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THIRD DIVISION

[G.R. No. 196907, March 13, 2013]

NIPPON EXPRESS (PHILIPPINES) CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

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*.

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%)	P 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	(P 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 P20,345,824.29.[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 P10,928,607.31 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 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 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.**
> **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
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> x x x
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> (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.
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> 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]).
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> > 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]).
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> 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]

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