REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB No. 346
(CTA Case No. 6592)

Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUN 25 2008

x - x

DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Coca-Cola Bottlers Philippines, Inc. (COCA-COLA) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated June 19, 2007 in CTA Case No. 6592 entitled, "*Coca-Cola Bottlers Philippines, Inc. (CCBPI), petitioner vs. Commissioner of Internal Revenue, respondent*" denying petitioner-COCA-COLA's Petition for Review therein, and from the Resolution[3] (*Assailed Resolution*) dated November 20, 2007 denying COCA-COLA's Motion for Reconsideration.

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

> *"Petitioner is a domestic corporation organized and existing under the Philippine laws, with principal office at San Miguel Properties Centre, No. 7 St. Francis Avenue, Ortigas Center, Mandaluyong City and engaged*

[1] CTA En Banc Rollo, pp. 8-33.
[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 41-54.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 55-60.

in the manufacture and sale of carbonated beverages. On the other hand, respondent is vested by law with the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes; and holds office at the Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is one of the top five thousand (5,000) corporations of the Philippines as determined by the respondent. Thus, it is required to withhold one percent (1%) creditable Expanded Withholding Tax ("EWT") on income payments to its local suppliers of goods pursuant to Section 2.57.2(M) of Revenue Regulations No. 2-98 ("RR 2-98"), as amended.

The Coca-Cola Export Corporation ("TCCEC") and San Miguel Corporation ("SMC") are among the local suppliers of the petitioner. Petitioner made several purchases of goods from TCCEC and SMC on various dates from December 1998 to December 2000. On these purchases, petitioner withheld and remitted to the BIR the total amount of ₱70,868,561.92 on different dates representing 1% EWT on its payments to TCCEC and SMC. The EWT withheld shall be referred to as the "First Remittance" and broken down as follows:

Name of Supplier	EWT Remitted
1. TCCEC	P 60,799,252.43
2. SMC	10,069,309.49
Total	**P 70,868,561.92**

On January 25, 2001, petitioner filed with the respondent its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of December 2000 in the amount ₱113,298,812.90.

On January 16, 2003, petitioner filed a claim for tax refund or tax credit in the amount of ₱70,868,561.92, representing the creditable withholding tax, claimed as twice remitted to the BIR. Petitioner alleged therein:

> *'At the close of December 2000 all purchases for the period that were already received but which have not undergone invoice verification were retrieved from the SAP computer accounting system and the corresponding withholding tax amounting to P89,394,730.01 (TCCEC-P66,959,093.93 + SMC-P10,958,463.65 + Other Suppliers-P11,477,172.43) was taken up unmindful of the fact that some purchases from TCCEC and SMC were paid manually and the corresponding withholding tax thereon were*

> *already taken up manually and remitted to your office previously (since as earlier stated manual payments of invoices, the corresponding manual take up of the withholding tax and remittance of the withholding tax to your office will not be captured by the SAP-AP Module). The said amount of P89,394,730.01 that was taken up as withholding tax on purchases which have not undergone invoice verification was included in the amount of P113,298,812,90 remitted by the CCBPI to your office on January 25, 2001, which remittance is evidenced by Land Bank Official Receipt No. 7060941. It is also included in CCBPI's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) – BIR Form No. 1601-E for the month of December 2000 which was filed with your office on the same date. Out of the amount of P89,394,730.01 that was taken up as withholding tax on purchases that have not undergone invoice verification, P70,868,5671.92 (TCCEC-P60,799,252.43 + SMC-P10,069,309.49) were for purchases that were already manually paid and the withholding tax thereon taken up and/or remitted to your office previously. Hence, there was double remittance of withholding tax in the amount of P70,868,561.92. But while CCBPI remitted the withholding tax on the said purchases twice, the actual withholding of the tax was done only once since the invoices were already paid at the time of the second take up of the withholding tax. Therefore, the amount of withholding tax that was remitted to your office for the month of December 2000 was in excess by P70,868,561,92 of the amount that is required to be, and actually, withheld from local suppliers of goods and services pursuant to Sec. 2.57.2(M) of R.R. 2-98.'*
> (Assailed Decision, pp. 2-4.)

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[4] on June 19, 2007, the dispositive portion of which reads as follows:

> ***"WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit.*
>
> ***SO ORDERED."***

[4] Supra, note 2.

Not satisfied with the above decision, COCA-COLA filed a "Motion for Reconsideration"[5] on July 13, 2007. Respondent filed an "Opposition (To Motion for Reconsideration"[6] on August 22, 2007.

In the *Assailed Resolution*[7] dated November 20, 2007, the *CTA Second Division* denied COCA-COLA's "Motion for Reconsideration" for lack of merit.

On December 12, 2007, COCA-COLA filed a "Motion for Additional Time to File Petition for Review[8]" with the *CTA En Banc*. In a Resolution[9] dated December 14, 2007, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from December 12, 2007 or until December 27, 2007, within which to file a Petition for Review. On December 27, 2007, COCA-COLA filed the instant Petition for Review[10] with the *CTA En Banc*, praying that the CTA *En Banc* reverse the Decision dated June 19, 2007 of the CTA Second Division in CTA Case No. 6592 entitled, "*Coca-Cola Bottlers Philippines, Inc. (CCBPI), petitioner vs. Commissioner of Internal Revenue, respondent*" and decide in favor of the petitioner.

Petitioner raised the following grounds[11] in support of the instant Petition for Review, to wit:

A.

Petitioner has proven that there was no double utilization of the withholding taxes by SMC and TCCEC.

B.

Petitioner has established by preponderance of evidence required in tax refund claims its entitlement to tax refund.

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[5] CTA Second Division Rollo, pp. 628-646.
[6] CTA Second Division Rollo, pp. 649-653.
[7] Supra, note 3.
[8] CTA En Banc Rollo, pp. 3-5.
[9] CTA En Banc Rollo, p. 7.
[10] Supra, note 1.
[11] Ibid, p. 7.

C.

The question of double utilization is not a prerequisite to petitioner's claim, as this is not even an issue in the case.

The CTA *En Banc* promulgated a Resolution[12] on January 17, 2008, ordering the CIR to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. In compliance with the said Resolution, CIR filed its Comment[13] on January 30, 2008.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

As aptly discussed by the *CTA Second Division* in the assailed Decision, and We quote, to wit:

> *"To prove its claim, petitioner presented the following documentary evidence:*
>
> *1. Monthly Remittance Return of Income Taxes Withheld (BIR Form 1601) for the months of January 1999 to December 2000;*
> *2. Official Receipts of the EWT remitted to the BIR;*
> *3. Schedule of total remittance;*
> *4. Letter from the BIR designating petitioner as withholding agent of 1% creditable withholding tax;*
> *5. Waiver and Quit Claim from SMC;*
> *6. Waiver and Quit Claim from TCCEC;*
> *7. Independent CPA Report (Partial) dated November 3, 2003;*
> *8. Schedule of TCCEC purchases with manual payments (December 1998 to November 2000);*
> *9. Payment arrangements between CCBPI and TCCEC for the CYs 1998, 1999 and 2000;*
> *10. TCCEC sales invoices and debit/credit memos for the CY 1998 to 2000;*

[12] CTA En Banc Rollo, pp. 62-63.
[13] CTA En Banc Rollo, pp. 64-68.

11. Financial Accounting (FI) documents/Purchase Order (PO) history documents evidencing goods receipt (GR) amount for the CYs 1998, 1999 and 2000;
12. SAP Payment Booking Schedules with Payment Request Forms, Official Receipts and Checks evidence manual payment of EWT for the CYs 1999 and 2000;
13. Schedule of EWT Balances Per General Ledger (1999-2000);
14. Schedule of EWT remittance for CY 1999-2000;
15. 1999 and 2000 Details of EWT Remittance;
16. Schedule of Withholding Tax Accruals for TCCEC for December 2000;
17. Schedule of Withholding Tax Accruals for the CYs 1998, 1999 and 2000 which were remitted in December 2000;
18. Alphalist of payees subjected to EWT for December 2000;
19. Independent CPA Report (Partial) dated February 11, 2004;
20. Schedule of SMC Purchases with Over-remitted EWT (February 1999 to November 2000) or "the Lead Schedule" for brevity;
21. SMC Sales Invoices for the CY 2000;
22. Financial Accounting (FI) Documents/Material Documents/Purchase Order (PO) History Documents Evidencing Goods Receipt (GR) amount for the CYs 1999 and 2000;
23. SAP Payment Booking Schedules with Payment Request Forms, Official Receipts and Checks Evidencing Manual Payment of EWT for the CYs 1999 and 2000;
24. Delivery Summary Accompanying Payment Documents;
25. 2000 Details of EWT Remittance for SMC (excerpts);
26. Details of Withholding Tax Accruals for SMC for December 2000;
27. Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the month of December 2000 under the name of SMC;
28. Final and Consolidated Independent CPA Report dated August 20, 2004;
29. SMC's Statement of Accounts for CY 2000;
30. Process Verification Flowchart for TCCEC and SMC;
31. General Process Verification Flowchart for TCCEC and SMC;

32. Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the months of January, April, June, July, August, September, November, December 2000 under the name of SMC; and
33. Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the first, second, third quarters of the year 2000 under the name of TCCEC.

As regards to petitioner's supplier TCCEC, the CPA reported that it adopted several procedures and, subsequently, "verified the actual remittances of EWT for the months of January 1999 to December 2000 by tracing each manual payment against the 1999 and 2000 Details of EWT Returns (Exhbits MM and NN) checking machine validation in the returns and Official Receipts issued by the Land Bank of the Philippines." In a tabular form, the CPA made the following findings:[14]

Finding	EWT Remitted Related to Purchases from TCCEC	EWT Remittance Included again In the Dec-00 return	Reference
Traced to January 1999 EWT Return	5,546,131.53	50,128.25	Annex K
Traced to February 1999 EWT Return	4,714,693.43	51,933.40	Annex L
Traced to March 1999 EWT Return	4,753,582.23	322,197.50	Annex M
Traced to April 1999 EWT Return	3,955,110.11	162,476.80	Annex N
Traced to May 1999 EWT Return	5,428,294.97	276,923.25	Annex O
Traced to June 1999 EWT Return	6,078,263.90	238,044.60	Annex P
Traced to July 1999 EWT Return	5,582,892.61	209,491.80	Annex Q
Traced to August 1999 EWT Return	1,587,365.85	420,837.80	Annex R
Traced to September 1999 EWT Return	4,540,301.76	332,207.65	Annex S
Traced to October 1999 EWT Return	4,392,087.28	621,561.50	Annex T
Traced to November 1999 EWT Return	4,922,836.16	1,594,531.10	Annex U
Traced to December EWT 1999 EWT Return	5,594,318.20	1,550,986.77	Annex V
Traced to January 2000 EWT Return	5,698,622.50	1,949,662.69	Annex W
Traced to February 2000 EWT Return	3,922,311.11	3,767,292.71	Annex X
Traced to March 2000 EWT Return	3,570,938.31	3,571,521.05	Annex Y
Traced to April 2000 EWT Return	4,330,076.95	4,481,521.75	Annex Z
Traced to May 2000 EWT Return	5,690,551.72	5,600,215.27	Annex AA
Traced to June 2000 EWT Return	6,204,600.73	6,194,933.24	Annex BB
Traced to July 2000 EWT Return	5,354,375.64	5,424,330.07	Annex CC
Traced to August 2000 EWT Return	4,183,784.48	4,106,642.99	Annex DD
Traced to September 2000 EWT Return	5,167,762.72	5,166,865.10	Annex EE

[14] Please see the final and consolidated report, Exhibit AAA, pp. 8-9.

Traced to October 2000 EWT Return	4,457,580.51	4,456,894.16	Annex FF
Traced to November 2000 EWT Return	4,940,662.87	4,939,823.06	Annex GG
Traced to December 2000 EWT Return	4,732,160.97	4,266,059.45	Annex HH
Not traced to Returns		**1,042,170.86**	**Annex II**
Unaccounted Difference		(0.40)	
Total	115,349,306.50	60,799,252.42	

Of the ₱60,799,252.42 which petitioner claimed to be remitted twice, ₱1,042,170.86 were not traced to EWT returns and, thus, leaving the amount of ₱59,757,081.56 as possible double remittance. To summarize the figures:

Supplier		TCCEC
Amount claimed as remitted twice	P	60,799,252.42
Less: Amount not traced to returns		1,042,170.86
Possible amount of double remittance	P	59,757,081.56

For supplier SMC, the amount being claimed is ₱10,069,309.49. The CPA reported that it adopted several procedures and, subsequently, "verified actual remittance of EWT withheld on manually-processed payments (outside the normal SAP process) to SMC amounting to P10,069,309.49 for the months of March 1999 to December 2000 by tracing each manual payment against the 2000 Details of EWT Returns (Excerpts) (Exhibit XX) and checking machine validation in the returns and Official Receipts issued by the Land Bank of the Philippines. [It] also traced the EWT withheld on manually-processed payment (outside the normal SAP process) to check if these were again included in the amount of accrued EWT of the petitioner in December 2000 and remitted in January 25, 2001 by tracing the document number and receipt number from the supporting document and receipt number from the supporting documents (Exhibit VV) to the Lead Schedule-SMC (Exhibit SS)." The CPA made the following findings:[15]

[15] Procedure 5.2, p. 13 of Exhibit AAA.

Finding	EWT Remitted Related to Purchases from SMC	EWT Remittance Included again in The December 2000 return	Reference
Traced to February 1999 Return	2,408,470.52	9,893.43	Annex XX
Traced to March 1999 Return	2,830,673.21	21,770.86	Annex YY
Traced to April 1999 Return	4,133,768.45	28,024.78	Annex ZZ
Traced to June 1999 Return	5,287,821.99	140,477.78	Annex AAA
Traced to July 1999 Return	641,395.42	8,787.00	Annex BBB
Traced to September 1999 Return	63,391.61	2,214.41	Annex CCC
Traced to October 1999 Return	163,611.91	495.40	Annex DDD
Traced to December 1999 Return	865,485.16	4,954.04	Annex EEE
Traced to January 2000 Return	1,844,673.40	416,814.56	Annex FFF
Traced to March 2000 Return	1,929,808.35	1,122,478.88	Annex GGG
Traced to April 2000 Return	1,157,084.21	1,508,174.84	Annex HHH
Traced to June 2000 Return	2,652,728.28	1,727,032.88	Annex III
Traced to August 2000 Return	860,720.77	898,598.34	Annex JJJ
Traced to September 2000 Return	1,863,536.20	1,730,070.39	Annex KKK
Traced to November 2000 Return	1,221,725.16	98,273.49	Annex LLL
Traced to December 2000 Return	1,893,804.21	1,027,467.26	Annex MMM
Not traced to Returns		**1,323,781.22**	**Annex NNN**
Unaccounted Difference		(0.07)	
Total	**29,818,662.85**	**10,069,309.49**	

Of the P10,069,309.49 being claimed by the petitioner as remitted twice for SMC, P1,323,781.22 were not traced to EWT returns, leaving the amount of P8,745,528.27 as possible double remittance. To summarize the figures:

Supplier		SMC
Amount claimed as remitted twice	P	10,069,309.49
Less: Amount not traced to returns		1,323,781.22
Possible amount of double remittance	P	8,745,528.27

After considering and scrutinizing the evidence presented by the petitioner, including the final and consolidated report of the CPA, this Court is convinced there was double remittance of EWT being claimed for refund or credit. In sum, the amount of double remittance is computed as follows:

Supplier		SMC		TCCEC		TOTAL
Amount claimed as remitted twice	P	10,069,309.49	P	60,799,252.42	P	70,868,561.91
Less: Amount not traced to returns		1,323,781.22		1,042,170.86		2,365,952.08
Amount of double remittance	P	8,745,528.27	P	59,757,081.56	P	**68,502,609.83**

However, this Court is not persuaded to grant petitioner's prayer to refund or credit the EWT in the amount of P68,502,609.83 twice remitted for the reasons mentioned hereunder.

Pursuant to Section 58 (B) of the National Internal Revenue Code (NIRC) of 1997, as implemented by Revenue Regulations No. 2-98, as amended, taxes withheld under the Withholding Tax System must be covered by withholding tax certificates which are to be issued by the withholding agent or payor to the income recipient or payee. Taxes withheld which are supported by the aforesaid certificates shall be allowed as tax credit against the payees' income tax liabilities.

Considering the foregoing, petitioner has the duty, not only to establish the fact of double remittance but also, to prove that there was no double utilization of the claimed creditable withholding taxes on the part of petitioner's suppliers, namely: TCCEC and SMC.

In its attempt to establish the fact that there is indeed no double utilization of the subject creditable withholding taxes, petitioner presented as evidence the waivers and quitclaims issued by the respective officers of TCCEC and SMC, which state that they did not avail and utilize the excess Expanded Withholding Tax remitted by petitioner as credit against their income tax liabilities.[16] Likewise, in the Supplemental Joint Stipulation of Facts filed on July 4, 2005, the parties agreed that there was already an examination of the taxpayer's original copies of the Annual Income Tax Return of TCCEC and SMC.

[16] Exhibits AA-3 and BB-3.

This Court rules that the abovementioned documentary evidence are insufficient to prove that there was no double utilization of the subject claimed creditable withholding taxes.

As a matter of fact, this Court observed that there were discrepancies between the parties' Supplemental Joint Stipulation of Facts and the CPA's final and consolidated report.

For instance, in the Supplemental Joint Stipulation of Facts, "only the amount of ₱62,963,874.46 represents creditable withholding tax claimed and reported by TCCEC on the gross payments that petitioner made to it for the year ended December 31, 2000 xxx broken down as follows:"[17]

Payee's Name	Payor's Name	Period	Tax Withheld
The Coca-Cola Export Corporation ("TCCEC")	CCBPI	4th Quarter 1999	17,812,217.00
TCCEC	CCBPI	2nd Quarter	30,445,734.63
TCCEC	CCBPI	3rd Quarter	14,705,922.83
TOTAL			**62,963,874.46**

When compared with the figures in the CPA's final and consolidated report,[18] *the tax withheld for the 4th and 2nd quarters did not match. Only the amount of ₱14,705,922.83 for the 3rd quarter for the year 2000 matched.*

Another instance, in the Supplemental Joint Stipulation of Facts, "only the amount of ₱9,573,010.00 represents creditable withholding tax claimed and reported by SMC on the gross payments that Petitioner made to it for the year ended December 31, 2000 xxx broken down as follows:"[19]

Payee's Name	Payor's Name	Period	Tax Withheld
San Miguel Corporation ("SMC")	Coca-Cola Bottlers	4th Quarter 1999	1,676,444.94

[17] Please see paragraph 2(b) of the Supplemental Joint Stipulation of Facts; docket, p. 526.
[18] Exhibit AAA, pp. 8-9.
[19] Please see paragraph 1(b) of the Supplemental Joint Stipulation of Facts; docket, pp. 525-526.

	Philippines, Inc. ("CCBPI")		
SMC	CCBPI	January to March 2000	4,086,752.82
SMC	CCBPI	April 2000	1,157,084.21
SMC	CCBPI	June 2000	2,652,728.28
TOTAL			**₱9,573,010.00**

When compared with the figures in the CPA's final and consolidated report,[20] *the tax withheld for April 2000 in the amount of ₱1,157,084.21 and June 2000 in the amount of ₱2,652,728.28 tallied. However, the tax withheld for the 4th quarter of 1999 and 1st quarter of 2000 were different.*

In view of the foregoing findings, this Court cannot therefore determine with utmost certainty whether petitioner's suppliers SMC and TCCEC utilized ***twice*** *the creditable withholding tax certificates issued to them by petitioner. Petitioner should have presented a reconciliation report, summarizing in detail the creditable withholding tax certificates issued to its suppliers, the suppliers' income tax returns for years 1999 and 2000 and 2001, general ledgers, related to invoices or receipts, or such other evidence where the Court can trace and ascertain that there was no double utilization of the creditable withholding taxes by TCCEC and SMC."*

(Assailed Decision, pp. 5-12.)

With regard to the grounds relied by the petitioner, in support of the instant petition, the same were resolved by the CTA *Second Division* in the assailed Resolution, which is quoted hereunder, to wit:

"In its Motion for Reconsideration, petitioner contested this Court's ruling alleging among others that double utilization was not an issue but rather double remittance which this Court found in the positive. Petitioner added that assuming arguendo that there was a need to prove double

[20] Supra at p. 13.

utilization, the facts of the case to support this allegation were absent. The possible amount of double remittance of P68,502,609.83, as found by the Court, multiplied twice amounted to P137,005,218.76. This amount, compared with the withholding tax credits claimed by SMC and TCCEC in its income tax returns for the year 2000 (P9,573,101.00 and P62,963,874.46, respectively or P72,536,975.46 in sum) is far beyond what was claimed negating the assertion of double utilization.

Petitioner further argued that, this notwithstanding, it gave SMC and TCCEC Certificates of Creditable Tax Withheld for the year 2000 only in the amounts of P14,046,445.65 and P59,280,180.81, respectively, or a total of P73,326,626.46. This permitted the two suppliers tax credit use only up to that extent, preventing further tax credit claim. Petitioner asserted that at the very least, it be permitted to claim the difference between P137,005,218.76 and P73,326,626.46 or the amount of P63,678,592.30.

Petitioner finally concluded that given the above, it has established, by preponderance of evidence required in tax refund claims, its entitlement to tax refund.

Xxx xxx xxx

The main issue in petitioner's Motion is whether or not there is a need to prove double utilization and, if so, whether this fact exists in the case.

Section 204 of the 1997 Tax Code provides for the authority of the Commissioner to refund or credit taxes erroneously collected. It specifically states that:

> *"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.*
>
> *xxx xxx xxx"*

By definition, "erroneous tax" is one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some respect is illegal[21]*. In order to be refundable, petitioner must prove that taxes were erroneously received within the purview of this definition or kept without legal basis. In the case of excess taxes withheld, the tax collected becomes illegal if it is retained despite non-utilization. Hence, petitioner is mistaken that its allegation is in no way related to double utilization. On the contrary, the issue of double utilization lies in the very heart of its claim.*

In summarizing its claims for double remittance, petitioner presented a schedule in its Memorandum filed on May 5, 2006[22]*, which itemized creditable withholding tax claimed by petitioner as twice remitted beginning January 1999 to December 2000 for TCCEC and February 1999 to December 2000 for SMC. However, in the Supplemental Joint Stipulation of Facts,*[23] *the annual income tax return of SMC and TCCEC examined to prove creditable withholding taxes claimed were only*

[21] Black's Law Dictionary, Sixth Edition.
[22] *Rollo*, pp. 602-603, 605.
[23] *Rollo*, pp. 525-527.

for the year 2000. The 2000 returns showed creditable withholding tax utilized by SMC and TCCEC for the following periods:

TCCEC		SMC	
4th qtr. of 1999	P 17,812,217.00	4th qtr. of 1999	P 1,676,444.94
2nd qtr. of 2000	30,445,734.63	Jan. to Mar. 2000	4,086,752.82
3rd qtr. of 2000	14,705,922.83	April 2000	1,157,084.21
		June 2000	2,652,728.28
TOTAL	P 62,963,874.46		P9,573,010.00

No other return, schedule, or invoices were presented to prove that creditable withholding taxes for the following periods were not utilized:

1. *TCCEC: January 1999 to September 1999 and 1st quarter of 2000*
2. *SMC: February 1999 to September of 1999.*

Neither was there evidence offered to reconcile these disparities and those found by the Court commissioned Independent Certified Public Accountant.

Petitioner's argument that it should be permitted to claim the difference between P137,005,218.76 and P73,326,626.46 or the amount of P63,678,592.30 is a point well taken. Nonetheless, the Court cannot grant the same because a portion of the amount of P68,502,609.83 was from the earlier periods of 1999 over which no supporting documents were shown to prove non-utilization.

Finally, the Court does agree with petitioner that it has adequately proven by preponderance of evidence its entitlement to tax refund. The term 'preponderance of evidence'. means that the evidence as a whole adduced by one side is superior to that of the other.[24]

[24] Ricardo J. Francisco on "Evidence," Third Edition 1996, citing Municipality of Moncada vs. Cajuigan, 21 Phil 184 and Nolan vs. Jalandoni, 23 Phil 292.

Since Petitioner's documentary evidence is insufficient, it cannot be said to establish its cause of action. Accordingly, preponderance of evidence cannot be claimed to have been settled in its favor."
(Assailed Resolution, pp. 2-6.)

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[25] In the present case, petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed June 19, 2007 Decision and November 20, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the June 19, 2007 Decision and November 20, 2007 Resolution of the *CTA Second Division* in CTA Case No. 6592 entitled, "*Coca-Cola Bottlers Philippines, Inc. (CCBPI), petitioner vs. Commissioner of Internal Revenue, respondent*", are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[25] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, 309 SCRA 87; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 332; and *Commissioner of Customs vs. Court of Tax Appeals*, 328 SCRA 822.

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

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.

ERNESTO D. ACOSTA
Presiding Justice