REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOPEWELL TILEMAN POWER SYSTEMS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5682

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 07 2000

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# DECISION

This case involves a claim for refund/tax credit in the amount of P6,078,633.00 representing overpaid creditable withholding taxes for the fiscal years 1996 and 1997.

The following facts are stipulated by the parties:

> (1) Petitioner is a domestic corporation, having been incorporated under Philippine laws in 1993;
>
> (2) Petitioner was organized primarily to design, construct, erect, assemble, commission, operate, maintain, rehabilitate and manage turbine and other power generating plants and related facilities; and
>
> (3) On October 15, 1996, Petitioner filed with the Bureau of Internal Revenue its Corporate Annual Income Tax Return for the fiscal year ended June 30, 1996.

The rest of the facts are simple.

For fiscal year ended June 30, 1996 (Exh. A) Petitioner declared a creditable taxes withheld at source in the amount of P2,191,983.00 which it applied against its income tax due for the period in the sum of P862,913.00. Thus, leaving an excess creditable withholding tax amounting to P1,329,070.00 (Exh. A-3). Petitioner indicated its intention to carry-over said excess withholding tax to the succeeding year's tax liability (Exh. A-4).

Petitioner's Corporate Annual Income Tax Return for the fiscal year ended June 30, 1997 (Exh. B) filed on October 15, 1997, showed creditable taxes withheld in the amount of P5,280,440.00 and prior year's excess tax credit of P1,329,070.00 (Exh. B-4) whereas the income tax due was only P530,877.00. At this point in time, Petitioner's excess creditable withholding taxes amounted to P6,078,633.00 (Exh. B-2). Petitioner opted to refund the said excess taxes as reflected in its return (Exh. B-5).

Accordingly, Petitioner filed an application for the refund of excess creditable withholding taxes for the fiscal years 1996 and 1997 in the total amount of P6,078,633.00 with the Bureau of Internal Revenue on October 5, 1998 (Exh. H).

Considering that the two-year prescriptive period was about to lapse, the instant petition was filed without haste on October 15, 1998.

Respondent, by way of Special and Affirmative Defenses, states:

> a) Petitioner's claim for refund/tax credit is still undergoing administrative examination/investigation by Respondent's Bureau considering that there exists a serious doubt as to the veracity of the deductions claimed and declared by said Petitioner during its fiscal year 1997;
>
> b) Petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected;
>
> c) The total amount of P6,078,633.00 being claimed by Petitioner as alleged overpaid creditable withholding tax for fiscal years 1996 and 1997 was not properly documented;

> d) In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim/credit; and
>
> e) In the long line of cases decided by no less than this Honorable Court, as affirmed by the Court of Appeals and the Supreme Court, claims for refund/credit are construed *strictissimi juris* against the taxpayer as they partake the nature of exemption from tax.

To prove their respective allegations and positions, Petitioner presented both testimonial and documentary evidence while Respondent merely submitted the case based on the pleadings.

The only issue for resolution in this case is whether or not Petitioner is entitled to a refund/credit of creditable withholding taxes for the fiscal years 1996 and 1997 in the total sum of P6,078,633.00.

We rule in favor of the Petitioner.

The records of this case disclose that on October 15, 1996, Petitioner filed with the BIR its Corporation Annual Income Tax Return for fiscal year ended June 30, 1996, reflecting a total creditable income tax payment of P2,191,183.00 which was applied against an income tax due of P862,913.00 leaving a refundable excess creditable tax payment of P1,329,070.00 (Exhs. A to A-3, inclusive & Exh. A-7). Petitioner then opted to carry-over the excess tax credits of P1,329,070.00 to the succeeding year 1997 (Exh. A-4).

On October 15, 1997 (Exh. B-1), Petitioner filed with the BIR its Corporation Annual Income Tax Return for fiscal year ended June 30, 1997 declaring a total creditable tax payment of P6,609,510.00 representing the sum of the prior year's excess credits of P1,329,070.00 and creditable taxes withheld during 1997 in the sum of P5,280,440.00 (Exh. B-4). The total creditable tax payment of P6,609,510.00 was applied against an income tax due of P530,877.00 resulting to excess tax credits of

P6,078,633.00 (Exh. B-2) which Petitioner opted to be refunded (Exh. B-5) instead of carrying it over to the following year of 1998.

On October 5, 1998, Petitioner filed with the BIR an administrative claim for refund of P6,078,633.00 representing overpaid income tax for fiscal year ended June 30, 1997 (Exh. H) and subsequently filed a Petition for Review with this Court on October 15, 1998.

Based on the documentary evidence presented, Petitioner proved that it complied with the following basic requirements for refund of excess unutilized creditable withholding taxes provided under Revenue Regulations No. 6-85, as affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459,** to wit:

1.) that the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;

2.) that the income upon which the taxes were withheld were included in the return of the recipient; and

3.) 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.

In compliance with the first requirement, Petitioner filed its administrative and judicial claims on October 5, 1998 (Exh. H-1) and October 15, 1998, respectively, which are both within two years from October 15, 1996 and October 15, 1997, the dates when Petitioner filed its annual income tax returns for fiscal years ended June 30, 1996 and June 30, 1997 (Exhs. A-1 & B-1), respectively.

As regards the second requirement, Petitioner declared in its annual income tax returns/audited financial statements for FYs 1996 and 1997 income from sale of services of P177,468,162.00 (Exh. A-5) and P113,656,666.00 (Exh. B-6) from which the income taxes of P2,191,983.00 (Exh. A-6) and P5,280,440.00 (Exh. B-7) were withheld, respectively.

Petitioner presented a reconciliation of the total withholding taxes as reflected in the annual income tax returns and as indicated in the certificates of creditable tax withheld at source for FYs 1996 and 1997 (Exh. I). Total withholding taxes shown in the annual income tax returns for both FYs 1996 and 1997 amounted to P7,472,423.00 (Exh. I-1) which is almost equal with the total withholding taxes indicated in the certificates of creditable tax withheld at source for fiscal years 1996 and 1997 in the amount of P7,472,425.00 (Exh. I-2).

It is to be noted also that Petitioner's total income from sale of services of P291,124,828.00 as declared in the annual income tax returns for both FYs 1996 (Exhs. A-5 & B-6) and 1997 is even higher than the amount of P262,582,067.80 representing the total of the income payments reflected in the certificates of creditable tax withheld at source (Exhs. D to E, inclusive).

Lastly, the fact of withholding is established by the Certificates of Creditable Tax Withheld at Source issued by Hopewell Power (Phils.) Corporation to Petitioner detailed as follows:

| Exh. | Withholding Agent | Period Covered | Income Payment | Creditable Tax Withheld |
|---|---|---|---|---|
| C | Hopewell Power (Phils) Corp | Apr. 30 to June 30, 1996 | P 83,219,600.00 | P 832,196.00 |
| D | Hopewell Power (Phils) Corp | October 1996 | 55,297,039.40 | 2,764,851.97 |
| E | Hopewell Power (Phils) Corp | Oct. 31 to Dec. 31, 1996 | 124,065,428.40 | 3,875,377.50 |
| | | | P262,582,067.80 | P7,472,425.47 |

Petitioner indicated its intention of having the 1997 excess tax credits of P6,078,633.00 refunded instead of carrying them over to the succeeding year (see Exhibit B-5), by the presentation of the 1998 annual income tax return. Petitioner, for the sake of clarity, has presented the 1998 Annual Income Tax Return ending fiscal year June 30, 1998 (Exh. G) to show that the 1996 and 1997 creditable withholding taxes were not carried over to the said taxable year.

**WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Respondent is **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in the amount of P6,078,633.00 in favor of the Petitioner.

**SO ORDERED.**

AMANCIO Q. SAGA
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**RAMON O. DE VEYRA**
Associate Judge

## CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Judge