**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***
************

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**NIPPON EXPRESS (PHILS.) CORPORATION,**
Respondent.

**CTA EB No. 924**
**(CTA Case No. 6967)**

Present:

**DEL ROSARIO,** *P.J.*
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,** *and*
**COTANGCO-MANALASTAS,**
**RINGPIS-LIBAN** *JJ.*

**Promulgated:**

DEC 18 2013 Apolinario 11:30 a.m.

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# DECISION

**UY, *J.*:**

This Petition for Review[1] filed on August 31, 2012 seeks the modification of the Decision dated August 10, 2011,[2] and the reversal

[1] Docket, pp. 5 to 21.
[2] Docket, pp. 23 to 48. Penned by Associate Justice Lovell R. Bautista and concurred by Associate Justice Amelia Cotangco-Manalastas, but with Dissenting Opinion by Associate Justice Olga Palanca-Enriquez.

and setting aside of the Resolution dated July 31, 2012,[3] both promulgated by the Third Division of this Court (or "Court in Division") in CTA Case No. 6967, entitled *"Nippon Express (Philippines) Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

> **Decision dated August 10, 2011:**
>
> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **TWO MILLION SIX HUNDRED FOURTEEN THOUSAND TWO HUNDRED NINETY-SIX PESOS AND 84/100 (P2,614,296.84)**, representing excess/unutilized input VAT attributable to its zero-rated sale for taxable year 2002.
>
> **SO ORDERED**".
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> **Resolution dated July 31, 2012:**
>
> "**WHEREFORE**, petitioner's Motion to Withdraw Petition for Review is hereby **GRANTED**. Accordingly, the Petition for Review is hereby considered **WITHDRAWN**. The case is hereby considered **CLOSED** and **TERMINATED**.
>
> **SO ORDERED**".

## THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (or Commissioner), vested by law with the power to decide, approve, and grant refunds of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office, BIR Building, Agham Road, Diliman, Quezon City.

Respondent Nippon Express (Philippines) Corporation (or Nippon Express) is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the

[3] Docket, pp. 50 to 55.

Securities and Exchange Commissions under Certificate of Registration No. AS095-005669, with principal office address at U-2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Salcedo Village, Makati City. Respondent is primarily engaged in the business of a forwarder for the combined transportation by air, sea or land from one point of receipt to a point of destination; in the operation of container depot, warehousing, storage, hauling and packing facilities; and in the business of international and domestic air and sea freight and cargo forwarding, hauling, carrying, handling, distributing, loading and unloading of general cargoes and all classes of goods, wares and merchandise. It is registered as a value-added tax (VAT) taxpayer with the Large Taxpayer District Office (LTDO) of the Bureau of Internal Revenue (BIR), Revenue Region No. 8.

On April 25, 2002, July 25, 2002, October 25, 2002, and January 27, 2003, Nippon Express filed its Quarterly VAT Returns for the four quarters of 2002 with the BIR, through the Electronic Filing and Payment System.

Thereafter, on April 22, 2004, Nippon Express filed, an administrative claim for the issuance of tax credit certificate (TCC) with the LTDO, Revenue Region No. 8, representing its excess/unused input taxes attributable to its zero-rated sales for the period January 1, 2002 to December 31, 2002 in the total amount of ₱ 24,644,506.86.

Due to the Commissioner's alleged inaction on the said administrative claim, Nippon Express filed with the Court in Division, a Petition for Review on April 23, 2004 which was docketed as CTA Case No. 6967, praying that judgment be rendered granting its claim for the issuance of TCC in the amount of ₱ 24,644,506.86, representing its alleged excess input tax attributable to its zero-rated sales for taxable year 2002.

In her Answer filed in CTA Case No. 6967 on June 17, 2004, the Commissioner interposed Special and Affirmative Defenses alleging, among others, that Nippon Express failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected, that sale of goods, properties or services to PEZA registered enterprises do not qualify as zero-rated sale and that in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

During trial, Nippon Express presented its lone witness, Jose S. Tayag, Jr.. a duly commissioned Independent Certified Public Accountant to prove its case. Thereafter, Nippon Express filed its Formal Offer of Evidence on January 7, 2008, submitting Exhibits "A" to "H", "J", "K", "M" to "O", "R", and "S", inclusive of sub-markings and the same were admitted by the Court in Division in the Resolutions dated June 4, 2008 and September 3, 2008.

Subsequently, the Court in Division set the presentation of the evidence for the Commissioner of Internal Revenue. However, during the hearing held on October 30, 2008, and upon oral motion of the counsel for Nippon Express due to the absence of the Commissioner's counsel for two (2) consecutive hearings, the Court in Division considered the Commissioner to have waived her right to present evidence and directed the parties to file their respective Memoranda. Nippon Express was given a period of thirty (30) days from October 30, 2008, while the Commissioner was given a period of fifteen (15) days from receipt of the Resolution dated November 4, 2008, to file their respective Memoranda.

However, on March 3, 2009, Nippon Express filed a Motion for Leave of Court to Allow Presentation of Additional Evidence, which the Court in Division granted in the Resolution dated May 6, 2009. Correspondingly, Nippon Express recalled its lone witness Jose S. Tayag, Jr. and he testified on further examination on February 10, 2010. Thereafter, the Court in Division admitted Exhibits "L", "P", "T" to "SSS", "TTT", "UUU", and "VVV-1" to "VVV-6527", inclusive of sub-markings, in its Resolutions dated April 30, 2010 and August 9, 2010.

On December 22, 2010, CTA Case No. 6967 was submitted for decision taking into consideration the parties' respective Memoranda (filed on October 11, 2010 by Nippon Express, and on November 26, 2010 by the Commissioner).[4]

On August 10, 2011, the Court in Division rendered the assailed Decision, partially granting the refund claim of Nippon Express in the reduced amount of ₱ 2,614,296.84, representing excess/unutilized input VAT attributable to its zero-rated sales for taxable year 2002. The Commissioner of Internal Revenue was ordered to issue a TCC in the said amount.

However, on August 12, 2011, Nippon Express filed a *Motion to*

[4] Division Docket (CTA Case No. 6967), p. 470.

*Withdraw Petition for Review*, alleging that the Commissioner, through BIR Assistant Commissioner for Large Taxpayers Service, Zenaida G. Garcia, issued a TCC (numbered 122-11-00024 and dated July 27, 2011) granting the administrative claim for refund of Nippon Express for the year 2002, at a reduced amount of ₱ 21,675,128.91. Nippon Express moved for the withdrawal of its Petition for Review upon the ground that it has arrived at a reasonable settlement of the issues with the BIR, and to avoid incurring further legal and related costs.[5]

Subsequently, both parties still filed their respective Motions for Reconsideration of the assailed Decision, the Commissioner on August 26, 2011[6] and Nippon Express on August 31, 2011[7].

On September 15, 2011, the Commissioner filed its *Comment/Opposition (to Respondent's Motion to Withdraw Petition for Review)*,[8] opposing the said Motion to Withdraw for being misplaced, misleading, erroneous and bereft of factual and legal basis. Allegedly, the subject TCC is clearly contrary to the factual findings of the Court in Division's Decision dated August 10, 2011, since there is no clear showing on the part of the BIR, which issued the subject TCC that the existing laws, jurisprudence and procedure to grant the claim for refund of Nippon Express was followed. Moreover, if the subject TCC is allegedly pursued and applied as tax credit of Nippon Express, the interest of the government is prejudiced considering the fact that the government will be refunding a big amount not properly and substantially proven by Nippon Express to be erroneously paid to the BIR. Finally, the filing of a Motion to Withdraw Petition for Review by Nippon Express is allegedly tantamount to a withdrawal and abandonment of its *Motion for Reconsideration*.

On the other hand, the Commissioner filed on October 10, 2011, her *Comment/Opposition* to the Motion for Reconsideration filed by Nippon Express;[9] while Nippon Express filed its Comment to the Commissioner's Motion for Reconsideration on October 24, 2010.[10]

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[5] Par. 3, Motion to Withdraw Petition For Review, Division Docket (CTA Case No. 6967), pp. 498 to 499.
[6] Division Docket (CTA Case No. 6967), pp. 519 to 530.
[7] Division Docket (CTA Case No. 6967), pp. 502 to 515.
[8] Division Docket (CTA Case No. 6967), pp. 531 to 534.
[9] Division Docket (CTA Case No. 6967), pp. 546 to 556.
[10] Division Docket (CTA Case No. 6967), pp. 558 to 582.

In the assailed Resolution dated July 31, 2012, the Court in Division granted the *Motion to Withdraw Petition for Review* filed by Nippon Express and considered CTA Case No. 6967 as closed and terminated.[11]

The Commissioner then filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review,*[12] praying for an additional period of fifteen (15) days from August 16, 2012 or until August 31, 2012, within which to file her Petition for Review. In the Resolution dated August 16, 2012,[13] the Court *En Banc* granted the said Motion.

On August 31, 2012, the Commissioner filed the instant Petition for Review with the following Assignment of Errors:

"**ASSIGNMENT OF ERRORS**:

**I.**

**THE MAJORITY MEMBERS OF THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT TIMELY FILED BOTH ITS ADMINISTRATIVE AND JUDICIAL CLAIM FOR INPUT VAT REFUND FOR THE 1ST QUARTER OF TAXABLE YEAR 2002**

**II.**

**THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN GRANTING RESPONDENT'S MOTION TO WITHDRAW THE PETITION FOR REVIEW IN CTA CASE NO. 6967 AND CONSIDERED THE CASE AS CLOSED AND TERMINATED."**[14]

Moreover, the Commissioner prays for (1) the issuance of an Order staying the judgment rendered by the Court in Division; (2) modification of the assailed Decision dated August 10, 2011 by holding that Nippon Express is not entitled to its claimed input VAT refund for the 1st quarter of taxable year 2002; and (3) reversal and

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[11] Division Docket (CTA Case No. 6967), pp. 584 to 589.
[12] Docket, pp. 1 to3.
[13] Docket, p. 4.
[14] Petition for Review, p. 3, Docket, p. 7

setting aside of the assailed Resolution dated July 31, 2012 for lack of merit.

In compliance with the Court *En Banc*'s Resolution dated October 1, 2012,[15] Nippon Express filed its Comment to the instant Petition for Review on November 9, 2012.[16]

Subsequently, the Court *En Banc* gave due course to the instant Petition for Review, in the Resolution dated December 13, 2012[17] and directed both parties to submit their respective memoranda within thirty (30) days from receipt thereof.

The Commissioner filed her Memorandum on February 13, 2013,[18] while Nippon Express filed its Memorandum on March 1, 2013.[19] This case was submitted for decision in the Resolution dated March 13, 2013.[20]

Hence, this Decision.

## THE ISSUES

The following issues are raised by petitioner for the resolution of the Court *En Banc*, to wit:

> "1. Whether or not the majority members of the Court in Division erred in holding that respondent timely filed both its administrative and judicial claim for input VAT refund for the first quarter of taxable year 2002; and
>
> 2. Whether or not the Court in Division erred in granting respondent's Motion to Withdraw the Petition for Review in CTA Case No. 6967 and considered the said case as closed and terminated." [21]

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[15] Docket pp. 58 to 59.
[16] Docket, pp. 64 to 85.
[17] Docket, pp. 87 to 88.
[18] Docket, pp. 91 to 100.
[19] Docket, pp. 107 to 133.
[20] Docket, p. 136.
[21] Docket, pp. 7 to 8, and 91.

***Petitioner's Arguments:***

Petitioner argues that respondent's administrative claim for input VAT refund for the first quarter of taxable year 2002 was filed beyond the period prescribed under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997.

According to petitioner, the findings and conclusion of this Court is accorded the highest respect and will not be lightly set aside or overturned unless there has been an abuse or improvident exercise of authority.

Furthermore, this Court cannot allegedly consider the BIR-issued TCC as evidence to the Petition for Review in CTA Case No. 6967, since the same was not formally offered by respondent. Petitioner likewise asserts that this Court cannot take judicial notice over the said TCC presented by respondent which was strongly objected to by petitioner.

Petitioner stresses that the *Motion to Withdraw the Petition for Review* filed by respondent in CTA Case No. 6967 is tantamount to the withdrawal and abandonment of its Motion for Reconsideration dated August 31, 2011. Thus, respondent is deemed to have accepted the Decision dated August 10, 2011 of the Court *a quo*.

Lastly, petitioner points out that the provision under Revenue Memorandum Circular (RMC) No. 49-03 is not applicable to the instant case; and that tax refunds, being in the nature of tax exemption, is construed *strictissimi juris* against respondent.

***Respondent's counter-arguments:***

Anent the first issue, respondent submits that the seasonable filings of both the administrative and judicial claims for refund or issuance of TCC for the first quarter of 2002 have been established by respondent; that the pronouncement in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[22] has not become part of the laws of the land; that assuming *arguendo* that the rule laid down in the said case has overturned previous decisions and has become part of the laws of the land, its applicability to the instant case remains improper; that granting the Petition for Review of petitioner

[22] G.R. No. 172129, September 12, 2008.

on the ground of prescription of the administrative and judicial claims for the 1st quarter of taxable year 2002 will also disturb the legal principle of *stare decisis*; and that the legal doctrine according highest respect to the findings and conclusions of the Court in Division cannot be invoked to prevent the same Court from reversing or modifying its earlier decision.

As regards the second issue, respondent argues that by its filing of the *Motion to Withdraw*, it cannot be considered to have withdrawn nor abandoned its *Motion for Reconsideration* of the Decision of the Court in Division; that in granting respondent's *Motion to Withdraw*, the Court in Division correctly applied the provisions of RMC No. 49-03; that the Court in Division has full authority to take judicial notice of the TCC issued by the BIR even if it has not been formally offered in evidence; that the counsels of petitioner should respect the decision of the petitioner herself to partially grant respondent's administrative claim of refund; and that at any rate, petitioner has sufficiently established all the elements/requisites that will entitle it to a claim for VAT refund or issuance of a TCC, as provided under the law and regulations.

## THE COURT *EN BANC*'S RULING

We find no merit in the instant Petition for Review.

***The two-year period to file an administrative claim should be reckoned from the close of the taxable quarter when the sales were made, pursuant to Section 112(A) of the NIRC of 1997.***

In the assailed Decision, the Court in Division found that respondent's administrative and judicial claim for refund or credit of input VAT for zero-rated sales were timely filed following the Supreme Court's pronouncement in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*.[23] The Court in Division ratiocinated:

> "It bears stressing that the prevailing ruling of the Supreme Court at the time of filing of the instant Petition

[23] G.R. Nos. 141104 & 148763, June 8, 2007.

for Review is *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, where it was held that the reckoning of the two-year prescriptive period is from the date of filing of the Quarterly VAT return. In this case, the earliest quarter covered by the instant claim is the first quarter of 2002 for which petitioner filed its original Quarterly VAT return on April 25, 2003. Counting from this date, both the administrative and judicial claims filed on April 22, 2004 and April 23, 2004, respectively, were filed within the two-year prescriptive period. Therefore, petitioner's claim was timely filed both in the administrative and judicial levels."[24]

Petitioner argues that respondent's claim for input VAT refund for the first quarter of taxable year 2002 was filed beyond the period prescribed under Section 112(A) of the NIRC of 1997. Petitioner emphasizes that respondent can no longer rely upon the *Atlas* case because the Supreme Court has already ruled in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[25] that taxpayers claiming for a refund of unutilized input VAT cannot avail itself of the provisions of either Section 204(C) or Section 229 of the NIRC of 1997 which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor.

We agree with petitioner.

Section 112(A) of the NIRC of 1997 provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax.—*

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

[24] Docket, pp. 29 to 30.
[25] G.R. No. 172129, September 12, 2008.

> 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.
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> xxx xxx xxx." *(Emphasis supplied)*

In *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*,[26] the Supreme Court clarified the effectivity and scope of the *Atlas* and *Mirant* doctrines in relation to prescriptive periods for claiming input VAT refunds. The High Court said:

> "The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*.** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT." (*Underscoring supplied)*

Needless to state, the application of *Atlas* in the instant case is manifestly misplaced. Records indubitably show that respondent's administrative and judicial claims for refund were filed in 2004, when neither *Atlas* nor *Mirant* has been promulgated.

In fact, in the more recent consolidated cases of *Mindanao II*

[26] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

*Geothermal Partnership vs. Commissioner of Internal Revenue,*[27] the Supreme Court found it unnecessary to rely on either *Atlas* or *Mirant* in determining the timeliness of the administrative claims of petitioners therein, *viz:*

> "When Mindanao II and Mindanao I filed their respective administrative and judicial claims in 2005, neither *Atlas* nor *Mirant* has been promulgated, ***Atlas* was promulgated on 8 June 2007, while *Mirant* was promulgated on 12 September 2008. It is therefore misleading to state that *Atlas* was the controlling doctrine at the time of filing of the claims.** The 1997 Tax Code, which took effect on 1 January 1998, was the applicable law at the time of filing of the claims in issue.
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> xxx xxx xxx
>
> In determining whether the administrative claims of Mindanao I and Mindanao II for 2003 have prescribed, we see no need to rely on either *Atlas* or *Mirant*. Section 112(A) of the 1997 Tax Code is clear: '[A]ny VAT-registered person, whose sales are zero-rated or effectively zero-rated may **within two years after the close of 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."

In the same vein, this Court finds it unnecessary to rely upon *Atlas* or *Mirant* in determining the timeliness of respondent's administrative claims. The clear and unequivocal language then of the above-quoted Section 112(A) must be followed.

Apropos, if the words of the law are clear, plain, and free of ambiguity, it must be given its literal meaning and applied without any interpretation.[28] And, where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.[29]

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[27] G.R. Nos. 193301 & 194637, March 11, 2013.
[28] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159610, June 12, 2008.
[29] *Pansacola vs. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006.

Nonetheless, respondent avers that at the time the administrative and judicial claims were filed on April 22, 2004 and April 23, 2004, respectively, the issue as to the reckoning point of the running of the two-year prescriptive period has not yet been decided upon by the Supreme Court. In 2004, the prevailing rule, as held by this Court in several cases, was that the date of filing of the Quarterly Return is the reckoning date in the counting of the two-year prescriptive period. Thus, respondent may not be faulted for relying on existing and prevailing pronouncements issued by this Court under which the Petition for Review was filed.

We cannot sustain respondent's contention.

Elucidating on the binding effect of this Court's decisions, the Supreme Court said in the *San Roque* case, viz:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public.** That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. As held by this Court in *The Philippine Veterans Affairs Office v. Segundo:*
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>> xxx Let it be admonished that decisions of the Supreme Court 'applying or interpreting the laws or the Constitution...form part of the legal system of the Philippines,' and, as it were, 'laws' by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character.** Let it be warned that to defy our decisions is to court contempt. (Emphasis supplied)."

Verily, inasmuch as decisions of this Court are only binding upon specific parties respectively involved therein, respondent cannot rely upon the same in order to excuse itself from complying with the clear mandate of the law.

With the foregoing discussions in mind, respondent had until the following dates within which to file its administrative claims, to wit:

| Period Covered (2002) | Close of quarter when sales were made | End of the two-year period |
|---|---|---|
| 1st quarter | 31 March 2002 | 31 March 2004 |
| 2nd quarter | 30 June 2002 | 30 June 2004 |
| 3rd quarter | 30 September 2002 | 30 September 2004 |
| 4th quarter | 31 December 2002 | 31 December 2004 |

Such being the case, respondent's administrative claim for the first quarter of taxable year 2002 filed on April 22, 2004 has already prescribed; while its administrative claims for the second, third and fourth quarter of the same year similarly filed on April 22, 2004 were made within the prescribed period.

Be that as it may, the Court in Division was correct in considering CTA Case No. 6967 as **CLOSED and TERMINATED**.

***The Court a quo did not err in granting respondent's Motion to Withdraw Petition for Review in CTA Case No. 6967.***

Pertinent provisions of RMC No. 42-2003,[30] as amended by RMC No. 49-2003,[31] provide as follows:

> **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**

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[30] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

[31] SUBJECT: 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, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

**be also denied?**

A-17: 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.

<u>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.</u> 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" (*Underscoring supplied)*.

Petitioner maintains that the foregoing directive does not apply in the instant case because respondent failed to satisfy the requirements of the RMC. In particular, petitioner believes that RMC No. 49-2003 directs a taxpayer to first notify the BIR of its agreement with the findings of the agency before filing a motion to withdraw with this Court; and that the RMC likewise requires filing the motion to withdraw before the promulgation of this Court's decision.

Contrary to petitioner's stance, the Court *En Banc* finds nothing in RMC No. 49-2003 which explicitly requires a taxpayer to give notice to the BIR informing the latter of its agreement with the results of the administrative evaluation. Neither does the said RMC prescribe a period for filing a motion to withdraw with this Court.

Furthermore, the records of this case show that while the Decision of the Court in Division was promulgated on August 10, 2011, counsel for respondent received a copy thereof only on August 16, 2011,[32] which is four (4) days after the filing of respondent's *Motion to Withdraw Petition for Review* (*i.e.*, on August 12, 2011)[33] attaching a copy of the subject TCC issued on July 27, 2011.

In other words, the said *Motion to Withdraw Petition for Review* was filed before Nippon Express had knowledge of the Court in Division's Decision. Such being the case, it is clear that the said circumstances warrant the application of the above-quoted provisions of RMC No. 42-2003, as amended by RMC No. 49-2003, since the Court *a quo* was not *"able to release its decision ahead of the evaluation of the administrative agency"* or since *"the administrative agency is able to process the claim of the taxpayer ahead of the CTA"*.

In this connection, it is apparent that respondent Nippon Express' conformity to the BIR's findings need no formal act, but was clearly manifested by its simple filing of the Motion to Withdraw

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[32] Notice of Decision, Division Docket (CTA Case No. 6967), p. 471.
[33] Division Docket (CTA Case No. 6967), p. 498.

Petition for Review. Logically, a taxpayer-claimant will not file a motion to withdraw, if he is not agreeable or amenable to the findings of the BIR.

RMCs, such as RMC Nos. 42-2003 and 49-2003, are considered administrative rulings which are issued from time to time by the Commissioner of Internal Revenue.[34] Relative thereto, it has been recognized that administrative issuances have the force and effect of law, and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[35] Thus, adherence to the said RMCs is imperative.

Moreover, it is noteworthy that petitioner did not present counter-evidence before the Court in Division. Also, the existence or the fact of issuance by the BIR of the subject TCC in favor of petitioner is not denied.

In fact, in the instant Petition for Review before the Court *En Banc*, petitioner simply argues that: (1) the Decision of the Court in Division decreeing that respondent is only entitled to the amount of ₱ 2,614,296.84 must be enforced or implemented, relying on the legal presumption that the findings and conclusion of the Court in Division are valid; (2) the said TCC is without any evidentiary value and is deemed excluded or rejected, for not being offered in evidence in accordance with Section 34, Rule 132 of the Rules of Court;[36] (3) the Court in Division cannot take judicial notice of the said TCC; and (4) the issuance of the said TCC clearly prejudiced the interest of the government, since it was put in a disadvantageous situation wherein the government will be refunding to respondent a much bigger amount.

And even in the Court *a quo*, petitioner simply argues as follows:

> "...it is submitted that the amount covered under the subject Tax Credit Certificate (TCC) issued by the BIR through Asst. Commissioner for Large Taxpayers Service, Zenaida G. Garcia, albeit at a reduced amount of

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[34] *Asia International Auctioneers, Inc., et al. vs. Parayno, et al.*, G.R. No. 163445, December 18, 2007.

[35] *Chevron Philippines, Inc. vs Bases Conversion Development Authority*, G.R. No. 173863, September 15, 2010.

[36] SEC. 34. *Offer of evidence.*— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

> ***Php21,675,128.91***, is clearly contrary to the factual findings of this Honorable Court in its Decision dated 10 August 2011 since there is no clear showing on the part of the BIR which issued the subject TCC that the existing laws, jurisprudence and procedure to grant the claim for refund of petitioner was followed. Hence, the issuance of the subject TCC was erroneous and bereft of factual and legal basis. Moreover, if the subject TCC is pursued and applied as tax credit of petitioner, obviously the interest of the government is prejudiced considering the fact that the government will be refunding to petitioner a big amount ***(i.e. Php21,675,128.91)*** not properly and substantially proven by petitioner to be erroneously paid to the BIR, hence, presumably it violates the provisions under Section 3 of R.A. 3019."[37]

To emphasize, petitioner, being the head of the agency which processed the subject TCC, could have easily denied the existence thereof.

Furthermore, considering that the Commissioner ought to know the tax records of all taxpayers,[38] she could have easily prevented the issuance of the TCC, if she truly believes that respondent is indeed not entitled thereto, by not continuing to process the claim at the administrative level upon being elevated to the Court in Division.

The issuance of a TCC should not be taken lightly. This must be so because a TCC is defined as *"a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed..."*[39] The term *"tax credit"*, in turn, refers *"to the amount of due to a taxpayer resulting from an overpayment of a tax liability or*

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[37] Division Docket (CTA Case No. 6967), pp. 532 to 533.
[38] See the cases of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.* (G.R. No. 122480, April 12, 2000), and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation* (G.R. No. 180042, February 8, 2010).
[39] Section 1(B), Revenue Regulations No. 5-00.

*erroneous payment of a tax due."*[40]

In *Pilipinas Shell vs. Commissioner of Internal Revenue*,[41] the Supreme Court said:

> "From the above definitions, it is clear that a TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on certain goods. xxx.
>
> Therefore, the TCCs are immediately valid and effective after their issuance. xxx."

Accordingly, considering that the subject TCC is a government undertaking acknowledging that respondent is entitled to a certain amount of tax credit, it must be given weight and due consideration, upon its issuance.

Be that as it may, since the existence of the subject TCC is undisputed by petitioner herself, the Court in Division may take judicial notice thereof because it is a matter, as above observed, ought to be known to judges because of their judicial functions, pursuant to Section 2, Rule 129 of the Rules of Court, viz:

> "SEC. 2. Judicial notice, when discretionary.— **A court may take judicial notice of matters which** are of public knowledge, or are capable of unquestionable demonstration, or **ought to be known to judges because of their judicial functions**." *(Emphases supplied)*

Accordingly, considering that judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them,[42] a formal offer of the subject TCC as evidence is no longer necessary.

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40 Section 1(A), Revenue Regulations No. 5-00.
41 G.R. No. 172598, December 21, 2007.
42 Remedial Law Compendium – Volume Two by Florenz D. Regalado, © 2001, pp. 683 to 684, citing 31 C.J.S. 509).

Anent the allegation that the government is prejudiced if the subject TCC is pursued and applied as tax credit of respondent, suffice it to state that purported irregularities in the issuance of the said TCC allegedly in violation of Republic Act No. 3019 are matters beyond the jurisdiction of this Court. After all, mere allegations are not evidence[43] and are not equivalent to proof.[44] It must be emphasized that the Court does not rule on allegations which are manifestly conjectural, as these may not exist at all.[45] As a corollary, it is presumed that official duty has been regularly performed in the issuance of the subject TCC, absent any clear and convincing evidence to the contrary.[46]

Lastly, We cannot subscribe to petitioner's contention that the filing of the *Motion to Withdraw the Petition for Review* of respondent in CTA Case No. 6967 is tantamount to the withdrawal and abandonment of the latter's *Motion for Reconsideration*, and accordingly, respondent is deemed to have accepted the Decision of the Court in Division. It must be stated that there can be no such withdrawal or abandonment simply because, as already observed, the said *Motion to Withdraw the Petition for Review* was filed ahead of respondent's *Motion for Reconsideration.*

To reiterate, respondent's *Motion to Withdraw Petition for Review* was filed on August 12, 2011,[47] and the said *Motion for Reconsideration* was filed on August 31, 2011,[48] or fifteen (15) days after counsel for respondent came to know of the Decision on August 16, 2011.[49] As the Court *En Banc* sees it, the filing of the said *Motion for Reconsideration* is obviously intended to prevent the said Decision from becoming final, since the Court in Division has yet to resolve the *Motion to Withdraw* at the time of such filing.

**WHEREFORE**, all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit. The Resolution dated July 31, 2012 promulgated by the Court in Division in CTA Case No. 6967, is hereby **AFFIRMED**.

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43 *Martinez vs. National Labor Relations Commission*, G.R. No. 117495, May 29, 1997.
44 *Philippine National Bank vs. Court of Appeals,* G.R. No. 116181, April 17, 1996.
45 *ABAKADA GURO PARTY LIST OFFICERS vs. Ermita, et al.*, G.R. Nos. 168056, 168207, 168461, 168463, and 168730, September 1, 2005.
46 Refer to Section 3(m), Rule 131 of the Revised Rules of Court.
47 Division Docket (CTA Case No. 6967), p. 498.
48 Division Docket (CTA Case No. 6967), p. 502.
49 Division Docket (CTA Case No. 6967), p. 471.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

*(With Concurring and Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
***COURT OF TAX APPEALS***
QUEZON CITY

# ***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**NIPPON EXPRESS (PHILS.) CORPORATION,**
Respondent.

**CTA EB NO. 924**
(CTA Case No. 6967)

*Present*:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**COTANGCO-MANALASTAS,**
**RINGPIS-LIBAN,** *J.J.*

Promulgated:
DEC 1 9 2013 11:30 a.m.

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## CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.:***

I concur in the *ponencia* of my learned and esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, holding that Nippon Express (Phils.) Corporation's ("Nippon") "*administrative claim for the first quarter of taxable year 2002 filed on April 22, 2004 has already prescribed while its administrative claims for the second, third and fourth quarter of the same year similarly filed on April 22, 2004 were made within the prescribed period.*"

With due respect, however, I dissent on the finding that the *"Court in Division was correct in considering CTA Case No. 6967 as closed and terminated."*

Records show that the Court in Division rendered the assailed Decision on August 10, 2011. On August 12, 2011, Nippon filed a Motion to Withdraw Petition for Review, attached thereto as Annex A is a photocopy of Tax Credit Certificate (ITS TCC No. 122-11-00024)[1] dated July 27, 2011 in the amount of Php21,675,128.91, issued by Zenaida G. Garcia, Assistant Commissioner, Large Taxpayers Service of the Bureau of Internal Revenue (BIR). The Commissioner of Internal Revenue (CIR) and Nippon received their respective copies of the assailed Decision on August 15, 2011 and August 16, 2011, respectively. The CIR and Nippon filed their respective Motions for Reconsideration of the assailed Decision on August 26, 2011 and August 31, 2011, respectively.

In the Resolution dated July 31, 2012, the Court in Division granted Nippon's Motion to Withdraw Petition for Review. The petition for review in CTA Case No. 6967 was considered withdrawn and the case was regarded as closed and terminated. It is my humble view that the Motion to Withdraw Petition for Review filed by Nippon should not have been granted as the same was filed after the Court in Division had promulgated its Decision on August 10, 2011, albeit a copy of which was received by Nippon only on August 16, 2011.

In granting Nippon's Motion to Withdraw Petition for Review, the Court in Division recalled and set aside the assailed Decision. I am of the view that a decision rendered by the Court of Tax Appeals (CTA) cannot simply be recalled or set aside by the mere filing of a motion to withdraw the petition for review. Truth to tell, the withdrawal of a petition for review is not among the remedies available to Nippon after a judgment has been rendered, but before it becomes final and executory.

I am aware that A-17 of Revenue Memorandum Circular (RMC) No. 42-2003,[2] as amended by RMC No. 49-2003,[3] provides that if the administrative agency is able to process the claim for refund ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer may file a motion to withdraw the claim with the CTA. Nonetheless, the procedure stated in the afore-stated RMCs cannot supersede or modify the procedures specified in the RRCTA and the 1997 Rules of Civil Procedure which were approved by no less than the Supreme

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[1] Annex A, Motion to Withdraw Petition for Review.

[2] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

[3] 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, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

Court. At this juncture, it is worthy to note that the 1987 Constitution, specifically Article VIII, Section 5, gave to the Supreme Court the exclusive power to promulgate rules concerning pleading, practice and procedure in all courts. The pronouncement of the Supreme Court in *Leo Echegaray v. Secretary of Justice, et al.*[4] is enlightening, to wit:

> "The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court. Its Section 5(5), Article VIII provides:
>
> xxx xxx xxx
>
> Sec. 5. The Supreme Court shall have the following powers:
>
> xxx xxx xxx
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
>
> The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. **But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.** If the manifest intent of the 1987 Constitution is to strengthen the independence of the judiciary, it is inutile to urge, as public respondents do, that this Court has no jurisdiction to control the process of execution of its decisions, a power conceded to it and which it has exercised since time immemorial." (Boldfacing supplied)

[4] G.R. No. 132601 January 19, 1999.

In *Pacific Mills, Inc. and George U. Lim v. Hon. Manuel S. Padolina, et al.*,[5] the Supreme Court elucidated the courses of action that can be taken in the event that new facts occur after a judgment or decision has been rendered by the courts, *viz.*:

> "Petitioners, however, asseverate that the instant case falls under one of the exceptions to the rule on immutability of judgments, claiming that the fact of condonation constitutes a supervening event which, in the higher interest of justice, calls for the modification of our previous judgment. It bears reiteration that the condonation allegedly took place as early as January 12, 1987, while the instant case was still pending with the Court of Appeals. In *Baclayon vs. CA* (182 SCRA 762 [1990]), we stated:
>
> > "[A]ttempts to frustrate or put off enforcement of an executory judgment *on the basis of facts or events occurring before the judgment became final* cannot meet with success. Facts or events bearing on the substance of the obligation subject of the action should ordinarily be alleged during the issue-formulation stage or otherwise by proper amendment, and proved at the trial; **<u>if discovered after the case has been submitted but before the decision is rendered, proved after obtaining a reopening of the case; and if discovered after judgment has been rendered but before it becomes final, substantiated at a new trial which the court in its discretion may grant on the ground of newly discovered evidence, pursuant to Rule 37, Rules of Court</u>.** Once the judgment becomes executory, the only other remedy left to attempt a material alteration thereof is that provided for in Rule 38 of the Rules of Court (governing petitions for relief from judgments), or an action to set aside the judgment on account of extrinsic, collateral fraud.
> >
> > There is no other permissible mode of preventing or delaying execution on equitable grounds *predicated on facts occurring before finality of judgment.*" (Boldfacing and underscoring supplied)

Applying the doctrine laid down in *Pacific Mills Inc.*, and considering the relevance of the TCC issued by the BIR to Nippon's claim for refund, it is my humble view that Nippon should have filed a motion for new trial under Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 37 of the 1997 Rules of Civil Procedure before the Court in Division and introduced the TCC as evidence, so that the Court in Division could appropriately consider the TCC and render an amended decision, if warranted.

[5] G.R. No. 141013, November 29, 2000; cited in C.T.A. EB Case No. 71, June 7, 2005 (CTA Case No. 4803), penned by Senior Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy and Associate Justice Caesar A. Casanova concurring; then Presiding Justice Ernesto D. Acosta and then Associate Justice Olga Palanca-Enriquez were on leave.

By granting Nippon's Motion to Withdraw Petition for Review filed on August 12, 2011, or two (2) days after the promulgation of the assailed Decision on August 10, 2011, the Court in Division has recalled or set aside its own decision (rendered after considering evidentiary facts and applicable laws) in a manner that is contrary to the procedures stated in the RRCTA and the 1997 Rules of Civil Procedure.

Otherwise stated, while the issuance of the TCC under the circumstances of this case does not per se result in the modification of the Court in Division's decision, the significance and binding effect of judicial decisions may not be dependent upon the final determination by the administrative agency concerned of the very issue resolved by the court.

As afore-stated, the TCC should have been presented in a motion for new trial, which the Court in Division, in its discretion, may grant. Even then, the parties should be able to justify in an appropriate proceedings a modification of the decision based on the TCC.

All told, I VOTE to grant the petition for review filed by the CIR.

**ROMAN G. DEL ROSARIO**
Presiding Justice