Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ITALIAN-THAI DEVELOPMENT PUBLIC CORPORATION LIMITED,
Petitioner,

-versus-

CTA CASE NO. 7567

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 0 4 2011 [signature] 4:15 p.m

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DECISION

MINDARO-GRULLA, J.,

This is a Petition for Review filed on January 26, 2007 by Italian-Thai Development Public Corporation Limited, as petitioner, against the Bureau of Internal Revenue (BIR) as respondent, for the Court in Division, pursuant to Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA). It involves a claim for refund or issuance of tax credit certificate in the amount of P8,367,984.13, allegedly representing excess unutilized withholding value-added tax (VAT) on services performed to the government by petitioner for the period covering October 2004 to October 2005.

Petitioner Italian-Thai Development Public Corporation Limited is a Thai corporation duly licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines under SEC Registration No. AFO096-068.[1] Petitioner is a VAT-registered taxpayer engaged in the construction and repair of projects covered under Republic Act No. 7718, also known as the Expanded Build-Operate-Transfer Law, and foreign-funded projects. Its registered office address is at 1408 Tektite Tower I, Exchange Road, Ortigas, Pasig City.[2]

Respondent Bureau of Internal Revenue is a public entity, duly created under the Philippine laws, whose primary duty is to collect national internal revenues for the government. Its main office address is at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

The records show that the Department of Public Works and Highways (DPWH) awarded to petitioner the following contracts for the construction/implementation of projects which are funded by the Japan Bank for International Cooperation (JBIC), to wit:

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[1] Exhibit "E"
[2] Exhibit "B"; Par. 3, Petition for Review, Docket, p. 1

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a. Contract Package VII, Construction/Improvement of Sub-Projects in Iloilo Province, Rural Road Network Development Project II dated June 16, 2000;[3]

b. Contract Package I of Arterial Road Link Development Project, Phase IV, Restoration of Dalton Pass Section (Sta. Rita-Aritao Road), Nueva Ecija-Nueva Viscaya dated March 28, 2000;[4] and

c. Contract Package III, Liloan–San Ricardo Section under the Arterial Road Links Development Project, Phase IV (Himayangan–Silago–Abuyog Road and Liloan–San Ricardo Road Projects).[5]

Petitioner contends that JBIC projects are covered by the agreement of the Japanese government and the Republic of the Philippines. It has been mandated that JBIC funds are not to be used to pay taxes and the participating government agency is to assume whatever taxes that may be imposed in connection with said funded projects. Petitioner also points out that the said exemption of JBIC-funded projects from the 8.5% creditable VAT withholding can be corroborated by Memorandum Circular Nos. 32-99 and 42-99 and VAT Ruling Nos. 112-99 and 080-2001.[6]

Petitioner claims that despite those agreements, circulars, and VAT rulings granting exemption from the 8.5% creditable VAT withholding to JBIC-funded projects, the DPWH continued to withhold

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[3] Exhibit "C"
[4] Exhibit "D"
[5] Exhibit "E"
[6] Par. 3, Joint Stipulation of Facts, Docket, p. 67

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the 8.5% VAT on its payments to petitioner for the period covering October 2004 to October 2005 in the total amount of P8,367,984.13.

As a consequence, petitioner filed an administrative claim for refund or issuance of tax credit certificate for its purported overpaid output VAT with the Bureau of Internal Revenue on January 9, 2007.[7]

Respondent failed to act on petitioner's administrative claim for refund, prompting petitioner to file the instant Petition for Review before this Court on January 26, 2007.

On April 10, 2007, respondent filed her Answer[8], interposing the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 8. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

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[7] Exhibit "M"
[8] Docket, pp. 45-47

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During trial, petitioner presented documentary and testimonial evidence which includes that of witnesses Neil U. Sison and Annie Rose S. Perez

For failure of respondent's counsel to appear despite notice and upon motion of petitioner's counsel during the hearing held on January 18, 2010, this Court in a Resolution declared respondent's counsel as deemed to have waived his right to present evidence. This Court also ordered petitioner to file its Memorandum within thirty (30) days from January 18, 2010 or until February 17, 2010; while respondent was granted twenty (20) days from receipt thereof to file his Memorandum.[9]

On March 1, 2010, the instant case was deemed submitted for decision upon submission of petitioner's Memorandum on February 18, 2010, sans respondent's Memorandum.[10]

The issue is whether petitioner is entitled to a refund or to an issuance of tax credit certificate in the amount of P8,367,984.13, representing excess unutilized withholding VAT on services performed to the government covering the period from October 2004 to October 2005.

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[9] Resolution dated January 18, 2010, Docket, p. 740
[10] Docket, p. 748

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As previously stated, petitioner alleges that it is a contractor of the DPWH on the following projects:

1. Construction/Improvement of Sub-Projects in Iloilo Province, Rural Road Network Development Project II;[11]

2. Arterial Road Link Development Project, Phase IV, Restoration of Dalton Pass Section (Sta. Rita-Aritao Road), Nueva Ecija-Nueva Viscaya;[12] and

3. Liloan-San Ricardo Section under the Arterial Road Links Development Project, Phase IV (Himayangan-Silago-Abuyog Road and Liloan-San Ricardo Road Projects).[13]

The DPWH withheld 8.5% creditable value-added tax from its payments to petitioner for the period covering October 2004 to October 2005, amounting to P15,084,702.54, as reflected in petitioner's amended Quarterly VAT Returns as follows:

Exhibit	Period	Creditable VAT Withheld
O	4th Quarter 2004	P 11,938,878.10
P	1st Quarter 2005	678,542.42
Q	2nd Quarter 2005	1,881,492.56
R	3rd Quarter 2005	-
S	4th Quarter 2005	585,789.46
	TOTAL	**P15,084,702.54**

The withholding of creditable VAT was made pursuant to Section 114 of the National Internal Revenue Code (NIRC) of 1997 prior to its amendment by Republic Act No. 9337, to wit:

"SEC. 114. *Return and Payment of Value-added Tax.* –

[11] Exhibit "C"
[12] Exhibit "D"
[13] Exhibit "E"

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(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 each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 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 sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however,* That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted ten (10) days following the end of the month the withholding was made."

In relation thereto, Revenue Regulations (R.R.) No. 10-93 provides:

"SECTION 8. *Nature of Tax Withheld.* - The amount of tax herein withheld and paid as evidenced by the Certificate of Value-added Tax Withheld on Government Payments (BIR Form____) shall be creditable against the value-added tax liability of the payee/seller of goods or services, provided that the payments received from which the taxes were deducted and withheld are included in the tax return/declaration as part of his declared sales or receipts."

Based on the foregoing provisions, the creditable VAT withheld shall be creditable against petitioner's output tax liability when:

1. the creditable VAT withheld is duly supported by a Certificate of Creditable VAT Withheld on Government Payments; and

2. the gross receipts corresponding to the creditable VAT withheld were declared as part of gross receipts.

Petitioner avers that the creditable VAT withheld by the DPWH for the period covering October 2004 to October 2005 was not fully credited against its output tax liability for the same period, constituting excessively or erroneously paid tax, which is refundable under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended, quoted herein:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
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> 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."
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> "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

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> maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> 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 the 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."

Thus, in order to be entitled to a refund or tax credit of unutilized creditable VAT withheld, the following requisites must be satisfied:

1. both the administrative and judicial claims for refund must be filed within the two-year prescriptive period; and
2. the claim must be duly substantiated by documentary evidence.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide that the administrative and judicial remedies of filing a claim for refund of erroneously paid tax must be done within two years from payment of the tax.

In relation thereto, Section 114(A) of the NIRC of 1997, as implemented by Section 4(2) of R.R No. 6-01, provides that the Quarterly VAT Return must be filed and the corresponding taxes must be paid not later than the 25th day following the close of each taxable quarter; while the Monthly VAT Declaration must be filed and the taxes thereon must be paid not later than the 10th day following the end of each month. Section 114(A) of the NIRC of 1997, as amended and Section 4(2) of R.R. No. 6-01 are quoted hereunder for easy reference:

> "SEC. 114. *Return and Payment of Value-added Tax.* -
>
> (A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.
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> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided,* That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches."
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> "SECTION 4. *Time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon.* - The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.
>
> xxx xxx xxx
>
> (2) Section 4.110-1(A), (B) and (C) of Revenue Regulations No. 7-95, as amended, is further amended to read as follows:
>
>> 'SECTION 4.110-1. *Filing of return and payment of VAT.* -
>>
>> A) *Filing of Return.* - Every person liable to pay VAT shall file a quarterly return of the amount of his gross sales or receipts within *twenty five (25)* days following the close of the calendar quarter.
>>
>> B) *Payment of VAT* - All persons liable to VAT shall pay the tax monthly based on the taxable sales/receipts for the month, using the

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> monthly VAT declaration form within *ten (10)* days after the end of each month; *provided, however, that with respect to taxpayers who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the monthly VAT declaration and paying the tax due thereon via the EFPS shall be five (5) days later than the deadline set above*. The declaration shall be accomplished only for the first two (2) months of each calendar quarter."

The instant claim involves alleged excess creditable VAT withheld covering the period from October 2004 to October 2005.

After a careful examination of the records, this Court finds that petitioner submitted only its **amended** Quarterly Value-added Tax Returns for the fourth quarter of 2004, the four (4) quarters of 2005, and the Monthly Value-added Tax Declaration for October 2005.[14] Without the Quarterly VAT Returns originally filed by petitioner, this Court cannot ascertain whether petitioner's claim for the period covering October 2004 to October 2005 in the amount of P8,367,984.13 was filed within the two-year period prescribed by law. Consequently, petitioner's claim must fail.

In view of the foregoing, this Court finds it unnecessary to determine petitioner's compliance with the other requisites for refund of unutilized creditable VAT withheld.

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[14] Exhibits "O" to "T"

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

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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