REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NIPPON EXPRESS (PHILIPPINES) CORPORATION, Petitioner,	**CTA CASE NO. 6967**
	Members:
- versus -	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 31 2012 ABFernand 11:33 a.m.

x---x

RESOLUTION

This resolves the following:

a) The "Motion to Withdraw Petition for Review" filed by petitioner on August 12, 2011;

b) The "Motion for Reconsideration" filed by respondent by registered mail on August 26, 2011;

c) The "Motion for Reconsideration" filed by petitioner on August 31, 2011;

d) The "Comment/Opposition (To Petitioner's Motion to Withdraw Petition for Review)" filed by respondent on September 15, 2011;

e) The "Comment/Opposition (To Petitioner's Motion for Reconsideration)" filed by respondent by registered mail on October 10, 2011; and

f) The "Comment (To Respondent's Motion for Reconsideration dated 25 August 2011)" filed by petitioner on October 24, 2011.

The factual antecedents are as follows:

On August 10, 2011, the Court promulgated a Decision, the *fallo* of which, to quote:

> **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 (₱2,614,296.84),** representing excess/unutilized input VAT attributable to its zero-rated sales for taxable year 2002.
>
> **SO ORDERED.**

However, on August 12, 2011, petitioner filed a "Motion to Withdraw Petition for Review," stating that:

xxx xxx xxx

3) Last 27 July 2011, the Commissioner of Internal Revenue, through the BIR Assistant Commissioner for Large Taxpayer Service, Zenaida G. Garcia, issued a TCC granting the [p]etitioner's administrative claim for refund for the CY 2002, albeit at a reduced amount of Twenty One Million Six Hundred Seventy Five Thousand One Hundred Twenty Eight and 91/100 Pesos (₱21,675,128.91). A copy of the TCC is attached hereto as Annex *"A"*;

4) Having arrived at a reasonable settlement of the issues with respondent Commissioner of Internal Revenue/BIR, and to avoid incurring further legal and related costs, not to mention the time and resources of this Honorable Court, [p]etitioner most respectfully moves for the withdrawal of its Petition for Review.

xxx xxx xxx

On the other hand, on August 26, 2011, respondent filed by registered mail her "Motion for Reconsideration," praying for the reconsideration and setting aside of the Decision dated August 10, 2011, and accordingly, for the issuance of another ruling dismissing the Petition for Review for palpable lack of merit and/or for lack of jurisdiction to entertain the case.

And on August 31, 2011, petitioner filed a "Motion for Reconsideration," praying as follows:

1) GRANT the foregoing Motion for Reconsideration;

2) SET ASIDE the Decision promulgated on August 10, 2011;

3) RENDER judgment granting [p]etitioner's remaining claim for tax credit in the amount of Twenty Four Million Six Hundred Forty Four Thousand Five Hundred Six and 86/100 (₱24,644,506.86) less the amount of TCC granted by the respondent BIR; and correspondingly

4) ORDER the issuance of a tax credit certificate for the remaining amount; or

5) In the alternative, GRANT [p]etitioner's Motion to Withdraw Petition for Review filed last August 12, 2011.

On September 15, 2011, respondent filed her "Comment/Opposition (To Petitioner's Motion to Withdraw Petition for Review)" pursuant to the Court's Resolution dated September 2, 2011; and on October 10, 2011, filed by registered mail her "Comment/Opposition (To Petitioner's Motion for Reconsideration)" in accordance with the Court's Resolution dated September 16, 2011.

On October 24, 2011, petitioner filed its "Comment (To Respondent's Motion for Reconsideration dated 25 August 2011)" pursuant to the Court's Resolutions dated September 16, 2011, and October 11, 2011.

After consideration of the parties' respective submissions, the Court quotes Revenue Memorandum Circular No. 49-03,[1] dated August 15, 2003, which states 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.
>
> 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

---

[1] 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.

> Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office.

Based on the records of the case, respondent issued a Tax Credit Certificate dated July 27, 2011, in favor of petitioner in the amount of ₱21,675,128.91.

From the above-quoted provision, "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"; petitioner filed a "Motion to Withdraw Petition for Review" on August 12, 2011.

However, this Court promulgated a Decision on August 10, 2011, in favor of petitioner, ordering for the issuance of a tax credit certificate in the reduced amount of ₱2,614,296.84.

Thus, the "Motion to Withdraw Petition for Review" dated August 12, 2011, was filed after the Court promulgated its Decision dated August 10, 2011.

Section 3 of Rule 50 of the Revised Rules of Court, provides as follows:

> RULE 50
> DISMISSAL OF APPEAL
>
> xxx xxx xxx
>
> SEC. 3. *Withdrawal of appeal.* - An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

Therefore, the approval of a withdrawal of an appeal is discretionary upon the Court.

And since petitioner has manifested in writing that it had arrived at a reasonable settlement of the issues with respondent, and that to avoid incurring further legal and related costs, not to mention the time and resources, it hence moves for the withdrawal of its Petition for Review.

With this, the Court has no option but to find for the petitioner.

In view hereof, the Decision dated August 10, 2011 is hereby recalled and set aside.

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.

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice