REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MITSUBISHI CORPORATION, TOKYU CONSTRUCTION CO., LTD., A.M. ORETA & CO., INC. AND BF CORPORATION, OPERATING AS MTOB CONSORTIUM,
Petitioner,

- versus -

C.T.A. CASE NO. 5649

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 15 2000

x - x

DECISION

This Petition for Review involves a claim for refund/tax credit in the amount of P4,703,281.16 allegedly representing unutilized creditable value-added-taxes withheld for the second, third and fourth quarters of the taxable year 1996.

Petitioner MTOB Consortium is an unincorporated consortium of Mitsubishi Corporation, Tokyu Construction Co., Ltd., A.M. Oreta & Co., Inc. and BF Corporation. Mitsubishi Corporation is a resident foreign corporation organized and existing under the laws of Japan licensed to do business in the Philippines (Exh. A). Tokyu Construction Co., Ltd. is also a resident foreign corporation organized and existing under the laws of Japan with a license to do business in the Philippines (Exh. Z). A.M. Oreta & Co., Inc. and BF Corporation are both domestic corporations (Exhs. C & B, respectively).

MTOB Consortium was formed for the purpose of undertaking the construction of the NAIA Terminal 2 Development Project. It is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer (Exh. D).

On November 9, 1995, Petitioner entered into a contract with Manila International Airport Authority (MIAA), an agency of the Republic of the Philippines, for the construction of the NAIA Terminal 2 Development Project (Exh. Y).

For the second, third and fourth quarters of 1996, MIAA withheld 6% creditable input VAT from its income payment made to Petitioner as evidenced by the quarterly VAT returns filed by the Petitioner, to wit:

PERIOD COVERED	VAT WITHHELD	EXHIBIT
2nd Quarter	P1,798,608.62	J
3rd Quarter	1,550,336.52	O
4th Quarter	1,354,336.02	U
TOTAL	P4,703,281.16	

Based on the monthly (Exhs. E, F, G, H, K. L, M, N, P, Q, R, S) as well as the quarterly (Exhs. I, J, O, T, U) VAT returns filed by Petitioner, it did not incur output VAT liabilities for the second, third, and fourth quarters of 1996 inasmuch as its input taxes were more than enough to offset its output taxes due.

Accordingly, Petitioner filed a written claim for refund with the BIR for the unutilized creditable VAT for the said period in the sum of P4,703,281.16 on June 24, 1998 (Exh. GG). Two days thereafter or on June 26, 1998 the instant petition was filed.

By way of Special and Affirmative Defenses, Respondent had this to say:

> 1) Gross receipts of construction and service contractors like the MTOB Consortium are subject to VAT pursuant to Section 102(a) of the Tax Code, as amended by Republic Act 7716 (BIR Ruling No. 274-92, dated September 30, 1992). Although 75% of the project if foreign funded

the OECF portion shall be subject to 10% VAT since the services being performed by the residents, in this case the MTOB Consortium members, are for a resident client, MIAA. Gross receipts derived from the 25% pesos portion of the project shall be subject to the 10% VAT also. Consequently, since MIAA is a government agency, it shall withhold the 6% creditable VAT or its gross payments to the MTOB Consortium, pertaining to both the 75% foreign currency funded portion, including the OECF peso portion, and the 25% peso portion of the project pursuant to Republic Act No. 7649 and as implemented by Revenue Regulations No. 10-93;

2) Considering that the MTOB Consortium is subject to the 10% VAT on its gross receipts derived from its sales of services, the 6% creditable VAT withheld by MIAA on its gross payments to MTOB Consortium is still insufficient to cover the latter's VAT liabilities on its sale of services;

3) Petitioner has not shown that the alleged creditable VAT withheld has not been applied to output tax in the next succeeding quarters, hence, not refundable;

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

5) Well-settled is the rule that claims for refund are strictly construed against the claimants since it partakes of the nature of an exemption from taxation.

To bolster its case, Petitioner presented both testimonial and documentary evidence. Respondent, on the other hand, offered in evidence the 3rd Indorsement dated July 16, 1999 (Exh. 1) to show that no action was taken on Petitioner's claim as of said date.

The issues submitted for Our determination are:

(a) Whether or not Petitioner is entitled to the refund/tax credit of unutilized creditable VAT in the amount of P4,703,281.16; and

(b) If in the affirmative, whether or not Petitioner has proven its claim by substantial evidence.

The legal basis for the withholding of 6% creditable value-added tax is Section 110(c) of the Tax Code, as amended, which provides:

> *(c) Withholding of Creditable Value-Added Tax.* - The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of its purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every release or installment payment which shall be creditable against the value-added tax liability of the seller or contractor. (Underscoring supplied.)

Corollary thereto, Section 102 of the Code mandates:

> **SEC. 102.** ***Value-added tax on sale of services.*** - *(a) Rate and base of tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration including those performed or rendered by construction and service contractors; xxx.

Under Section 110(c) aforecited, the VAT withheld from the payments made by MIAA to Petitioner shall be creditable against the latter's output VAT liability. However, as clearly shown by the records in this case, Petitioner had no output VAT liability for the second, third and fourth quarters of 1996 because the input VAT incurred for the said quarters were more than its output VAT liabilities. Therefore, the creditable VAT withheld by MIAA from its payments to Petitioner in the total amount of P4,703,281.16 appears to be unutilized. In other words, refundable.

As regards compliance with the substantiation requirements, Petitioner filed the administrative claim for refund on June 24, 1998 and the judicial claim was filed on June 26, 1998. Since this case involves the second, third and fourth quarters of 1996, both claims were filed within the reglementary period under Section 230 (now 229) of the Tax Code, as amended.

To further prove conformity with the statutory and regulatory provisions, Petitioner also submitted certificates of creditable income tax withheld at source, detailed as follows:

PERIOD COVERED	VAT WITHHELD	EXHIBIT
March 1996	P 354,591.48	AA
April 1996	367,330.32	BB
June 1996	731,457.24	CC
June 1996	345,229.08	DD
SUBTOTAL	P1,798,608.12	
June 1996	P 611,236.86	EE
June 1996	440,933.94	FF
August 1996	498,165.72	V
SUBTOTAL	P1,550,336.52	
September 1996	P 719,952.00	W
October 1996	634,384.02	X
SUBTOTAL	P1,354,336.02	
T O T A L	P4,703,281.16	

Based on the above-mentioned documents, the amount of P354,591.48 was withheld in March of 1996 and which was supposedly filed on April 20, 1996. Taking into account the two-year prescriptive period allowed by law for the filing of refunds, the same is already barred by prescription. Therefore, Petitioner is entitled to the refund of only P4,348,689.68.

WHEREFORE, in view of the foregoing, the instant claim for refund is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE** a TAX CREDIT CERTIFICATE in favor of the Petitioner in the amount of P4,348,689.68 representing unutilized creditable value-added tax for the second, third and fourth quarters of 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(on-leave)
RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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