Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ISUZU PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6079

Members:

Castañeda, Jr., *Chairman*
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:

JUN 1 7 2005 Apolinario

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DECISION

UY, *J.*:

This Petition for Review seeks a refund or issuance of a tax credit certificate of alleged overpaid quarterly income tax and excess/unutilized creditable withholding taxes for the taxable year ended 1997 in the aggregate amount of Forty Five Million Nine Hundred Twenty Eight Thousand Five Hundred Seventy Nine Pesos (P45,928,579.00).

THE FACTS

Petitioner, Isuzu Philippines Corporation, is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at 114 Technology Avenue, Laguna Technopark, Biñan, Laguna *(Paragraph 1, Admitted Facts, Joint Stipulation of Facts and Issues, Records, p.52).* It is engaged in the business of assembling, manufacturing, designing and sale of motor vehicles, parts, accessories, tools and equipment.

On the other hand, respondent, Commissioner of Internal Revenue, is the government official vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes, with office address at BIR National Office Building, Diliman, Quezon City.

On April 15, 1997, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the calendar year 1996, declaring excess/unutilized creditable withholding taxes in the amount of P4,623,685.00, with an indication that said amount is "to be applied as credit to next year" *(Exhibit "O", Records, p. 298).*

On May 30, 1997, petitioner filed its Quarterly Income Tax Return for the first quarter of calendar year 1997 *(Exhibit "D", Records, p. 138),* showing a payment of income tax in the amount of P29,155,375.03 *(Exhibit "D-4").* On April 29, 1998, petitioner filed its Annual Income Tax Return for the calendar year 1997 *(Paragraph 3, Admitted Facts, Joint Stipulation of Facts and Issues, Records, p. 53)* reporting a net loss in the amount of P177,006,063.00 *(Exhibit "A", Records, p. 75-77),* computed as follows:

Gross Income	P 521,534,740.00
Less: Deductions	698,540,793.00
TAXABLE LOSS	P (177,006,053.00)

For the same calendar year, petitioner likewise declared excess/unutilized creditable withholding taxes in the total amount of P16,773,204.00 *(Exhibit "A-5")*, broken down as follows:

First Quarter	P	3,966,570.00
Second Quarter		5,068,325.00
Third Quarter		5,909,978.00
Fourth Quarter		1,828,331.00
TOTAL	P	16,773,204.00

Petitioner's 1997 Income Tax Return also reflected an overpaid quarterly income tax in the sum of P29,155,375.00 for its first quarter operations *(Exhibit "A-4", Records, p. 77)*.

Petitioner indicated in the said Annual Corporate Income Tax Return for calendar year 1997 that it would carry forward as tax credit for taxable year 1998, the amount of P50,552,264.00 *(Exhibit "A-3", Records, p. 75)* representing its overpaid quarterly income tax and excess/unutilized creditable withholding taxes for calendar years 1996 and 1997, computed as follows:

Year 1996 excess credit	P	4,623,685.00
First Quarter of 1997 overpayment		29,155,375.00
Excess/unutilized creditable withholding taxes		16,773,204.00
Total	P	50,552,264.00

On April 30, 1999, petitioner filed its Annual Income Tax Return for the calendar year 1998 *(Exhibit "B, Records, p. 93-94).* The said return shows that petitioner was again in a net loss position amounting to P726,246,634.00 *(Exhibit "B-3").*

Consequently, on April 7, 2000, petitioner filed an administrative claim for refund/issuance of a tax credit certificate with the BIR in the amount of P45,928,579.00 representing overpaid quarterly income tax and excess/unutilized creditable withholding taxes for taxable year 1997 broken down as follows:

Payment for the first quarter	P29,155,375.00
Tax withheld for the first quarter	3,966,750.00
Tax withheld for the second quarter	5,068,325.00
Tax withheld for the third quarter	5,909,978.00
Tax withheld for the fourth quarter	1,828,331.00
TOTAL	P45,928,579.00

As the two (2)-year prescriptive period was about to lapse, petitioner filed the instant judicial claim on April 14, 2000.

In his Answer filed on June 1, 2000, respondent raises the following Special and Affirmative Defenses:

> "3. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 4. The amount of P45,928,579.00 being claimed by petitioner representing alleged unutilized creditable withholding taxes for calendar year 1997 was not properly documented;

5. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

6. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code, as amended;

7. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

8. Claims for refund are construed strictly against the claimant for 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)" (Answer, Records, pp. 37-40).

THE ISSUES

In the Joint Stipulation of Facts and Issues filed on August 23, 2000, both parties agreed to submit to this Court's determination the following issues:

1. Whether or not the amount of P16,773,204.00 was withheld from income payments made to the petitioner for the taxable year 1997.

2. Whether or not the income from which the amount of P16,773,204.00 was withheld was declared by the petitioner as part of its taxable income.

3. Whether or not the petitioner paid quarterly income tax in the amount of P29,155,375.00 for the taxable year 1997.

4. Whether or not the petitioner incurred a net loss of P50,552.264.00 for the taxable year 1997.

5. Whether or not the petitioner incurred a net loss of P726,246,634.00 for the taxable year 1998.

6. Whether or not the creditable withholding taxes being claimed for refund are duly substantiated by the appropriate withholding tax certificates.

7. Whether or not the petitioner filed a claim for refund of the amount of P45,928,579.00 representing overpaid quarterly income tax and excess/unutilized creditable withholding taxes for the taxable year 1997 with the respondent within the two-year period prescribed by law.

8. Whether or not the amount of P45,928,579.00 representing overpaid quarterly income tax and excess/unutilized creditable withholding taxes for taxable year 1997 was applied against any income tax liability for the succeeding taxable year/s.

9. Whether or not the amount being claimed for refund is duly substantiated by the appropriate documentary evidence.

Petitioner claims that it is entitled to a refund/tax credit of its overpaid quarterly income tax and unutilized creditable withholding taxes for the year 1997 as it has complied with the basic requirements laid down by this Court in a plethora of cases which would entitle it to the refund claimed in this case; that its claim finds legal basis under Section 69 (now Section 76) in relation to Section 230 (now Section 229) of the National Internal Revenue Code, as amended.

Respondent, however, disagrees. Citing Section 76 of the 1997 NIRC, respondent maintains that petitioner cannot claim for a refund or tax credit of its excess or unutilized tax credits in the year 1997 considering that the option to carry over excess tax credits had been chosen by the petitioner for the said year. Allegedly under Section 76, *"once the option to carry over and apply the excess quarterly income tax against income 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 refund or issuance of a tax credit certificate shall be allowed therefor".*

THIS COURT'S RULING

Evidently, petitioner chose the option "to be applied as credit to next year" under the option box in its 1997 income tax return. And for the year 1998, petitioner actually carried over the 1997 excess tax credits amounting to P50,552,264.00.

It is thus crucial to determine the applicable law at the time that petitioner filed its 1997 income tax return. Is it Section 69 of the 1977 National Internal Revenue Code (NIRC), as amended, or is it Section 76 of the 1997 National Internal Revenue Code (NIRC)?

The instant petition involves petitioner's claim for tax refund of its alleged overpaid quarterly income tax and excess/unutilized creditable withholding taxes for the taxable year ended 1997. The Tax Code of 1997 took effect only on January 1, 1998. Following the basic rule that laws shall have prospective application unless provided otherwise *(Santos vs.*

Sandiganbayan, 347 SCRA 386), the Tax Code of 1997 can not be made to apply to cases prior to January 1, 1998 as in the present case. Thus, it is the 1977 Tax Code, as amended, that is applicable in this case.

Section 69 of the 1977 National Internal Revenue Code, as amended, reads:

> **SEC. 69.** ***Final Adjustment Return.*** — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>
> (a) Pay the tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return <u>may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.</u>

Clearly, the above law provides that any excess of the total quarterly payments over the actual income tax computed in the adjustment or final corporate income tax return, shall either be refunded to the corporation or may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.

Unlike the provisions of Section 76 of the Tax Code of 1997, Section 69 above-cited does not contain any irrevocability clause relative to the option of carry over and it allows the carry over of excess income taxes to the taxable quarters of the succeeding taxable year only.

On the other hand, Section 76 allows the carry over of excess tax credits to the taxable quarters of the succeeding taxable years, and requires that the corporation signify its intention in its annual income tax return, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year.

In the case at bar, petitioner signified its intention to carry over the excess credit of P50,552,264.00 for the year 1997 by marking the appropriate option box *(Exhibit A)*. For the year 1998, petitioner actually carried over the same amount of P50,552,264.00 as prior year's excess credits and also opted to carry over as next year's tax credit the amount of P66,575,235.00 *(Exhibit B)*.

Pursuant to Section 69 of the NIRC, as amended, petitioner opted to carry over its 1997 excess income taxes to the year 1998. Despite the choice of carry over however, petitioner failed to actually apply the same excess credits against any tax liabilities for the year 1998 since it was in a net loss position. Thus, We hold that petitioner may still claim the overpaid income tax and unutilized creditable withheld taxes for the year 1997 because Section 69 allows the crediting of excess credits against the succeeding taxable quarters of the succeeding taxable year only, in this case, up to 1998 only.

It is noteworthy that for the year 1999, petitioner no longer carried over the said amount of P66,575,235.00 as prior year's excess credits, which it originally intended to carry over *(Exhibit "C", Records, pp. 122-124).* Moreover, it was again in a net loss position.

Having dispensed with the legal issue, We now proceed to resolve the factual issues of whether or not petitioner incurred a net loss of P50,552,264.00 for the taxable year 1997, and net loss of P726,246,634.00 for the taxable year 1998.

We rule in the affirmative subject to the qualification that for the taxable year 1997, the net loss incurred by petitioner is not only the amount of P50,552,264.00, but the total amount of P177,006.053.00 as reflected in its Annual Income Tax Return for 1997, and as stated in the Memorandum Report prepared by Revenue Officer II, Noel D. Roncesvalles addressed to Mr. Enrique F. Suministrado, Revenue District Officer, which forms part of the BIR Records, and marked as respondent's Exhibit "2". The pertinent portions of said Report read as follows:

"MEMORANDUM FOR	:	**MR. ENRIQUE F. SUMINISTRADO** Revenue District Officer
FROM	:	**NOEL D. RONCESVALLES** Revenue Officer II
DATE	:	July 25, 2000
SUBJECT	:	**ISUZU PHILIPPINES CORPORATION** Request for Refund of Unutilized Withholding Taxes (P45,928,579.00)

As required, the undersigned conducted an examination of subject taxpayer's request of unutilized withholding taxes in the amount of FORTY-FIVE MILLION NINE HUNDRED TWENTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY-NINE PESOS (P45,928,579.00) which was incurred in 1997.

The results of said review are submitted as follows:

1.0 **<u>RESULTS OF 1997 OPERATIONS</u>**

Per Income Tax Return (ITR) filed with the BIR, the taxpayer incurred a net loss of P177,006,053 (Exhibit 1).

Consequently, no income tax was due from the taxpayer for 1997.

2.0 While no income tax was due from the taxpayer in 1997, the latter effectively paid a total of P45,928,579.00 (amount of claim) in income taxes computed as follows:

First Quarter Income Tax Payments (Exhibit 2)	-	P29,155,375.03
Creditable tax withheld by:		
Gencars, Inc. (Exhibit 3)	-	6,695,721.90
Gencars Batangas, Inc. (Exhibit 4)	-	1,921,847.25
Industrial Transport Equipment, Inc. (Exhibit 5)	-	8,155,634.53
Total		**P45,928,578.71**

Further, it was intended that above amount be carried forward against 1998 income tax. Same was confirmed by taxpayer's external auditor, SGV & Co. (E.C. Alcantara – Tax Division) in its letter of April 6, 2000 (Exhibit 6).

No explicit request for a cash refund or tax credit certificate was made by the taxpayer prior to SGV & Co.'s letter cited as Exhibit 6.

3.0 **<u>RESULTS OF 1998 OPERATIONS</u>.**

Per ITR filed, the taxpayer incurred a net loss of P726,246,634.00 (Exhibit 7) in 1998.

Consequently, the taxpayer was not able to effectively offset 1997 unutilized withholding taxes against any income tax liability in 1998."

The foregoing findings of Noel D. Roncesvalles, Revenue Officer II of Revenue District No. 57 of San Pedro, Laguna, confirms petitioner's claims that it indeed incurred net losses for the taxable years 1997 and 1998.

Moreover, the Court notes that respondent did not present evidence to controvert petitioner's declaration of net losses in its income tax returns for 1997 and 1998. In the case of ***San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue***, the Supreme Court said that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct (228 SCRA 135, 141, November 23, 1993).

As regards the rest of the stipulated issues by the parties, being interrelated, will be discussed jointly.

It is well settled that the refund of excess creditable withholding taxes is dependent on claimant's compliance with the following basic requirements:

> (1) That the claim for refund was filed within the two-year reglementary period pursuant to Section 230 [now Section 229] of the Tax Code, as amended;
>
> (2) That the fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom;

(3) That the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient *(Revenue Regulations No. 12-94[amending Revenue Regulations No. 6-85]; ACCRA Investments Corporation vs. The Hon. Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, 204 SCRA 957; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459).*

A perusal of the records of this case shows that the first requisite has been complied with by petitioner as both the administrative and judicial claims of refund were filed within the two-year prescriptive period. Petitioner filed its Annual Income Tax Return for the calendar year 1997 on April 29, 1998. The written claim for refund was filed with the Bureau of Internal Revenue on April 7, 2000 while the instant petition was filed on April 14, 2000.

The second requirement (substantiation of payment of withholding taxes), has likewise been sufficiently complied with. In proving its claim that it has an overpaid quarterly income tax in the amount of P29,155,375.03, representing the quarterly income tax it paid for the first quarter of 1997, petitioner presented a machine validated Quarterly Income Tax Return *(Exhibit" D", Records, p. 138*). With respect to creditable tax withheld at source for the same taxable year, petitioner submitted the following Certificates of Creditable Taxes Withheld at Source:

Exhibit	Withholding Agent	Tax Withheld
G	GenCars Batangas, Inc.	P 1,921,847.25
H	GenCars Batangas, Inc.	P 6,695,721.90
I	Industrial & Transport Equipment, Inc.	P 8,155,634.68
	Total	**P16,773,203.68**

(Records, pp. 141 – 143). Thus, the total creditable taxes withheld for the taxable year 1997 was P45,928,578.71, which is the aggregate of P29,155,375.03 quarterly income tax paid for the first quarter of 1997 and the creditable tax withheld at source in the amount of P16,773,203.68.

To prove compliance with the third requirement that the income upon which the taxes were withheld were included as part of the gross income of the petitioner, it presented its Annual Income Tax Return for the year 1997. In said return, petitioner declared a gross sales amounting to P4,613,789,205.00 (*Exhibit "A-6"*).

Petitioner likewise presented various schedules detailing the amounts of creditable taxes withheld by GenCars, Inc., GenCars, Batangas, Inc. as well as Industrial and Transport Equipment, Inc. (Inteco) during the year 1997 and the related gross income payments as reflected in the sales invoices issued by petitioner in 1996 and 1997 to the aforesaid entities (*Exhibits "J, K and L", Records, pp. 206 to 255*), and breakdown of certificate of creditable tax withheld issued by withholding agents for the year 1997 (*Exhibit "N", Records, p. 295*).

These documents reveal that the creditable withholding taxes of P16,773,203.68 pertained to petitioner's gross sales of motor vehicles to Gencars, Inc., Gencars Batangas, Inc. and Inteco in 1996 and 1997 in the amounts of P17,484,182.00 and P1,659,836,186.20, respectively, detailed below:

	Creditable Taxes Withheld in 1997	Petitioner's Related Gross Sales	
	Per Certificates	1996	1997
GenCars, Batangas	P 1,921,847.25	P 4,788,000.00	P 187,396,725.00
GenCars, Inc.	6,695,721.90	12,696,182.00	656,876,008.00
Inteco – QA			
Inteco – Edsa	8,155,634.53		815,563,453.20
	P 16,773,203.68	**P 17,484,182.00**	**P1,659,836,186.20**

In its income tax returns for taxable years 1996 and 1997, petitioner's reported gross sales from the same entities amounted to P311,972,135.81 in 1996 (*Exhibits "N-2 and O", Records, p. 297 to 303)*) and P2,065,220,904.30 in 1997 (*Exhibits M to M-2 and A-6 (Records, pp. 292-294, and p. 76, respectively*) , broken down as follows:

	Petitioner's Gross Sales Per ITR	
	1996	1997
GenCars, Batangas	P 35,917,803.64	P 194,671,983.97
GenCars, Inc.	276,054,332.17	818,416,182.39
Inteco-QA		520,552,288.34
Inteco-Edsa		531,580,449.60
	P 311,972,135.81	P2,065,220,904.30

Apparently, there is a discrepancy between the gross sales figures as reflected in the withholding tax certificates and as declared in petitioner's 1996 and 1997 income tax returns. Said discrepancy was due to certain factors, namely: a) the timing difference between the point at which petitioner recognized/reported its sales revenues as against the time when the corresponding tax was actually withheld by its customers; and b) income payments received by petitioner in 1997 which were not subjected to withholding tax. This was clearly illustrated by petitioner in its Reconciliation of Certificate of Creditable Tax Withheld at Source For The Year 1997 (*Exhibit "N-1", Records, p. 296)*) and explained by petitioner's Accounting Supervisor, Ms. Mary Grace Bustos, during the hearings conducted on July 21, 2003 and August 25, 2003 (*page 14, TSN, July 21, 2003; pages 8 – 21, TSN, August 25, 2003*).

Evidently, petitioner properly declared in its 1996 and 1997 income tax returns the gross income related to the creditable withholding taxes of P16,773,203.68.

In fine, this Court finds petitioner to have sufficiently complied with all the requisites for a refund or issuance of a tax credit certificate corresponding to its overpaid quarterly income tax and excess/unutilized creditable withholding taxes for taxable year 1997 in the total amount of P45,928,578.71.

WHEREFORE, in view of all the foregoing, the instant petition is hereby **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **P45,928,578.71** representing its overpaid quarterly income tax and excess or unutilized creditable withholding taxes for the taxable year 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman