REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

JT INTERNATIONAL (PHILIPPINES), INC., Petitioner,	**CTA SCA CASE NO. 0023**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 27 2025 1:15 p.m.

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RESOLUTION

For the Court's resolution is petitioner's *Motion for Reconsideration*, filed on January 20, 2025, assailing this Court's dismissal of its Petition for Mandamus through a Resolution, dated December 5, 2024 ("Assailed Resolution").

The Motion lacks merit.

The dismissal is not based on the claim that the two-year prescriptive period applies or that that taxes here are erroneously or illegally collected

In the Motion, petitioner claims that this Court adopted respondent's implicit position that the two-year prescriptive period for claiming refunds applies to petitioner's case, based on Our finding that a regular Petition for Review, not a Petition for Mandamus, would have been proper here.[1] It then proceeds to argue that the two-year period does not apply to its case, apparently rendering the dismissal without legal basis.

The argument misses the point. Nowhere in the Assailed Resolution do We even mention the two-year prescriptive period at issue. Neither is it mentioned in the basis We cited for Our finding that a Petition for Review

[1] Motion for Reconsideration, p. 5.

would have been proper.[2] It is not brought up in *Rule 43 of the Rules of Court*. Neither can it be found in *Rule 7 of Republic Act* ("*RA*") *No. 1125, as amended*. Even if We turn to the *Revised Rules of the Court of Tax Appeals, as amended* ("*RRCTA*"), *Rule 8, Section 3(a)* of the same only explicitly applies the 2-year period to inaction on "claims for refund of internal revenue taxes erroneously or illegally collected", which does not seem to cover all possible refund claims brought to this Court via a regular Petition for Review.

In short, our finding that petitioner should have filed a Petition for Review rather than a Petition for Mandamus does not rely on or imply the claim that the two-year prescriptive period is applicable to petitioner's case. Consequently, petitioner's arguments on the applicability of the two-year period are of no moment and do not refute Our findings.

Much the same can be said of petitioner's claim that the taxes sought to be refunded are *not* erroneously or illegally collected. Nowhere in the Assailed Resolution do We say otherwise. These arguments are thus of no moment as well and do not challenge Our ruling.

Section 204(C) does not make refunds mandatory after a decision on redeeming or changing stamps

A major recurring argument in the Motion sees the Commissioner of Internal Revenue ("CIR") *mandated* to grant a refund.[3] According to petitioner, upon the Commissioner of Internal Revenue's ("CIR") exercise of discretion to redeem/change stamps or not, he is then mandated to refund the value of returned stamps. This seems to be based on a particular reading of *Section 204(C) of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), as quoted below:

> SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — *The Commissioner **may*** —
>
> . . . .
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, ***in his discretion***, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided however, That a return filed showing an overpayment shall be considered a written claim for refund.

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2 Resolution, dated December 5, 2024, p. 6, *Rollo*, p. 344.
3 Motion for Reconsideration, pp. 5-6.

(Italics and emphasis supplied.)

The above lists four distinct powers of the CIR: (1) to credit or refund taxes erroneously or illegally received; (2) to credit or refund penalties imposed without authority; (3) to refund the value of internal revenue stamps when they are returned in good condition by the purchaser; and (4) to, *in the CIR's discretion*, (i) redeem or change unused stamps that have been rendered unfit for use and (ii) refund their value upon proof of destruction.

For petitioner, in item #4, only the decision to (i) redeem or change unused stamps is discretionary whereas (ii) the refund of their value is mandatory.

The interpretation is incorrect.

As discussed in the Assailed Resolution, the listed powers are all modified by the term "*may*" in the first sentence of *Section 204*. In other words, the CIR (1) *may or may not* credit or refund taxes claimed to have been erroneously or illegally collected. He (2) *may or may not* credit or refund penalties claimed to have been imposed without authority. He (3) *may or may not* refund the value of internal revenue stamps when they are returned in good condition by the purchaser. *In his discretion*, he (4) *may or may not* (i) redeem or change returned stamps, and, *in his discretion*, he *may or may not* (ii) *refund their value.*

Further, consider the following statements:

A. At your discretion, you may eat and drink.
B. At your discretion, you may eat, but you must drink.
C. At your discretion, you may eat and, at your discretion, drink.

In statement A, the option "you may eat" is discretionary, given the phrase "[a]t your discretion". This does not render "drink" mandatory, however. That would require a construction like that of statement B, which explicitly uses the word "must". Neither is a construction like that of statement C, which repeats the phrase "at your discretion", necessary to make "drink" discretionary. The repetition of the phrase is redundant. The use of "at your discretion" at the beginning of statement A is sufficient to make both actions discretionary. We would need a statement like B, which directly uses the word "must", to have one action be discretionary and the other mandatory.

The present Motion identifies nothing in *Section 204(C) of the NIRC* itself which makes "refund [the stamps'] value" mandatory. Again, the whole provision is modified by the word "may", rendering all enumerated powers equally *discretionary*. Item #4 is prefaced with the phrase "in his discretion", even further emphasizing that the entire power is discretionary. Nothing in the law shows that the words "may" and "discretion" suddenly do not apply to "refund their value". The power is not listed as "in his discretion, redeem or change unused stamps, *but he is mandated to refund their value*" or any similar wording. There is no use of words such as "mandatory", "must", "necessary", "ministerial", "required", "shall", or similar. There is no construction presenting it as a choice between redeeming/changing stamps or refunding their value, where one option *must* be chosen, especially as "redeem or change unused stamps" and "refund their value" are separated by the conjunction "and", not "or". As such, *there is nothing in the law rendering anything in Section 204(C) mandatory* or, more to the point, *ministerial*. Petitioner can repeatedly quote the provision and claim this is so, but without *specific identification of what in the law renders the refund of the value of returned stamps mandatory*, without *logical and sensible analyses of the particular wording of the provision*, the Court cannot accept its position.

Petitioner thus failed to show that *Section 204(C) of the NIRC* itself renders the refund of stamps not redeemed or changed mandatory. It thus, again, failed to show that its filing of a Petition for Mandamus was proper.

Revenue Regulations No. 18-2021 still does not render refunds ministerial

In claiming that the refund of its stamps' value does not involve discretion on the part of respondent, petitioner also cites *Revenue Regulations* ("*RR*") *No. 18-2021*. It particularly focuses on *Section 8* of the same,[4] which says that "[s]tamps surrendered beyond the period required under these Regulations shall be processed in accordance with *Section 204 (C) of the* [*NIRC*]".

It should be obvious that this still does not render the refund returned stamps mandatory. The use of the word "shall" here simply means that the CIR *must* process the claim following *Section 204(C) of the NIRC*. However, as discussed, *Section 204(C)* involves discretionary action on the part of the CIR. So, read together with *Section 204(C)*, *Section 8 of RR No. 18-2021* simply says that when stamps are surrendered beyond the required period, the CIR is mandated *to exercise his discretion* in determining the propriety of redeeming, changing, or refunding the returned stamps.

To be clear, *Section 8 of RR No. 18-2021* does *not* say that the CIR is mandated to refund anything. It does not say that, upon deciding whether or not to redeem/change returned stamps, the CIR is required to refund their value. The passage at issue contains nothing that modifies *Section 204(C)*, only identifies said provision as the governing rule applicable to the specific situation covered. As such, the issuance does not actually support petitioner's base position.

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4 *Id.* at 6-8.

Petitioner's use of said *RR* thus fails to convince us of any error in Our dismissal of its case.

Petitioner's arguments on the "credit-back" mechanism and RR No. 7-2014 are based on the assumption that refunds are mandatory

In the Motion, petitioner also discusses the "credit-back" mechanism for refunds, as well as how *RR No. 7-2014* should be applicable here. However, these arguments are made relevant to the case at bar via the assumption that the refund of the value of returned stamps under *Section 204(C)* is mandatory. The arguments are supported *by* the assumption but do not themselves support, bolster, or prove said assumption. As their applicability to this case is founded on an untenable position, then, they do not substantially challenge the Court's ruling and thus need not be covered in any more detail.

The correctness of the CIR's decision is distinct from whether or not it is ministerial

Finally, the Court notes that many of petitioner's arguments in the Motion touch upon substantial issues in its case. Its persistent insistence that respondent wrongly applied the two-year prescriptive period to its case, for example, is essentially a claim that the respondent's denial of its refund claim has no legal basis. To give another example, it holds that following the case of *British American Tobacco (Philippines) Limited v. Commissioner of Internal Revenue*,[5] it should be granted a refund as the subject stamps were issued but became spoiled. Indeed, much of the force of its arguments throughout the Motion rests on the belief that because the CIR *should* grant the refund, considering the cited law and jurisprudence, such grant is *ministerial* and not *discretionary*.

The Court disagrees.

That the CIR *should* grant a claim for refund, following the relevant laws and jurisprudence, does not mean that said grant is automatic or ministerial. The CIR is not omniscient. He must use his discretion to determine and decide on the propriety of the refund claim. Such a decision is not a trivial matter. It requires, among others, an evaluation of the arguments, a thorough examination of the supporting documents, a review of the relevant laws, rules, regulations, and jurisprudence, and a synthesis of all of the above to finally determine if the taxpayer is entitled to the refund sought. It is a decision or a judgment. It is, in a word, *discretionary*.

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5 CTA Case No. 9998, June 28, 2021. It should be noted that a second Decision was promulgated in this case on September 12, 2023, following a new trial, but petitioner does bring this later ruling into the discussion.

Thus, assuming *arguendo* that petitioner's claim has factual and legal bases, that respondent's denial of the same was wrong, that the claim should have been granted, such grant would still not have been ministerial. The CIR would still have to have made a judgment call on the claim before deeming it correct. Even if petitioner is entitled to a refund, the decision of such would still be discretionary.

Taking a wider view of the issue, there have been many cases where a taxpayer *correctly* claimed for refunds of erroneously or illegally collected taxes but were denied such refunds at the administrative level. Despite this correctness, the proper relief in such cases would still be a regular Petition for Review, *not* one for Mandamus. The determination of such correctness still involves making a decision or judgment. As such, while the taxpayer may have a "clear legal right to the act demanded",[6] such act would still, be discretionary, not ministerial. In other words, *the correctness of a claim does not render its grant ministerial.* Or more directly, *the correctness of a denied claim does not make a Petition for Mandamus the proper remedy.*

In sum, petitioner's Motion fails to convince that a decision on a claim for refund under *Section 204(C) of the NIRC* is merely ministerial. It consequently fails to convince that a Petition for Mandamus is the proper remedy here. It thus ultimately fails to convince that the dismissal of this case was erroneous.

ACCORDINGLY, the petitioner's *Motion for Reconsideration*, filed on January 20, 2025, is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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6 *Maguindanao del Norte v. Bureau of Local Government Finance*, G.R. No. 265373, November 13, 2023.