Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

HAVI FOOD SERVICES PHILIPPINES, INC., Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent,	**CTA EB CASE NO. 187** (CTA Case No. 6619) Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ. Promulgated: JAN 03 2007

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DECISION

CASANOVA, J.:

This is a Petition for Review seeking the partial reversal of the Decision dated January 5, 2006 and Resolution dated May 17, 2006 both issued by the Court of Tax Appeals Second Division in CTA Case No. 6619 entitled, "Havi Food Services Philippines, Inc. vs. Commissioner of Internal Revenue," partially denying petitioner's claim for refund or issuance of tax credit of its excess and unutilized creditable withholding taxes for the Year 2001 in the amount of P9,357,681.00.

The facts of the case, as culled from the records, are as follows:

> "1. Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Sumulong Highway, Marikina City, Metro Manila.

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2. Petitioner is duly registered with the Bureau of Internal Revenue as shown by Certificate of Registration with RDO Control No. 96-045-3183.

3. Petitioner is engaged in the business of warehousing and all business necessarily or impliedly incidental thereto, and to construct, hire, purchase, operate and maintain all or any means of conveyances for the transportation to and from the warehouse by land or water of any and all food, food products, and other goods, wares, merchandise or manufactured articles.

4. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to decide, approve and grant refunds and/or the issuance of tax credit certificates for excess creditable withholding taxes. He may be served with summons and other legal processes at c/o The Chief, Legal Division, Bureau of Internal Revenue, Revenue Region 7 Bldg., corner Scout Santiago and Quezon Avenue, Quezon City.

5. Petitioner filed its Annual Income Tax Returns for calendar years ended 31 December 2000 and 2001 on March 26, 2001 and April 3, 2002 respectively.

6. The petitioner duly filed an administrative claim for refund with the BIR on 17 July 2002 in the amount of Nine Million Three Hundred Fifty-Seven Thousand Six Hundred Eighty One Pesos (Php 9,357,681.00), representing its unutilized creditable tax withheld for the calendar years ended December 31, 2000 and 2001.

7. The Respondent, to date, has not acted with finality with regard to Petitioner's administrative claim for refund."

(*Joint Stipulation of Facts and Issues*)

In his Answer, respondent alleged by way of special and affirmative defenses:

"5. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;

6. Claims for tax refunds are strictly construed against the taxpayer. Petitioner has no cause of action."

After trial on the merits, the Second Division promulgated a Decision on January 5, 2006, the dispositive portion of which is hereunder quoted, to wit:

"**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** the amount of P2,339,906.53 in favor of petitioner, representing unutilized excess creditable income taxes withheld for the taxable year 2001.

SO ORDERED."

On January 26, 2006, petitioner filed a "Motion for Partial Reconsideration (Of The Decision Dated 05 January 2006)." In a Resolution dated May 17, 2006, the Second Division denied the said motion for lack of merit. Petitioner elevated the instant case with the Court En Banc raising the following assignment of errors:

I.

THE SECOND DIVISION OF THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT THE IRREVOCABILITY CLAUSE UNDER SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE APPLIES TO ALL THE SUCCEEDING TAXABLE YEARS AND THAT PETITIONER'S ONLY RECOURSE IS TO CARRYOVER/APPLY ITS

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UNUTILIZED TAX CREDIT TO THE SUCCEEDING TAXABLE YEARS UNTIL THE SAME IS FULLY UTILIZED.

II.

THE SECOND DIVISION OF THE HONORABLE COURT OF TAX APPEALS ERRED IN PARTIALLY DENYING PETITIONER'S CLAIM FOR REFUND. THE DECISION IS CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE AND NOT SUPPORTED BY THE FACTS OF THE CASE AS PRESENTED BY THE PARTIES.

After a careful and thorough perusal, evaluation and study of the instant Petition for Review, the Court *En Banc* finds no cogent reason to disturb the Decision of the Second Division promulgated on March 29, 2005, and the Resolution dated August 23, 2005.

As correctly found out by the Court's Second Division, petitioner, by its own admission, filed its Corporate Annual Income Tax Return for the calendar year ended December 31, 2000 showing a total overpayment of P8,815,617.00, and indicated therein that the same will be CARRIED OVER to the next year (*Petition for Review, page 2, paragraph 3*). This fact is evidenced by an "x" mark in a box corresponding to the choice "To be carried over as tax credit next year/quarter" in its 2000 Annual Income Tax Return (*Annex "C", Petition For Review*).

A cursory reading of *Section 76 of the NIRC of 1997, as amended*, reveals the effect of the choice made by petitioner in the matter of its tax refund pertaining to its 2000 excess creditable withholding tax, to wit:

> "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:
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> (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

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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."

Pursuant to the aforequoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, is allowed two (2) options: (a) be credited or refunded (either in the form of cash or credit certificate) with the excess amount paid; or (b) carry-over the excess credit. Once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other (*Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241*).

Thus, petitioner is precluded from claiming a refund/tax credit certificate as it had already chosen, and in fact, had exercised the option of carry over. Having exercised such option, the same is irrevocable. Petitioner's only recourse is to carry over/apply the 2000 unutilized tax credit to the succeeding taxable years until the same is fully utilized. Although said excess was not fully utilized in 2001, petitioner cannot still seek its refund, instead it should just apply the same to the succeeding years until it is fully utilized. By express mandate of *Section 76*, the option to carry over is irrevocable regardless of whether or not the excess tax credit is actually or fully utilized.

In sum, what the instant petition asks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had been resolved and extensively discussed in the assailed Decision and Resolution.

WHEREFORE, premises considered, the assailed Decision and Resolution of the Second Division are hereby **AFFIRMED *in toto***. The instant Petition for Review is **DENIED DUE COURSE** and is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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CERTIFICATION

Pursuant to Sec 13, Art. VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice