REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

WRIGLEY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6863

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
DEC 08 2008; 3:05 pm

x -x

DECISION

BAUTISTA, *J.*:

This case involves petitioner's claim against respondent for the refund or issuance of tax credit certificate in the amount of P4,151,725.70, allegedly representing overpaid withholding taxes from the royalties paid for calendar year 2002.

Wrigley Philippines, Inc. (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Marcos Highway, Sitio Puting Bato, Barangay Inarawan, Antipolo City.[1] Petitioner is registered as a value-added tax (VAT) entity, with TIN/VAT No. 000-280-753-000 and BIR Certificate of Registration No. 8RC000016763 dated January 1, 1996.[2]

---

[1] Par. 9, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 174.
[2] Par. 11, JSFI, Docket, p. 174.

471

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law. He holds office at the BIR National Office Building, Agham Road, East Triangle, Diliman, Quezon City.[3]

Petitioner is engaged in the business of manufacturing, purchasing, exporting, importing, selling, and in general, trading and dealing in and handling chewing gum, confectionary, gum chicle, food products, and by-products thereof.[4]

On July 2, 1993, petitioner entered into a ten (10)-year License Agreement with Wm. Wrigley Jr. Company (Wrigley-US), a non-resident foreign corporation duly organized and existing under the State of Delaware, USA; with business address at 410 North Michigan Avenue, Chicago, Illlinois, USA. The same was renewed for another ten (10) years or until July 1, 2013.[5] Under the Agreement, petitioner was granted the following rights:

1. License to manufacture and sell chewing gum under the Technical Data acquired and developed by Wrigley-US, consisting primarily of formulae, written descriptions, blue prints, manufacturing processes, inventions and methods with respect to the manufacture of chewing gum;

2. Information to all developments or improvements relating to the manufacture of chewing gum;

3. Technical assistance by communicating and interpreting techniques that may be developed with respect to the marketing, selling, advertising, manufacturing and packaging of chewing gum; and

4. Exclusive right to manufacture, use and sell in the Philippines under Wrigley-US trademarks."

For the rights and benefits received by petitioner, it agreed to pay Wrigley-US a fee of five percent (5%) based on the Net Sales, plus two percent (2%) based on its Net

---

[3] Par. 1, JSFI, Docket, p. 168.
[4] Par. 10, JSFI, Docket, p. 174.
[5] Annex "F-1", Petition for Review, Docket, pp. 66-81.

472

Foreign Exchange Earnings with respect to all its manufactured and sold chewing gums.[6] Moreover, Philippine withholding taxes on all payments under the said License Agreement shall be withheld and deducted from the payments due to Wrigley-US.

In accordance with the provisions of the License Agreement dated July 1, 1993, petitioner paid Wrigley-US the royalty fees due thereon for calendar year 2002. The said royalty fees were subjected to fifteen percent (15%) withholding tax rate pursuant to the "most favored nation" clause of the Philippines-US Tax Treaty, in relation to the pertinent provisions of the RP-Russia, RP-Denmark or RP-Sweden Tax Treaties, which reads as follows:

RP-US TAX TREATY
"Article 13
Royalties

(1) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) However, the tax imposed by that other Contracting State shall not exceed —

(a) In the case of the United States, 15 percent of the gross amount of the royalties, and

(b) In the case of the Philippines, the least of:

(i) 25 percent of the gross amount of the royalties;

(ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

(iii) **the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State.**

[6] Exhibit "B-4".

473

(3) The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process or other like right or property, or for information concerning industrial, commercial or scientific experience. The term 'royalties' also includes gains derived from the sale, exchange or other disposition of any such right or property which are contingent on the productivity, use or disposition thereof." (*Emphasis supplied*)

RP-RUSSIA TAX TREATY
"Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, the royalties may also be taxed in the Contracting State in which they arise and according to the laws of the State, but the tax so charged **shall not exceed 15 per cent of the gross amount of royalties**.

3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films and tapes for television or radio broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience." (*Emphasis supplied*)

RP-DENMARK TAX TREATY
"Article VIII
Royalties

(1) Royalty paid by a resident or corporation of the Philippines to a resident or corporation of Denmark may be taxed in the Philippines.

(2) In this Article, the term 'royalty' means any royalty or amount paid as consideration for the use of, or for the privilege of using any copyright, patent, design, secret process or formula, trademark, or the like property, and other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

(3) The Philippine withholding tax on royalty paid to a resident or corporation in Denmark by a resident or corporation in the Philippines may be reduced by 1/3 of the regular tax due thereon if:

474

(a) The payor is engaged in the active conduct of business in area of investment enumerated in paragraph 2 of Article VI, preferably in joint venture, and

(b) eighty per cent (80%) of the gross income of the payor during the taxable year was derived from the active conduct of business in preferred areas of investment where the subject royalty payment was utilized."

On November 18, 1999, Philippines entered into an agreement with People's Republic of China entitled "Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to taxes on Income" or the RP-China Tax Treaty, which took effect on January 1, 2002. The pertinent provisions of which state as follows:

RP-CHINA TAX TREATY
"Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of the State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

a) 15 per cent of the gross amount of royalties arising from the use of, the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for television or broadcasting, or

b) 10 per cent of the gross amount of royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

For as long as the transfer of technology, under Philippine Law, is subject to approval, the limitation of the tax rate mentioned under (b) shall, in the case of royalties arising in the Republic of the Philippines, only apply if the contract giving rise to such royalties has been approved by the Philippine competent authorities.

475

> 3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience." (*Emphasis supplied*)

Under the treaty, only ten percent (10%) withholding tax rate is imposed on royalty payments arising from the use of, or the right to use, any patent, trademark design or model, plan, secret formula or process, or from the use of, or the right to use industrial, commercial, or scientific equipment or for the information concerning industrial, commercial or scientific experience.

Thereafter, BIR issued BIR Memorandum Circular (RMC) No. 46-2002 dated September 2, 2002 stating that the "tax on royalty payments to residents of US and China are paid under similar circumstances, *i.e.* the amount of royalty income tax paid or accrued to the Philippines under the respective tax treaties is available as tax credit against the income tax payable in their respective countries", and "US residents may, therefore, invoke the preferential rate of 10% on royalties, accruing beginning January 1, 2002, arising in the Philippines 'from the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, . . ., or for information concerning industrial, commercial or scientific experience' under the RP-China Tax Treaty, pursuant to the 'most-favored nation' clause of the RP-US tax treaty".

Notwithstanding this, petitioner had been withholding and remitting to respondent the tax on its royalty payments at fifteen percent (15%) tax rate. Hence, for calendar year 2002, petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld on the following dates:

476

Month	Date Filed	Royalty Payments	Withholding Taxes Remitted at 15%
January	11-Feb-02	P 8,245,416.00	P 1,236,812.00
February	8-Mar-02	6,603,672.00	990,551.00
March	10-Apr-02	7,814,138.00	1,172,121.00
April	10-May-02	6,664,923.00	999,738.00
May	10-Jun-02	7,225,613.00	1,083,842.00
June	10-Jul-02	6,043,701.00	906,555.00
July	13-Aug-02	5,400,604.00	810,091.00
August	10-Sep-02	7,482,852.00	1,122,428.00
September	10-Oct-02	7,009,429.00	1,051,414.00
October	8-Nov-02	7,490,780.00	1,123,617.00
November	10-Dec-02	6,646,433.00	996,965.00
December	10-Jan-03	6,406,956.00	961,043.40
TOTAL		**P 83,034,517.00**	**P 12,455,177.40**

In view of the foregoing and pursuant to the BIR Revenue Memorandum Order No. 1-2000[7], petitioner filed with the BIR's International Tax Affairs Division (ITAD) a written request[8] for a ruling confirming that petitioner's technical service fee or royalty payments to Wrigley-US are subject to ten percent (10%) withholding tax rate pursuant to the "most favored nation clause" under the Philippines-US Tax Treaty, in relation to the provisions of the RP-China Tax Treaty; with a claim for refund or issuance of tax credit certificate for the amount of P4,151,725.70, representing overpaid withholding taxes it made starting January 1, 2002, when the RP-China Tax Treaty took effect. Attached to the written request are the documentary requirements prescribed under RMO No. 1-2000.

In response to petitioner's request, the BIR-ITAD, through BIR Assistant Commissioner Milagros V. Regalado, issued BIR Ruling No. DA-ITAD-142-03[9] dated September 23, 2003 which stated that:

> "Such being the case, this Office is of the opinion and so holds that the royalty payments of WPI to Wrigley-US under the License Agreement are subject to final withholding tax at the rate of 10% pursuant to the 'most favored nation' provision of the RP-US tax treaty in relation to the RP-China tax treaty effective January 1, 2002 [Revenue Memorandum Circular (RMC) No. 46-2002 dated September 2, 2002; BIR Ruling No. DA-ITAD 101-03 dated July 24, 2003]. WPI shall deduct and withhold the tax at the time the royalty income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, and whichever

[7] Procedures for Processing Tax Treaty Relief Application dated November 25, 1999.
[8] Annex "T", Petition for Review.
[9] Annex "U", Petition for Review.

477

comes first. The term 'payable' refers to the date the obligation become due, demandable, or legally enforceable [Section 4 — Time of Withholding, Revenue Regulations No. 12-2001]."

However, in the same Ruling, petitioner's claim for refund or issuance of a tax credit certificate was resolved in this manner, to wit:

> "This ruling is issued on the basis of the facts as presented and is rendered only for the purpose of determining whether Wrigley is entitled to the benefits of the RP-US tax treaty. The determination on whether your request for tax refund should be given due course is upon the Office which will be conducting the investigation for that purpose. Thus, the docket pertaining thereto (including copy of this ruling) shall be endorsed to the proper office for processing and investigation."

Under BIR RMO No. 1-00, in case of a claim for issuance of tax credit certificate, ITAD shall forward to the BIR's Appellate Division its Indorsement Memo with the certified copy of the approved ruling for the issuance of a tax credit certificate. The Appellate Division, in turn, shall issue a tax credit certificate in the name of the withholding agent for the account of the "non-resident taxpayer/recipient of the income." The Appellate Division shall forward the duly signed tax credit certificate to the ITAD for its release.

To date, respondent has not issued his final decision on petitioner's claim for refund or issuance of tax credit certificate, representing its overpaid withholding taxes for calendar year 2002 amounting to P4,151,725.70. Hence, this *Petition for Review* filed on February 9, 2004.

Respondent, in his *Answer*[10] raised the following Special and Affirmative Defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 6. The amount of P4,151,725.70 being claimed by petitioner as allegedly representing overpaid withholding taxes for calendar year 2002 was not properly documented;
>
> 7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

[10] Docket, p. 134.

478

8. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

After trial on the merits, this case was submitted for decision on May 7, 2008 taking into consideration petitioner's *Memorandum* filed on March 28, 2008, without respondent's *Memorandum*.

ISSUES

The following issues[11] were submitted for this Court's resolution:

"1. Whether or not Petitioner had met the two requirements for the availment of the preferential tax rate of 10% on royalty payments to a resident of the US pursuant to the 'most favored nation clause' of the Philippines-US Tax Treaty in relation to the Philippines-China Tax Treaty for the calendar year 2002, i.e. (1) there is an agreement or a contract whereby the royalties paid to the US must originate from the use of, or the right to use the patent, trade mark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and (2) for as long as the contract or agreement is subject to approval under Philippine law, the same must be duly approved by the Philippine competent authorities;

2. Whether or not Petitioner paid Wrigley-US the fees under the License Agreement dated July 1, 1993, for the calendar year 2002, and correspondingly withheld and remitted to the BIR the fifteen percent (15%) withholding tax on said fees based on the 'most favored nation clause' in the Philippines-US Tax Treaty, in relation to the pertinent provisions of the Philippines-Russia, Philippines-Denmark or the Philippines-Sweden Tax Treaties;

3. Whether or not Petitioner had timely and duly filed the administrative claim for the refund or issuance of a tax credit certificate for overpaid withholding taxes for calendar year 2002 amounting to P4,151,725.70; and

4. Whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate for overpaid withholding taxes for calendar year 2002 amounting to P4,151,725.70."

---

[11] JSFI, Docket, p. 175.

479

The issue on prescription will be discussed first.

In order for a taxpayer to be entitled to a claim for refund, it must satisfy the requirements of the following pertinent provisions of the National Internal Revenue Code (NIRC), to wit:

"**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may –

xxx xxx xxx

> **(C)** Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx"

> "**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

From the foregoing, no suit or proceeding in Court for the refund of erroneously or illegally assessed or collected national revenue taxes shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty, regardless of any supervening

480

cause that may arise after payment; and the reckoning of the two-year prescriptive period for the refund of erroneously paid tax shall be from the date of payment of the tax. Thus, petitioner had a period of two (2) years from the date of its payment or remittance of the subject withholding tax within which to file its claim for refund or issuance of a tax credit certificate.

The instant claim pertains to petitioner's alleged erroneously paid final withholding tax on royalties for the months of January to December 2002. Perusal of the records shows that petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld[12] and paid the corresponding final withholding taxes on the following dates: February 11, 2002, March 8, 2002, April 10, 2002, May 10, 2002, June 10, 2002, July 10, 2002, August 13, 2002, September 10, 2002, October 10, 2002, November 8, 2002, December 10, 2002 and January 10, 2003.[13] Counting from the dates when petitioner filed its Monthly Remittance Returns, petitioner had at the earliest until February 11, 2004 within which to file its claim for refund both administratively and judicially. Petitioner's administrative claim for refund was filed on February 28, 2003[14] and the *Petition for Review* filed on February 9, 2004. Therefore, both claims fall within the two-year prescriptive period laid down by the NIRC.

The Supreme Court said that the RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation,* which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away

[12] BIR Form No. 1601-F.
[13] Par. 12, JSFI, Docket, p. 174.
[14] Exhibit "F".

with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.[15]

The purpose of a "most favored nation" clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries. The "most favored nation" clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation. The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided that the subject matter of taxation, in this case royalty income, is the same as that in the tax treaty under which the taxpayer is liable.[16]

Anent the first issue, RMC 46-2002 provides for the requirements that should be complied with before the 10% rate of withholding tax on royalties remitted to a resident of US and China may be availed of, to wit:

1. It is necessary that there be an agreement or a contract whereby the royalties paid to the US must originate from the use of, or the right to use any patent, trademark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and

2. For as long as the contract or agreement is subject to approval under Philippine law, the same must be duly approved by the Philippine competent authorities.

[15] Comissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999.
[16] *Ibid.*

In order to prove that it satisfied the above requirements, petitioner submitted its authenticated and notarized 10-year License Agreement[17] with Wm. Wrigley Jr. Co., USA, and its Certificate of Registration No. 1466 with the Bureau of Patents, Trademarks and Technology Transfer[18]. It likewise submitted the Renewal Agreement[19] between Wrigley-US, with the Certificate of Compliance No. 5-2003-00062[20] from the Intellectual Property Office. This Court finds the foregoing documents to be in order. Thus, petitioner sufficiently complied with the requisites of RMC No. 46-02.

As to the issue of whether or not petitioner paid Wrigley-US the fees due under the License Agreement dated July 1, 1993 for calendar year 2002, and correspondingly withheld and remitted to the BIR the fifteen percent (15%) withholding tax on said fees based on the "most favored nation" clause in the Philippines-US Tax Treaty in relation to the pertinent provisions of the Philippines-Russia, Philippines-Denmark, or Philippines-Sweden Tax Treaties, this Court rules in the affirmative.

A perusal of the records reveals that the total amount of royalties due to Wrigley-US for the period from January to December 2002 amounted to P85,516,680.00, which was remitted by petitioner on a quarterly basis after deducting the corresponding 15% final withholding taxes of P12,827,502.00, the details of which are as follows:

2002	Gross Royalties Payable	!5% Final Tax Withheld	Net Royalties Payable	Exhibits	Net Royalties Remitted Per Quarter			
					In Philippine Pesos	Exch Rate	In US Dollars	Exhibits
Jan	P 8,245,416.00	P 1,236,812.40	P 7,008,603.60	W to W-3				
Feb	6,603,672.00	990,550.80	5,613,121.20	X to X-3				
Mar	7,814,137.88	1,172,120.68	5,642,017.20	Y to Y-3	19,263,742.00	50.520	381,309.22	EEE
Apr	6,664,923.53	999,738.53	5,665,185.00	Z to Z-3				
May	7,225,612.94	1,083,841.94	6,141,771.00	AA to AA-3				
June	6,043,701.18	906,555.18	5,137,146.00	BB to CC	16,944,102.00	51.530	328,820.14	BBBBB
July	5,400,604.00	810,090.60	4,590,513.40	DD to DD-3				
Aug	7,482,852.00	1,122,427.80	6,360,424.20	EE to FF-3				
Sept	7,011,402.82	1,051,710.42	5,959,692.40	GG to HH-3	16,910,630.00	53.195	317,900.60	DDDDD
Oct	7,488,804.55	1,123,320.68	6,365,483.87	II to II-3				

[17] Exhibit "B".
[18] Exhibit "A".
[19] Exhibit "D".
[20] Exhibit "C".

483

Nov	6,646,433.00	996,964.95	5,649,468.05	JJ to KK-3				
Dec	8,889,120.09	1,333,368.01	7,555,752.08	LL to NN-3	19,570,704.00	53.950	362,756.33	GGG
Total	**P85,516,680.00**	**P12,827,502.00**	**P72,689,178.00**		**72,689,178.00**		**1,390,786.29**	

Petitioner's Monthly Remittance Returns of Final Income Taxes Withheld for calendar year 2002[21] show that it remitted to the BIR a total amount of P12,455,177.40, representing 15% final withholding taxes on royalties of P83,034,517.00, broken down as follows:

Exhibit	Month	Date of Filing of Return/Remittance	Royalty	15% Final Tax Withheld/Remitted
G	Jan	11-Feb-02	P 8,245,416.00	P 1,236,812.00
H	Feb	8-Mar-02	6,603,672.00	990,551.00
I	Mar	10-Apr-02	7,814,138.00	1,172,121.00
J	Apr	10-May-02	6,664,923.00	999,738.00
K	May	10-Jun-02	7,225,613.00	1,083,842.00
L	Jun	10-Jul-02	6,043,701.00	906,555.00
M	Jul	13-Aug-02	5,400,604.00	810,091.00
N	Aug	10-Sep-02	7,482,852.00	1,122,428.00
O	Sep	10-Oct-02	7,009,429.00	1,051,414.00
P	Oct	8-Nov-02	7,490,780.00	1,123,617.00
Q	Nov	10-Dec-02	6,646,433.00	996,965.00
R	Dec	10-Jan-03	6,406,956.00	961,043.40
		TOTAL	**P 83,034,517.00**	**P 12,455,177.40**

However, this Court noted that the royalty payments of P83,034,517.00 and the related 15% final withholding taxes of P12,455,177.40 reflected in the Returns are lower than the actual royalties remitted and the 15% final taxes withheld by petitioner in the amounts of P85,516,680.00 and P12,827,502.00, respectively.

The discrepancy allegedly arose from the error made by petitioner in its Monthly Remittance Return for December 2002. The amounts of royalties and interest and the corresponding final withholding taxes were allegedly interchanged in the Return[22]. However, the said error does not affect petitioner's claimed amount of P4,151,725.70, since the amount of the claim was computed based on the amounts reflected in the Returns.

Applying therefore the 10% preferential tax rate under the RP-China Tax Treaty on royalty payments made by petitioner to Wrigley-US, the amount of final withholding taxes

[21] Exhibits "G" to "R".
[22] Exhibit "AAA".

494

overpaid by petitioner for the months of January to December of calendar year 2002 amount to P4,151,725.70, computed as follows:

Month Covered	Date Remitted	Royalty	15% FWT	10% FWT	Excess FWT Remitted
Jan 2002	11-Feb-02	P 8,245,416.00	P 1,236,812.00	P 824,541.60	P 412,270.40
Feb 2002	8-Mar-02	6,603,672.00	990,551.00	660,367.20	330,183.80
Mar 2002	10-Apr-02	7,814,138.00	1,172,121.00	781,413.80	390,707.20
Apr 2002	10-May-02	6,664,923.00	999,738.00	666,492.30	333,245.70
May 2002	10-Jun-02	7,225,613.00	1,083,842.00	722,561.30	361,280.70
June 2002	10-Jul-02	6,043,701.00	906,555.00	604,370.10	302,184.90
July 2002	13-Aug-02	5,400,604.00	810,091.00	540,060.40	270,030.60
Aug 2002	10-Sep-02	7,482,852.00	1,122,428.00	748,285.20	374,142.80
Sept 2002	10-Oct-02	7,009,429.00	1,051,414.00	700,942.90	350,471.10
Oct 2002	8-Nov-02	7,490,780.00	1,123,617.00	749,078.00	374,539.00
Nov 2002	10-Dec-02	6,646,433.00	996,965.00	664,643.30	332,321.70
Dec 2002	10-Jan-03	6,406,956.00	961,043.40	640,695.60	320,347.80
TOTAL		**P 83,034,517.00**	**P 12,455,177.40**	**P 8,303,451.70**	**P 4,151,725.70**

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **FOUR MILLION ONE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED TWENTY FIVE and 70/100 PESOS (P4,151,725.70)**, representing petitioner's overpayment of final withholding taxes on royalties for calendar year 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

486