REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9887

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
JUN 10 2019 10:04a

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RESOLUTION

On March 12, 2019, petitioner filed its *Motion to Withdraw* stating the following:

> 1. On July 25, 2018, Petitioner filed the instant Petition for Review of Respondent's partial denial of the former's claim for refund of excess and unapplied input Value Added Tax (VAT) directly attributable to its zero-rated sales for the taxable year 2016 in the total amount of Three Million Six Hundred Nine Thousand Five Hundred Ten Pesos and Eighty-Five Centavos (Php3,609,510.85).
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> 2. During the pre-trial conference before this Honorable Court on February 28, 2019, Respondent, through counsel, reiterated their claim that Petitioner's claim for refund should have been denied in its entirety, instead of being only partially denied at the administrative level. As such, the issues were joined such that the amount in question was increased from Three Million Six Hundred Nine Thousand Five Hundred Ten Pesos and Eighty-Five Centavos (Php3,609,510.85 to Twenty Million Eighty Three Thousand Nine Hundred Fifty Three Pesos and Fifty Five Centavos (Php20,083,953.55).
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> 3. The reversion of the issue to the original amount of Petitioner's refund claim is inequitable. It would result

> to additional costs to Petitioner which far outweigh the value of the original amount of the denial.
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> 4. In particular, presentation of evidence for the original amount of Twenty Million Eighty Three Thousand Nine Hundred Fifty Three Pesos and Fifty Five Centavos (Php20,083,953.55) would significantly increase the fees of an independent certified public accountant (ICPA), as opposed to what the cost would have been had the issue been restricted to the partial denial in the amount of Three Million Six Hundred Nine Thousand Five Hundred Ten Pesos and Eighty-Five Centavos (Php3,609,510.85).
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> 5. In view of the foregoing, while we are of the opinion that Respondent should not be allowed to question his own decision on appeal, a conscientious examination of the financial and legal costs versus the potential benefits of pursuing the case has forced Petitioner to file the instant Motion to Withdraw.

In his *Comment*, filed on April 5, 2019, respondent Commissioner of Internal Revenue (CIR) manifests that he has no objection to petitioner's *Motion to Withdraw*.

In *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corp.*,[1] (*Nippon*) the Supreme Court discussed withdrawals of pending appeals before the Court of Tax Appeals (CTA), as follows:

> A perusal of the Revised Rules of the Court of Tax Appeals (RRCTA) reveals the lack of provisions governing the procedure for the withdrawal of pending appeals before the CTA. Hence, pursuant to Section 3, Rule of the RRCTA, the Rules of Court shall suppletorily apply:
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> > Sec. 3. *Applicability of the Rules of Court.* – The Rules of Court in the Philippines shall apply suppletorily to these Rules.
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> Rule 50 of the Rules of Court – an adjunct rule to the appellate procedure in the CA under Rules 42, 43, 44, and 46 of the Rules of Court are equally adopted in the RRCTA – states that when the case is deemed submitted for resolution, withdrawals of appeals made after the filing of the appellee's brief may still be allowed in the discretion of the court:

[1] G.R. No. 212920, September 16, 2015.

RULE 50
DISMISSAL OF APPEAL

xxx xxx xxx

> Section 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.** (Emphasis supplied)

It should also be noted that in the abovequoted *Nippon* case, the Supreme Court reiterated that the CTA Division had already acted upon and issued its Decision reducing the amount of refund granted to Nippon, thus, the motion to withdraw should not have been granted.

Based on the foregoing, the withdrawal of the appeal may be allowed upon the discretion of the Court. Thus, considering that the instant case is still at the pre-trial stage and the same has not yet been submitted for decision, and that respondent has no objection to the withdrawal of the petition, the Court grants petitioner's *Motion to Withdraw*.

By withdrawing the instant Petition for Review, the VAT Refund/Credit Notice dated May 11, 2018, issued by the CIR which granted the refund of Php16,472,943.38 and disallowed the amount of Php3,609,510.85 (subject of this appeal), is now final, executory and demandable.

WHEREFORE, petitioner's *Motion to Withdraw* is hereby **GRANTED**. Accordingly, the Petition for Review filed on July 25, 2018 is **DISMISSED**, and the case is considered **CLOSED** and **TERMINATED**. The VAT Refund/Credit Notice dated May 11, 2018 is **DECLARED** final and executory. No further pleadings or motions shall be entertained herein.

SO ORDERED.

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice