised in the right manner as required by statute. Only after a final determination of the right to refund and its amount does it become a vested right for the taxpayer.

8. ID.; ID.; ID.; ID.; PRACTICE, WITHOUT MORE, NO MATTER HOW LONG CONTINUED, CANNOT GIVE RISE TO ANY VESTED RIGHTS IF IT IS CONTRARY TO LAW; ADMINISTRATIVE PRACTICE IS NOT SUBJECT TO THE DOCTRINE OF OPERATIVE FACT.— San Roque further anchors its argument on the "actual practice" by the Bureau and the Court of Tax Appeals in treating the 120+30-day period as permissive rather than directory. This contention is specious. x x x [A]n administrative practice is not subject to the doctrine of operative fact. "Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law."

9. ID.; ID.; SECTION 246 THEREOF APPLIES ONLY WHEN THERE IS A VALID INTERPRETATION MADE BY THE COMMISSIONER OF INTERNAL REVENUE; BUREAU OF INTERNAL REVENUE RULING NO. DA-489-03 DECLARED ULTRA VIRES AND WAS NOT VALIDLY ISSUED SINCE IT WAS PROMULGATED BY A DEPUTY COMMISSIONER.— Section 246. Non-Retroactivity of Rulings. – Any revocation, modification or reversal of any of

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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 shall be prejudicial to the taxpayer, except in the following cases: (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. This provision should only apply when there is a valid interpretation made by the Commissioner of Internal Revenue. In the present case, the Bureau of Internal Revenue Ruling No. DA-489-03 is *ultra vires* and was not validly issued since it was promulgated by a Deputy Commissioner.

10. ID.; ID.; SECTION 112 (C) THEREOF; A RULE OR REGULATION CANNOT GO BEYOND THE TERMS AND PROVISIONS OF THE CODE; REVENUE REGULATION NO. 07-95 CANNOT GO BEYOND THE PROVISIONS OF THE TAX CODE.— Under Section 4 of the 1997 Tax Code, the power to interpret the provisions of the Code and other tax laws is under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, subject to review by the Secretary of Finance. Pursuant to Section 7 of the Tax Code, the Commissioner of Internal Revenue may delegate his or her powers to a subordinate official except, among others, the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau of Internal Revenue. The Bureau of Internal Revenue Ruling No. DA-489-03 is a ruling of first impression, declaring for the first time in written form the permissive nature of the 120-day period stated in Section 112 (C). x x x. [The dissent], however, disagrees x x x that the Bureau of Internal Revenue Ruling is an application of a rule already laid down and specified in Revenue Regulation No. 07-95, which considered the 120-day (then 60-day) period as non-obligatory and discretionary. Nowhere in the Revenue Regulation is it expressed or implied that the 120-day (then 60-day) period is permissive. x x x. [I]t is clear from [Section 4.106-2 of Revenue Regulation 07-95] that the appeal to the Court of Tax Appeals may be

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made only after the lapse of the 60-day (now 120-day) period without action by the Commissioner of Internal Revenue on the administrative claim. A rule or regulation cannot go beyond the terms and provisions of the basic law. Revenue Regulation No. 07-95, therefore, cannot go beyond the provisions of the Tax Code.

11. ID.; ID.; TAX REFUNDS/TAX CREDITS; THE 120+30 DAY PERIOD IS NOT A MERE PROCEDURAL TECHNICALITY THAT CAN SIMPLY BE DISREGARDED IF THE CLAIM IS OTHERWISE MERITORIOUS, BUT A MANDATORY AND JURISDICTIONAL CONDITION IMPOSED BY LAW; NO ACTION FOR THE RECOVERY OF TAX PAID CAN BE MAINTAINED WITHOUT STRICTLY COMPLYING WITH EACH AND EVERY ONE OF THE CONDITIONS REQUIRED BY THE LAW TO THAT EFFECT.— [A] value added tax refund is not a refund of an excessively, illegally or erroneously collected tax. A value added tax refund claim may be made because it is specifically allowed and provided for by law, *i.e.*, Section 110 (B) and Section 112 (A) of the National Internal Revenue Code, as amended. Similar in nature to a tax exemption, it must be construed strictly against the taxpayer. Hence, strict compliance with *both* substantive and procedural requirements is required for a value added tax refund claim to prosper. The 120+30-day period is not a mere procedural technicality that can simply be disregarded if the claim is otherwise meritorious, but a mandatory and jurisdictional condition imposed by law. "Failure to comply with [these] requisite[s] is fatal because it has been repeatedly held that no action for the recovery of a tax paid can be maintained without strictly complying with each and every one of the conditions required by the law to that effect." Even handed justice requires that the new rule be applied retroactively to all who are similarly situated, including the claims of San Roque and Taganito, which are subject of the present case. Reiterating Our view expressed in the separate Opinion in the Decision: "the provisions that We have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the Commissioner or after the lapse of 120 days from the date of

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submission of complete documents in support of the administrative claim for refund."

VELASCO, JR., *J., dissenting opinion:*

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE INTERPRETATION OF THE SECRETARY OF FINANCE, AS EMBODIED IN REVENUE REGULATIONS, PREVAILS OVER RULINGS ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE, WHO IS ONLY EMPOWERED, AT MOST, TO RECOMMEND THE PROMULGATIONS OF RULES AND REGULATIONS BY THE SECRETARY OF FINANCE; THE COMMISSIONER OF INTERNAL REVENUE CANNOT AMEND AND REVERSE A REVENUE REGULATION BY THE MERE EXPEDIENCE OF ISSUING A RULING.— *Lazi Bay* was not an isolated adjudication that deviated from an otherwise fixed and strict observance of the 120≤30 day period stated in Section 112 (C). Instead, it should be taken as a reflection of the prevailing rule and practice carried over from Republic Act No. (RA) 7716, by RR 7-95, which considered the period as non-obligatory and discretionary. RR 7-95 was promulgated pursuant to the power of the Secretary of Finance provided in Section 245 in relation to Section 4 of the 1977 NIRC, as amended by RA 7716. Section 245 of the 1977 NIRC defined the authority of the Secretary of Finance to promulgate rules and regulations x x x. Meanwhile, Section 4 of the 1977 NIRC, as amended, specified the provisions that must be contained in rules and regulations, not just in rulings of the BIR. Among other things, the 1977 NIRC required that "[t]he **conditions** to be observed by revenue officers, provincial fiscals and other officials respecting the institution and **conduct of legal actions and proceedings**" must be defined in a revenue regulation, not just an issuance of the BIR. Certainly, therefore, the specification of the details regarding the observance of the prescriptive period for the filing of judicial claims is within the power of the Secretary of Finance, not the CIR. This delineation of the rule-making powers of the tax authorities was reiterated in Sections 244 and 245, in relation to Sections 4 and 7, of the 1997 NIRC. Section 244 of the 1997 NIRC, again, defined the authority of the Secretary of Finance to promulgate rules and regulations,

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and Section 245 enumerated the specific provisions that must be contained in a revenue regulation x x x. In turn, Section 4 of the 1997 NIRC provides that the CIR has the "power to interpret the provisions of the [1997 Tax] Code x x x subject to the review by the Secretary of Finance." Ergo, **the interpretation of the Secretary of Finance, as embodied in revenue regulations, prevails over rulings issued by the CIR**, who is only empowered, at most, "to recommend the promulgation of rules and regulations by the Secretary of Finance." Given the limited power vested on the CIR in relation to the rule-making power reposed on the Secretary of Finance, the CIR cannot amend and reverse a revenue regulation by the mere expedience of issuing a ruling. Thus, **if this Court is bent on upholding the effectivity of BIR Ruling No. DA-489-03 in *Lazi Bay*, it must be taken as an application of a rule already laid down and specified by the Secretary of Finance in RR 7-95, and not as an isolated application that deviated from an un-interpreted provision of law**.

2. **ID.; ID.; REVENUE REGULATION 7-95 PREVAILS OVER MERE RULING OF THE BUREAU OF INTERNAL REVENUE.—** Indeed, RR 7-95 prevails over a mere BIR Ruling. Note that a revenue regulation is published before its effectivity so that taxpayers are notified of its effects and the consequences of the failure to abide thereby. This is not so with respect to BIR Rulings. Instead, the rulings are addressed and transmitted to the parties who applied for the issuance of the BIR's opinion; other taxpayers are not notified by publication in a newspaper of general circulation of its import and consequence. Unless they conduct a thorough and in-depth investigation, they will not be informed of the opinion of the BIR as embodied in the ruling. As between RR 7-95, a revenue regulation and the BIR ruling in *Lazi Bay*, therefore, reliance on the former is more in accord with due process.

3. **ID.; ID.; TAX REFUND/CREDIT; TAXPAYERS ARE ALLOWED TO TREAT THE 120-DAY PERIOD AS NON-COMPULSORY AND MERELY DISCRETIONARY SO LONG AS THE 2-YEAR PERIOD IS OBSERVED AND COMPLIED.—** [T]o facilitate the sanctioned non-compulsory and discretionary treatment of the 120≤30 day period for the filing of judicial claims, RMC No. 42-03 was issued on July 15, 2003 to address, among others, the rule regarding

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simultaneously filed and pending administrative and judicial claims. Note that RMC No. 42-03 did not mandate the dismissal of a judicial claim filed while an administrative claim is still pending on the ground of prematurity. Instead, RMC No. 42-03 contemplated a situation that allowed the exercise by the CTA and the CIR of concurrent jurisdiction over the claim for refund/issuance of TCC. This RMC was intended as a "response to request of selected taxpayers for adoption of procedures in handling refund cases that are **aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law**." And yet, RMC 49-03 allowed for the *simultaneous* processing of the administrative and judicial claims for input VAT refund/issuance of TCC by the BIR and the CTA, respectively, and NOT the dismissal of the judicial claim on the ground of prematurity. Clearly, the period referred to by the CIR in issuing RMC 49-03 is the period laid down in Section 112 (C) of the 1997 NIRC, as interpreted and enforced by RR 7-95, *i.e.*, "the two (2) year period from the date of filing of the VAT return for the taxable quarter." Hence, taxpayers were allowed to treat the 120-day period as non-compulsory and merely discretionary so long as the 2-year period is observed and complied. **BIR Ruling No. DA-489-03 in *Lazi Bay* simply echoed this rule laid down in RR 7-95 and affirmed by RMC Nos. 42-03 and 49-03** x x x. Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law. Hence, the prevailing rule even after the effectivity of the 1997 NIRC was to treat the 120≤30-day period as non-mandatory since RR 7-95 was not affected and remained in effect.

4. ID.; ID.; ID.; BIR RULING DA-489-03 IS AN EVIDENCE OF THE RULE AND PRACTICE THAT ALLOWED FOR THE DISCRETIONARY AND NON MANDATORY TREATMENT OF THE 120≤30 DAY PERIOD; WHEN THE LEGISLATURE REENACTS A LAW THAT HAS BEEN CONSTRUED BY AN EXECUTIVE AGENCY USING SUBSTANTIALLY THE SAME LANGUAGE, IT IS AN INDICATION OF THE ADOPTION BY THE LEGISLATURE OF THE PRIOR CONSTRUCTION BY THE AGENCY.— Section 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by

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Section 112 (C) of the 1997 NIRC. It is a hornbook rule that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency. The almost verbatim reproduction of Section 106(D) of the 1977 NIRC by Section 112(C) of the 1997 NIRC is therefore an implied recognition by the legislature of the propriety of the interpretation made by the Secretary of Finance of the proper prescriptive period in filing judicial claims for input VAT refund/issuance of TCCs. The continuing application of RR 7-95 in interpreting the provisions of the 1997 NIRC is also acknowledged by the Secretary of Finance, the BIR, the CTA, and this Court. x x x. Numerous BIR rulings rendered after the effectivity of the 1997 NIRC regarding tax incidents that occurred after January 1, 1998 similarly applied the relevant provisions of RR 7-95. Even this Court in resolving claims for refund of input VAT paid after January 1, 1998 recognized the effectivity of RR 7-95 in interpreting the provisions of the 1997 Tax Code. Citing *Panasonic v. Commissioner of Internal Revenue*, We explained that **RR 7-95 gained the status of a legislative act that binds the taxpayers and this Court** x x x. It is, therefore, inaccurate to state that before the issuance of BIR Ruling DA-489-03 in *Lazi Bay* on 10 December 2003, there was ***no*** administrative practice, rule or ruling rule followed by the BIR that supported simultaneous filing of claims and that prior to the *Lazi Bay* ruling, the BIR considered the 120≤30 day period mandatory. Rather, the *Lazi Bay* ruling is one of the outcomes and tangible evidence of such practice, as made concrete by RR 7-95, that allowed the simultaneous filing of claims. Similarly, as pointed out by movant, the fact that this Court, like the CTA and the BIR, has passed upon the issue of the prescriptive period for filing the judicial claim *sub silencio* is also a glaring evidence of the sanctioned rule and practice that allowed for the discretionary and non-mandatory treatment of the 120≤30 day period in Section 112(C) of the 1997 NIRC.

5. ID.; ID.; ID.; RR-16-2005 REQUIRING THE MANDATORY OBSERVANCE OF THE 120≤30 DAY PERIOD BEFORE THE FILING OF A JUDICIAL CLAIM FOR VAT REFUND APPLIES PROSPECTIVELY AND NOT RETROACTIVELY TO THE DATE OF THE

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EFFECTIVITY OF THE 1997 TAX CODE; STATUTES INCLUDING ADMINISTRATIVE RULES AND REGULATIONS OPERATE PROSPECTIVELY ONLY, UNLESS THE LEGISLATIVE INTENT TO THE CONTRARY IS MANIFEST BY EXPRESS TERMS OR BY NECESSARY IMPLICATION.— The policy requiring the mandatory observance of the 120≤30 day period before the filing of a judicial claim for VAT refund was set and made clear only upon the effectivity of RR 16-2005 on November 1, 2005. RR 16-2005 abolished once and for all the standing rule provided in RR 7-95 when it deleted any reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT x x x. Since, similar to RR 7-95, RR 16-2005 was promulgated pursuant to Sections 244 and 245 of the 1997 Tax Code, it embodies a legislative rule that deserves the deference and respect due the law it implements. For this reason, from the effectivity of RR 16-2005 on November 1, 2005, all taxpayers are bound to strictly observe the 120≤30 day period provided in Section 112 (C) and there was no need to wait for the promulgation of a decision like *Aichi* in view of the existence of a clear legislative rule that finally repealed all other rulings that may have clouded the mandatory nature of the 120<30 day period. Like all laws and regulations, RR 16-2005 applies prospectively and not retroactively to the date of the effectivity of the 1997 Tax Code. As this Court explained in *BPI Leasing Corporation v. Court of Appeals*, the rule on prospectivity of laws encompasses revenue regulations implementing the 1997 NIRC: x x x. **The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication**.

6. **ID.; ID.; ID.; ID.; ID.; REFUND SEEKERS SHOULD NOT BE PREJUDICED, PENALIZED NOR CASTIGATED FOR HAVING TAKEN GUIDANCE FROM THE POLICIES, PRONOUNCEMENTS, ISSUANCES AND ACTUATIONS OF THE BUREAU OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, WHICH ACTUATIONS HAVE DIRECT BEARING ON A DIFFICULT QUESTION OF LAW; PRINCIPLE OF OPERATIVE FACT APPLIES.—** The Decision of February 12, 2013 and the Resolution employ retroactivity to backdate the Court's new

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interpretation of the 120≤30 day period under Section 112. This is a dangerous precedent. The retroactivity of application of a new judicial interpretation must be seen for what it is – a corrective tool that must be used in a very controlled, restricted manner and only for very necessary, limited situations and occasions. It is not a tool to be employed lightly; extreme need therefor must be first established. For it is capable of destroying established contractual rights and relationships and causing drastic, massive damage. The narration of case facts and antecedents of the Decisions and Resolutions of this Court and the CTA enumerated above speak to the principle of operative fact, inasmuch as they all bear witness that for years prior to the effectivity of RR 16-2005 in November 2005, in the process of resolving judicial claims for refund of input VAT, the BIR, the CTA and this Court all paid scant attention to the 120≤30 day period requirement in Section 112. This operative fact cannot be denied and ignored if this Court is to be true to its role as the vanguard of truth and ultimate dispenser of justice in this country. As this Court once said: "[t]he actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to its invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." Thus, in arriving at a judicious ruling on a "difficult question of law," this Court should give premium to the good faith of the taxpayers in relying on a valid revenue regulation that has taken the proper agencies too long to update. x x x. Thus, if, as the Decision declares, "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law," there is more reason to maintain that refund seekers should not be prejudiced, penalized nor castigated for having taken guidance from the policies, pronouncements, issuances and actuations of the BIR and the CTA, which actuations have direct bearing on a difficult question of law.

7. ID.; ID.; ID.; ID.; JUDICIAL CLAIM FOR REFUND OF INPUT VAT FILED AND COMMENCED BEFORE THE EFFECTIVITY OF RR16 – 2005 ON NOVEMBER 1, 2005

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SHOULD BE GRANTED REGARDLESS OF THE FAILURE OF THE TAXPAYER TO TAKE INTO ACCOUNT THE 120≤30 PERIOD REQUIREMENT IN SECTION 112 (C) OF THE NIRC.— This Court is, therefore, duty-bound to actively refrain from actions that may be perceived as elevating strict adherence to procedural rules and technicalities over and above the taxpayer's clear, substantive legal right to the refund sought. We must remain cognizant of the taxpayer's good faith compliance with procedures approved and sanctioned by the BIR and the CTA and accepted by this Court, and avoid creating obstacles to defeat the taxpayer's substantive right to refunds. Consistent with the principle of operative fact and the basic notions of fairness and equity, the strict and mandatory application of Section 112 (C) must be reckoned from the day the rule was set clarified and set in black and white—on the effectivity of RR 16-2005 on November 1, 2005. In net effect, all claims for refund of input VAT filed and commenced after November 1, 2005 must strictly observe the period provided in Section 112(C) of the 1997 Tax Code. Since San Roque filed its judicial claim in April 2003, or more than two (2) years *before* the effectivity of RR 16-2005, its claim for input VAT should be granted regardless of its failure to take into account the period provided in Section 112 (C).

8. ID.; ID.; ID.; THE PREMATURE FILING OF A JUDICIAL CLAIM BEFORE THE LAPSE OF 120 DAYS FROM THE FILING OF THE ADMINISTRATIVE CLAIM DOES NOT DEPRIVE THE COURT OF TAX APPEALS OF ITS JURISDICTION.— The non-mandatory treatment of the 120≤30 day period prior to November 1, 2005 should hold especially true for taxpayers like movant San Roque, that had filed its judicial claim within the 120 days, and not after the lapse of the period. The prematurity in filing, unlike the late filing, of the judicial claim cannot serve to deprive the CTA of its jurisdiction as it is axiomatic that the jurisdiction of courts is determined by law. The discretion is, therefore, with the CTA to dismiss without prejudice, upon proper motion, a judicial claim prematurely filed by a taxpayer. This Court cannot, contrary to RA 1125 which vested upon the CTA its jurisdiction, declare the immediate deprivation of such jurisdiction to consider and evaluate the legitimacy of a taxpayer's claim on the feeble

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ground that the taxpayer has failed to patiently await the lapse of the period given to the CIR to act. At most, the prematurity of the filing of the judicial claim for the refund of VAT is a ground for the dismissal without prejudice of the claim that can be waived by the BIR and disregarded by the CTA, if the tribunal is inclined to rule on the substantial aspect of the claim. It is not for this Court to pre-empt the decision of the CTA on the exercise of the jurisdiction it has been conferred by law. In the case of San Roque, when both the CTA Second Division and the CTA *En Banc* looked into the substance of the movant-taxpayer's claim and eventually decided to grant it, despite San Roque's premature filing thereof, **the tax tribunal was acting with the jurisdiction** it has been granted under RA 1125, as amended.

9. ID.; ID.; ID.; ALL CLAIMS FOR INPUT VAT REFUND/ ISSUANCE OF TCC FILED AFTER NOVEMBER 1, 2005 MUST STRICTLY OBSERVE THE 120≤30 DAY PERIOD PROVIDED IN SECTION 112 (C) OF THE 1997 NIRC WHILE ALL JUDICIAL CLAIMS FILED PRIOR TO THE SAME DATE ARE ALLOWED TO RELY ON THE PRACTICE SANCTIONED BY RR 7-95, AS EXEMPLIFIED BY BIR RULING NO. DA-489-03.— The act of the CTA in granting San Roque's claim based on the merits of its claim is a further indication of the long-observed practice allowing the premature filing of judicial claims. In fact, in applying the x x x provision of RA 1125, the presently observed and still effective Revised Rules of the Court of Tax Appeals did not mention the period provided in Section 112 (C). Instead, it still underscores the two (2) year period contemplated in RR 7-95: x x x. We cannot, therefore, deny the movant's claim for refund solely based on the prematurity of its judicial filing, which in the first place has been instigated by the taxpayer's good faith reliance on a revenue regulation issued by the Secretary of Finance, the practice observed by the BIR and the CTA, and the silent tolerance by this Court. While, indeed, the lifeblood of our country is the taxes due from the taxpayers, the heart of this nation beats in rhyme with justice and fairness that deplore the sacrifice of a substantial right in the altars of procedure. Let us therefore look into the merits of the movant's rights and give credit to its good faith passing over of the period provided in Section 112 (C) of the 1997 NIRC. Hence, all claims for input VAT refund/issuance

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of TCC filed after November 1, 2005 must strictly observe the 120≤30 day period provided in Section 112 (C) of the 1997 NIRC. Meanwhile, all judicial claims filed prior to the same date are allowed to rely on the practice sanctioned by RR 7-95, as exemplified by BIR Ruling No. DA-489-03 in *Lazi Bay*.

APPEARANCES OF COUNSEL

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Ilao & Ilao Law Offices for San Roque Power Corp. and Taganito Mining Corp.
Tirso A. Tejada for Philex Mining Corp.

R E S O L U T I O N

CARPIO, *J.*:

This Resolution resolves the Motion for Reconsideration and the Supplemental Motion for Reconsideration filed by San Roque Power Corporation (San Roque) in G.R. No. 187485, the Comment to the Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR) in G.R. No. 187485, the Motion for Reconsideration filed by the CIR in G.R. No. 196113, and the Comment to the Motion for Reconsideration filed by Taganito Mining Corporation (Taganito) in G.R. No. 196113.

San Roque prays that the rule established in our 12 February 2013 Decision be given only a prospective effect, arguing that "the manner by which the Bureau of Internal Revenue (BIR) and the Court of Tax Appeals (CTA) actually treated the 120 + 30 day periods constitutes an operative fact the effects and consequences of which cannot be erased or undone."[1]

The CIR, on the other hand, asserts that Taganito Mining Corporation's (Taganito) judicial claim for tax credit or refund was prematurely filed before the CTA and should be disallowed

[1] G.R. No. 187485, Motion for Reconsideration, p. 3.

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because BIR Ruling No. DA-489-03 was issued by a Deputy Commissioner, not by the Commissioner of Internal Revenue.

We deny both motions.

The Doctrine of Operative Fact

The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."

The doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration.[2] In *Serrano de Agbayani v. Philippine National Bank*,[3] the application of the doctrine of operative fact was discussed as follows:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

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[2] See *Republic v. Court of Appeals*, G.R. No. 79732, 8 November 1993, 227 SCRA 509.

[3] 148 Phil. 443, 447-448 (1971). Emphasis added. Citations omitted.

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Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as **until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect**. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because **the judiciary is the governmental organ which has the final say on whether or not a *legislative or executive measure* is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.* (Boldfacing and italicization supplied)

Clearly, for the operative fact doctrine to apply, there must be a "**legislative or executive measure**," meaning **a law or executive issuance**, that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid. In the present case, however, there is no such law or executive issuance that has been invalidated by the Court except BIR Ruling No. DA-489-03.

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To justify the application of the doctrine of operative fact as an exemption, San Roque asserts that "the BIR and the CTA **in actual practice** did not observe and did not require refund seekers to comply with the 120+30 day periods."[4] **This is glaring error because an administrative practice is neither a law nor an executive issuance. Moreover, in the present case, there is even no such administrative practice by the BIR as claimed by San Roque.**

In BIR Ruling No. DA-489-03 dated 10 December 2003, the Department of Finance's One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS) asked the BIR to rule on the propriety of the actions taken by Lazi Bay Resources Development, Inc. (LBRDI). LBRDI filed an **administrative claim** for refund for alleged input VAT for the four quarters of 1998. Before the lapse of 120 days from the filing of its administrative claim, LBRDI also filed a **judicial claim** with the CTA on 28 March 2000 as well as a supplemental judicial claim on 29 September 2000. In its Memorandum dated 13 August 2002 before the BIR, the DOF-OSS pointed out that LBRDI is "not yet on the right forum in violation of the provision of Section 112(D) of the NIRC" when it sought judicial relief before the CTA. Section 112(D) provides for the 120+30 day periods for claiming tax refunds.

The DOF-OSS itself alerted the BIR that LBRDI did not follow the 120+30 day periods. In BIR Ruling No. DA-489-03, Deputy Commissioner Jose Mario C. Buñag ruled that "a 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." Deputy Commissioner Buñag, citing the 7 February 2002 decision of the Court of Appeals (CA) in *Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation*[5] (*Hitachi*), stated that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the CTA.

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[4] Emphasis supplied. G.R. No. 187485, Motion for Reconsideration, p. 7.

[5] CA-G.R. SP No. 63340.

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Before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, there was ***no*** administrative practice by the BIR that supported simultaneous filing of claims. Prior to BIR Ruling No. DA-489-03, the BIR considered the 120+30 day periods mandatory and jurisdictional. **Thus, prior to BIR Ruling No. DA-489-03, the BIR's actual administrative practice was to contest simultaneous filing of claims at the administrative and judicial levels, until the CA declared in *Hitachi* that the BIR's position was wrong. The CA's *Hitachi* decision is the basis of BIR Ruling No. DA-489-03 dated 10 December 2003 allowing simultaneous filing. From then on taxpayers could rely in good faith on BIR Ruling No. DA-489-03 even though it was erroneous as this Court subsequently decided in *Aichi* that the 120+30 day periods were mandatory and jurisdictional.**

We reiterate our pronouncements in our Decision as follows:

> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x 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." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.
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> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner x x x.
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> x x x x x x x x x

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To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[6]

San Roque's argument must, therefore, fail. The doctrine of operative fact is an argument for the application of equity and fair play. In the present case, we applied the doctrine of operative fact when we recognized simultaneous filing during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when this Court promulgated *Aichi* declaring the 120+30 day periods mandatory and jurisdictional, thus reversing BIR Ruling No. DA-489-03.

The doctrine of operative fact is in fact incorporated in Section 246 of the Tax Code, which provides:

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:

(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)

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[6] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013, 690 SCRA 336, 387 and 398-399.

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Under Section 246, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. **There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or ruling, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency.**

Since the law has already prescribed in Section 246 of the Tax Code how the doctrine of operative fact should be applied, there can be no invocation of the doctrine of operative fact other than what the law has specifically provided in Section 246. In the present case, the rule or ruling subject of the operative fact doctrine is BIR Ruling No. DA-489-03 dated 10 December 2003. Prior to this date, there is no such rule or ruling calling for the application of the operative fact doctrine in Section 246. Section 246, being an exemption to statutory taxation, must be applied strictly against the taxpayer claiming such exemption.

San Roque insists that this Court should not decide the present case in violation of the rulings of the CTA; otherwise, there will be adverse effects on the national economy. In effect, San Roque's doomsday scenario is a protest against this Court's power of appellate review. San Roque cites cases decided by the CTA to underscore that the CTA did not treat the 120+30 day periods as mandatory and jurisdictional. However, CTA or CA rulings are not the executive issuances covered by Section 246 of the Tax Code, which adopts the operative fact doctrine. CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of this Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents. Obviously, decisions of lower courts are not binding on this Court. **To hold that CTA or**

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CA decisions, even if reversed by this Court, should still prevail is to turn upside down our legal system and hierarchy of courts, with adverse effects far worse than the dubious doomsday scenario San Roque has conjured.

San Roque cited cases[7] in its Supplemental Motion for Reconsideration to support its position that retroactive application of the doctrine in the present case will violate San Roque's right to equal protection of the law. However, San Roque itself *admits* that the cited cases never mentioned the issue of premature or simultaneous filing, nor of compliance with the 120+30 day period requirement. **We reiterate that "[a]ny issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent."**[8] **Therefore, the cases cited by San Roque to bolster its claim against the application of the 120+30 day period requirement do not have any value as precedents in the present case**.

Authority of the Commissioner to Delegate Power

In asking this Court to disallow Taganito's claim for tax refund or credit, the CIR repudiates the validity of the issuance

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[7] *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, 13 June 2012, 672 SCRA 350; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011, 659 SCRA 658; *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, 6 April 2011, 647 SCRA 398; *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011, 641 SCRA 70; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 172378, 17 January 2011, 639 SCRA 521; *Hitachi Global Storage Technologies Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010, 634 SCRA 205; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751 (2007); *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481 (2006); *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, 503 Phil. 823 (2005); *Commissioner of Internal Revenue v. Cebu Toyo Corporation,* 491 Phil. 625 (2005).

[8] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra* note 6 at 410.

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of its own BIR Ruling No. DA-489-03. "Taganito cannot rely on the pronouncements in BIR Ruling No. DA-489-03, being a mere issuance of a Deputy Commissioner."[9]

Although Section 4 of the 1997 Tax Code provides that 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," Section 7 of the same Code does not prohibit the delegation of such power. Thus, "**[t]he Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

WHEREFORE, we **DENY** with **FINALITY** the Motions for Reconsideration filed by San Roque Power Corporation in G.R. No. 187485, and the Commissioner of Internal Revenue in G.R. No. 196113.

SO ORDERED.

Leonardo-de Castro, Brion, Bersamin, Abad, and *Perez, JJ.,* concur.

Leonen, J., see separate dissenting and concurring opinion.

Del Castillo, J., joins *J.* Leonen's concurring and separate dissenting opinion.

Sereno, C.J., maintains her dissent.

Velasco, Jr., J., dissents (pls. see dissenting opinion).

Peralta, Mendoza, Reyes and *Perlas-Bernabe, JJ.,* join the dissent of *J.* Velasco, Jr.

Villarama, Jr., J., on leave.

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[9] G.R. No. 196113, Motion for Reconsideration, p. 4.

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CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

We undermine the operative value of the rule of law whenever we reward clearly erroneous administrative interpretation of statutes. We open the legal order to undeserved inconsistencies, and worse, we make the Commissioner of Internal Revenue vulnerable to pressure.

Inconsistency in the administrative implementation of clear statutory provisions and vulnerability of our revenue officials to rent-seeking behavior drive investors away from our markets.

Properly denying an irregular application for a tax refund would mean more funds that can be used for the social good. The beneficiaries of a social good may be too atomized that they may not have the resources to compel our tax officials to deny an improper application of refund of taxes made. In my view, this is the compelling rationale behind the principle that tax statutes are strictly construed against the taxpayer. Our legal order equalizes opportunities through its general principles.

I reiterate my concurrence with the interpretation of Section 112 (C) of the National Internal Revenue Code of 1997[1] (referred here as the 1997 Tax Code) that the 120+30 day period is mandatory and jurisdictional. It has been that way since 1997, and doubts as to what it clearly said only arose due to inconsistent issuances of the Bureau of Internal Revenue.

I, however, reiterate my dissent with respect to the application of this doctrinal interpretation as We resolved the Motions for Reconsideration of the February 12, 2013 Decision of this Court filed by San Roque Power Corporation in G.R. No. 187485, and the Commissioner of Internal Revenue in G.R. No. 196113.

In my view, the text of Section 112 (C) is clear. It puts all taxpayers on notice. The interpretations made through Revenue

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[1] Republic Act No. 8424 as amended by Republic Act No. 9337.

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Regulation or by Opinion by a Deputy Commissioner of the Bureau of Internal Revenue contrary to the provisions of the law are clearly *ultra vires* and should not be countenanced. If We sanction these acts, it undermines the operative value of the statute as written. It rewards erroneous interpretation and unduly grants discretion to the Commissioner of Internal Revenue, which may be abused given the pressure from million-peso claims for tax refunds.

Section 112 (C) of the 1997 Tax Code provides:

> (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 Subsection (A) thereof.
>
> 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 taxpayers 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.*** (Emphasis provided)

There is no room for any other interpretation of the text except that resort to an appeal with the Court of Tax Appeals is made (a) only after the 120-day period from the date of submission of complete documents to support the refund or tax credit certificate with the Commissioner of Internal Revenue or (b) within the 120-day period from the time the claim has been denied or only partially granted.

In the Decision, the majority considered the issuance by the Bureau of Internal Revenue of Ruling No. DA-489-03 dated December 10, 2003 in Re: Lazi Bay Resources Development, Inc. This opinion, rendered by a Deputy Commissioner, stated

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that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief. The majority deemed it equitable to except, from the strict compliance with the 120+30-day mandatory and jurisdictional periods, judicial claims filed within the period from December 10, 2003, when Bureau of Internal Revenue Ruling No. DA-489-03 was issued, to October 6, 2010, when the doctrine in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] was adopted. The main *ponencia* still maintains that the taxpayers cannot be faulted for relying on the Bureau's declaration.

In its Motion for Reconsideration, San Roque argues that by the 'operative fact' principle, due recognition should be given to the fact that even prior to the issuance of Bureau of Internal Revenue Ruling No. DA-489-03, including the time when its administrative and judicial claims for refund were filed on March 28, 2003 and April 10, 2003, respectively, the Bureau and the Court of Tax Appeals in actual practice neither observed nor demanded compliance with the 120+30-day period. Thus, in the spirit of justice, fairness and equity, San Roque insists that the rule on the mandatory and jurisdictional nature of the 120+30-day period should only be applied prospectively.

On the other hand, the Commissioner of Internal Revenue argues that the Bureau of Internal Revenue Ruling No. DA-489-03 is not a valid issuance authorized under Section 4 of the 1997 Tax Code because a deputy commissioner issued it.

I maintain my position that the *Aichi* doctrine[3] as confirmed in *San Roque* should be applied to all undecided Value Added Tax or VAT refund cases, regardless of the period when the claim for refund was made.

When this Court interprets law, it declares what a particular provision has always meant. We do not create new legal obligations. We do not have the power to legislate. Interpretations

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[2] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[3] *Id.*

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of law made by courts necessarily always have a "retroactive" effect.

Once We determine that a previous interpretation of the law is erroneous, We cannot, at the same time, continue to give effect to such erroneous interpretation because Ours is the duty to uphold the true meaning of the law.

A construction placed upon the law by the Commissioner, even if it has been followed for years, if found to be contrary to law, must be abandoned. To say that such interpretation established by the administrative agency has effect would be to say that this Court has the power to control or suspend the effectivity of laws. We cannot hold ourselves hostage to an erroneous interpretation. To say that equity should be considered because it has been relied upon by taxpayers would mean to underestimate or, worse, make the ordinary beneficiaries of the use of our taxes invisible. We cannot use equity only to favor large taxpayers.

We cannot justify such course of action.

Settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents."[4] Similar with Our duty of upholding the Constitution when it is in conflict with a statute,[5] it is Our duty to uphold a statute when it is in conflict with an executive issuance. We ensure that clear provisions of law are not undermined by the Commissioner of Internal Revenue.[6]

Concededly, Section 4 of the Tax Code expressly grants to the Commissioner of Internal Revenue the power to interpret tax laws, thus:

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[4] *Philippine Basketball Association v. Court of Appeals*, 392 Phil. 133, 144 (2000).

[5] CONSTITUTION, Art. V, Sec. 5 (2)(a).

[6] *Philippine Petroleum Corp. v. Municipality of Pililla, Rizal,* G.R. No. 90776, June 3, 1991, 198 SCRA 82, 88.

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> 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.
>
> x x x x x x x x x

However, the Commissioner of Internal Revenue cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

The doctrine of operative fact cannot be an excuse for Us to renege on this constitutional duty. This doctrine only refers to rights that have already been vested due to reliance on a statute or executive act that was eventually declared unconstitutional or invalid.[7]

In *Benguet Consolidated Mining Co. v. Pineda*,[8] vested right is defined as follows:

> Vested right is "some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy."
>
> x x x x x x x x x
>
> "Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested

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Well-settled is the rule that administrative regulations must be in harmony with the provisions of the law. In case of discrepancy between the basic law and an implementing rule or regulation, the former prevails.

[7] See *Agbayani, de v. Philippine National Bank, et al.*, 148 Phil. 443 (1971).

[8] 98 Phil. 711 (1956) citing *Balboa v. Farrales*, 51 Phil. 498, 502 (1928) and 16 C.J.S. 214-215.

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right. So, inchoate rights which have not been acted on are not vested."[9]

There are no vested rights in procedure. Taxpayers do not have vested rights over tax refunds. Refunds need to be proven and its application raised in the right manner as required by statute. Only after a final determination of the right to refund and its amount does it become a vested right for the taxpayer.

San Roque further anchors its argument on the "actual practice" by the Bureau and the Court of Tax Appeals in treating the 120+30-day period as permissive rather than directory. This contention is specious. I agree with Justice Carpio that an administrative practice is not subject to the doctrine of operative fact. "Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law."[10]

I regret that I cannot agree with Justice Carpio that Section 246 of the Tax Code apply in these cases. This provides:

> Section 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 shall be prejudicial to the taxpayer, except in the following cases:
>
> (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;

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[9] *Id.* at 722.

[10] *Baybay Water District v. Commission on Audit*, 425 Phil. 326, 342 (2002).

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(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.

This provision should only apply when there is a valid interpretation made by the Commissioner of Internal Revenue. In the present case, the Bureau of Internal Revenue Ruling No. DA-489-03 is *ultra vires* and was not validly issued since it was promulgated by a Deputy Commissioner.

In *Aichi*, this Court squarely addressed the particular issue on prematurity of a judicial claim based on its reasonable interpretation of the language of the 1997 Tax Code. In that case, this Court did not defer application of the rule laid down. This Court ordered the Court of Tax Appeals to dismiss *Aichi*'s appeal due to the premature filing of its claim for refund/credit of input value added tax. In *Aichi*, the administrative and judicial claims were simultaneously filed on September 30, 2004.

The Bureau of Internal Revenue Ruling is *ultra vires* and invalid not only because it contravenes the law but also because it was issued beyond the scope of the authority of the deputy commissioner. In this, I agree with Justice Velasco.

Under Section 4[11] of the 1997 Tax Code, the power to interpret the provisions of the Code and other tax laws is under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, subject to review by the Secretary of Finance. Pursuant to

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[11] SECTION 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.

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Section 7[12] of the Tax Code, the Commissioner of Internal Revenue may delegate his or her powers to a subordinate official except, among others, the power to issue rulings of first impression[13] or to reverse, revoke or modify any existing ruling of the Bureau of Internal Revenue. The Bureau of Internal Revenue Ruling No. DA-489-03 is a ruling of first impression, declaring for the first time in written form the permissive nature of the 120-day period stated in Section 112 (C).

I, however, disagree with my esteemed colleague, Justice Velasco, in his view that the Bureau of Internal Revenue Ruling is an application of a rule already laid down and specified in Revenue Regulation No. 07-95,[14] which considered the 120-day (then 60-day) period as non-obligatory and discretionary.

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[12] SECTION 7. *Authority of the Commissioner to Delegate Power*. — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: *x x x*; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

[13] Rulings of first impression as defined in Revenue Administrative Order No. 2-2001, dated October 22, 2001, refer to the rulings, opinions and interpretations of the Commissioner of Internal Revenue with respect to the provisions of the Tax Code and other tax laws without established precedent, and which are issued in response to a specific request for ruling filed by a taxpayer with the Bureau of Internal Revenue. Provided, however, that the term shall include reversal, modifications or revocation of any existing ruling.

[14] Consolidated Value-Added Tax Regulations.

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Nowhere in the Revenue Regulation is it expressed or implied that the 120-day (then 60-day) period is permissive. Section 4.106-2 of Revenue Regulation 07-95 provides:

> Section 4.106-2. *Procedures for claiming refunds or tax credits of input tax.* — (a) x x x.
>
> x x x x x x x x x
>
> (c) Period within which refund or tax credit of input taxes shall be made. — In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.
>
> In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue *after* the sixty (60) day period from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals**.
>
> x x x x x x x x x

On the contrary, it is clear from the provision cited above that the appeal to the Court of Tax Appeals may be made only after the lapse of the 60-day (now 120-day) period without action by the Commissioner of Internal Revenue on the administrative claim. A rule or regulation cannot go beyond the terms and provisions of the basic law.[15] Revenue Regulation No. 07-95, therefore, cannot go beyond the provisions of the Tax Code.

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[15] CIVIL CODE, Art. 7.

> x x x x x x x x x
>
> Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

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Even assuming, without conceding, that Justice Velasco's interpretation of the Revenue Regulation is correct, it will still be *ultra vires* in the light of the clear provisions of the law.

San Roque further argues that strict adherence to procedural rules is exacted at the expense of substantive justice considering its clear entitlement to a refund. Such contention is misguided. Again, a value added tax refund is not a refund of an excessively, illegally or erroneously collected tax. A value added tax refund claim may be made because it is specifically allowed and provided for by law, *i.e.*, Section 110 (B)[16] and Section 112 (A)[17] of the

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[16] SECTION 110. *Tax Credits*. — x x x

x x x x x x x x x

(B) *Excess Output or Input Tax*. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided,* That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

x x x x x x x x x

[17] SECTION 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: *Provide, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-

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National Internal Revenue Code, as amended. Similar in nature to a tax exemption, it must be construed strictly against the taxpayer. Hence, strict compliance with *both* substantive and procedural requirements is required for a value added tax refund claim to prosper.

The 120+30-day period is not a mere procedural technicality that can simply be disregarded if the claim is otherwise meritorious, but a mandatory and jurisdictional condition imposed by law. "Failure to comply with [these] requisite[s] is fatal because it has been repeatedly held that no action for the recovery of a tax paid can be maintained without strictly complying with each and every one of the conditions required by the law to that effect."[18]

Even handed justice requires that the new rule be applied retroactively to all who are similarly situated, including the claims of San Roque and Taganito, which are subject of the present case. Reiterating Our view expressed in the separate Opinion in the Decision: "the provisions that We have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the Commissioner or after the lapse of 120 days from the date of submission of complete documents in support of the administrative claim for refund."

Finally, San Roque's argument that the retroactive application of the subject Decision would have detrimental effects to the flow of investments, especially foreign, into our country and hampering the growth and development of our national economy, is inaccurate.

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rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x x x x x x x

[18] *Wee Poco & Co. v. Posadas*, 64 Phil. 640, 648 (1937).

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Investment is the process of exchanging income for goods that are expected to produce earnings at a later time.[19] Investments are not only composed of private investments (local or foreign). There are also public investments. Public investments include building infrastructure such as roads, ports, power, water, and telecommunication facilities.[20] These kinds of investments are as important to private investors as it is to the general population. National investment is an aggregate of both public and private investments in reality.

Prospective application of the new doctrine may lead to some private savings for refund-seekers. However, not all private savings may not be reinvested immediately for the public to experience some form of welfare gain.[21] Hence, private savings might not be enough to offset the government's deficit in its revenues caused in the reduction of the collected tax.[22] Since the government deficit is greater than private savings, national savings (or its economic equivalent of national investments) is actually reduced.[23]

On the other hand, public savings (from government revenue) translate to investments in public goods that benefit the majority of the population,[24] such as major infrastructure projects like roads and bridges, education, police and fire protection, to name a few.

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[19] Encyclopedia Britannica. <http://global.britannica.com/EBchecked/topic/292475/investment> (visited September 25, 2013).

[20] D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, 401 (Sixth Edition, 2006).

[21] This concept in economics is referred to as the relative inelasticity of private savings. For a more technical explanation, refer to J. STIGLITZ, ECONOMICS OF THE PUBLIC SECTOR, 584-586 (Third Edition, 2000).

[22] *Id.* at 584.

[23] *Id.*

[24] "The basic economic rationale for public investment is to finance projects for which the benefits accruing to a private investor are too small to make the venture profitable but benefits to society more broadly can be quite large." D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, 400-401 (Sixth Edition).

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For many foreign investors eyeing developing countries as a potential investment ground, infrastructure is also a critical issue.[25] According to Dwight Perkins, *et al*., "Countries with poor infrastructure often cannot attract investment."[26] Since the Philippines is stricter compared to other countries in the region in terms of labor standards and wages, we will be in serious trouble if our government does not have enough revenue to sustain infrastructure projects. These projects also benefit private investment in the form of reduced transaction costs.

To reiterate, tax is only one aspect of the costs of doing business. Good infrastructure translates to reduced costs in more business-related aspects, such as transportation, communication, and other utilities.

Investors also are concerned with macroeconomic and political stability, and the quality of institutions and governance,[27] such as the judiciary's performance. When investors have the impression that court systems are unpredictable, they tend to move their investments elsewhere.[28] Systems can become unpredictable if unbridled discretion is rewarded among those that are tasked to implement the law. On the other hand, investor confidence is gained through a consistent application of the rule of law.[29]

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[25] *Id.* at 411.

[26] *Id.*

[27] D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, *supra* at 411-414.

[28] D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, *supra* at 412.

[29] The World Bank has been aggregating data for indicators of governance and institutions, and one of the things they measure is Rule of Law, which is defined as "perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and **the courts**, as well as the likelihood of crime and violence." See D. KAUFMANN, A. KRAAY, AND M. MASTRUZZI, *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008*, p. 6. <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/06/29/000158349_20090629095443/Rendered/PDF/WPS4978.pdf> (visited May 27, 2013).

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Understandably, petitioners marshall arguments in support of their needs. Justice requires that We consider them carefully but weigh this in relation to the public interest. In doing so, We should always abide by Our understanding of the concept of the rule of law and always appropriately take the longer view. All these We can do so elegantly in this case with a plain, straightforward reading of what the law has always been providing since 1997.

WHEREFORE, I vote to:

1. DENY the Motion for Reconsideration of San Roque Power Corporation in G.R. No. 187485; and

2. GRANT the Motion for Reconsideration of the Commissioner of Internal Revenue in G.R. No. 196113.

DISSENTING OPINION

VELASCO, JR., *J.*:

Before Us are the Motions for Reconsideration filed by San Roque Power Corporation (San Roque) in G.R. No. 187485 and the Commissioner of Internal Revenue (CIR) in G.R. No. 196113.

As before, the sole issue for resolution is the application of Section 112 (C) of the National Internal Revenue Code of 1997 (1997 NIRC),[1] which requires the lapse of 120 days after the filing of an administrative claim for Value–Added Tax (VAT) refund before a judicial claim for the refund of the same tax can be successfully instituted within 30 days from expiration of the said 120-day period, *viz*:

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

x x x x x x x x x

(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

[1] Previously Section 112 (D) of the 1997 Tax Code.

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within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) thereof.

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. (Underscoring supplied.)

In his Resolution denying the motions at bar, Justice Carpio reiterates the Decision dated February 12, 2013. He explained that the period in Section 112 (C) must be construed as mandatory from January 1, 1998 until December 10, 2003. From December 11, 2003, the 120≤30 day period is discretionary until October 5, 2010. Then, from October 6, 2010 onwards, the 120≤30 day period is again mandatory.

Justice Carpio ratiocinated that under the 1997 NIRC, in the filing of judicial claims for the refund of excess input VAT or the issuance of a tax credit certificate (TCC), the observance of the 120≤30 day-provided in Section 112 (C) of the 1997 Tax Code is mandatory. However, since the Bureau of Internal Revenue (BIR) issued BIR Ruling No. DA-489-03 Re: Lazi Bay Resources Development, Inc. (*Lazi Bay* ruling) on December 10, 2003, which provided the contrary position, taxpayers can rely on this BIR ruling until its reversal in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] (*Aichi*) promulgated on October 6, 2010. In other words, Justice Carpio is of the position that Section 112 (C) must be considered mandatory from the effectivity of the 1997 NIRC on January 1, 1998, except the period between December 10, 2003 and October 6, 2010.

Chief Justice Sereno in her Separate Dissenting Opinion, in the meantime, would advance the application of the mandatory nature of the period in Section 112 (C) from the date of promulgation of *Aichi* on October 6, 2010. She is of the considered

[2] G.R. No. 184823, October 6, 2010.

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view that due process and equity demands that taxpayers, who relied on the various Court of Tax Appeals (CTA) and BIR Opinions promulgated prior to *Aichi* allowing the discretionary treatment of the period, must be exempted from the mandatory application of Section 112 (C). Thus, Section 112 (C) is not mandatory during the period between January 1, 1998 (the date of effectivity of the 1997 NIRC) and October 6, 2010 (the date of promulgation of *Aichi*).

Justice Leonen, on the other hand, states in his Separate Opinion the observation that the strict and mandatory application of the 120≤30 day-period must be reckoned from the date of the effectivity of the 1997 NIRC. He posits that the construction made by this Court in *Aichi* should be read into and considered part of Section 112 (C) from the moment it became effective on January 1, 1998.

In my previous Dissent, I submitted that for judicial claims for refund/credit of input VAT filed from January 1, 1996 (effectivity of Revenue Regulation No. [RR] 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005), the Court may treat the period provided for the filing of judicial claims as permissible provided that both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. Then, for judicial claims filed from November 1, 2005 (date of effectivity of RR 16-2005) and thereafter, the prescriptive period under Section 112 (C) is mandatory.

I explained that RR 7-95 was clear that both the administrative and judicial claims must be filed within 2 years from the close of the relevant taxable quarters. Hence, taxpayers were led to believe that the 120≤30 day-period (or 60≤30 as the case may be) is immaterial provided that the 2-year prescriptive period is observed. RR 7-95 remained in effect even after the effectivity of the 1997 NIRC on January 1, 1998, as shown by the various issuances of the Secretary of Finance, BIR (RMC 42-03, RMC 49-03, BIR Ruling No. DA-489-03), and the decisions of the CTA, which have mostly been affirmed by this Court.

It was only on November 1, 2005, when RR 16-2005 took effect, that the import of Section 112 (C) was clarified and

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the standing rule enunciated in RR 07-95 was effectively repealed.

Hence, the discretionary treatment of the 120≤30 day-period in Section 112 (C) must be allowed during the period from January 1, 1996 until October 31, 2005 in recognition of the prevailing rule laid down in RR 7-95, as exemplified by the ruling in BIR Ruling No. DA-489-03, that allowed the simultaneous filing of administrative and judicial claims for the refund of excess VAT. Thereafter, or from November 1, 2005 onwards, the 120≤30 day period must be strictly applied and is mandatory pursuant to the letter of Section 112 (C), as correctly implemented by RR 16-2005 and recognized in *Aichi*.

I maintain my position.

BIR Ruling No. DA-489-03 is an evidence of the rule and practice observed after the effectivity of the 1997 NIRC that allowed the discretionary treatment of the 120≤30 day period; it is not an aberrant ruling that should justify the suspension of an otherwise mandatory rule

It is the contention of movant San Roque, which filed its judicial claim for VAT refund on April 10, 2003, or 13 days after filing its administrative claim, that the prevailing rule and practice observed by the BIR and the CTA at the time it filed its judicial claim sanctioned the discretionary treatment of Section 112 (C) of the 1997 NIRC. Hence, the relaxation of the strict and mandatory application of the said provision must not, as argued, be reckoned from the issuance of *Lazi Bay* in December 2003 but from the time that the BIR set in black and white the rule mandating the strict and mandatory observance of the 120≤30 day period in said Section 112 (C).

On this point, I agree with the movant San Roque and vote to grant its Motion for Reconsideration.

Lazi Bay was not an isolated adjudication that deviated from an otherwise fixed and strict observance of the 120≤30 day period stated in Section 112 (C). Instead, it should be taken as a reflection

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of the prevailing rule and practice carried over from Republic Act No. (RA) 7716,[3] by RR 7-95,[4]

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[3] RA 7716, entitled "An Act Restructuring The Value Added Tax (VAT) System, Widening Its Tax Base And Enhancing Its Administration And For These Purposes Amending And Repealing The Relevant Provisions Of The National Internal Revenue Code, As Amended, And For Other Purposes" (dated May 5, 1994), amended Presidential Decree 1158, otherwise known as the 1977 Tax Code, and first introduced the period within which to file a judicial claim for the refund of VAT or the issuance of a TCC. Section 6 of which stated:

> Section 6. Section 106 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> "Sec. 106. Refunds or tax credits of creditable input tax. — (a) 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, xxx
>
> xxx xxx xxx
>
> "(d) 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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) 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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals." (Emphasis and underscoring supplied.)

[4] Entitled "Consolidated Value-Added Tax Regulations" issued on December 9, 1995 and effective January 1, 1996. It implemented RA 7716, RA 8241 entitled "An Act Amending Republic Act No. 7716, Otherwise Known As The Expanded Value-Added Tax Law And Other Pertinent Provisions Of The National Internal Revenue Code As Amended" (dated December 10, 1996); and RA 8424, as amended, entitled "An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes" (effective January 1, 1998), specifically, Sections 105, 106, 106(A), 106(B), 106(C), 106(D), 107, 107(A), 107(B), 108, 108(A), 108(B), 108(C), 109, 110, 110(A), 110(B), 110(C), 111, 111(A), 111(B), 112, 112(A), 112(B), 112(C), 112(D), 112(E), 113, 113(A), 113(B), 114, 114(A), 114(B), 114(C), 115, 115(a), 115(b) and 236 and Title IV of the NIRC of 1997.

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which considered the period as non-obligatory and discretionary.[5]

RR 7-95 was promulgated pursuant to the power of the Secretary of Finance provided in Section 245 in relation to Section 4 of the 1977 NIRC, as amended by RA 7716. Section 245 of the 1977 NIRC defined the authority of the Secretary of Finance to promulgate rules and regulations, *viz*:

> SEC. 245. The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code. x x x

Meanwhile, Section 4 of the 1977 NIRC, as amended, specified the provisions that must be contained in rules and regulations, not just in rulings of the BIR. Among other things, the 1977 NIRC required that "[t]he **conditions** to be observed by revenue officers, provincial fiscals and other officials respecting the institution and **conduct of legal actions and proceedings**"[6] must be defined in a revenue regulation, not just an issuance of the BIR. Certainly, therefore, the specification of the details regarding the observance of the prescriptive period for the filing of judicial claims is within the power of the Secretary of Finance, not the CIR.

This delineation of the rule-making powers of the tax authorities was reiterated in Sections 244 and 245, in relation to Sections 4 and 7, of the 1997 NIRC. Section 244 of the 1997 NIRC, again, defined the authority of the Secretary of Finance to promulgate rules and regulations, and Section 245 enumerated the specific provisions that must be contained in a revenue regulation:

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[5] Section 4.106-2 of RR 07-95 provided that taxpayers applying for input VAT refund/issuance of TCCs must file their judicial claims before the lapse of two (2) years from the date of filing of the VAT return for taxable years. This reference to the 2-year period in the filing of the judicial claim for refund/issuance of TCC led to the discretionary treatment of the period given to the CIR to resolve the administrative claim in order to toll the running of the 2-year prescriptive period.

[6] Section 4(C), 1977 Tax Code. Emphasis supplied.

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SEC. 244. The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

SEC. 245. The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing or defining:

x x x x x x x x x

(d) The conditions to be observed by revenue officers respecting the institutions and conduct of legal actions and proceedings;

In turn, Section 4 of the 1997 NIRC provides that the CIR has the "power to interpret the provisions of the [1997 Tax] Code x x x subject to the review by the Secretary of Finance." Ergo, **the interpretation of the Secretary of Finance, as embodied in revenue regulations, prevails over rulings issued by the CIR**, who is only empowered, at most, "to recommend the promulgation of rules and regulations by the Secretary of Finance."[7]

Given the limited power vested on the CIR in relation to the rule-making power reposed on the Secretary of Finance, the CIR cannot amend and reverse a revenue regulation by the mere expedience of issuing a ruling. Thus, **if this Court is bent on upholding the effectivity of BIR Ruling No. DA-489-03 in *Lazi Bay*, it must be taken as an application of a rule already laid down and specified by the Secretary of Finance in RR 7-95, and not as an isolated application that deviated from an un-interpreted provision of law**.

The fact that then Deputy Commissioner for Legal & Inspection Group Jose Mario Buñag, instead of the CIR, issued BIR Ruling No. DA-489-03 is yet another proof that it is not to be construed as a departure from a rule or provision of law but an application of a rule already laid down in RR 7-95 and prevailing at the time of its issuance. Section 7 of the 1997 NIRC specifically prohibits the delegation of the power "to issue rulings of first impression or to reverse, revoke or modify any existing ruling

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[7] Section 7(a), 1997 Tax Code.

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of the Bureau."[8] Hence, the *Lazi Bay* ruling can only be taken as an indication of a prevailing rule laid down by the Secretary of Finance and affirmed and resonated in the Revenue Memorandum Circulars (RMCs) issued by the CIR himself, such as RMC No. 42-03 and RMC 49-03.

Indeed, RR 7-95 prevails over a mere BIR Ruling. Note that a revenue regulation is published before its effectivity so that taxpayers are notified of its effects and the consequences of the failure to abide thereby. This is not so with respect to BIR Rulings. Instead, the rulings are addressed and transmitted to the parties who applied for the issuance of the BIR's opinion; other taxpayers are not notified by publication in a newspaper of general circulation of its import and consequence. Unless they conduct a thorough and in-depth investigation, they will not be informed of the opinion of the BIR as embodied in the ruling. As between RR 7-95, a revenue regulation and the BIR ruling in *Lazi Bay*, therefore, reliance on the former is more in accord with due process.

Further, to facilitate the sanctioned non-compulsory and discretionary treatment of the 120≤30 day period for the filing of judicial claims, RMC No. 42-03 was issued on July 15, 2003 to address, among others, the rule regarding **simultaneously filed and pending administrative and judicial claims**. Note that RMC No. 42-03 did not mandate the dismissal of a judicial claim filed while an administrative claim is still pending on the ground of prematurity. Instead, RMC No. 42-03 contemplated a situation that allowed the exercise by the CTA and the CIR of concurrent jurisdiction over the claim for refund/issuance of TCC, *viz*:

Q-17: *If a claim submitted to the Court of Tax Appeals for judicial determination is denied by the CTA due to lack of documentary support, should the corresponding claim pending at the BIR offices be also denied?*

A-17: Generally, the BIR loses jurisdiction over the claim when it is filed with the CTA. Thus, when the claim is denied by the

[8] Section 7(b), 1997 Tax Code.

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CTA, the BIR cannot grant any tax credit or refund for the same claim. However, cases involving tax credit/refund claims, which are archived in the CTA and have not been acted upon by the said court, may be processed by the concerned BIR office upon approval of the CTA to archive or suspend the proceeding of the case pending in its bench

This situation was later clarified by RMC No. 49-03 dated August 15, 2003 entitled "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund." This RMC was intended as a "response to request of selected taxpayers for adoption of procedures in handling refund cases that are **aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law**."[9] And yet, RMC 49-03 allowed for the *simultaneous* processing of the administrative and judicial claims for input VAT refund/issuance of TCC by the BIR and the CTA, respectively, and NOT the dismissal of the judicial claim on the ground of prematurity.[10]

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[9] Emphasis and underscoring supplied.

[10] In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

I.) *A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows*:

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.*

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Clearly, the period referred to by the CIR in issuing RMC 49-03 is the period laid down in Section 112 (C)[11] of the 1997 NIRC, as interpreted and enforced by RR 7-95, *i.e.*, "the two (2) year period from the date of filing of the VAT return for the taxable quarter."[12] Hence, taxpayers were allowed to treat the 120-day period as non-compulsory and merely discretionary so long as the 2-year period is observed and complied.

BIR Ruling No. DA-489-03 in *Lazi Bay* simply echoed this rule laid down in RR 7-95 and affirmed by RMC Nos. 42-03 and 49-03 when the Deputy Commissioner stated that:

> [A] a 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. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe**. The Tax Code fixed the period of two (2) years filing a claim for refund with the Commissioner** [Sec. 112(A) in relation to Sec. 204(c)] ***and* for filing a case in court** [Section 229]. Hence,

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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 to 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 the initiative of either the Legal Office or the 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.

[11] Previously Section 112 (D) of the 1997 Tax Code.

[12] Section 4.106-2 of RR 7-95.

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a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law.[13]

Hence, the prevailing rule even after the effectivity of the 1997 NIRC was to treat the 120≤30-day period as non-mandatory since RR 7-95 was not affected and remained in effect.

Also worthy of note is that the provision that RR 7-95 interpreted and enforced virtually remained the same; Section 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Section 112 (C) of the 1997 NIRC.[14] It is a

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[13] Emphasis and underscoring supplied.

[14] Section 106 (D), 1997 NIRC	Section 112 (C), 1997 NIRC
Sec. 106. *Refunds or tax credits of creditable input tax.* — x x x d) *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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) 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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.	Section 112. *Refunds or Tax Credits of Input Tax.* – x x x *(D) 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 Subsection (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.

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hornbook rule that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency.[15] The almost verbatim reproduction of Section 106(D) of the 1977 NIRC by Section 112(C) of the 1997 NIRC is therefore an implied recognition by the legislature of the propriety of the interpretation made by the Secretary of Finance of the proper prescriptive period in filing judicial claims for input VAT refund/issuance of TCCs.

The continuing application of RR 7-95 in interpreting the provisions of the 1997 NIRC is also acknowledged by the Secretary of Finance, the BIR, the CTA, and this Court. To implement Section 5 of the 1997 NIRC, RR No. 19-99[16] issued on December 27, 1999 or almost two (2) years after the 1997 NIRC became effective, stated thus:

> SECTION 2. Coverage. — Beginning January 1, 2000, general professional partnerships, professionals and persons described above shall be governed by the provisions of Revenue Regulation No. 7-95, as amended, otherwise known as the "Consolidated Value-Added Tax Regulations." x x x[17]

Numerous BIR rulings rendered after the effectivity of the 1997 NIRC regarding tax incidents that occurred after January 1, 1998 similarly applied the relevant provisions of RR 7-95.[18]

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[15] *Commissioner of Internal Revenue v. American Express*, G.R. No. 152609, June 29, 2005, 462 SCRA 197, 229-230.

[16] Implementing Section 5 of Republic Act No. 8424, Otherwise Known as the Tax Reform Act of 1997, and Other Pertinent Provisions of the National Internal Revenue Code of 1997, Imposing Value-Added Tax (VAT) on Sale of Services by Persons Engaged in the Practice of Profession or Calling and Professional Services Rendered by General Professional Partnerships; Services Rendered by Actors, Actresses, Talents, Singers and Emcees; Radio and Television Broadcasters and Choreographers; Musical, Radio, Movie, Television and Stage Directors; and Professional Athletes, beginning January 1, 2000.

[17] Underscoring supplied.

[18] ITAD RULING NO. 145-03, September 26, 2003, addressed to Synertronix Inc.; ITAD RULING NO. 131-03, August 18, 2003, addressed

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Even this Court in resolving claims for refund of input VAT paid after January 1, 1998 recognized the effectivity of RR 7-95 in interpreting the provisions of the 1997 Tax Code. In *Hitachi Global Storage Technologies Philippines, Corp. v. Commissioner of Internal Revenue*,[19] this Court, speaking through Justice Carpio, sustained the denial of an application for refund of input VAT for the four taxable quarters of 1999 on the ground of petitioner-taxpayer's failure to comply with the provisions of RR 7-95. Citing *Panasonic v. Commissioner of Internal Revenue*,[20] We explained that **RR 7-95 gained the status of a legislative act that binds the taxpayers and this Court**:

> On 4 August 2000, Hitachi filed an administrative claim for refund or issuance of a tax credit certificate before the BIR. The claim involved ₱25,023,471.84 representing excess input VAT attributable to Hitachi's zero-rated export sales for the four taxable quarters of 1999.
>
> On 2 July 2001, due to the BIR's inaction, Hitachi filed a petition for review with the CTA …

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to Bernaldo Mirador Law Offices; ITAD RULING NO. 103-03, July 24, 2003, addressed to Baniqued & Baniqued Attorneys at Law; ITAD RULING NO. 211-02 dated ITAD RULING NO. 211-02, addressed to Terumo (Philippines) Corporation; ITAD RULING NO. 185-02, October 21, 2002, addressed to Fuji Plastic Industry Phils., Inc.; ITAD RULING NO. 147-02 dated ITAD RULING NO. 147-02, addressed to Sycip Gorres Velayo & Co.; ITAD RULING NO. 136-02 dated August 5, 2002, addressed to Noritake Porcelana Mfg., Inc.; ITAD RULING NO. 066-02 dated April 24, 2002 addressed to Castillo & Poblador Law Offices; ITAD RULING NO. 040-02 dated ITAD RULING NO. 040-02 addressed to Punongbayan & Araullo; ITAD RULING NO. 128-01 dated December 21, 2001 addressed to December 21, 2001; ITAD RULING NO. 116-01 dated ITAD RULING NO. 116-01 addressed to Punongbayan & Araullo; ITAD RULING NO. 086-01 dated October 10, 2001 addressed to Castillo Laman Tan Pantaleon & San Jose Law Offices; BIR RULING [DA-(S40M-023) 560-08] dated December 19, 2008 addressed to Platon Martinez Flores San Pedro Leaño; BIR RULING [DA-330-98] dated July 17, 1998 addressed to Sycip Gorres Velayo; VAT RULING NO. 016-05 dated August 26, 2005 addressed to SyCip Gorres Velayo & Co.; VAT RULING NO. 020-02 dated April 1, 2002 addressed to Joaquin Cunanan & Co.

[19] G.R. No. 174212, October 20, 2010.

[20] G.R. No. 178090, February 8, 2010.

x x x x x x x x x

We already settled the issue of printing the word "zero-rated" on the sales invoices in Panasonic *v*. Commissioner of Internal Revenue. In that case, we denied Panasonic's claim for refund of the VAT it paid as a zero-rated taxpayer on the ground that its sales invoices did not state on their face that its sales were "zero-rated." We said:

> But **when petitioner Panasonic made the export sales subject of this case, *i.e.*, from April 1998 to March 1999, the rule that applied was Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and took effect on January 1, 1996**. It already required the printing of the word "zero-rated" on invoices covering zero-rated sales. **When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code**. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law.
>
> Section 4.108-1 of **RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1997 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments**. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of the invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. (Emphasis supplied)

Likewise, in this case, **when Hitachi filed its claim for refund or tax credit, RR 7-95 was already in force**.[21]

It is, therefore, inaccurate to state that before the issuance of BIR Ruling DA-489-03 in *Lazi Bay* on 10 December 2003,

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[21] Emphasis and underscoring supplied.

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there was ***no*** administrative practice, rule or ruling rule followed by the BIR that supported simultaneous filing of claims and that prior to the *Lazi Bay* ruling, the BIR considered the 120≤30 day period mandatory. Rather, the *Lazi Bay* ruling is one of the outcomes and tangible evidence of such practice, as made concrete by RR 7-95, that allowed the simultaneous filing of claims.

Similarly, as pointed out by movant, the fact that this Court, like the CTA and the BIR, has passed upon the issue of the prescriptive period for filing the judicial claim *sub silencio* is also a glaring evidence of the sanctioned rule and practice that allowed for the discretionary and non-mandatory treatment of the 120≤30 day period in Section 112(C) of the 1997 NIRC.

A review of a sampling of twenty (20) CTA *En Banc* Decisions involving judicial claims for VAT refund filed between 1998 to 2003 will conclusively show that the CIR and the CTA completely ignored and considered as a non-issue the mandatory compliance of the 120≤30 day period. For convenience, I summarized in the table below the pertinent data culled from 20 CTA *En Banc* Decisions:

CTA EB Case No.	Case Title	Date of Administrative Claim	Date of Judicial Claim	Comment
14	*ECW Joint Venture, Inc. v. CIR*	June 19, 2002	July 19, 2002	Case was decided on the merits. CIR and CTA said nothing about prematurity of judicial claim or CTA's lack of jurisdiction.
43	*Overseas Ohsaki Construction Corp. v. CIR*	Oct. 23, 2001	Oct. 24, 2001	-ditto-
47	*BASF Phils., Inc. v. CIR*	Mar. 27, 2001	Apr. 19, 2001	-ditto-
53	*Jideco Mfg. Phils. Inc. v. CIR*	Oct. 23, 2002	Oct. 24, 2002	-ditto-
85	*Applied Food Ingredients Co. v. CIR*	July 5, 2000	Sep. 29, 2000	-ditto-
186	*Kepco Phils. Corp. v. CIR*	Jan. 29, 2001	Apr. 24, 2001	-ditto-
197	*American Express Int'l Inc. – Phil. Branch. CIR*	Apr. 25, 2002	Apr. 25, 2002	-ditto-
226	*Mirant (NavotasII) Corporation (formerly, Southern Energy Navotas II Power, Inc.) v. CIR*	Mar. 18, 2003	Mar. 31, 2003 & Jul. 22, 2003	-ditto-

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231	*Marubeni Phils. Corp. v. CIR*	Mar. 30, 2001	Apr. 25, 2001	-ditto-
24	*Intel Technology Phils., Inc. v. CIR*	May 6, 1999	Sep. 29, 2000	CTA EB explicitly noted that the judicial claim was filed long after the lapse of the 120≤30 day period under Sec. 112. However, no mention was made about the prescription or the CTA's lack of jurisdiction. The case was decided on the merits.
28	*Intel Technology Phils., Inc. v. CIR*	May 18, 1999	Mar. 31, 2000	Case was resolved on the merits. No one raised the issue of violation of Sec. 112 or the CTA's lack of jurisdiction.
54	*Hitachi Global Storage Technologies Phils. Corp. v. CIR*	Aug. 4, 2000	July 2, 2002	-ditto-
107	*Kepco Phils. Corp. v. CIR*	Oct. 25, 1999	Oct. 1, 2001	-ditto-
154	*Silicon Phils., Inc. v. CIR*	Oct. 25, 1999	Oct. 1, 2001	-ditto-
174	*Kepco Phils. Corp. v. CIR*	Oct. 1, 2001 & June 24, 2002	Apr. 22, 2003	-ditto-
181	*Intel Technology Phils., Inc. v. CIR*	Aug. 26, 1999	Jun. 29, 2001	-ditto-
209	*Intel Phils. Mfg., Inc. v. CIR*	Aug. 6, 1999	Mar. 30, 2001	-ditto-
219	*Silicon Phils., Inc. v. CIR*	Aug. 10, 2000	June 28, 2002	-ditto-
233	*Panasonic Communications Imaging Corp, of the Phils. v. CIR*	Feb. 8, 2000 & Aug. 25, 2000	Mar. 6, 2001	-ditto
239	*Panasonic Communications Imaging Corp, of the Phils. v. CIR*	Mar. 12, 1999 Jul. 20, 1999	Dec. 16, 1999	-ditto-

Although CTA Decisions are not binding legal precedents, their factual recitals are nothing less than indelible records of, and incontrovertible proof as to, the manner in which both the BIR and the CTA regarded the 120≤30 day period, and the manner in which they actually handled administrative and judicial claims for refund/tax credit during the period in question. And the narrations of facts and case antecedents culled from the CTA *En Banc* Decisions establish that the BIR and CTA, by their very actuations in the period between 1996 and 2005, did in fact permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120≤30 day period in Section 112.

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It is also necessary to point out that the February 12, 2013 Decision in these consolidated cases, in contrast, cited only one solitary decision rendered by the Court of Appeals (CA), not the CTA, as supposed proof that the BIR, in the years between 1998 and 2003, allegedly took the position that the 120≤30 day period was mandatory and jurisdictional.

While sheer number of cases is not always determinative of an issue, in this particular case, the large number of CTA EB Decisions containing factual recitals which prove that the BIR and the CTA did not observe the 120≤30 day period most certainly carry far more weight than a single solitary CA case allegedly showing the opposite.

Also deserving of a closer look are the Decisions of this Court in the following cases, involving similarly situated but "more fortunate" judicial claims which were decided earlier, prior to the promulgation of the Decision in these consolidated cases on February 12, 2013 embodying the Court's new interpretation of the 120≤30 period requirement:

1) *CIR v. Cebu Toyo Corporation*, G.R. No. 149073, February 16, 2005;
2) *CIR v. Toshiba Information Equipment,* G.R. No. 150154, August 9, 2005;
3) *CIR v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.),* G.R. No. 159593, October 12, 2006;
4) *Intel Phils. v. CIR,* G.R. No. 166732, April 27, 2007;
5) *CIR v. Ironcon Builders & Development Corp.,* G.R. No. 180042, February 8, 2010.
6) *Mirant Sual Corporation (formerly, Southern Energy Philippines, Inc.) v. CIR,* G.R. No. 167315, February 10, 2010.
7) *Hitachi Global Storage Technologies Phils. Corp. v. CIR,* G.R. No. 174212, October 20, 2010.
8) *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR,* G.R. No. 172378, January 17, 2011.
9) *Kepco Philippines Corp. v. CIR*, G.R. No. 179961, January 31, 2011;
10) *Microsoft Philippines, Inc. v. CIR,* G.R. No. 180173, April 6, 2011;

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11) *Southern Philippines Power Corporation v. CIR,* G.R. No. 179632, October 19, 2011;
12) *Western Philippines Power Corporation v. CIR,* G.R. No. 181136, June 13, 2012;
13) *Eastern Telecom Phils., Inc. v. CIR,* G.R. No. 168856, August 29, 2012;
14) *Silicon Philippines, Inc. v. CIR, (Formerly Intel Philippines, Inc.) v. CIR,* G.R. No. 179904, February 6, 2013 [This is an unsigned Resolution of the Court's Second Division];
15) *Intel Technology Philippines, Inc. v. CIR,* G.R. No. 172613, February 13, 2013 [This is an unsigned Resolution of the Court's Second Division].

An examination of the narration of facts in each case of the above-listed cases shows that each case pertains to a judicial claim for refund of excess unutilized input VAT pursuant to Section 112 of the 1997 NIRC, and these judicial claims were all filed with the CTA within the period starting from January 1, 1998 to December 10, 2003, the so-called period of strict enforcement of the 120≤30 day period according to this Court's February 12, 2013 Decision in the present consolidated cases. Without exception, each of the above-listed judicial claims did not comply with the 120≤30 day period requirement. But in every instance and notwithstanding that the narrations of facts very clearly and unmistakably showed that these claims failed to comply with the aforesaid requirement, this Court nonetheless either granted those judicial claims or else denied them on grounds other than such non-compliance. Notably, in every single occasion, the Court let pass said non-compliance *sans* comment.

What is more, seven (7) of the foregoing Decisions and two (2) Resolutions mentioned above were promulgated after *Aichi* was promulgated on October 6, 2010, yet unlike San Roque, those nine judicial claims were not subjected to the *Aichi* ruling and the retroactive application of the Court's new interpretation. In other words, even in the post-*Aichi* scenario, the Court still refrained from denying outright these claims for their failure to strictly comply with the 120≤30 day period in recognition and cognizance of the prevailing practice after the effectivity of the 1997 NIRC and pre-RR 16-2005 that allowed the discretionary treatment of the period.

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The mandatory application of the 120<30 day period was set in black and white only after the effectivity of RR 16-2005.

The policy requiring the mandatory observance of the 120≤30 day period before the filing of a judicial claim for VAT refund was set and made clear only upon the effectivity of RR 16-2005 on November 1, 2005. RR 16-2005 abolished once and for all the standing rule provided in RR 7-95 when it deleted any reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT, *viz*.:

SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. –

x x x x x x x x x

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.** (Emphasis supplied.)

Since, similar to RR 7-95, RR 16-2005 was promulgated pursuant to Sections 244 and 245 of the 1997 Tax Code,[22] it

[22] In relation to Section 23 of RA 9337 which states: Value-Added Tax (VAT) Reform Act, effective July 1, 2005. "SECTION 23.Implementing Rules and Regulations. — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the

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embodies a legislative rule that deserves the deference and respect due the law it implements. For this reason, from the effectivity of RR 16-2005 on November 1, 2005, all taxpayers are bound to strictly observe the 120≤30 day period provided in Section 112 (C) and there was no need to wait for the promulgation of a decision like *Aichi* in view of the existence of a clear legislative rule that finally repealed all other rulings that may have clouded the mandatory nature of the 120<30 day period.

Like all laws and regulations, RR 16-2005 applies prospectively and not retroactively to the date of the effectivity of the 1997 Tax Code. As this Court explained in *BPI Leasing Corporation v. Court of Appeals*,[23] the rule on prospectivity of laws encompasses revenue regulations implementing the 1997 NIRC:

> The Court finds the questioned revenue regulation to be legislative in nature. Section 1 of Revenue Regulation 19-86 plainly states that it was promulgated pursuant to Section 277 of the NIRC. Section 277 (now Section 244) is an express grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC. In *Paper Industries Corporation of the Philippines v. Court of Appeals*, the Court recognized that the application of Section 277 calls for none other than the exercise of quasi-legislative or rule-making authority. Verily, it cannot be disputed that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative, and not interpretative as alleged by BLC.
>
> x x x x x x x x x
>
> **The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication**. In the present case, there is no indication that the revenue regulation may operate retroactively. Furthermore, there is an express provision stating that it "shall take

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effective implementation of this Act. Upon issuance of the said rules and regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked."

[23] G.R. No. 127624, November 18, 2003.

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effect on January 1, 1987," and that it "shall be applicable to all leases written on or after the said date." Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation. Thus, BLC is not in a position to invoke the provisions of Revenue Regulation 19-86 for lease rentals it received prior to January 1, 1987.[24]

The rule and practice observed between 1996 and November 2005 that allowed the non-mandatory application of the 120<30 day is an operative fact that must be considered in resolving judicial claims filed during the period. Hence, justice and fairness dictate that the tax claimants who relied on RR 07-95, and the practice observed by the BIR, the CTA and this Court be given relief

In line with the prospective application of RR 16-2005, no one can argue with the February 12, 2013 Decision where it declared that "[t]his court is applying *Mirant* and *Aichi* prospectively," on account of its sound basis in hornbook doctrine, law and jurisprudence, apart from being fully justified by considerations of fairness and equity. However, the Decision immediately departed from the doctrinal norm of prospectivity by retroactively applying the new interpretation thus causing the denial of San Roque's claim, while in the same breath announcing that the Court shall apply *Mirant* and *Aichi* prospectively. We can avoid such jarring dissonance by applying the new Doctrine from the moment when the strict application of the period had been put in ink by RR 16-2005.

The Decision of February 12, 2013 and the Resolution employ retroactivity to backdate the Court's new interpretation of the 120≤30 day period under Section 112. This is a dangerous precedent. The retroactivity of application of a new judicial interpretation must be seen for what it is – a corrective tool that must be used in a very controlled, restricted manner and only for very necessary, limited situations and occasions. It is not a tool to be employed lightly; extreme need therefor must be first established. For it is capable of destroying established

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[24] Emphasis supplied.

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contractual rights and relationships and causing drastic, massive damage.

The narration of case facts and antecedents of the Decisions and Resolutions of this Court and the CTA enumerated above speak to the principle of operative fact, inasmuch as they all bear witness that for years prior to the effectivity of RR 16-2005 in November 2005, in the process of resolving judicial claims for refund of input VAT, the BIR, the CTA and this Court all paid scant attention to the 120≤30 day period requirement in Section 112. This operative fact cannot be denied and ignored if this Court is to be true to its role as the vanguard of truth and ultimate dispenser of justice in this country. As this Court once said: "[t]he actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to its invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official."[25]

Thus, in arriving at a judicious ruling on a "difficult question of law," this Court should give premium to the good faith of the taxpayers in relying on a valid revenue regulation that has taken the proper agencies too long to update. On this point, I quote with approval a portion of the sound observation made by San Roque in its Supplemental MR:

> Respondent deferentially submits that fairness and evenhandedness will opt for a prospective application of the new interpretation, given the unalterable fact that taxpayers had taken their cue from the policies, and procedures of the tax agency and the tax court, (which policies, issuances and procedures enjoyed what amounts to the tacit approval of the High Court), and had filed their claims accordingly, and now are in no position to undo what had been done years before.

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[25] *Francisco Serrano de Agbayani v. Philippine National Bank, et al.*, G.R. No. L-23127, April 29, 1971; citing *Chicot County Drainage Dist. v. Baxter States Bank*, 308 US 371, 374 (1940).

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The pragmatic application of the principle of operative fact calls to mind a kindred tenet *viz.*, the legal maxim "*Cursus curia est lex curiae,*" which means the "practice of the court is the law of the court" [Also written as "*cursus buriae est lex curiae*," the practice of the court is the law of the court. 3 Burst. 53; Broom, Leg. Max. (3d London Ed.)126; 12 C.B. 414; 17 Q. B. 86; 8 Exch. 199; 2 Maule & S. 25; 15 East, 226; 12 Mees. & W. 7; 4 Mylne & C. 635; 3 Scott, N. R. 599.] Of Ancient vintage, this principle or maxim declares that historically, the customs of the Court, are as binding as the law. Herbert Broom explains the significance of the maxim in this manner:

> "Where a practice has existed it is convenient to adhere to it, because it is the practice even though no reason can be assigned for it; for an inveterate practice in the law generally stands upon principles that are founded in justice and convenience. Hence, if any necessary proceeding in an action be informal, or be not done within the time limited for it, or in the manner prescribed by the practice of the court, it may be set aside for irregularity." [*Broom, Herbert, A Selection of Legal Maxims Classified and Illustrated,* (London: Sweet & Maxweel Limited, 1845)

The "operative fact" principle would suggest that due recognition be given to the fact that the non-observance of the 120≤30 day period requirement has been the consistent, long-standing practice or the "*cursus curiae*" of the CTA, the CIR and the CA (with the tacit approval of this Honorable Court) for over a decade and a half, and that the binding effect thereof cannot simply be made to vanish by waving a new judicial interpretation.[26]

Thus, if, as the Decision declares, "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law," there is more reason to maintain that refund seekers should not be prejudiced, penalized nor castigated for having taken guidance from the policies, pronouncements, issuances and actuations of the BIR and the CTA, which actuations have direct bearing on a difficult question of law.

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[26] Supplemental Motion for Resolution, pp. 16-17.

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It is clear from the provisions of the Civil Code that good faith possession of a right can spring from a difficult question of law:

> Article 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
>
> x x x x x x x x x
>
> Mistake upon a doubtful or difficult question of law may be the basis of good faith.

This Court is, therefore, duty-bound to actively refrain from actions that may be perceived as elevating strict adherence to procedural rules and technicalities over and above the taxpayer's clear, substantive legal right to the refund sought. We must remain cognizant of the taxpayer's good faith compliance with procedures approved and sanctioned by the BIR and the CTA and accepted by this Court, and avoid creating obstacles to defeat the taxpayer's substantive right to refunds.

Consistent with the principle of operative fact and the basic notions of fairness and equity, the strict and mandatory application of Section 112 (C) must be reckoned from the day the rule was set clarified and set in black and white—on the effectivity of RR 16-2005 on November 1, 2005. In net effect, all claims for refund of input VAT filed and commenced after November 1, 2005 must strictly observe the period provided in Section 112(C) of the 1997 Tax Code. Since San Roque filed its judicial claim in April 2003, or more than two (2) years *before* the effectivity of RR 16-2005, its claim for input VAT should be granted regardless of its failure to take into account the period provided in Section 112 (C).

Premature filing of a judicial claim before the lapse of 120 days from the filing of the administrative claim does not deprive the CTA of jurisdiction

The non-mandatory treatment of the 120≤30 day period prior to November 1, 2005 should hold especially true for taxpayers

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like movant San Roque, that had filed its judicial claim within the 120 days, and not after the lapse of the period.

The prematurity in filing, unlike the late filing, of the judicial claim cannot serve to deprive the CTA of its jurisdiction as it is axiomatic that the jurisdiction of courts is determined by law.[27] The discretion is, therefore, with the CTA to dismiss without prejudice, upon proper motion, a judicial claim prematurely filed by a taxpayer. This Court cannot, contrary to RA 1125 which vested upon the CTA its jurisdiction, declare the immediate deprivation of such jurisdiction to consider and evaluate the legitimacy of a taxpayer's claim on the feeble ground that the taxpayer has failed to patiently await the lapse of the period given to the CIR to act.

At most, the prematurity of the filing of the judicial claim for the refund of VAT is a ground for the dismissal without prejudice of the claim that can be waived by the BIR and disregarded by the CTA, if the tribunal is inclined to rule on the substantial aspect of the claim. It is not for this Court to pre-empt the decision of the CTA on the exercise of the jurisdiction it has been conferred by law.

In the case of San Roque, when both the CTA Second Division and the CTA *En Banc* looked into the substance of the movant-taxpayer's claim and eventually decided to grant it, despite San Roque's premature filing thereof, **the tax tribunal was acting with the jurisdiction** it has been granted under RA 1125, as amended,[28] which states that:

SEC. 7. ***Jurisdiction.*** – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review appeal, as herein provided:

x x x x x x x x x

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[27] *Heirs of Juanita Padilla v. Magdua*, G.R. No. 176858, September 15, 2010.

[28] An Act Creating the Court of Tax Appeals.

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2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue provided a specific period of action, in which case the inaction shall be deemed a denial.

The act of the CTA in granting San Roque's claim based on the merits of its claim is a further indication of the long-observed practice allowing the premature filing of judicial claims. In fact, in applying the foregoing provision of RA 1125, the presently observed and still effective Revised Rules of the Court of Tax Appeals[29] did not mention the period provided in Section 112 (C). Instead, it still underscores the two (2) year period contemplated in RR 7-95:

Rule 4
JURISDICTION OF THE COURT

Sec. 3. *Cases within the jurisdiction of the Court in Divisions*. –

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue involving disputed assessments, refunds of internal revenue, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides as specific period of action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty-day period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of the Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the

[29] A.M. No. 05-11-07-CTA, Effective November 22, 2005 (last amended as of October 15, 2008)

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disputed assessment beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court **prior to the expiration of the two-year period** under Section 229 of the National Internal Revenue Code;

x x x x x x x x x

Rule 8
PROCEDURE IN CIVIL CASES

Sec. 3. *Who may appeal; period to file petition –*

(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes xxx xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, **the taxpayer must file a petition within the two-year period prescribed by law from payment or collection of the taxes**.[30]

We cannot, therefore, deny the movant's claim for refund solely based on the prematurity of its judicial filing, which in the first place has been instigated by the taxpayer's good faith reliance on a revenue regulation issued by the Secretary of Finance, the practice observed by the BIR and the CTA, and the silent tolerance by this Court.

While, indeed, the lifeblood of our country is the taxes due from the taxpayers, the heart of this nation beats in rhyme with justice and fairness that deplore the sacrifice of a substantial right in the altars of procedure. Let us therefore look into the merits of the movant's rights and give credit to its good faith passing over of the period provided in Section 112 (C) of the 1997 NIRC.

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[30] Emphasis and underscoring supplied.

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Hence all claims for input VAT refund/issuance of TCC filed after November 1, 2005 must strictly observe the 120≤30 day period provided in Section 112 (C) of the 1997 NIRC. Meanwhile, all judicial claims filed prior to the same date are allowed to rely on the practice sanctioned by RR 7-95, as exemplified by BIR Ruling No. DA-489-03 in *Lazi Bay*.

For all the foregoing, I vote to GRANT the Motion for Reconsideration filed by San Roque Power Corporation in G.R. No. 187485, and **DENY** the Motion for Reconsideration of the Commissioner of Internal Revenue in G.R. No. 196113.

THIRD DIVISION

[G.R. No. 162802. October 9, 2013]

EDS MANUFACTURING, INC., *petitioner, vs.* **HEALTHCHECK INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; RESOLUTION OF A CONTRACT WILL NOT BE PERMITTED FOR A SLIGHT OR CASUAL BREACH, BUT ONLY FOR SUCH SUBSTANTIAL AND FUNDAMENTAL VIOLATIONS AS WOULD DEFEAT THE VERY OBJECT OF THE PARTIES IN MAKING THE AGREEMENT; RESOLUTION OF CONTRACT IS THE BREACH OF FAITH BY ONE OF THE PARTIES WHICH IS VIOLATIVE OF THE RECIPROCITY BETWEEN THEM.— The general rule is that rescission (more appropriately, ***resolution***) of a contract will not be permitted