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FIRST DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **NIPPON EXPRESS (PHILS.) CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA); WHEN THE CASE IS DEEMED SUBMITTED FOR RESOLUTION, WITHDRAWAL OF APPEALS MADE AFTER THE FILING OF THE APPELLEE'S BRIEF MAY STILL BE ALLOWED IN THE DISCRETION OF THE COURT UNLESS SUCH GRANT WOULD PREJUDICE THE INTEREST OF THE GOVERNMENT, AND MORE SIGNIFICANTLY, THE PUBLIC; APPLICATION IN CASE AT BAR.— 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 I of the RRCTA, the Rules of Court shall suppletorily apply: x x x 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 which are equally adopted in the RRCTA — states that when the case is deemed submitted for resolution, withdrawal of appeals made after the filing of the appellee' s brief may still be allowed in the discretion of the court: x x x While it is true that the CTA Division has the prerogative to grant a motion to withdraw under the authority of the foregoing legal provisions, the attendant circumstances in this case should have incited it to act otherwise. x x x The primary reason, however, that militates against the granting of the motion to withdraw is the fact that the CTA Division, in its August 10, 2011 Decision, had already determined that Nippon was only entitled to refund the reduced amount of **₱2,614,296.84** since it failed to prove that the recipients of its services were non-residents "doing business outside the Philippines"; hence, Nippon's purported sales therefrom could not qualify as zero-rated sales, necessitating the reduction in the amount of refund claimed. Markedly

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different from this is the BIR's determination that Nippon should receive **₱21,675,128.91** as per the July 27, 2011 Tax Credit Certificate, which is, in all, **₱19,060,832.07** larger than the amount found due by the CTA Division. Therefore, as aptly pointed out by Associate Justice Teresita J. Leonardo-De Castro during the deliberations on this case, the massive discrepancy alone between the administrative and judicial determinations of the amount to be refunded to Nippon should have already raised a red flag to the CTA Division. Clearly, the interest of the government, and, more significantly, the public, will be greatly prejudiced by the erroneous grant of refund — at a substantial amount at that — in favor of Nippon. Hence, under these circumstances, the CTA Division should not have granted the motion to withdraw.

2. ID.; NATIONAL INTERNAL REVENUE CODE OF 1997; TAX CREDITS; IN MATTERS OF TAXATION, THE GOVERNMENT CANNOT BE ESTOPPED BY THE MISTAKES, ERRORS OR OMISSIONS OF ITS AGENTS; RATIONALE.— In this relation, it deserves mentioning that the CIR is not estopped from assailing the validity of the July 27, 2011 Tax Credit Certificate which was issued by her subordinates in the BIR. In matters of taxation, the government cannot be estopped by the mistakes, errors or omissions of its agents for upon it depends the ability of the government to serve the people for whose benefit taxes are collected.

3. ID.; ID.; ID.; THE CLAIM FOR TAX CREDIT WAS ALREADY TIME-BARRED FOR BEING FILED BEYOND THE TWO (2)-YEAR PRESCRIPTIVE PERIOD; ESTABLISHED IN CASE AT BAR.— [T]he Court has observed that based on the records, Nippon's administrative claim for the first taxable quarter of 2002 which closed on March 31, 2002 was already time-barred for being filed on **April 22, 2004**, or beyond the two (2)-year prescriptive period pursuant to Section 112(A) of the National Internal Revenue Code of 1997. Although prescription was not raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cabrera and Company for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated December 18, 2013 and the Resolution[3] dated June 10, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 924, which affirmed the Resolution[4] dated July 31, 2012 of the CTA Third Division (CTA Division) in CTA Case No. 6967, granting respondent Nippon Express (Phils.) Corporation's (Nippon) motion to withdraw petition for review[5] (motion to withdraw).

The Facts

Nippon is a domestic corporation duly organized and existing under Philippine laws which is primarily engaged in the business of freight forwarding, namely, in the international and domestic air and sea freight and cargo forwarding, hauling, carrying, handling, distributing, loading, and unloading general cargoes and all classes of goods, wares, and merchandise, and the operation of container depots, warehousing, storage, hauling, and packing facilities.[6] It is a Value-Added Tax (VAT) registered

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[1] *Rollo*, pp. 12-31.

[2] *Id*. at 39-62. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring; and Presiding Justice Roman G. Del Rosario concurring and dissenting.

[3] *Id*. at 83-99.

[4] *Id*. at 228-233. Signed by Associate Justices Lovell R. Bautista, Olga Palanca-Enriquez, and Amelia R. Cotangco-Manalastas.

[5] *Id*. at 220-222.

[6] *Id.* at 40 and 42 (pages are inadvertently misarranged).

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entity with Tax Identification No./VAT Registration No. 004-669-434-000.[7] As such, it filed its quarterly VAT returns for the year 2002 on April 25, 2002, July 25, 2002, October 25, 2002, and January 27, 2003, respectively.[8] It maintained that during the said period it incurred input VAT attributable to its zero-rated sales in the amount of ₱28,405,167.60, from which only ₱3,760,660.74 was applied as tax credit, thus, reflecting refundable excess input VAT in the amount of ₱24,644,506.86.[9]

On April 22, 2004, Nippon filed an administrative claim for refund[10] of its unutilized input VAT in the amount of ₱24,644,506.86 for the year 2002 before the Bureau of Internal Revenue (BIR).[11] A day later, or on April 23, 2004, it filed a judicial claim for tax refund, by way of petition for review,[12] before the CTA, docketed as CTA Case No. 6967.[13]

For its part, petitioner the Commissioner of Internal Revenue (CIR) asserted, *inter alia*, that the amounts being claimed by Nippon as unutilized input VAT were not properly documented, hence, should be denied.[14]

Proceedings Before the CTA Division

In a Decision[15] dated August 10, 2011, the CTA Division partially granted Nippon's claim for tax refund, and thereby ordered the CIR to issue a tax credit certificate in the reduced

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[7] See Certificate of Registration issued by the Large Taxpayer District Office; *id*. at 109.

[8] *Id*. at 40.

[9] *Id*. at 104.

[10] *Id*. at 124-129.

[11] See *id*. at 40 and 140.

[12] *Id*. at 100-106.

[13] *Id*. at 40.

[14] See Answer dated June 17, 2004; *id*. at 130-131.

[15] *Id*. at 167-183. Penned by Associate Justice Lovell R. Bautista with Associate Justice Amelia Cotangco-Manalastas concurring and Associate Justice Olga Palanca Enriquez dissenting.

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amount of ₱2,614,296.84, representing its unutilized input VAT which was attributable to its zero-rated sales.[16] It found that while Nippon timely filed its administrative and judicial claims within the two (2)-year prescriptive period,[17] it, however, failed to show that the recipients of its services – which, in this case, were mostly Philippine Economic Zone Authority registered enterprises – were non-residents "doing business outside the Philippines." Accordingly, it concluded that Nippon's purported sales therefrom could not qualify as zero-rated sales, hence, the reduction in the amount of tax credit certificate claimed.[18]

Before its receipt of the August 10, 2011 Decision, or on August 12, 2011, Nippon filed a **motion to withdraw**,[19] considering that the BIR, acting on its administrative claim, already issued a tax credit certificate in the amount of ₱21,675,128.91 on July 27, 2011 (July 27, 2011 Tax Credit Certificate).

Separately, the CIR moved for reconsideration[20] of the August 10, 2011 Decision and filed its comment/opposition[21] to Nippon's motion to withdraw, claiming that: (*a*) the CTA Division had already resolved the factual issue pertaining to Nippon's entitlement to a tax credit certificate, which, after trial, was proven to be only in the amount of ₱2,614,296.84; (*b*) the issuance of the July 27, 2011 Tax Credit Certificate was bereft of factual and legal bases, and prejudicial to the interest of the government; and (*c*) Nippon's motion to withdraw was "tantamount to [a] withdrawal and abandonment of its [m]otion for [r]econsideration also filed in this case."[22]

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[16] *Id*. at 181-182.

[17] *Id*. at 173-174.

[18] See *id*. at 174-181.

[19] *Id*. at 220-222.

[20] *Id*. at 193-204.

[21] *Id*. at 224-227.

[22] See *id*. at 224-226.

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Thereafter, Nippon, which maintained that it only had notice of the August 10, 2011 Decision on August 16, 2011,[23] likewise sought for reconsideration,[24] praying that the CTA Division set aside its August 10, 2011 Decision and render judgment ordering the CIR to issue a tax credit certificate in the full amount of ₱24,644,506.86, or in the alternative, grant its motion to withdraw.[25]

In a Resolution dated July 31, 2012,[26] the CTA Division granted Nippon's motion to withdraw and, thus, considered the case closed and terminated.[27] It found that pursuant to **Revenue Memorandum Circular No. 49-03 (RMC No. 49-03) dated August 15, 2003**, Nippon correctly availed of the proper remedy notwithstanding the promulgation of the August 10, 2011 Decision. It added that in approving the withdrawal of Nippon's petition for review, it exercised its discretionary authority under Section 3, Rule 50 of the Rules of Court after due consideration of the reasons proffered by Nippon, namely: (*a*) that the parties had already arrived at a reasonable settlement of the issues; (*b*) further legal and related costs would be avoided; and (*c*) the court's time and resources would be saved.[28]

Aggrieved, the CIR elevated[29] its case to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[30] dated December 18, 2013, the CTA *En Banc* affirmed the July 31, 2012 Resolution of the CTA Division granting Nippon's motion to withdraw.[31] It debunked the CIR's

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[23] *Id*. at 205.

[24] See Motion for Reconsideration dated August 31, 2011; *id*. at 205-218.

[25] *Id*. at 217.

[26] *Id*. at 228-233.

[27] *Id*. at 233.

[28] See *id*. at 232-233.

[29] See petition for review dated August 28, 2012; *id*. at 234-247.

[30] *Id*. at 39-62.

[31] *Id*. at 59.

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assertions that Nippon failed to comply with the requirements set forth in RMC No. 49-03 – *i.e.*, that Nippon failed to notify the BIR that it agreed with its findings and to file the necessary motion before the CTA Division prior to the promulgation of its Decision – noting that RMC No. 49-03 did not expressly require a taxpayer to inform the BIR of its assent nor prescribe a definite period for filing a motion to withdraw. It also observed that the CIR did not deny the existence and issuance of the July 27, 2011 Tax Credit Certificate. In this regard, the same may be taken judicial notice of, and the need for its formal offer dispensed with.[32]

The CIR moved for partial reconsideration[33] which was, however, denied by the CTA *En Banc* in a Resolution[34] dated June 10, 2014; hence, this petition.

The Issue Before the Court

The core issue in this case is whether the CTA properly granted Nippon's motion to withdraw.

The Court's Ruling

The petition is meritorious.

A perusal of the Revised Rules of the Court of Tax Appeals[35] (RRCTA) reveals the lack of provisions governing the procedure for the withdrawal of pending appeals before the CTA. Hence, pursuant to Section 3, Rule 1 of the RRCTA, the Rules of Court shall suppletorily apply:

> Sec. 3. Applicability of the Rules of Court. – The Rules of Court in the Philippines shall apply suppletorily to these Rules.

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

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[32] See *id*. at 47-58.

[33] See Motion for Partial Reconsideration dated February 3, 2014; *id*. at 68-81.

[34] *Id*. at 83-99.

[35] A.M. No. 05-11-07-CTA effective December 15, 2005.

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Rules of Court which are equally adopted in the RRCTA[36] – states that when the case is deemed submitted for resolution, withdrawal of appeals made after the filing of the appellee's brief may still be allowed in the discretion of the court:

> RULE 50
> DISMISSAL OF APPEAL
>
> x x x x x x x x x
>
> 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)

Impelled by the BIR's supervening issuance of the July 27, 2011 Tax Credit Certificate, Nippon filed a motion to withdraw the case, proffering that:

> Having arrived at a reasonable settlement of the issues with the [CIR]/BIR, and to avoid incurring further legal and related costs, not to mention the time and resources of [the CTA], [Nippon] most respectfully moves for the withdrawal of its Petition for Review.[37]

Finding the aforementioned grounds to be justified, the CTA Division allowed the withdrawal of Nippon's appeal thereby ordering the case closed and terminated, notwithstanding the fact that the said motion was filed after the promulgation of its August 10, 2011 Decision.

While it is true that the CTA Division has the prerogative to grant a motion to withdraw under the authority of the foregoing

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[36] Section 1, Rule 7 of the RRCTA states:

> SECTION 1. *Applicability of the Rules of the Court of Appeals, exception*. – The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

[37] *Rollo*, p. 221.

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legal provisions, the attendant circumstances in this case should have incited it to act otherwise.

First, it should be pointed out that the August 10, 2011 Decision was rendered by the CTA Division after a full-blown hearing in which the parties had already ventilated their claims. Thus, the findings contained therein were the results of an exhaustive study of the pleadings and a judicious evaluation of the evidence submitted by the parties, as well as the report of the commissioned certified public accountant. In *Reyes v. Commission on Elections*,[38] the Court only noted, and did not grant, a motion to withdraw the petition filed after it had already acted on said petition, ratiocinating in the following wise:

> It may well be in order to remind petitioner that jurisdiction, once acquired, is not lost upon the instance of the parties, but continues until the case is terminated. When petitioner filed her Petition for *Certiorari* jurisdiction vested in the Court and, in fact, the Court exercised such jurisdiction when it acted on the petition. Such jurisdiction cannot be lost by the unilateral withdrawal of the petition by petitioner.[39]

The primary reason, however, that militates against the granting of the motion to withdraw is the fact that the CTA Division, in its August 10, 2011 Decision, had already determined that Nippon was only entitled to refund the reduced amount of **₱2,614,296.84** since it failed to prove that the recipients of its services were non-residents "doing business outside the Philippines"; hence, Nippon's purported sales therefrom could not qualify as zero-rated sales, necessitating the reduction in the amount of refund claimed. Markedly different from this is the BIR's determination that Nippon should receive **₱21,675,128.91** as per the July 27, 2011 Tax Credit Certificate, which is, in all, **₱19,060,832.07** larger than the amount found due by the CTA Division. Therefore, as aptly pointed out by Associate Justice Teresita J. Leonardo-De Castro during the deliberations on this case, the massive discrepancy alone between the administrative and judicial

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[38] G.R. No. 207264, October 22, 2013, 708 SCRA 197.

[39] *Id*. at 233.

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determinations of the amount to be refunded to Nippon should have already raised a red flag to the CTA Division. Clearly, the interest of the government, and, more significantly, the public, will be greatly prejudiced by the erroneous grant of refund – at a substantial amount at that – in favor of Nippon. Hence, under these circumstances, the CTA Division should not have granted the motion to withdraw.

In this relation, it deserves mentioning that the CIR is not estopped from assailing the validity of the July 27, 2011 Tax Credit Certificate which was issued by her subordinates in the BIR. In matters of taxation, the government cannot be estopped by the mistakes, errors or omissions of its agents for upon it depends the ability of the government to serve the people for whose benefit taxes are collected. [40]

Finally, the Court has observed that based on the records, Nippon's administrative claim for the first taxable quarter of 2002 which closed on March 31, 2002 was already time-barred[41] for being filed on **April 22, 2004**, or beyond the two (2)-year

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[40] "It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents. It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people." (*Visayas Geothermal Power Company v. CIR,* G.R. No. 197525, June 4, 2014, 725 SCRA 130, 149.)

[41] "First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer '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 the creditable input tax due or paid to such sales.' In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit 'within two (2) years,' which means at anytime within two years. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full

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prescriptive period pursuant to Section 112(A)[42] of the National Internal Revenue Code of 1997. Although prescription was not raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.[43]

All told, the CTA committed a reversible error in granting Nippon's motion to withdraw. The August 10, 2011 Decision of the CTA Division should therefore be reinstated, without prejudice, however, to the right of either party to appeal the same in accordance with the RRCTA.

WHEREFORE, the petition is **GRANTED**. The Decision dated December 18, 2013 and the Resolution dated June 10, 2014 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 924 are hereby **SET ASIDE**. The Decision dated August 10, 2011 of the Court of Tax Appeals Third Division in CTA Case No. 6967 is **REINSTATED**, without prejudice, however, to the right of either party to appeal the same in accordance with the Revised Rules of the Court of Tax Appeals.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.,* concur.

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period before his right to apply for a tax refund or credit is barred by prescription." (*CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 390-391.)

[42] Section 112 (A) of the National Internal Revenue Code of 1997 reads:

Section 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: x x x.

x x x (Emphasis and underscoring supplied)

[43] See *China Banking Corporation v. CIR*, G.R. No. 172509, February 4, 2015.