Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

STABLEWOOD PHILIPPINES, INC. [Formerly Rolls-Royce Philippines, Inc., (formerly Orca Energy, Inc.)], Petitioner,	CTA EB CASE NO. 794 (CTA Case No. 7704) For: Refund or issuance of a Tax Credit Certificate
-versus-	Present: ACOSTA, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA PALANCA-ENRIQUEZ FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 08 2012 [illegible] 1:20 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals, *as amended*, of the Decision dated January 31, 2011[1] and the Resolution dated June 9, 2011[2]

[1] Penned by Associate Justice Amelia Cotangco-Manalastas, concurred in by Associate Justices Lovell R. Bautista and Olga Palanca-Enriquez, *En Banc* Docket, pp. 33-45.
[2] *Id.*, *En Banc* Docket, pp. 47-54.

rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

<u>**Decision dated January 31, 2011:**</u>

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**.
>
> SO ORDERED."[3]

<u>**Resolution dated June 9, 2011:**</u>

> "**WHEREFORE**, premises considered petitioner's *Motion for Reconsideration and new Trial (Re: Decision dated 31 January 2011)* is hereby **DENIED**.
>
> SO ORDERED."[4]

The antecedent facts as culled from the decision of the Court a *quo* are as follows:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Registration No. AS096-002540. Its registered address is at Suite 208, 2nd Floor, The Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City. Petitioner's primary purpose is:
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> > 'To engage, construct, erect, assemble, commission, operate, maintain and rehabilitate gas turbine and other power generating plants and related facilities for the conversion into electricity and other forms of energy of coal, distillate and other fuel provided by and under contract with the government of the Philippines or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation or other entity; and to render advice and consultancy services in connection with the construction, erection, assembly, commissioning, operation, maintenance and rehabilitation of such plants; provided that in no event shall the corporation itself engage in the general supply or

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[3] *En Banc* Docket, p. 45.
[4] *Id.* at 77.

distribution of electricity in retail or in the business of a public utility or furnish services or engage in industries or activities reserved by the constitution or by law to corporation wholly or partially owned by Filipino citizens.'

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 7, 2006, petitioner electronically filed its Annual Income Tax Return (ITR) for taxable year 2005, which reflected a tax overpayment in the amount of ₱76,245,344.99.

An administrative claim for refund of the excess Creditable Withholding Tax (CWT) in the year 2005 was filed by petitioner with the BIR Revenue Region No. 8 (Makati City) on November 24, 2006. However, respondent failed to act on the said application for refund, prompting petitioner to file the present Petition for Review before this Court on November 13, 2007.

In her Answer filed on January 4, 2008, respondent raised the following Special and Affirmative Defenses:

> '5. Granting but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
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> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
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> 8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
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> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner,CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, pt Edition, p. 206);*

> 10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).'*
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> On March 14, 2008, petitioner filed a Motion to Amend Caption, praying that the Court allow the amendment of the caption of the instant case from 'Orca Energy, Inc. vs. Commissioner of Internal Revenue' to 'Rolls-Royce Philippines, Inc. (formerly Orca Energy, Inc.) vs. Commissioner of Internal Revenue'. In a Resolution dated April 24, 2008, this Court granted petitioner's motion.
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> On May 26, 2009, petitioner again filed a Motion to Amend Caption, where it prayed that the Court allow the amendment of the caption of the instant case from 'Rolls-Royce Philippines, Inc. (formerly Orca Energy, Inc.) vs. Commissioner of Internal Revenue' to 'Stablewood Philippines, Inc., [formerly Royce-Royce Philippines, Inc. (formerly Orca Energy, Inc.)] vs. Commissioner of Internal Revenue'. In a Resolution dated June 23, 2009, this Court again granted, among others, petitioner's Motion to Amend Caption.
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> During trial, petitioner presented testimonial and documentary evidence to prove its case.
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> On November 5, 2009, respondent's counsel manifested that he will no longer present controverting evidence and instead requested a period of thirty (30) days to file respondent's Memorandum.
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> The case was submitted for decision on February 24, 2010, taking into consideration respondent's Memorandum filed on January 21, 2010 and petitioner's Memorandum filed on February 17, 2010."[5]

On January 31, 2011, the Court *a quo* rendered a Decision denying petitioner's claim for refund of the excess Creditable Withholding Tax (CWT) for the taxable year 2005 and held that petitioner's original chosen option to

[5] *Id.* at 34-37.

refund in the form of tax credit certificate is actually negated by its very act of carrying over said excess amount to the succeeding taxable quarters of 2006 pursuant to the irrevocability rule under *Section 76 of National Internal Revenue Code (NIRC) of 1997, as amended.*

Petitioner moved for reconsideration and new trial of the assailed Decision, which was subsequently denied in a Resolution[6] dated June 9, 2011.

Hence, this Petition for Review was filed before the Court *En Banc* on July 13, 2011.[7]

Petitioner raised the following arguments before the Court *En Banc*, to wit:

1. Petitioner fully substantiated its claim for refund or issuance of TCC in the amount of ₱65,085,905.82 representing its excess and unutilized CWT in 2005.

2. The Honorable Court committed reversible error in denying petitioner's claim for refund on the basis only of the 2006 1st to 3rd quarter ITRs and in totally disregarding petitioner's indication of its choice to be refunded its 2005 CWT in its 2005 annual ITR and petitioner's failure to carry-over and utilize such 2005 CWT in its 2006 annual ITRs.

3. The shareholders and board of directors approved the dissolution of petitioner, hence, petitioner's excess and unutilized CWT ought to be refunded or issued TCC since petitioner will no longer be able to utilize said excess CWT."[8]

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[6] *Supra* note 2.
[7] The Petition for Review was filed within the extended period granted by the Court *En Banc* in a Resolution dated June 29, 2011.
[8] *En Banc* Docket, p. 11.

The principal issue in this case is whether or not petitioner is entitled to its claim for refund in the form of a Tax Credit Certificate (TCC) in the amount of ₱65,085,905.82 representing its excess CWT for taxable year 2005.

Petitioner contends that the options to either seek refund or carry-over excess CWT are alternative and the choice of one precludes the other.[9] Hence, petitioner argues that when it categorically chose to be refunded its 2005 excess CWT by marking the choice "To be issued a Tax Credit Certificate" in its 2005 Annual Income Tax Return, it was already barred from carrying-over to the succeeding years its excess CWT in 2005. Simply put, petitioner opines that its first choice of refund in the form of a TCC should take precedence over the erroneous inclusion of the 2005 CWT in the 1st, 2nd, and 3rd Quarterly ITRs for 2006.

We are not persuaded.

The resolution of the case involves the application of *Section 76 of National Internal Revenue Code (NIRC) of 1997, as amended,* which reads:

> 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: c

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[9] *Id.* at 20-23.

(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.]

In ***Systra Philippines, Inc. v. Commissioner of Internal Revenue***,[10] the Supreme Court had an occasion to interpret the irrevocability rule embodied in the last sentence of *Sec. 76 of NIRC of 1997, as amended*, thus:

"A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

This is known as the irrevocability rule and is embodied in the last sentence of Section 76 of the Tax Code. The phrase "such option shall be considered irrevocable for that taxable period" means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked.

The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of

[10] G.R. No. 176290, September 21, 2007.

the succeeding years for which no tax credit certificate has been issued and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund."[11] [Emphasis supplied.]

Based on the foregoing, it is therefore clear that the phrase "***such option shall be considered irrevocable for that taxable period***" means that **the option to carry over** the excess tax credits of a particular taxable year **can no longer be revoked**. Otherwise stated, if the option to carry over the excess credit is exercised, it shall be irrevocable for that particular taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.

In the instant case, records show that petitioner electronically filed its 2005 Annual Income Tax Return (ITR), where it categorically marked the option "To be issued a Tax Credit Certificate"[12] insofar as its CWT for the First Three Quarters of 2005 in the amount of ₱65,085,905.82. However, petitioner thereafter carried over the said amount in its Quarterly Income Tax Returns for the first,[13] second,[14] and third[15] quarters of the succeeding taxable year 2006.

Thus, as correctly pointed out by the Court *a quo* in the assailed Decision, petitioner's original chosen option to claim for refund in the amount

[11] *Id.*
[12] Exhibit "D-1", Division Docket, Vol. 1, p. 541.
[13] Filed on May 29, 2006, Exhibit "AAA-3", Item No. 29A, Division Docket, Vol. 3, p. 1496.
[14] Filed on August 25, 2006, Exhibit "BBB", Item No. 29A, Division Docket, Vol. 3, p. 1499.
[15] Filed on November 27, 2006, Exhibit "CCC", Item No. 29A, Division Docket, Vol. 3, p. 1502.

of ₱65,085,905.82 representing its CWT for the taxable year 2005 is negated by its actual carry-over of the said amount to the succeeding taxable quarters of 2006.[16] Hence, the irrevocability rule under Section 76 of NIRC of 1997, as amended, applies in this case. Necessarily, a claim for refund of such excess credits can no longer be made. Instead, the excess credits will be applied against income tax due for the taxable quarters of the succeeding taxable years.

To emphasize, "once the carry over option was made, actually or constructively, it became forever irrevocable regardless of whether the excess tax credits were actually or fully utilized."[17] Therefore, petitioner's contention that its 2005 CWT was not utilized nor actually carried-over to its 2006 and 2007 annual ITRs is rendered futile by the fact that it filled out the portion "Prior Year's Excess Credits" in its first,[18] second,[19] and third[20] quarters of 2006 Quarterly Tax Returns. The inevitable conclusion is that petitioner categorically availed itself of the carry-over option regardless of whether the claimed amount has actually been utilized or not.

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[16] *En Banc* Docket, p. 44.
[17] *Systra Philippines, Inc. v. Commissioner of Internal Revenue, supra* note *10.*
[18] *Supra* note 13.
[19] *Supra* note 14.
[20] *Supra* note 15.

Finally, petitioner asseverates that even assuming *arguendo* that it could actually carry-over its 2005 CWT to the subsequent years until it is fully utilized, petitioner opines that it is now impossible to utilize said excess credits considering that its shareholders and board of directors already approved the dissolution of its corporate existence effective December 31, 2010.[21] Hence, petitioner insists that it should be allowed to claim for refund its 2005 unutilized CWT. In order to prove the fact of its corporate dissolution, petitioner attached to its petition the original copies of the Minutes of the Special Meeting of its Shareholders,[22] Minutes of the Special Meeting of its Board of Directors,[23] and its written notice to the Bureau of Internal Revenue of petitioner's dissolution together with BIR Form No. 1905 or the Application for Registration Information Update.[24]

We do not agree.

In ***Systra Philippines, Inc. v. Commissioner of Internal Revenue***,[25] the Supreme Court held that there would be no forfeiture of any amount in favor of the government in cases where the taxpayer opted to carry-over its excess CWT as the taxpayer may claim and carry it over in the succeeding taxable

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[21] *En Banc* Docket, pp. 25-26.
[22] Annex "D", Petition for Review, *En Banc* Docket, pp. 56-60.
[23] Annex "E", Petition for Review, *En Banc* Docket, pp. 61-64.
[24] Annex "F", Petition for Review, *En Banc* Docket, p. 65-67.
[25] *Supra* note 10.

years until it is fully utilized. Notably, the High Court emphasized that if "the corporation **permanently ceases its operations** before full utilization of the tax credits it opted to carry over, it may then be **allowed to claim the refund of the remaining tax credits.** In such a case, the remaining tax credits can no longer be carried over and the **irrevocability rule ceases to apply**. *Cessante ratione legis, cessat et ipso lex* (The cause ceasing, the effect ceases)."[26]

Similarly, in ***IMPSA Construction Corporation v. Commissioner of Internal Revenue***,[27] this Court held that in case of cessation of business, the taxpayer may opt to claim for refund even if it previously chose the irrevocable option to carry-over its excess credits as there is no more opportunity for it to utilize the same. However, this Court stressed that the taxpayer must prove that the termination of its business operation is permanent in nature and not merely temporary. Therefore, compliance with the provisions of *Sections 52(C) and 235 of the NIRC of 1997, as amended,* is necessary before a taxpayer may be entitled for the refund of the unutilized CWT, to wit:

> SEC. 52. *Corporation Returns.* -
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> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* - Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of

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[26] *Id.*, at Footnote No. 23. [Emphasis supplied.]; Black's Law Dictionary, Revised Fourth Ed., St. Paul, Minn., West Publishing Co., 1968
[27] CTA EB No. 685, May 24, 2011.

the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.** [Emphasis supplied.]

SEC. 235. *Preservation of Books and Accounts and Other Accounting Records.* - All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: *Provided*, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases:

(a) Fraud, irregularity or mistakes, as determined by the Commissioner;
(b) The taxpayer requests reinvestigation;
(c) Verification of compliance with withholding tax laws and regulations;
(d) Verification of capital gains tax liabilities; and
(e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. **All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.**

> Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives shall be subject to examination by the Bureau of Internal Revenue for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liability, if any. [Emphasis supplied.]

Based on the foregoing, it is evident that if the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may be allowed to claim the refund of the remaining tax credits as an exception to the irrevocability rule *under Section 76 of the NIRC of 1997, as amended.* However, the dissolving corporation must prove that the termination of its operations is permanent in nature and that it is cleared from any tax or other government liabilities before a tax refund may be granted. Therefore, a corporation contemplating dissolution must first secure a tax clearance certificate from the Commissioner of Internal Revenue (CIR), which certificate shall then be submitted to the Securities and Exchange Commission (SEC) for the issuance of the Certificate of Dissolution. Hence, compliance with *Sections 52(C) and 235 of the NIRC of 1997, as amended*, is necessary before a taxpayer may be issued a tax refund of its excess CWT. It must be underscored that this is a safeguard devised by Congress in order to ensure that no corporation may escape payment of taxes and other government liabilities by simply opting to cease its operations and dissolve the corporation.

In the instant case, petitioner failed to present the tax clearance certificate and certificate of dissolution issued by the BIR and SEC, respectively, in order to prove that it was cleared of any tax liability as mandated under *Sections 52(C) and 235 of the NIRC of 1997, as amended.* Petitioner's submission of notice to the BIR informing the latter of the approval of the dissolution of its corporate existence by its shareholders and directors is not determinative of whether petitioner is cleared from any taxes and other government liabilities.

Settled is the rule that tax refunds are in the nature of tax exemptions, and it is to be construed *strictissimi juris* against the entity claiming the same.[28] Hence, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[29]

In fine, we see no cogent reason to deviate from the factual findings of the Court *a quo* that petitioner is not entitled to its claim for a tax refund in the form of a TCC for its excess CWT for the taxable year 2005 in the amount of

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[28] *Philippine Geothermal Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005 *citing Commissioner of Internal Revenue v. Solidbank Corporation, G.R. No. 148191*, 25 November 2003, 416 SCRA 436, 461.
[29] *Id.*

₱65,085,905.82.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. Accordingly, the Decision and Resolution of the Third Division of this Court in CTA Case No. 7704 dated January 31, 2011 and June 9, 2011 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ERNESTO D. ACOSTA
Presiding Justice