REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE COCA-COLA EXPORT CORPORATION, Petitioner,	**C.T.A. CASE NO. 7059**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 2 6 2006

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DECISION

UY, J.:

Before this Court is petitioner's claim for refund or tax credit in the amount of TEN MILLION THREE HUNDRED FIFTEEN THOUSAND FOUR HUNDRED TWENTY FOUR PESOS AND FORTY SIX CENTAVOS (P10,315,424.46) representing an alleged overpayment of final tax erroneously withheld and remitted to respondent for the period September 2002.

THE FACTS

The facts of the case, as borne by the records, are as follows:

Petitioner, a corporation organized and existing under the laws of the State of Delaware, U.S.A., is duly licensed and registered to do business in the Philippines through a Philippine branch.[1] Its place of business is at the 10th Floor, King's Court Building, 2129 Chino Roces [formerly Pasong Tamo] Avenue, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue empowered, among others, to grant claims for refund/tax credit of overpaid final tax, with office address at the BIR National Office Building located at Agham Road, Diliman, Quezon City.[3]

The Coca-Cola Company ("TCCC") is a company duly organized and existing under the laws of the State of Delaware, U.S.A.[4] It is not registered as a corporation or partnership licensed to do business in the Philippines and it does not do business in the Philippines.[5]

Effective January 1, 2001, petitioner and TCCC entered into a Royalty Agreement,[6] whereby petitioner agreed to pay TCCC royalty for the use of the trademarks, secret processes and formulae, other confidential know-how as well as the use of other intangibles in connection with the manufacture of concentrates beverage bases and syrups used in the preparation of beverages. The monthly royalty payments and the balance payments to the TCCC shall be made after deducting therefrom any applicable withholding tax that may be imposed on such payments by Philippine law, taking to

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1 Paragraph 1, Joint Stipulation of Facts and Issues.
2 Paragraph 2, Joint Stipulation of Facts and Issues.
3 Paragraph 3, Joint Stipulation of Facts and Issues.
4 Paragraph 4, Joint Stipulation of Facts and Issues.
5 Paragraph 5, Joint Stipulation of Facts and Issues.
6 The Philippine Intellectual Property Office issued a Certificate of Compliance No. 5-2002-00110 for the Royalty Agreement between petitioner and TCCC valid beginning January 1, 2001.

430

consideration the tax treaty between the Republic of the Philippines and the United States of America.

Subsequently, the Agreement between the Government of the Republic of the Philippines and Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income came into force on March 23, 2001.[7] The said treaty directs the payment of ten percent (10%) tax on royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment.

Consequently, petitioner filed with the Bureau of Internal Revenue ("BIR") a request for confirmation that, among others, the royalties accrued and/or paid by petitioner to TCCC beginning January 1, 2002 are subject to ten percent (10%) withholding tax, pursuant to the RP-US Tax Treaty in relation the RP-China Tax Treaty.[8]

Pending BIR's action on the petitioner's request for confirmation, petitioner filed with the BIR its Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002 and remitted final withholding taxes totaling P80,904,360.32 on October 10, 2002, computed as follows:[9]

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7 The provisions on taxes apply on income derived or which accrued beginning January 1, 2002.
8 Paragraph 8, Joint Stipulation of Facts and Issues.
9 Exhibits B, C and D.

	Tax Base	Tax Rate	Tax Required to be Withheld
Tax Required to be Withheld based on Regular Rates			
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	P 308,547,058.80	15%	P 46,282,058.82
Tax Required to be Withheld based on Tax Treaty Rates			
Royalty Payment (based on RP-US Tax Treaty in relation to RP-China Tax Treaty	346,223,015.00	10%	34,622,301.50
Total Amount Due			P 80,904,360.32

On July 24, 2003, BIR Assistant Commissioner Milagros V. Regalado issued BIR Ruling No. DA-ITAD 101-03, which confirmed that "royalties arising in the Philippines and payable to TCCC for 2001 are subject to tax at the rate of 15 percent (15%) while royalty payments accruing beginning January 1, 2002 shall be subject to 10 percent (10%) pursuant to Article 13(2)(b)(iii) of the RP-US tax treaty, in relation to Article 12(2)(b) of the RP-Russia and RP-China tax treaties, respectively (BIR Ruling No. DA-ITAD 101-03 dated July 4, 2003; RMC 46-02 dated September 2, 2002)."[10]

On August 11, 2004, petitioner filed with the BIR an amended Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002.[11] The amendment was brought about by an alleged error in the amount of royalty declared in the original return. The actual royalty tax base of P346,223,015.00 declared per the original return was allegedly higher than the actual royalty due in the amount of P243,068,770.38 and paid by petitioner to TCCC for the month of September 2002. Consequently, the ten percent (10%) final tax due on royalties was reduced from P34,622,301.50 to

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10 Paragraph 9, Joint Stipulation of Facts and Issues.
11 Exhibit E.

P24,306,877.04 and an over-remittance of P10,315,424.46 was reflected in the amended return as follows:[12]

	Tax Base	Tax Rate	Tax Required to be Withheld
Tax Required to be Withheld based on Regular Rates			
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	P308,547,058.80	15%	P 46,282,058.82
Tax Required to be Withheld based on Tax Treaty Rates			
Royalty Payment (based on RP-US Tax Treaty in relation to RP-China Tax Treaty	243,068,770.40	10%	24,306,877.04
Total Amount Due			P 70,588,935.86
Less: Tax Remitted in Return Previously Filed on October 10, 2002			80,904,360.32
Total Amount of Over-remittance			P(10,315,424.46)

On August 27, 2004, petitioner filed with the BIR an administrative claim for refund/tax credit in the amount of P10,315,424.46 representing the alleged overpaid final withholding taxes on royalties it paid to TCCC for the period September 2002.[13]

Due to the respondent's inaction on its claim and the period within which to file a judicial action for recovery of erroneously collected national internal revenue tax is about to prescribe, petitioner filed a Petition for Review with this Court on September 29, 2004.

In his Answer filed on October 27, 2004, respondent asserts the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund is bereft of both factual and legal bases as it admitted under paragraph 9 of the Petition that it withheld only ten percent (10%) of the gross amount of royalty for the period September 2002;
>
> 5. Petitioner's admission is conclusive upon it;

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12 Ibid.

13 Annex H, Petition for Review.

433

6. Petitioner has the burden to prove by clear and convincing evidence that the royalties paid fall under Article 12(b) of the RP-US Treaty;

7. Petitioner has the burden to prove that it is entitled to the amount claimed for refund;

8. It is presumed that Respondent collected the tax in accordance with law;

9. It is well-settled that claims for refund of taxes partake the nature of exemption from taxes and are strictly construed against the claimant."

During trial, petitioner's lone witness, Karen Obciana-Magbanua, its Financial Reporting Manager, submitted a judicial affidavit[14] in support of its claim for refund or the issuance of tax credit certificate in its favor. Respondent, on the other hand, submitted the case for decision based on the pleadings after manifesting during the November 23, 2005 hearing that he has no witness to present. Both parties were allowed to file their respective memorandum within a period of thirty (30) days therefrom. Only petitioner filed its Memorandum.

Hence, this decision.

THE ISSUES

In their Joint Stipulation of Facts and Issues filed on March 3, 2005, the parties submitted the following issues for this Court's resolution:

1. Whether the royalties paid by petitioner would qualify under Article 13 (2)(B)(III) of the RP-US Treaty;

2. Whether petitioner overpaid final withholding taxes to the government in the amount of P10,315,424.46 due to an erroneous royalty base higher than the amount of royalty actually remitted by petitioner; and

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14 Exhibit R.

3. Whether petitioner's claim for refund is duly substantiated.

THIS COURT'S RULING

Anent the first issue, petitioner submits that the "most favored nation clause" or Article 13(2)(b)(iii) of the RP-US Tax Treaty must be interpreted in relation to Article 12 of the RP-China Tax Treaty, thus effectively reducing the twenty-five percent (25%) withholding tax to ten percent (10%) tax due from the royalties. For clarity and a better understanding of the provisions of the subject tax treaties, the pertinent articles and provisions are hereunder quoted:

"RP-US TAX TREATY

Article 13

Royalties

1.) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

2.) However, the tax imposed by that Contracting State shall not exceed:

a.) In the case of the United States, 15 per cent of the gross amount of the royalties, and

b.) In the case of the Philippines, the least of:

(i) 25 per cent of the gross amount of the royalties;

(ii) 15 per cent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

(iii) the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State.

3.) The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic film or films or tapes used for radio or television, broadcasting, any patent, trade mark, design or model, plan, secret formula or process or other like right or property, or for the information concerning industrial, commercial or scientific experience. The term 'royalties' also includes gains derived from the sale, exchange or other disposition thereof." *(Emphasis Ours)*

"RP-CHINA TAX TREATY

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of the State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

   a. 15 per cent of the gross amount of royalties arising from the use of, the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for television or broadcasting or

   b. 10 per cent of the gross amount of royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for

> information concerning industrial, commercial or scientific experience.
>
> For as long as the transfer of technology, under Philippine Law, is subject to approval, the limitation of the tax rate mentioned under (b) shall, in the case of royalties arising in the Republic of the Philippines, only apply if the contract giving rise to such royalties has been approved by the Philippines competent authorities.

3. The term 'royalties' shall mean payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience."

The Court finds the instant petition meritorious.

The phrase "royalties paid under similar circumstances" in the most favored nation clause of the RP-US Tax Treaty contemplates "circumstances that are tax-related." Applying the ruling of the Supreme Court in ***Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.,***[15] the concessional tax rate of 10% provided for in the RP-China Tax Treaty should apply only if the taxes imposed upon royalties in the RP-US Tax Treaty and in the RP-China Tax Treaty are paid under similar circumstances. This means that the RP-US Tax Treaty grants similar tax relief to residents of the U.S. with respect to taxes imposable upon royalties earned from sources within the Philippines as those allowed to their Chinese counterparts under the RP-China Tax Treaty. The Supreme Court explained:

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15 309 SCRA 87 [1999], 107.

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"The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the 'most favored' among other countries. The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation. The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided that the subject matter of taxation, in this case royalty income, is the same as that in the tax treaty under which the taxpayer is liable. xxx"

As We already enunciated in an earlier case involving the same parties:

"In this instant case, both the Philippines as the state of source, and the United States as the state of residence, are permitted to tax the royalties paid by the petitioner for the right to use TCCC's trademarks, secret processes and formulae, and other confidential know-how relating to or in connection with the manufacture of concentrate beverage bases and syrups. This, undoubtedly, is a case of double taxation. Under the RP-US Tax Treaty, the allowance of a tax credit to citizens or residents of the United States (in a[n] appropriate amount based upon the taxes paid or accrued to the Philippines) against the United States tax, but such tax shall not exceed the limitations provided by United States law for the taxable year, is allowed to give relief from double taxation. On the other hand, under Article 13 thereof, the Philippines is given the choice from three rates, namely: 25% of the gross amount of royalties; 15% when the royalties are paid by a corporation registered with the Philippine Board of Investment and engaged in preferred areas of activities, or; the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of the third State.

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Based on the above provisions, the concessional rates of 15% and 10% as provided under the RP-Russia and RP-China Tax Treaties, respectively, should apply only if the taxes imposed upon royalties in the RP-US Tax Treaty, RP-Russia Tax Treaty and RP-China Tax Treaty are paid under similar circumstances. Under Article 23 (1) & (2) Relief from Double

Taxation of the RP-US Tax Treaty, it is provided that the allowable foreign tax credit under the treaties is the appropriate amount of taxes actually paid or accrued to the Philippines. Although various tax treaties already in force would show dissimilar provisions on the relief from or avoidance of double taxation as this is a matter of negotiations between the contracting states, a cursory reading of the RP-Russia and RP-China Tax Treaties reveals similar provisions on the relief from or avoidance of double taxation as those stipulated in the RP-US Tax Treaty. There is no provision on a 'matching credit' similar to that found in the RP-West Germany Tax Treaty (Commissioner of Internal Revenue vs. SC Johnson and Son, Inc., supra). In other words, the three treaties deal with the method of payment by allowing a credit of the foreign tax as against the taxes actually paid in the Philippines, which is considered as paid under similar circumstances. It must be stressed that the purpose of the most favored nation clause is to grant to the contracting state treatment not less favorable that that which has been or may be granted to the 'most favored' among other countries. This is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation (Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., supra).

This likewise finds support in BIR Ruling DA-ITAD No. 103-03 dated July 24, 2003, which provides in part:

> 'In the case of Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R.N. 127105, promulgated on June 25, 1999, the Supreme Court interpreted the "most favored nation" clause, particularly the phrase "paid under similar circumstances", as referring to the manner of payment of taxes and not to the subject matter of the tax which is royalties. A perusal of the RP-US, RP-Russia and RP-China tax treaty provisions on the avoidance of double taxation shows a similarity on the manner of payment of taxes, that is, the allowable foreign tax credit on the three treaties is the amount actually paid in the Philippines.
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> Such being the case, and since TCCEC is not registered and engaged in preferred areas of activities in the Philippines, royalties arising in the Philippines and payable to TCCC for 2001 are

439

> subject to tax at the rate of 15 per cent (15%) while royalty payments accruing beginning January 1, 2002 shall be subject to 10 per cent (10%) pursuant to Article 13 (2)(b)(iii) of the RP-US tax treaty, in relation to Article 12 (2)(b) of the RP-Russia and RP-China tax treaties, respectively. (BIR Ruling No. DA-ITAD-101-103 dated July 24, 2003; RMC 46-02 dated September 2, 2002)'

> Moreover, Revenue Memorandum Circular No. 46-02, or the Memorandum Circular clarifying the implication of Article 12 (2)(b) on royalties of the RP-China Tax Treaty, which took effect on January 1, 2002 (Article 28 (2) RP-China Tax Treaty), in relation to Article 13 (2)(b)(iii) or the 'most favored nation' clause of the RP-US Tax Treaty, confirmed petitioner's stand that the tax on royalties to resident of the United States and China can be considered as paid under similar circumstances.

> **Clearly then, the provisions of the RP-China Tax Treaty, more particularly, the reduced tax rate on royalties at 10% should apply to petitioner.**" [16] *(Emphasis Ours)*

The similarity in the circumstances of payment of taxes is a condition present in the case and which entitles petitioner to enjoy the most favored nation treatment.[17] In fact, petitioner already availed of this privilege as it withheld and remitted to the BIR only ten percent (10%) final tax on royalties it paid to TCCC. Notably, the present case actually stemmed from petitioner's alleged use of erroneous royalty tax base.

Now, We proceed to the remaining issues. As aforementioned, since this case really involves a claim for refund/tax credit of alleged overpaid final withholding tax due to an erroneous tax base and not on the proper application/interpretation of tax treaties, the provisions of the National Internal

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16 The Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue, C.T.A. Case No. 6861, November 22, 2005.

17 Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., supra.

440

Revenue Code (NIRC) of 1997 shall apply. Hence, to be entitled to the refund/tax credit sought for, it is imperative for petitioner to prove that:

1. the claim was filed within the two-year prescriptive period both in the administrative and judicial levels as provided for under Sections 204(C) and 229 of the NIRC of 1997; and

2. there was actual over-remittance of final withholding taxes on royalties in the amount of P10,315,424.46 for the month of September 2002.

Based on the records of this case, petitioner complied with the first requirement. Sections 204 and 229 of the NIRC of 1997, provide as follows:

> "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."
>
> "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**

(441)

> **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 therefore, 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." *(Emphasis Ours)*

The instant claim pertains to erroneously remitted final withholding taxes for the month of September 2002 for which petitioner filed with the BIR its Monthly Remittance Return of Final Taxes Withheld and paid the corresponding taxes on October 10, 2002. Counting from said date, 2004 being a leap year, petitioner had until October 9, 2004 within which to file its claim for refund/tax credit certificate both in the administrative and judicial levels. Thus, both the letter-claim for refund/tax credit certificate with the BIR on August 27, 2004 and the Petition for Review with this Court on September 29, 2004 were filed well within the prescriptive period.

Also, petitioner was able to sufficiently establish by documentary evidence that there was an actual over-remittance of P10,315,424.46 final withholding taxes on the royalties it paid to TCCC for the month of September 2002.

As per evidence submitted in this case, petitioner filed its Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002 and remitted final withholding taxes in the sum of P80,904,360.32, as follows:[18]

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[18] Exhibits B, C & D.

	Tax Base	Tax Rate	Tax Required to be Withheld
Tax Required to be Withheld based on Regular Rates			
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	P 308,547,058.80	15%	P 46,282,058.82
Tax Required to be Withheld based on Tax Treaty Rates			
Royalty Payment (based on RP-US Tax Treaty in relation to RP-China Tax Treaty	346,223,015.00	10%	34,622,301.50
Total Amount Due			P 80,904,360.32

The amended Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002 filed by the petitioner on August 11, 2004[19] discloses an over-remittance of P10,315,424.46, computed as follows:

	Tax Base	Tax Rate	Tax Required to be Withheld
Tax Required to be Withheld based on Regular Rates			
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	P308,547,058.80	15%	P 46,282,058.82
Tax Required to be Withheld based on Tax Treaty Rates			
Royalty Payment (based on RP-US Tax Treaty in relation to RP-China Tax Treaty	243,068,770.40	10%	24,306,877.04
Total Amount Due			P 70,588,935.86
Less: Tax Remitted in Return Previously Filed on October 10, 2002			80,904,360.32
Total Amount of Over-remittance			P(10,315,424.46)

Petitioner alleges that there was an error in the amount of royalty declared in the original return considering that the tax base used in the original return was P346,223,015.00 instead of the actual amount of royalty due for September 2002 and paid to TCCC in the amount of P243,068,770.38.[20] Consequently, the ten percent (10%) royalty tax due thereon should be P24,306,877.04 and not P34,622,301.50.

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19 Exhibit E.
20 Exhibit R.

We agree. The various documents submitted by petitioner, such as the machine validated Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002,[21] Official Receipt from the Land Bank of the Philippines,[22] and Certification from the Bureau of Internal Revenue,[23] show that petitioner indeed paid a total amount of P80,904,360.32 final withholding taxes which included the amount of P34,622,301.50, representing 10% final withholding taxes on royalty payments of P346,223,015.00 for the month of September 2002.

The total amount of royalties due to TCCC for the period January to December 2002 of P1,877,392,472.90 was remitted by petitioner in tranches after deducting the corresponding ten percent (10%) withholding tax as evidenced by the various debit advices issued by Citibank from December 5, 2002 to April 22, 2003.[24] The Certification dated September 1, 2004 issued by Mr. Steve M. Whaley, Vice-President & General Tax Counsel of TCCC,[25] indicates that petitioner owed TCCC the royalty amount of only P243,068,770.38 instead of the declared royalty tax base of P346,223,015.00 as computed per petitioner's Royalty Expense Computation Worksheet and internal financial statement for September 2002.[26] Evidently, the royalty tax base of P346,223,015.00 reflected in the petitioner's original Monthly Remittance Return of Final Income Taxes Withheld for September 2002[27] was overstated by P103,154,244.62 (P346,223,015.00 less P243,068,770.38). As

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[21] Exhibit B.
[22] Exhibit C.
[23] Exhibit D.
[24] Exhibits I to O.
[25] Exhibits H and H-1.
[26] Exhibit F and G.
[27] Exhibit B.

444

a result of such overstatement in royalty payments of P103,154,244.62, petitioner over-remitted the related ten percent (10%) final withholding taxes of P10,315,424.46.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED** and respondent is **ORDERED** to refund or issue a tax credit certificate in the amount of TEN MILLION THREE HUNDRED FIFTEEN THOUSAND FOUR HUNDRED TWENTY FOUR PESOS AND FORTY SIX CENTAVOS (P10,315,424.46) to petitioner representing overpayment of final tax erroneously withheld and remitted to respondent for the period September 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

(On Official Business)
OLGA PALANCA-ENRIQUEZ
Associate Justice

445

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
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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