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THIRD DIVISION

[G.R. No. 191495, July 23, 2018]

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

D E C I S I O N

MARTIRES, J.:

In a claim for refund under Section 112 of the National Internal Revenue Code *(NIRC),* the claimant must show that: *(1)* it is engaged in zero-rated sales of goods or services; and *(2)* it paid input VAT that are attributable to such zero-rated sales. Otherwise stated, the claimant must prove that it made a *purchase* of taxable goods or services for which it paid VAT (input), and later on engaged in the *sale* of goods or services subject to VAT (output) but at zero rate. There is a refundable sum when the amount of input (VAT (attributable to zero-rated sale) is higher than the claimant's output VAT during one taxable period (quarter).

The issue in the present petition concerns the proof that the claimant, petitioner Nippon Express (Philippines) Corporation *(Nippon Express),* is engaged in zero-rated sales of services (not goods or properties).

THE FACTS

Petitioner Nippon Express repaired to the Court via its petition for review on certiorari under Rule 45 of the Rules of Court to assail the 15 December 2009 Decision of the Court of Tax Appeals *(CTA)* En Banc in CTA EB No. 492. The CTA En Banc affirmed the ruling of the CTA Second Division in CTA Case No. 7429 denying the refund claim of Nippon Express.

The present controversy stemmed from an application for the issuance of a tax credit certificate *(TCC)* of Nippon Express' excess or unutilized input tax attributable to its zero-rated sales for all four taxable quarters in 2004 pursuant to Section 112 of the National Internal Revenue Code *(NIRC).*

The Antecedents

Nippon Express is a domestic corporation registered with the Large Taxpayer District Office *(LTDO)* of the Bureau of Internal Revenue *(BIR),* Revenue Region No. 8–Makati, as a Value Added Tax *(VAT)* taxpayer.[1]

On **30 March 2005**, Nippon Express filed with the LTDO, Revenue Region No. 8, an application for tax credit of its excess/unused input taxes attributable to zero-rated sales for the taxable year 2004 in the total amount of P27,828,748.95.

By reason of the inaction by the BIR, Nippon Express filed a Petition for Review before the CTA on **31 March 2006.**[2] In its Answer, respondent Commissioner of Internal Revenue *(CIR)* interposed the defense, among others, that Nippon Express' excess input VAT paid for its domestic purchases of goods and services attributable to zero-rated sales for the four quarters of taxable year 2004 was not fully substantiated by proper documents.[3]

The Ruling of the CTA Division

After trial, the CTA Division *(the court)* found that Nippon Express' evidentiary proof of its zero-rated sale of services to PEZA-registered entities consisted of documents other than official receipts. Invoking Section 113 of the NIRC, as amended by Section 11 of Republic Act *(R.A.)* No. 9337, the court held the view that the law provided for invoicing requirements of VAT-registered persons to issue a VAT invoice for every sale, barter or exchange of goods or properties, and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. Noting that Nippon Express is engaged in the business of providing services, the court denied the latter's claim for failure to submit the required VAT official receipts as proof of zero-rated sales. The dispositive portion of the CTA Division's Decision, dated 5 December 2008, reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[4]

Aggrieved, Nippon Express moved for reconsideration or new trial but was rebuffed by the CTA Division in its Resolution[5] of 5 May 2009. Hence, Nippon Express filed on 10 June 2009 a petition for review with the CTA En Banc.

The Petition for Review before the CTA En Banc

In its appeal before the CTA En Banc, Nippon Express alleged that it had fully complied with the invoicing requirements when it submitted sales invoices to support its claim of zero-rated sales. Nippon argued that there is nothing in the tax laws and regulations that requires the sale of goods or properties to be supported only by sales invoices, or the sale of services by official receipts only. Thus, as Nippon Express put it, the CTA Division erred in holding that the sales invoices and their supporting documents are insufficient to prove Nippon Express' zero-rated sales.

The Ruling of the CTA En Banc

As stated at the outset, the CTA En Banc affirmed the decision of the CTA Division. The CTA En Banc disposed as follows:

> **"WHEREFORE,** the Petition for Review is **DISMISSED.** Accordingly, the impugned Decision of the Court in Division dated December 5, 2008 and its Resolution promulgated on May 5, 2009 in CTA Case No. 7429 are **AFFIRMED.**
>
> **SO ORDERED."**[6]

Worth mentioning is the lone dissent registered by Presiding Justice *(PJ)* Ernesto D. Acosta who opined that an official receipt is not the only acceptable evidence to prove zero-rated sales of services. He ratiocinated:

> **Sections 113 and 237 of the 1997 National Internal Revenue Code (NIRC)** x x x made use of the disjunctive term "or" which connotes that either act qualifies as two different evidences of input VAT. x x x It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services.
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> This is bolstered by the fact that Section 113 of the 1997 NIRC has been amended by Section 11 of Republic Act (RA) No. 9337, wherein the amendatory provisions of the law categorically required that VAT invoice shall be issued for sale of goods while VAT official receipt for the sale of services, which is absent in the amended law. Since this amendment took effect on July 1, 2005, the same cannot be applied in the instant case which involves a claim tor refund for taxable year 2004. RA 9337 cannot apply retroactively to the prejudice of petitioner given the well-entrenched principle that statutes, including administrative rules and regulations operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.
>
> Equally relevant are **Section 110 of the 1997 NIRC** and **Section 4.106-5 of Revenue Regulations No. 7-95.** x x x A reading of both provisions would show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or official receipt.[7]

Nippon Express opted to forego the filing of a motion for reconsideration; hence, the direct appeal before the Court.

The Present Petition for Review

In its petition, Nippon Express reiterated its stance that nowhere is it expressly stated in the laws or implementing regulations that *only* official receipts can support the sale of *services,* or that *only* sales invoices can support the sale of *goods* or *properties.* Nippon Express also adopted at length the dissenting opinion of PJ Acosta, *viz* the use of the disjunctive term "or" in Section 237 of the NIRC connoting the interchangeable nature of either VAT invoice or official receipt as evidence of

sale of goods or services; the lack of any statutory basis for the exclusivity of official receipts as proof of sale of service; and the non-retroactivity of R.A. No. 9337, enacted in 2005, to the petitioner's case.

In addition, Nippon Express posed the query on whether it may still be allowed to submit official receipts, in addition to those already produced during trial, in order to prove the existence of its zero-rated sales.

By way of Comment,[8] the CIR impugns the petition as it essentially seeks the re-evaluation of the evidence presented during trial which cannot be done in a petition for review under Rule 45. Likewise, the CIR argues that the evidence of the sale of service, as the CTA held, is none other than an official receipt. In contrast, the sales invoice is the evidence of a sale of goods. Since the petitioner's transactions involve sales of services, they should have been properly supported by official receipts and not merely by sales invoices.

THE COURT'S RULING

We deny the petition.

I.

The judicial claim of Nippon Express was belatedly filed. The thirty (30)-day period of appeal is mandatory and jurisdictional, hence, the CTA did not acquire jurisdiction over Nippon Express' judicial claim.

First, we observe that much of the CTA's discussion in the assailed decision dwelt on the substantiation of the petitioner's claim for refund of unutilized creditable input VAT. It did not touch on the subject of the court's jurisdiction over the petition for review filed before it by Nippon Express. Neither did the CIR bring the matter to the attention of the court *a quo.*

Nonetheless, even if not raised in the present petition, the Court is not prevented from considering the issue on the court's jurisdiction consistent with the well-settled principle that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.[9] The matter of 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.[10] Besides, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction pursuant to Section 1, Rule 9 of the Revised Rules of Court.[11]

Concerning the claim for refund of excess or unutilized creditable input VAT attributable to zero-rated sales, the pertinent law is Section 112 of the NIRC[12]

which reads:

> SEC. 112. *Refunds or Tax Credits of Input Tax. –*
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> (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
>
> (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 (8) 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.** (emphases supplied)

Under the aforequoted provision, a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application.[13] The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made.

From the submission of complete documents to support the administrative claim, the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction.[14] The period to appeal is **thirty (30) days** counted from the receipt of the decision or inaction by the CIR.

The 30-day period is further emphasized in Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, or the CTA charter, which reads:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner