REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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<u>SECOND DIVISION</u>

SUBIC BAY DISTRIBUTION, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6640

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 0 3 2004

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DECISION

This is a Petition for Review involving a claim for the issuance of a tax credit certificate in the amount of P15,794,318.00 allegedly representing excess and unutilized creditable withholding taxes of petitioner for the calendar year ending December 31, 2000.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 19C Tower One, Ayala Triangle, Ayala Avenue, Makati City *(Joint Stipulation of Facts and Issues, par.1).* It is engaged in the business of operating terminal and depot facilities for the purpose of distributing, marketing and selling of petroleum and other related products.

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On April 16, 2001 petitioner filed its Annual Income Tax Return for the calendar year ending December 31, 2000 *(Exhibit A)*, showing a total tax credits/payments amounting to P28,422,664.00 comprising of the following:

Prior year's Excess Credit	P12,628,346.00
CWT for the 1st 3 quarters (CY2000)	1,025,974.00
CWT for the 4th quarter (CY2000)	14,768,344.00
Total Tax Credits/Payment	P28, 422,664.00

Petitioner manifested its decision to have in its favor the issuance of tax credit certificates for its excess payments by marking the appropriate box corresponding to the phrase "To be issued a Tax Credit Certificate".

In a letter dated July 16, 2001, petitioner filed an administrative claim for the issuance of a tax credit certificate of its alleged unutilized creditable taxes withheld for the calendar years 1999-2000 with the Bureau of Internal Revenue through the Large Taxpayer Service, Excise Group *(Exhibit G)*. On March 10, 2003, petitioner filed another administrative claim, this time for a refund or issuance of tax credit certificate of its alleged unutilized creditable withheld taxes for the calendar year ending December 31, 2000 only in the aggregate amount of P15,794,318.00 *(Exhibit H)*.

On April 4, 2003, petitioner filed the instant petition to toll the running of the prescriptive period.

Respondent filed his Answer asserting the following special and affirmative defenses:

1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

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2. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and the failure to sustain the burden is fatal to the claim for refund/credit;

3. Claims for refund are construed strictly against the claimant for the same partake the nature of an exemption from taxation;
4. Petitioner must comply with the following:

    a. That the income from which the taxes were withheld was included in petitioner's income tax return;

    b. That it has complied with the provisions of Section 204 © and Section 229 of the 1997 NIRC on prescriptive period for claiming tax refund/credit;

    c. That the fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) showing the amount paid and the amount of tax withheld therefrom.

In the Joint Stipulation of Facts and Issues filed on August 5, 2003, the parties presented the following issues for this court's resolution:

1. Whether or not petitioner is entitled to a claim for refund and/or issuance of a tax credit certificate in the amount of P15,794,318.00 representing overpaid quarterly income tax and unutilized creditable tax withheld for calendar year 2000;
2. Whether or not the overpaid quarterly income tax and unutilized creditable tax withheld for calendar year ended December 2000 in the amount of P15,794,318.00 was duly supported by documentary evidence;

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3. Whether or not petitioner was able to comply with the provisions of Sections 204 © and 229 of the Tax Code for the purpose of filing a claim for refund and/or the issuance of tax credit certificate in the amount of P15,794, 318.

In order to be entitled to the refund/issuance of tax credit certificate of excess or unutilized creditable withholding taxes, petitioner must comply with the following requirements:

1. That the claim is filed with the Commissioner of Internal Revenue within the two (2)-year period from the date of payment of the tax (Section 229, NIRC);

2. It must not have opted to carry over and credit the excess income tax to the taxable quarters of the succeeding taxable years (Section 76, NIRC);

3. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and

4. The fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom (Section 2.58.3(B) Revenue Regulations No. 2-98; Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957).

Anent the first requirement, it appears that petitioner complied with the same. This case involved the taxable year 2000 and petitioner filed its annual income tax return for the said year on April 16, 2001 *(Exhibit A)*. An administrative claim was then filed by the petitioner on July 16, 2001 relative to its alleged unutilized creditable taxes withheld for the years 1999-2000 *(Exhibit*

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G). On March 10, 2003, petitioner filed another administrative claim for refund/tax credit for its alleged unutilized creditable withholding taxes for the year 2000 *(Exhibit H).* The Petition for Review was filed on April 4, 2003.

Clearly from the foregoing, both administrative and judicial claims were filed within the two (2)-year period required by law.

As regards the second requisite, Section 76 of the 1997 Tax Code provides:

> **SEC. 76.** *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over** and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years **has been made, such option shall be considered irrevocable for that taxable period** and **no application for cash refund or issuance of a tax credit certificate shall be allowed therefor**. (Emphasis supplied)

Undoubtedly, Section 76 allows the taxpayer to choose whether to have its excess tax credits or overpaid income tax in a given year refunded, or it be

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issued a tax credit certificate, or the taxpayer can also opt to have its overpayments/tax credits applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. However, when the option to carry over is exercised it is considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

In the case at bar, petitioner marked the box corresponding to the option "To be issued a Tax Credit Certificate" in its 2000 income tax return *(Exhibit A-6).* But when petitioner filed its Annual Income Tax Return for the calendar year ending December 31, 2001 on April 15, 2002 *(Exhibit HHH)*, it still carried over the amount of P28,422,664.00 as prior year's excess credits, the subject claim of P15,794,318.00 forming part thereof. The said amount of P28,422,664.00 likewise formed part of the total tax credits/payments for the year 2001 amounting to P45,309,333.00. Petitioner also marked therein the option "To be carried over as tax credit next year/quarter". When petitioner amended its income tax return for said year 2001 on December 20, 2002, it again declared the amount of P28,422,664.00 as prior year's excess credit and it again placed an "x" on the box corresponding to the option to have its overpayment "carried over as tax credit next year/quarter *(Exhibit E).*

Based on the above facts, petitioner undeniably opted to exercise the choice of carry-over of its excess tax or unutilized creditable withholding taxes for the year 2000. There can be no clearer intention to utilize the option of carry-over than these acts of petitioner. However, petitioner argues that it amended again its 2001 income tax return on March 12, 2003. And this time, it no longer declared the amount of P28,422,664.00 as prior year's excess tax credits *(Exhibit C)*. Petitioner theorizes that this later amendment superseded the earlier amendment. In view thereof, petitioner did not exercise the option to carry over its excess or unutilized creditable withholding taxes for the year 1999 in the amount of P12,628,348.00 and creditable withholding taxes for the year 2000 in the sum of P15,794,318.00 to the succeeding year 2001.

We disagree.

Again, Section 76 is quite clear. This court has already categorically ruled in a number of cases that once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made as in this case, such option is considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor **(Family Medicare Services, Inc. vs. Commissioner of Internal Revenue, *infra*; Bank of Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003; Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, May 2, 2002; The Philippine Banking Corporation (now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6280, August 16, 2001)**. That petitioner again amended its income tax return for the

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year 2001 does not alter the fact that it had already opted to carry-over its excess tax credits, its marking of "x" on the box "to be issued a tax credit certificate", notwithstanding. It must be noted that although petitioner already chose to be issued a tax credit certificate for its excess tax credits for the year 2000 *(Exhibit A-6)*, it nevertheless actually exercised the option of carry-over in the year 2001 as can be gleaned from its income tax return for the year 2001 when the amount of P28,422,664.00 was declared as prior year's excess credits *(Exhibits HHH & E)*. It bears stressing that Exhibit E was already an amendment to Exhibit HHH and still petitioner carried over the amount of P28,422,664.00 and reported as prior year's excess tax credits in the year 2001.

We do not subscribe to petitioner's view that the second amendment of its income tax return for the year 2001 superseded the first amendment thereby amending its actual exercise of the choices given under Section 76. Otherwise, Section 76 is rendered nugatory by a mere act of a taxpayer amending its return. Petitioner in fact admitted that the second amendment was purely for the purpose of removing the "prior year's excess tax credits" alleged to be erroneously stated in its first amendment. Any taxpayer can easily aver mistake or error in its declaration and amend its return not only once but several times, as the case may be. But we do not agree that the amendment of returns allowed by Section 6 of the 1997 Tax Code extends to changing a taxpayer's chosen option and actual exercise of such option under Section 76 of the same Code. As we already stated, to do so would render Section 76 ineffectual.

In sum, considering that petitioner already exercised the option to carry-over its prior year's excess tax credits of P28,422,664.00 to the taxable quarters of the succeeding taxable year, it is already barred from claiming a refund or a tax credit certificate corresponding thereto.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be considered *strictissimi juris* against the person or entity claiming the refund ***(Family Medicare Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6543, June 7, 2004; Commissioner of Internal Revenue vs. Procter and Gamble Philippines Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc. 309 SCRA 87).***

IN VIEW OF THE FOREGOING, this court hereby **DENIES** this Petition for Review for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Senior Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice
(Member)

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Senior Associate Justice
(Chairman)

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