REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1892** (CTA Case No. 9335)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
UNIVATION MOTOR PHILIPPINES, INC. (FORMERLY NISSAN MOTOR PHILIPPINES, INC.), Respondent.	***Promulgated:*** FEB 03 2020 11:35 a.m.

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DECISION

UY, J.:

The instant *Petition for Review*[1] filed on August 6, 2018 by the Commissioner of Internal Revenue against Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.), prays for reconsideration and setting aside of the Decision dated April 3, 2018 and Resolution dated July 4, 2018, promulgated by the Second Division of this Court in CTA Case No. 9335, entitled *"Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), Petitioner, vs. Commissioner of Internal Revenue, Respondent".* The dispositive portions thereof respectively read as follows:

[1] EB Docket, pp. 7 to 16.

Decision dated April 3, 2018:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱8,683,185.95**, representing petitioner's excess and unutilized CWT for CY 2013.
>
> **SO ORDERED.**"

Resolution dated July 4, 2018:

> "**WHEREFORE,** premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 3 April 2018)** is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on April 3, 2018 is hereby **AFFIRMED.**
>
> **SO ORDERED.**"

THE FACTS

Petitioner, Commissioner of Internal Revenue (or CIR), is vested with authority to carry out all functions, duties, and responsibilities of said office, including, *inter alia*, the power to act upon, decide and approve claims for refund and/or tax credits of overpaid or erroneously paid or collected internal revenue taxes.

Respondent, Univation Motor Philippines, Inc. (or "Univation"), is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Nissan Technopark, Barangay Pulong, Sta. Cruz, Sta. Rosa, Laguna. It is registered with the Large Taxpayers Service of the BIR, with Taxpayer Identification No. 000-389-353-000.

Univation is primarily engaged in buying, acquiring, manufacturing, assembling, producing, importing, holding, selling, disposing, distributing, dealing of motor trucks, cars, engines and other kinds of automobiles and mechanically propelled vehicles, means of transportation and industrial machinery, their bodies, spare parts, accessories, and repair, maintain, service, condition and/or recondition of said products.

On July 30, 2015, Univation filed with the BIR Large Taxpayers Excise Audit Division II (LTEAD II) an administrative claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱8,714,279.00 for alleged excess and unutilized CWT for CY 2013.

Due to the CIR's purported failure to act on the said administrative claim for refund, Univation filed a Petition for Review before the Court in Division on April 15, 2016 which was docketed as CTA Case No. 9335.

The CIR filed his Answer on May 16, 2016 in CTA Case No. 9335, interposing special and affirmative defenses. Allegedly, Univation's claim for refund is subject to administrative routinary investigation/examination by the Bureau; and that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund.

According to the CIR, it was incumbent upon the taxpayer to discharge its burden of proving entitlement to its claim for refund, which includes the fact of withholding of taxes and its subsequent remittance to the BIR. Thus, the taxpayer must prove its compliance with the following requisites: (a) the claim is filed with the CIR within the two-year period from the date of payment of tax; (b) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (c) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

In addition, the taxpayer must allegedly prove that it has not exercised the option to carry over any excess credits in the succeeding quarters as provided under Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended. Lastly, the CIR claims that the failure of Univation to submit documents supporting its claim for refund makes it pro-forma.

After the Pre-Trial Conference held on June 23, 2016, the parties filed their Joint Stipulation of Facts and Issues on July 11, 2016. Thereafter, in the Pre-Trial Order issued on August 2, 2016, the Court in Division approved the JSFI and terminated the pre-trial in CTA Case No. 9335.

During trial, Univation presented Lourdes Y. Bautista, its General and Cost Accounting Department Head, and Madonna Mia S. Dayego, the court-commissioned Independent Certified Public Accountant (ICPA), as its witnesses.

On the other hand, when it was the CIR's turn to present evidence on April 3, 2017[2], his counsel manifested that the case has no report of investigation. Thus, no evidence was presented by the CIR's counsel in CTA Case No. 9335. Upon motion of both counsels, the parties were granted thirty (30) days to file their memoranda.

The CIR filed his Memorandum on May 3, 2017, while Univation filed its Memorandum on May 22, 2017. Thereafter, CTA Case No. 9335 was deemed submitted for decision on May 26, 2017.

In the assailed Decision[3] dated April 3, 2018, the Court in Division partially granted Univation's Petition for Review, and order the CIR to issue a tax credit certification in favor of Univation in the amount of ₱8,683,185.95, representing Univation's excess and unutilized CWT for CY 2013.

Aggrieved, the CIR filed his *Motion for Partial Reconsideration (Re: Decision promulgated 3 April 2018)* on April 16, 2018, to which Univation filed its *Comment (Re: Motion for Partial Reconsideration dated October 10, 2017)* on May 21, 2018. In the assailed Resolution dated July 4, 2018, the Court in Division denied the CIR's *Motion for Partial Reconsideration (Re: Decision promulgated 3 April 2018)* for lack of merit.[4]

Undaunted, the CIR filed a *Motion for Extension of Time to File Petition for Review* on July 24, 2018.[5] In the Minute Resolution[6] dated July 26, 2018, the CIR was granted a final and non-extendible period of fifteen (15) days from July 24, 2018, or until August 8, 2018, within which to file his Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review* before the Court *En Bac* on August 6, 2018[7] docketed as CTA EB No. 1892.

In the Resolution dated September 3, 2018, Univation was directed to file its Comment within ten (10) days from notice.[8] On October 1, 2018, Univation filed its *Comment [Re: Petition for Review dated July 30, 2018]*.[9]

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[2] April 3, 2017 Minutes of Hearing , Division Docket, CTA Case No. 9335, Vol. II, p. 675
[3] EB Docket, pp. 22 to 35.
[4] EB Docket, pp. 36 to 40.
[5] EB Docket, pp. 1 to 5.
[6] EB Docket, p. 6.
[7] EB Docket, pp. 7 to 16.
[8] EB Docket, pp. 46 to 47.
[9] EB Docket, pp. 48 to 59.

Thereafter, the Court *En Banc* resolved to give due course to the Petition for Review, and directed the parties to file their respective memoranda within thirty (30) days from notice.[10] The CIR filed a *Manifestation*[11] on November 29, 2018, stating that he is adopting the arguments raised in the Petition for Review dated August 6, 2018 as his Memorandum, there being nothing to add. The same was noted by this Court in the Minute Resolution[12] dated December 4, 2018. For its part, Univation filed its *Memorandum*[13] on December 21, 2018.

In the Resolution dated February 7, 2019, this case was submitted for decision.[14] Hence, this Decision.

ISSUE

The CIR raises the following assignment of error in his Petition for Review, to wit:

> "THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF UNUTILIZED EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2013 IN THE REDUCED AMOUNT OF P8, 683,185.95 DESPITE NO EVIDENCE OF ACTUAL REMITTANCE TO THE BIR."[15]

Petitioner's arguments:

The CIR contends that the case involves a claim for refund of excess and unutilized creditable withholding taxes. Thus, it is incumbent upon respondent to discharge its burden of proving the fact of withholding of taxes and their subsequent remittance to the BIR.

According to the CIR, the fact of withholding of taxes is one thing, while the fact of their remittance is another. Thus, respondent should have presented evidence to prove actual remittance of the same alleged taxes to the BIR, and the CIR is not obliged to prove the non-remittance thereof.

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[10] EB Docket, pp. 61 to 62.
[11] EB Docket, pp. 63 to 66.
[12] EB Docket, p. 67.
[13] EB Docket, pp. 68 to 80.
[14] EB Docket, pp. 82 to 83.
[15] EB Docket, p. 10.

Since respondent failed to prove that the alleged withheld taxes came into the hands of the BIR, it is not entitled to any refund. A tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer.

Respondent's counter-arguments:

Univation counters that it is well-settled that the presentation of Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitute sufficient proof of the existence and validity of a taxpayer's CWT.

Moreover, the rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes, such as this case.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Presentation of Certificates of Creditable Tax Withheld at Source are competent and sufficient proof to establish the withholding of taxes without need of proving actual remittance thereof to the BIR.

Petitioner CIR argues that respondent Univation is *not* entitled to a refund or issuance of a TCC in the amount of ₱8,714,279.00, for alleged excess and unutilized CWT for CY 2013, due to its alleged failure to prove the fact of *remittance* of the subject taxes to the BIR.

According to the petitioner, respondent Univation should have presented evidence to prove *actual remittance* of the alleged taxes to the BIR, and the CIR is not obliged to prove the non-remittance thereof. Thus, petitioner cites Section 2 (A) of RR No. 2-2006, stating that proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWT.

We are not convinced.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank,*[16] it was held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. Moreover, it was categorically stated that proof of actual remittance is <u>not</u> a condition to a claim for refund of unutilized tax credits, to wit:

> "The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.
>
> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:
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> xxx xxx xxx
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> Moreover, as correctly held by the Court of Tax Appeals *En Banc*, the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:'
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>> **'SEC. 267.** ***Declaration under Penalties of Perjury***. — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.'
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> Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a

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[16] G.R. No. 180290, September 29, 2014.

written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.

Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits**. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

> xxx **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant**. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who

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> is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents."

Based on the foregoing, it is clear that a withholding tax certificate, completes in its relevant details, and with a written statement that it was made under the penalties of perjury, is sufficient and competent proof that taxes are withheld.

In fact, such taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee.[17]

Therefore, proof of remittance is <u>not</u> necessary, as the proof of remittance is the responsibility of the withholding agent, and not of the taxpayer who is claiming for a refund.

Correspondingly, the Court *En Banc* finds no merit in petitioner's argument that respondent taxpayer is obligated to prove the fact of remittance of the subject withholding tax.

On the contrary, with the presentation of the taxpayer's BIR Forms No. 2307, which constitute sufficient proof of the existence and validity of the respondent's CWT, it was incumbent upon the petitioner to prove that they were incomplete, false, or issued irregularly.[18] This, however, the petitioner neglected to do. Thus, there is no cogent reason for this Court to reverse the assailed Decision dated April 3, 2018 and Resolution dated July 4, 2018 of the Court in Division.

Anent Section 2 (A) of RR No. 2-2006 cited by the petitioner, this Court notes that the said Revenue Regulation refers to "*Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.*"

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[17] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80 and 206309, January 17, 2018, citing BIR Revenue Regulations No. 2-98 (1998), Sec. 2.57.
[18] *Ibid.* rb

To be specific, Section 1 of the subject RR states that the said rules were promulgated to: (a) to prescribe certain attachments to returns filed (SAWT/MAP); (b) to provide the penalties and effect of non-compliance hereof; and (c) to clarify other issues; while Section 2 (A) of the said RR indicates the documents required to be submitted, to wit:

> "**SECTION 2. *Mandatory Submission of Summary Alphalist of Withholding Agents of Income Payments Subjected to Creditable Withholding Taxes (SAWT) by the Payee/Income Recipient and of Monthly Alphalist of Payees (MAP) Subjected to Withholding Tax by the Withholding Agent/Income Payor as Attachment to their Filed Returns. —***
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> A. Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees(MAP) defined - Summary Alphalist of Withholding Agents/Payors of Income Payments subjected to Creditable Withholding Tax at Source (SAWT) Annex "A" is a consolidated alphalist of withholding agents from whom income was earned or received and subjected to withholding tax to be submitted by the payee-recipient of income as attachment to its duly filed return for a given period which Summary List contains a summary of information showing, among others, total amounts of income/gross sales/gross receipts and claimed tax credits taken from all Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) issued by the payors of income payment.
>
> Monthly Alphalist of Payees (MAP) Annex "B" is a consolidated alphalist of income earners from whom taxes have been withheld by the payor of income for a given return period and in whose behalf, the taxes were remitted. It contains a summary of information on taxes withheld and remitted through the monthly remittance returns (BIR Form Nos. 1601-E, 1601-F, 1600,) showing, among others, total amounts of income/gross sales/gross receipts and taxes withheld and remitted.

Finally, Section 5 thereof indicates the corresponding administrative penalties and criminal liability under the NIRC of 1997, as amended, in case of failure to comply with the RR.

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A review, however, of the foregoing RR, shows that while it specifically provides administrative penalties in case of failure of the responsible parties to comply with the requirements set forth therein, it does not require a taxpayer to comply with the same to entitle it to its claim for refund. Thus, there is nothing in the said RR that would prevent the respondent from being granted its subject refund claim.

Finally, petitioner contends that a tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer.

We are not swayed.

To the mind of the Court *En Banc,* the *strictissimi juris* rule applied against a taxpayer on its tax refund claim does not apply to claims for refund of overpaid or erroneously paid taxes such as in this case. As ruled by the Court in Division, respondent Univation was able to sufficiently prove its compliance with all legal requisites to be entitled to its refund claim for excess and unutilized CWT. Thus, even if the said rule is applied in this case, Univation has successfully proven its entitlement to its refund claim and We find no compelling reason to disturb the findings of the Court in Division.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated April 3, 2018 and the Resolution dated July 4, 2018 rendered by the Second Division of this Court, respectively, in CTA Case No. 9335 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice