REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NIPPON EXPRESS (PHILS.) CORPORATION
Petitioner,

~ *versus* ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 6688

Members:

Acosta, *PJ,*
Bautista, *and,*
Casanova, *JJ.*

Promulgated:

MAR 24 2009 ; 1:05 pm

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AMENDED DECISION

ACOSTA, *PJ:*

This resolves petitioner's Motion for Reconsideration filed on February 17, 2009 of the Decision promulgated on January 26, 2009, the dispositive portion thereof reads:

> "**WHEREFORE,** the instant Petition for Review is hereby DENIED for insufficiency of evidence.
>
> **SO ORDERED.**"

Noteworthy, this Court ruled in the assailed Decision that petitioner was able to establish that it rendered services to PEZA-registered enterprises and non-resident foreign corporation; the sales derived therefrom which are validly supported by documents amounting to P729,657,301.66 qualify for VAT zero-rating pursuant to Section 108(B)(2) and (3) of the 1997 National Internal Revenue Code (NIRC); it incurred or paid input tax of P32,007,359.80 for 2001; and out of the said input tax, P25,626,620.82 thereof has been validly supported. Unfortunately, the claim was denied due to the fact that petitioner has failed to prove that it did not apply/utilize the claimed input tax against its output tax in the succeeding quarters and that the timeliness of the claim could not be determined due to the absence of the original quarterly VAT returns for 2001.

In this Motion, petitioner faulted the Court in holding that it failed to prove compliance with the last two requisites to be entitled for its claimed excess or unutilized input tax on the following grounds:

1. the input taxes were not applied against any output tax liability during and in the succeeding quarters; and

2. the claim for refund was filed within the two-year prescriptive period.

In support thereof, petitioner argued that it was able to present its VAT return for the second quarter of 2003 whereby the amount of P26,180,337.69 was deducted from the total available input tax, and its witness has in fact testified on November 19, 2003 that its claim input tax was not applied against any output tax; the Court should have taken judicial notice of the records of another pending case entitled Nippon Express Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6967, pertaining to its claim for refund for 2002; and it has duly presented the original 2001 quarterly VAT returns together with the amended 2001 quarterly VAT returns; and even if the record is bereft of such evidence, its administrative and judicial claims were filed within the two year prescriptive period from the deadlines of the filing of the said VAT returns.

The instant Motion for Reconsideration is meritorious.

As aptly stated by petitioner, this Court could take judicial notice of the records of CTA Case No. 6967 to determine whether or not it applied or utilized the claimed input tax against its output tax in the succeeding taxable quarters since it is already settled rule that this Court could take judicial notice of the records of another case pending before it.[1] In Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue,[2] this Court ruled:

> "In the interest of justice, the Court takes judicial notice of the Quarterly VAT returns filed by petitioner in other cases that are pending before it. And a perusals thereof appeared that petitioner could not have utilized the said input VAT in the succeeding quarters, as the entries showed that the input VAT in the amount of P4,417,437.97, subject of the present case, was not carried over to the second quarter of taxable year 2002 until the second quarter of taxable year 2003."

A perusal of the photocopied documents attached to petitioner's Motion, as well as the original records of CTA Case No. 6967, which are sought to be taken judicial notice of, showed that the claim input tax has not been applied against any output tax in the succeeding quarters. Said amount of input tax was deducted from the total available input tax as "any VAT refund/TCC claimed" in the quarterly VAT return for the second quarter of 2003.

Proceeding now to the timeliness of the filing of the administrative and judicial claims.

Refund or tax credits of input tax attributable to zero-rated sales is specifically governed by Section 112 of the 1997 National Internal Revenue Code (NIRC). Section 112(A) of the NIRC provides that a VAT-registered person may **apply** for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated sales within two years after the close of the taxable quarter when the sales were made. Section 112(D) of the same Code provides that an **appeal** may be made to the CTA within thirty (30) days from the receipt of the decision of the

[1] Calamba Steel Center, Inc. vs. Commissioner of Internal Revenue, G.R. No. 151857, April 28, 2005; AB Leasing and Finance Corporation vs. Commissioner of Internal Revenue, G.R. No. 138342, July 8, 2003, Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637 & 162004, December 14, 2005
[2] CTA Case No. 6788, September 23, 2008.

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Commissioner denying the claim or after the expiration of the one hundred twenty day-period without action on the part of the Commissioner.

In the case at bar, petitioner's administrative application for refund of its unutilized input tax for the second to the fourth quarters of 2001 on April 24, 2003 was well made within the two year prescriptive period reckoned from the close of the taxable quarter when the sales where made pursuant to Section 112(A) of the NIRC. However, petitioner's claim for the first quarter of 2001 was applied out of time considering that the two year prescriptive period ends on March 31, 2003 reckoned from the close of the taxable quarter when the sales were made following the ruling of the Supreme Court in Commissioner v. Mirant Pagbilao Corporation.[3]

While petitioner's immediate recourse to the Court on April 25, 2003, after it applied a claim with the BIR on April 24, 2003, is a premature invocation of the Court's jurisdiction and is a clear violation of the rule on exhaustion of administrative remedies due to non observance of the procedure in Section 112(D) of the NIRC, however, since respondent did not register his objection thereto when he filed his Answer, the same is considered waived.

Petitioner is therefore entitled to the issuance of tax credit certificate in the amount of P10,928,607.31, representing excess/unutilized input tax for the second, third and fourth quarters of 2001, computed as follows:

Substantiated Input Tax[4]	P17,475,737.32
Less: Output Tax (second, third and fourth quarters of 2001)	4,392,057.71
Net	P13,083,679.61
Ratio of the substantiated zero-rated sales of P549,840,515.16[5] over total declared zero-rated and taxable sales of P658,266,596.48[6] for the second, third and fourth quarters of 2001	84%
Excess/unutilized input tax attributable to zero-rated sales	P10,928,607.31

[3] GR 172129, September 12, 2008.
[4] Exhibit CC; p. 175 *Rollo* less claim for the first quarter of 2001.
[5] Zero-rated sales validly supported with documents (per Assailed Decision) less first quarter zero-rated sales.
[6] Exhibits BB to BBBB.

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WHEREFORE, the instant Motion for Reconsideration is hereby GRANTED. Respondent is hereby ORDERED TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P10,928,607.31 representing an excess or unutilized input tax for the second, third and fourth quarters of 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals, First Division in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice