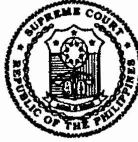

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NIPPON EXPRESS (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 196907

Present:

LEONARDO-DE CASTRO,*
PERALTA, *J., Acting Chairperson,***
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

March 13, 2013

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DECISION

MENDOZA, *J.*:

Before this court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking to set aside the May 13, 2011 Resolution[1] of the Court of Tax Appeals (*CTA*) *En Banc* in C.T.A. E.B. No. 505 (C.T.A. Case No. 6688) entitled *Commissioner of Internal Revenue v. Nippon Express (Philippines) Corporation.*

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* Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1430 dated March 12, 2013.

** Per Special Order No. 1429 dated March 12, 2013.

[1] *Rollo*, pp. 111-130; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez, with a Dissenting Opinion by Associate Justice Lovell R. Bautista.

The Facts

Petitioner Nippon Express (Philippines) Corporation *(petitioner)* is a corporation duly organized and registered with the Securities and Exchange Commission. It is also a value-added tax *(VAT)*-registered entity with the Large Taxpayer District of the Bureau of Internal Revenue *(BIR)*.[2] For the year 2001, it regularly filed its amended quarterly VAT returns.

On April 24, 2003, it filed an administrative claim for refund of ₱20,345,824.29 representing excess input tax attributable to its effectively zero-rated sales in 2001, computed as follows:[3]

Output VAT from Taxable Sales (10%)	₱ 5,827,022.20
Less: Input VAT from Taxable Sales	(1,789,111.32)
Input VAT from Zero-rated Sales	(24,383,735.17)
Refundable Excess Input VAT	(₱ 20,345,824.29)

Pending review by the BIR, on April 25, 2003, petitioner filed a petition for review with the CTA, requesting for the issuance of a tax credit certificate in the amount of ₱20,345,824.29.[4]

On January 26, 2009, the First Division of the CTA denied the petition for insufficiency of evidence.[5] Upon motion for reconsideration, however, the CTA First Division promulgated its Amended Decision,[6] dated March 24, 2009, ordering the respondent, Commissioner of Internal Revenue (*CIR*) to issue a tax credit certificate in favor of petitioner in the amount of ₱10,928,607.31 representing excess or unutilized input tax for the second, third and fourth quarters of 2001. The CTA First Division took judicial notice of the records of C.T.A. Case No. 6967, also involving petitioner, to show that the claim of input tax had not been applied against any output tax in the succeeding quarters. As to the timeliness of the filing of petitioner's administrative and judicial claims, the CTA First Division ruled that while the administrative application for refund was made within the two-year prescriptive period, petitioner's immediate recourse to the court

[2] Id. at 84.
[3] Id. at 85.
[4] Id.
[5] Id.
[6] Id. at 69-73; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

was a premature invocation of the court's jurisdiction due to the non-observance of the procedure in Section 112(D)[7] of the National Internal Revenue Code (*NIRC*) providing that an appeal may be made with the CTA within 30 days from the receipt of the decision of the CIR denying the claim or after the expiration of the 120-day period without action on the part of the CIR. Considering, however, that the CIR did not register his objection when he filed his Answer, he is deemed to have waived his objection thereto.[8] The CIR sought reconsideration but his motion was denied in the June 16, 2009 Resolution[9] of the CTA First Division.

The CIR elevated the case to the CTA *En Banc* which, on June 11, 2010, reversed and set aside the March 24, 2009 Amended Decision and the June 16, 2009 Resolution of the CTA First Division.[10] Accordingly, petitioner's claim for refund or issuance of a tax credit certificate was denied for lack of merit. The CTA *En Banc* ruled that the sales invoices issued by petitioner were insufficient to establish its zero-rated sale of services. Without the proper VAT official receipts issued to its clients, the payments received by petitioner could not qualify for zero-rating for VAT purposes. As a result, the claimed input VAT payments allegedly attributable to such sales could not be granted.

The CTA *En Banc* later changed its position on September 22, 2010 when it issued its Amended Decision[11] granting petitioner's motion for reconsideration, setting aside its own June 11, 2010 Decision and affirming the March 24, 2009 Amended Decision of the CTA First Division. In view of the pronouncement of the Court in the case of *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,*[12] that Section 113 of the NIRC did not distinguish between a sales invoice and an official receipt, the CTA *En Banc* found petitioner's sales invoices to be acceptable proof to support its claim for refund or issuance of a tax credit

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[7] Sec. 112. Refunds or Tax Credits of Input Tax

xxx

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

[8] *Rollo*, pp. 71-72.

[9] Id. at 75-81.

[10] Id. at 82-103; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista and Associate Justice Olga Palanca-Enriquez, with a Dissenting Opinion by Presiding Justice Ernesto D. Acosta, concurred in by Associate Justice Caesar A. Casanova.

[11] Id. at 104-110; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista and Associate Justice Olga Palanca-Enriquez, with a Dissenting Opinion by Presiding Justice Ernesto D. Acosta, concurred in by Associate Justice Caesar A. Casanova.

[12] G.R. No. 182364, August 3, 2010, 626 SCRA 567.

certificate representing its excess or unutilized input VAT arising from zero-rated or effectively zero-rated sales.

The CIR filed a motion for reconsideration, arguing that the sales invoice, which supported the sale of goods, was not the same as the official receipt, which must support the sale of services. In addition, it pointed out that the CTA had no jurisdiction over the petition for review because it was filed before the lapse of the 120-day period accorded to the CIR to decide on its administrative claim for input VAT refund.[13]

In another reversal of opinion, the CTA *En Banc* set aside the March 24, 2009 Amended Decision and the June 16, 2009 Resolution of the CTA First Division and dismissed the petition for review for lack of jurisdiction. In its May 13, 2011 Resolution,[14] the CTA *En Banc* held that the 120-day period under Section 112(D) of the NIRC, which granted the CIR the opportunity to act on the claim for refund, was jurisdictional in nature such that petitioner's failure to observe the said period before resorting to judicial action warranted the dismissal of its petition for review for having been prematurely filed, in accordance with the ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[15] With respect to the use of official receipts interchangeably with sales invoices, the tax court cited the ruling of the Court in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[16] which concluded that a VAT invoice and a VAT receipt should not be confused as referring to the same thing. A VAT invoice was the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt was the buyer's best evidence of the payment of goods and services received from the seller.

Hence, this petition.

The Issues

Petitioner raises the following questions:

> **WHETHER OR NOT THE COURT OF TAX APPEALS HAS NO JURISDICTION TO ENTERTAIN THE INSTANT CASE.**

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[13] *Rollo*, p. 115.
[14] Id. at 111-130.
[15] G.R. No. 184823, October 6, 2010, 632 SCRA 422.
[16] G.R. No. 181858, November 24, 2010, 636 SCRA 166.

WHETHER OR NOT THE PETITIONER'S VAT INVOICES ARE INSUFFICIENT PROOF TO SUPPORT ITS ZERO-RATED SALES.[17]

The Court's Ruling

The Court finds the petition to be without merit.

As regards the first issue, petitioner argues that the non-exhaustion of administrative remedies is not a jurisdictional defect as to prevent the tax court from taking cognizance of the case.[18] It merely renders the filing of the case premature and makes it susceptible to dismissal for lack of cause of action, if invoked. Considering, however, that the CIR failed to seasonably object to the filing of the case by petitioner with the CTA, it is deemed to have waived any defect in the petition for review. In fact, petitioner points out that the this issue was only raised for the first time in the respondent's Supplemental Motion for Reconsideration, dated December 3, 2010, which was filed after the promulgation of the September 22, 2010 Amended Decision of the CTA *En Banc*. Finally, petitioner insists that it cannot be faulted for relying on prevailing CTA jurisprudence requiring that both administrative and judicial claims for refund be filed within two (2) years from the date of the filing of the return and the payment of the tax due. Because this case was filed more than seven years prior to *Aichi*, the doctrine espoused therein cannot be applied retroactively as it would impair petitioner's substantial rights and will deprive it of its right to refund.[19]

Petitioner is mistaken.

The provision in question is Section 112(D) (now subparagraph C) of the NIRC:

> Sec. 112. Refunds or Tax Credits of Input Tax
>
> x x x
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of

[17] *Rollo*, p. 41.
[18] Id. at 42.
[19] Id. at 42-52.

> complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Supplied)

A simple reading of the abovequoted provision reveals that the taxpayer may appeal the denial or the inaction of the CIR only within thirty (30) days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim. Because the law is categorical in its language, there is no need for further interpretation by the courts and non-compliance with the provision cannot be justified.[20] As eloquently stated in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc.*:[21]

> It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application (Cebu Portland Cement Co. vs. Municipality of Naga, 24 SCRA-708 [1968]).
>
>> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (Chartered Bank Employees Association vs. Ople, 138 SCRA 273 [1985]; Luzon Surety Co., Inc. vs. De Garcia, 30 SCRA 111 [1969]; Quijano vs. Development Bank of the Philippines, 35 SCRA 270 [1970]).
>
> Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.[22]

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[20] *Pansacola v. Commissioner of Internal Revenue*, 537 Phil. 296, 309 (2006).

[21] 378 Phil. 10 (1999).

[22] Id. at 22.

Moreover, contrary to petitioner's position, the 120+30-day period is indeed mandatory and jurisdictional, as recently ruled in *Commissioner of Internal Revenue v. San Roque Power Corporation*.[23] Thus, failure to observe the said period before filing a judicial claim with the CTA would not only make such petition premature, but would also result in the non-acquisition by the CTA of jurisdiction to hear the said case.

Because the 120+30 day period is jurisdictional, the issue of whether petitioner complied with the said time frame may be broached at any stage, even on appeal. Well-settled is the rule that the question of jurisdiction over the subject matter can be raised at any time during the proceedings. Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[24] Consequently, the fact that the CIR failed to immediately express its objection to the premature filing of the petition for review before the CTA is of no moment.

As to petitioner's contention that it relied on the previous decisions of the CTA on the matter, the Court finds it apt to quote its ruling in *San Roque*:

> **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.**[25]

Pursuant to the ruling of the Court in *San Roque*, the 120+30-day period is mandatory and jurisdictional from the time of the effectivity of Republic Act *(R.A.)* No. 8424 or the Tax Reform Act of 1997. The Court, however, took into consideration the issuance by the BIR of Ruling No. DA-489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief. Because taxpayers cannot be faulted for relying on this declaration by the BIR, the Court deemed it reasonable to allow taxpayers to file its judicial claim even before the expiration of the 120-day period. This exception is to be observed from the issuance of the said ruling on December 10, 2003 up until its reversal by

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[23] G.R. No. 187485, February 12, 2013.
[24] *Republic of the Philippines v. Sangalang*, 243 Phil. 46, 50 (1988).
[25] *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra note 23.

Aichi on October 6, 2010. In the landmark case of *Aichi*, this Court made a definitive statement that the failure of a taxpayer to wait for the decision of the CIR or the lapse of the 120-day period will render the filing of the judicial claim with the CTA premature.[26] As a consequence, its promulgation once again made it clear to the taxpayers that the 120+30-day period must be observed.

As laid down in *San Roque*, judicial claims filed from January 1, 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC. The only exception is the period from December 10, 2003 until October 6, 2010, during which, judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on the claim for refund.

Based on the foregoing discussion and the ruling in *San Roque*, the petition must fail because the judicial claim of petitioner was filed on April 25, 2003, only one day after it submitted its administrative claim to the CIR. Petitioner failed to wait for the lapse of the requisite 120-day period or the denial of its claim by the CIR before elevating the case to the CTA by a petition for review. As its judicial claim was filed during which strict compliance with the 120+30-day period was required, the Court cannot but declare that the filing of the petition for review with the CTA was premature and that the CTA had no jurisdiction to hear the case.

Having thus concluded, the Court sees no need to discuss other issues which may have been raised in the petition.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

[26] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, supra note 15, at 443.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice