REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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RAYTHEON EBASCO OVERSEAS LTD. - PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7204

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
SEP 10 2009 ; 1:24 pm

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DECISION

BAUTISTA, *J.*:

The instant Petition for Review seeks the refund or issuance of tax credit certificate in the amount of **FORTY SIX MILLION THREE HUNDRED EIGHT THOUSAND THREE PESOS (P46,308,003.00)**, allegedly representing petitioner's unutilized excess creditable income taxes withheld for taxable years 2002 and 2003.

Raytheon Ebasco Overseas Ltd. - Philippine Branch (Petitioner) is a foreign corporation duly organized under the laws of the State of Delaware, United States of America, duly licensed to do business in the Philippines under Securities and Exchange Commission (SEC) Certificate of Registration No. A1997-16458 dated December 18, 1997.[1] Petitioner is engaged in procurement services, project management, construction, construction management, wholesale marketing, sales, and contract

[1] Exhibit "A"

administration; all in connection with industrial projects. It is likewise registered with the Bureau of Internal Revenue (BIR) in Makati City on January 1, 1997, under Certificate of Registration No. OCN8RC0000015850.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. He holds office at the Office of the Commissioner, BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Returns for taxable year ended December 31, 2002 on April 15, 2003 and for taxable year ended December 31, 2003 on April 15, 2004.[3]

In its Annual Income Tax Return for taxable year 2002[4], petitioner indicated a tax overpayment of P39,422,257.00, which it intends to be refunded by marking the box corresponding to the option "To be refunded" with a cross.[5]

Meanwhile, in its Annual Income Tax Return for taxable year 2003[6], petitioner declared a tax overpayment of P6,885,746.00, and manifested its choice by marking with a cross the option box "To be refunded".[7]

Petitioner filed an administrative claim for refund with respondent on April 13, 2005.[8] Unacted upon by respondent, petitioner elevated the matter to this Court via Petition for Review on April 14, 2005.

In his Answer[9] filed on June 9, 2005, respondent interposed the following Special and Affirmative Defenses:

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[2] Exhibit "B"
[3] Par. 1, Joint Stipulation of Facts and Issues, docket, p. 84
[4] Exhibit "N"
[5] Lines 28 and 30, Exhibit "N"
[6] Exhibit "E"
[7] Lines 28 and 30, Exhibit "E"
[8] Par. 6, Joint Stipulation of Facts and Issues, docket, p. 85
[9] Docket, pp. 65-66

"5) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

6) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not creditable or refundable;

8) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended;

9) In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge 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, 1st 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)*."

After trial on the merits, this case was submitted for decision on October 20, 2008, taking into consideration petitioner's Memorandum filed on July 23, 2008, sans respondent's Memorandum.[10] However, on December 17, 2008, petitioner filed its "Motion to Admit Memorandum" requesting the withdrawal of its Memorandum filed on July 23, 2008 as it was intended for CTA Case No. 6458 and to admit the attached Memorandum for the instant case. The said motion was granted. Hence, this case was submitted for decision on October 20, 2008, considering petitioner's Memorandum filed on December 17, 2008.

The parties stipulated the following issues[11] for this Court's resolution:

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[10] Docket, p. 456
[11] Stipulation of Issues, Joint Stipulation of Facts and Issues, docket, pp. 86-87

"11. Whether the income payments from which the taxes were withheld were included in Petitioner's gross income for the taxable years ended December 31, 2002 and December 31, 2003?

12. Whether Petitioner had unutilized and excess creditable withholding taxes during taxable years ended December 31, 2002 and December 31, 2003 amounting to P39,422,257.00 and P6,885,746.00, respectively?

13. Whether Petitioner has carried-over to the succeeding taxable year(s) the alleged excess/unutilized withholding tax for the taxable years ended December 31, 2002 and December 31, 2003?

14. Whether said unutilized and excess creditable withholding taxes may be the subject of a claim for refund under the Tax Code?

15. Whether Petitioner's right to claim a refund of the alleged excess/unutilized creditable withholding tax for the taxable years ended December 31, 2002 and December 31, 2003 was duly substantiated?

16. Whether Petitioner has the right to a refund either under Section 76 in relation to Sections 204 and 229 of the Tax Code, or under section 58(D) in relation to Section 204 of the same?

17. Whether Petitioner duly opted to refund such excess creditable withholding taxes?

18. Whether the said unutilized and excess creditable withholding taxes should be refunded by Respondent to Petitioner."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P46,308,003.00, representing its alleged excess or unutilized creditable withholding taxes for taxable years 2002 and 2003 based on the evidence presented."

Petitioner argues that its Annual Income Tax Returns for taxable years 2002 and 2003 firmly established that it has an excess creditable income taxes withheld; its intention to have the said excess refunded; and it did not carry-over or credit the same against any tax liability of succeeding taxable quarters.

Respondent counters that petitioner failed to demonstrate that the tax subject of this case was erroneously or illegally collected, and that it is incumbent upon petitioner to show that it has complied with Section 204(C), in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997.

In order for petitioner to be entitled to a claim for refund or issuance of tax credit certificate of excess/unapplied creditable withholding taxes, it must satisfy the following requirements:

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the Return of the recipient.[12]

Anent the first requisite regarding the two-year prescriptive period, the pertinent provisions of the NIRC of 1997 are Sections 204(C) and 229, which state:

> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund..."

[12] Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957.

"**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Petitioner has complied with the first requirement.

The reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld commences from the date of filing of the final adjustment return.[13]

The claimed excess creditable withholding taxes involve taxable years 2002 and 2003, for which petitioner filed its 2002 and 2003 Annual Income Tax Returns on April 15, 2003[14] and April 15, 2004[15], respectively. Counting from this date, petitioner had until April 15, 2005 and April 17, 2006[16], within which to file its claim for refund or issuance of tax credit certificate, both in the administrative and judicial levels. Petitioner's administrative claim for refund was filed on April 13, 2005[17] and its judicial claim through its Petition for Review was filed on April 14, 2005; both are well within the two-year prescriptive period.

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[13] ACCRA Investments Corporation vs. Court of Appeals, *supra*
[14] Exhibit "N-13"
[15] Exhibit "E-13"
[16] April 15, 2006 fell on a Saturday
[17] Exhibits "J" and "K"

As regards the second requisite of establishing the fact of withholding, petitioner submitted its Certificates of Creditable Tax Withheld at Source[18] [BIR Form 2307] issued by Kepco Ilijan Corporation and San Roque Power Corporation, showing creditable withholding taxes for taxable years 2002 and 2003 in the respective amounts of P39,422,257.75 and P19,212,263.57, broken down as follows:

Exh.	Period Covered (2002)			Payor/Withholding Agent	Income Payments	Tax Withheld
O	01/01/02	to	03/31/02	Kepco Ilijan Corporation	P 379,303,275.50	P 7,586,065.51
P	04/01/02	to	06/30/02	Kepco Ilijan Corporation	70,785,731.00	1,415,714.62
Q	07/01/02	to	09/30/02	Kepco Ilijan Corporation	58,886,944.00	1,177,738.88
R	10/01/02	to	12/31/02	Kepco Ilijan Corporation	1,889,181.50	37,783.63
S	01/---/02	to	03/---/02	San Roque Power Corp	782,236,170.50	15,644,723.41
T	04/---/02	to	06/---/02	San Roque Power Corp	439,045,393.50	8,780,907.87
U	07/---/02	to	09/---/02	San Roque Power Corp	191,520,901.50	3,830,418.03
V	10/---/02	to	12/---/02	San Roque Power Corp	47,445,290.00	948,905.80
Total					**P 1,971,112,887.50**	**P 39,422,257.75**

Exh.	Period Covered (2003)			Payor/Withholding Agent	Income Payments	Tax Withheld
F	01/01/03	to	03/31/03	Kepco Ilijan Corporation	P 68,770.00	P 1,375.40
G	01/---/03	to	03/---/03	San Roque Power Corp	274,086.20	13,704.31
G	01/---/03	to	03/---/03	San Roque Power Corp	188,853,290.00	3,777,065.80
H	04/---/03	to	06/---/03	San Roque Power Corp	5,832,165.05	116,643.06
I	10/---/03	to	12/---/03	San Roque Power Corp	15,303,475.00	15,303,475.00
Total					**P 210,331,786.25**	**P 19,212,263.57**

It can be observed from the foregoing table that Exhibit "I" reflects the same amount of P15,303,475.00 in its income payments and tax withheld. This Court cannot ascertain whether the said amount pertains to petitioner's income payments or its tax withheld; hence, the same will be denied.

Therefore, petitioner was able to substantiate by proper withholding tax certificates only the creditable withholding taxes in the amounts of P39,422,257.75 and P3,908,788.57 (P19,212,263.57 less P15,303,475.00) for taxable years 2002 and 2003, respectively.

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[18] Exhibits "F" to "I-8" and "O" to "V-10"

This Court shall now discuss if petitioner complied with the third requirement of whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its 2002 and 2003 Income Tax Returns.

A perusal of the withholding tax certificates revealed that the creditable income taxes of P39,422,257.75 and P3,908,788.57 for taxable years 2002 and 2003 were withheld on gross income payments of P1,971,112,887.50 and P195,028,311.25 (P210,331,786.25 less P15,303,475.00) respectively.

On the other hand, petitioner's gross income in its 2002 and 2003 Income Tax Returns and Audited Financial Statements amounted to P1,670,926,625.00[19] and P1,042,752,358.00[20], respectively. Petitioner submitted various official receipts[21] and invoices[22]; however, petitioner failed to present proofs, such as detailed general ledger, sales register, reconciliation schedules or any other document whereby the Court can trace that the income payments related to the claimed creditable taxes withheld formed part of its taxable gross income in its 2002 and 2003 Annual Income Tax Returns[23].

Furthermore, there is a need to determine whether petitioner made an option to carry-over its excess creditable withholding taxes to the succeeding quarters pursuant to Section 76 of the NIRC of 1997, 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:
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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 paid, as the case may be.

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[19] Exhibit "N-4"
[20] Exhibit "E-4"
[21] Exhibits "Z" to "CC" and "II" to "YY"
[22] Exhibits "DD" to "HH" and "ZZ" to "OOO"
[23] Exhibits "N" and "E"

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*)

Under the afore-quoted provision, 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. Once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.

In its 2002 and 2003 Annual Income Tax Returns, petitioner reflected income tax overpayment of P39,422,257.00[24] and P6,885,746.00[25], which petitioner marked as "To be refunded"[26].

Petitioner however failed to sufficiently prove that it did not carry-over the claimed creditable withholding taxes of P39,422,257.00 and P6,885,746.00 to the succeeding first, second, and third quarters of 2003 and 2004, as it merely presented its 2002[27] and 2003[28] Annual Income Tax Returns. While there was no amount of "Prior Year's Excess Credits" reflected in petitioner's 2002 and 2003 Income Tax Returns[29], this is not conclusive to prove that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2003 and 2004. Records disclosed that petitioner failed to present its First, Second, and Third

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[24] Exhibit "N-11"
[25] Exhibit "E-11"
[26] Exhibits "N-12" and "E-12"
[27] Exhibit "N"
[28] Exhibit "E"
[29] Exhibit "N", Line 27A and Exhibit "E", Line 27A

Quarterly Income Tax Returns for taxable years 2003 and 2004 as evidence, in order for this Court to determine whether petitioner effectively opted to carry-over the 2002 and 2003 excess creditable withholding taxes to the subsequent taxable quarters. If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable years 2003 and 2004, it therefore effectively exercised the option to carry-over the 2002 and 2003 unutilized creditable withholding taxes to the succeeding taxable years of 2003 and 2004. Consequently, petitioner's claim for refund should be denied pursuant to Section 76 of the NIRC of 1997.

This Court in **Millennium Business Services, Inc. vs. The Commissioner of internal Revenue**[30] said that the presentation of the Quarterly Income Tax Returns is vital. Without which, it cannot be ascertained whether petitioner did not carry-over the 2002 and 2003 excess/unutilized creditable withholding taxes to the subsequent quarters of 2003 and 2004. Petitioner may have carried over its 2002 and 2003 unutilized creditable withholding taxes to its Quarterly Income Tax Returns for 2003 and 2004, and it may have amended said Returns, whereby such unutilized creditable withholding taxes are no longer reflected therein; hence, its 2002 and 2003 Annual Income Tax Returns will no longer show any amount of prior year's excess credits. This doubt could have been avoided had petitioner presented the Quarterly Income Tax Returns for 2003 and 2004.

Settled is the rule that the claim for tax refund is in effect a claim for tax exemption. As such, the same must be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority.[31] Petitioner's failure to present its Quarterly Income Tax Returns for 2003 and 2004 is fatal to its claim for refund or issuance of tax credit certificate.

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[30] CTA Case No. 7441, February 11, 2009

[31] Commissioner of Internal Revenue vs. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division