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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE SINTER CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5088

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 29 1997

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DECISION

This is a judicial claim for the refund/issuance of tax credit certificate covering petitioner's excess tax credit for 1991 amounting to P2,318,018.00

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at No. 6754 Ayala Avenue, Makati, Metro Manila. It is registered as a preferred pioneer enterprise with the Board of Investments pursuant to Republic Act No. 5186 and is primarily engaged in the manufacture and export of sintered ore.

The facts are as hereunder stated.

On April 15, 1992, petitioner filed with respondent's Bureau its annual income tax return (ITR) for the calendar year ended December 31, 1991, showing a taxable income of P151,412,013.00, income tax due of P52,994,204.00 and income tax quarterly payments and creditable withholding taxes totalling P58,265,929.00, itemized as follows: (Exhibit "A")

	PO/CR	DATE	AMOUNT
1st Quarter	C10281383/ A9311850	5-30-91	P21,979,885.00
2nd Quarter	C10280222/ B23117275	8-29-91	2,322,623.00
3rd Quarter	C11922091/ B23117355	11-29-91	33,961,549.00
Creditable Expanded Withholding Tax			1,872.00
Total Income Tax Paid for 1991			P58,265,929.00

This resulted in an overpayment of P5,271,725.00 which petitioner elected to be applied as tax credit to the succeeding taxable year.

The income tax liability of petitioner however for year 1992 was P2,953,707.00 as shown in the Amended Income Tax Return of petitioner (Exhibit "K"). When deducted from the excess tax credit carried over from the previous year 1991, an unutilized balance of P2,318,018.00 remained.

On February 10, 1994, petitioner filed with respondent's office a formal written claim for refund or tax credit of said balance pursuant to the provisions of Section 69 in relation to Section 230 of the Tax Code (Exhibit "N"). Respondent, however, has neither acted upon nor granted said claim.

With the two-year prescriptive period for claiming refund or tax credit, as provided in Section 230 of the Tax Code, nearly about to lapse, petitioner moved to stop the running of said period by filing the instant appeal.

Petitioner repleads the above facts in its petition for review. In answer, respondent simply raises the special and affirmative defenses that the claim has not been properly documented nor verified and that, tax refunds are in the nature of tax exemptions. Hence, it is incumbent upon petitioner to introduce proof that said taxes subject of the claim were erroneously collected.

The lone issue to be discussed thus is petitioner's entitlement to the refund sought.

A close scrutiny of the records show that petitioner submitted the documentary requirements of a valid claim for refund of excess tax credit with the BIR and with this Court (Exhibits "A" to "N", inclusive of sub-markings). Petitioner did not apply the refundable amount as a credit for its income tax liability for 1993 (Exhibit "M"). Petitioner has substantiated its claim by proving payments of the quarterly taxes for the year 1991. However, with respect to the creditable tax withheld of P1,872.00, petitioner failed to show proof of such withholding by attaching with the 1991 Income Tax Return BIR Form No. 1743-1 (Exhibit "A-3").

During the trial, respondent attempted to convince this Court that the claim of petitioner for the year 1991 be reduced to P1,911,838.90 on account of a corresponding tax assessment for the same year in the amount of P406,179.10, as per Ms. Josephine M. Gaerlan's, respondent's revenue officer, final report on the result of the tax investigation conducted on the petitioner relative to its claim (Exhibit "2"). By way of rebuttal evidence, however, petitioner was able to prove that said tax assessment had been paid already through Authority to Accept Payment No. 2503153, dated May 31, 1995, and Tax Debit Memo SN 016326, dated September 4, 1995 (Exhibits "O" and "P", respectively).

It is worth mentioning that the same revenue officer of respondent, Ms. Josephine M. Gaerlan, who earlier recommended the claim in the reduced amount of P1,911,838.90, subsequently recommended that the full amount of P2,318,018.00 be granted to herein petitioner, in view of the previous payment of the abovesaid tax assessment (Exhibit "Q").

Taking into consideration the above recommendation, this Court is not, however, limited to the revenue officer's report as what has been proven by the evidence offered by petitioner. Thus, it appears that the amount of P1,872.00 has not been properly substantiated, therefore, cannot be included in the claim for refund. In summary, the Court can only grant the amount of P2,316,146.00 (net of P1,872.00) as excess quarterly tax payments for the year 1991.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. Respondent is **ORDERED** to ISSUE a **TAX CREDIT CERTIFICATE** in the name of petitioner Philippine Sinter Corporation in the amount of **P2,316,146.00**, representing excess income tax paid for the year 1991. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals