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[G.R. No. 187485, October 08, 2013]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. SAN ROQUE POWER CORPORATION, RESPONDENT.

[G.R. No. 196113]

TAGANITO MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

[G.R. No. 197156]

PHILEX MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

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 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 Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the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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> 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**.
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> 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.

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.

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
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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:
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> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
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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
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> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

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 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