REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MIRANT (PHILIPPINES) ENERGY CORPORATION, Petitioner,	**C.T.A. CASE NO. 7214**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 15 2008 8:07 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

The instant "Petition for Review" seeks the refund or issuance of a tax credit certificate with the aggregate amount of **SIXTEEN MILLION THREE HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED THIRTEEN PESOS (P16,366,413.00)**, representing excess creditable withholding taxes for calendar years 2002 and 2003.

Mirant (Philippines) Energy Corporation (petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Suite 501, CTC Building, 2232 Roxas

Boulevard, Pasay City.[1] Petitioner is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification No. 002-243-275.[2] It is primarily engaged in the business of developing, designing, constructing, erecting, assembling, commissioning, owning, operating, maintaining, rehabilitating, and managing gas turbine and other power generating plants and related facilities for the conversion into electricity, coal, distillate and other fuel provided by and under contract with the government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, who is vested with the authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On August 16, 2001, petitioner filed with the Securities and Exchange Commission (SEC) its Amended Articles of Incorporation stating its intent to change its corporate name from Mirant (Philippines) Mobile Corporation to Mirant (Philippines) Energy Corporation; and to include the business of supplying and delivering electricity and providing services necessary in

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 274.
[2] Par. 4, Jointly Stipulated Facts, JSFI, Docket, p. 275.
[3] Par. 1, Jointly Stipulated Facts, JSFI, Docket, p. 275.
[4] Par. 2, Admitted Facts, JSFI, Docket, p. 274.

connection with the supply or delivery of electricity. The SEC approved the same on October 22, 2001.[5]

Petitioner filed its Annual Income Tax Return (ITR) for calendar years 2002 and 2003 on April 15, 2003 and April 15, 2004, respectively, reflecting overpaid income taxes or excess creditable withholding taxes, detailed as follows:

	2002[6]	2003[7]
Gross Income	P 40,116,829.00	(44,470,276.00)
Add: Non-Operating & other Income	-	1,103,514.00
Total Gross Income	40,116,829.00	(43,366,762.00)
Less: Deductions	62,759,099.00	191,604,886.00
Taxable Income (Loss)	(22,642,270.00)	(234,971,648.00)
Tax Rate	32%	32%
Minimum Corporate Income Tax	802,337.00	0
Income Tax Due	802,337.00	0
Less: Creditable Tax Withheld for 1st 3 Quarters	4,303,356.00	0
Creditable Tax Withheld for 4th Quarters	2,730,984.00	5,788,032.00
Total Tax Credits/Payments	7,034,340.00	10,134,410.00
Tax Overpayment	**(P6,232,003.00)**	**(10,134,410.00)**

Petitioner indicated in the same ITRs its option to refund the tax overpayments for calendar years 2002 and 2003.

On March 22, 2005, petitioner filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of P16,366,413.00, representing overpaid income tax or excess creditable withholding tax of petitioner for calendar years 2002 and 2003.[8]

Due to the inaction of respondent and in order to toll the running of the two-year prescriptive period for claiming a refund under Section 229 of the

[5] Pars. 2 and 3, Jointly Stipulated Facts, JSFI, Docket, p. 275.
[6] Exhibit "I".
[7] Exhibit "J".
[8] Par. 6, Jointly Stipulated Facts, JSFI, Docket, p. 275.

National Internal Revenue Code (NIRC) of 1997, petitioner filed the instant Petition for Review on April 14, 2005.

Respondent in his Answer interposed the following Special and Affirmative Defenses:

"3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

6. Petitioner's claim for refund/issuance of tax credit in the amount of **P16,366,413.00**, as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were not fully substantiated by proper documentary evidence.

7. Petitioner failed to prove that the amount of **P16,366,413.00** as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were included as part of its gross income for the said taxable years 2002 and 2003, and did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.

8. The filing of the instant petition for review with this Honorable Court was premature since respondent was given an ample opportunity to examine its claim for refund.

9. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it complied with the provisions of ***Sections 204*** in relation to ***Section 230 (now 229)*** of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. 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

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(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."[9]

After trial on the merits, the case was submitted for decision on November 29, 2007, without respondent's Memorandum.

The issues[10] as stipulated by the parties are as follows:

"1. Whether or not petitioner is entitled to the refund of P16,366,413.00 representing excess and unutilized creditable withholding taxes for calendar years 2002 and 2003 by showing that –

a. The creditable withholding taxes amounting to P16,366,413.00 are duly supported by Certificates of Creditable Tax Withheld at Source;

b. The income from which these creditable taxes were withheld were duly declared as part of Petitioner's income in its annual income tax returns for calendar years ended December 31, 2002 and December 31, 2003;

c. Petitioner had shown that it did not carry over its unutilized creditable withholding taxes for calendar years ended December 31, 2002 and December 31, 2003 to the succeeding taxable period;

d. Petitioner had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period provided under Sections 204 and 229 of the National Internal Revenue Code, as amended."

The issues above can be summed into one primordial issue, *viz.*, "Whether or not petitioner is entitled to the refund of P16,366,413.00, representing excess and unutilized creditable withholding taxes for calendar years 2002 and 2003". Jr

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[9] Answer, Docket, pp. 249-250.

[10] Jointly Stipulated Issues, JSFI, Docket, p. 276.

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Petitioner's claim for refund is anchored on Sections 76 and 204(C) of the National Internal Revenue Code of 1997, which are quoted below for ready reference, to wit:

> "**SEC. 76. Final Adjustment Return**. – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -**
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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." (*Emphasis supplied*)

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Settled is the rule that a corporation must signify in its Annual ITR its intention whether to request refund of the overpaid income tax or claim the automatic tax credit to be applied against its income tax liabilities for the quarters of the succeeding taxable year by marking the appropriate box in the same ITR[11]. In the present case, petitioner signified its intention that the excess creditable tax withheld for calendar years 2002 and 2003 be refunded.

Under Line 30 of the 2002 Annual ITR[12], petitioner marked "x" the box "To be refunded". In order to prove that petitioner did not carry-over its 2002 excess withholding tax, petitioner presented its 2003 Annual ITR[13] which does not have any entry in Line 27A "Prior Year's Excess Credits". Under Line 31 of the same 2003 Annual ITR, petitioner marked "x" the box "To be refunded" and petitioner presented its 2004 Annual ITR[14], showing no entry in Line 27A "Prior Years Excess Credit" to prove that it did not carry-over its 2003 excess withholding tax.

However, petitioner's entitlement to refund is still subject to the satisfaction of the requirements laid down by the NIRC of 1997, as amended, namely:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 230 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 to the payee showing the amount paid and the amount withheld therefrom; and

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11 *Commissioner on Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005.
12 Exhibit "I-1".
13 Exhibit "J-4".
14 Exhibits "Q-1" to "Q-7".

3. That the income upon which the taxes were withheld is included as part of the gross income declared in the income tax return of the recipient.[15]

As regards the first requirement, Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended, provides:

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

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." (*Emphasis supplied*)

"**Section 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 payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon

[15] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 155682, March 27, 2007; *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1995.

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which payments was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*)

Petitioner complied with the first requisite. The subject claim involves calendar years 2002 and 2003. Petitioner filed its Annual Income Tax Returns on April 15, 2003 and April 15, 2004[16]. Counting from these dates, petitioner had until April 15, 2005 and April 15, 2006 within which to file its administrative and judicial claims for refund. Petitioner filed with the BIR its administrative claim for refund on March 22, 2005[17]. The instant petition was filed on April 14, 2005. Hence, both the administrative and judicial claims for refund were timely filed within the two-year prescriptive period.

Anent the second requirement, the Supreme Court enunciated in the case of **Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue**[18] that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee through the Certificates of Creditable Taxes Withheld at Source. In the present case, petitioner submitted to this Court as part of its documentary evidence ten (10) Certificates of Creditable Taxes Withheld at Source, which provide the following details:

Exhibit	Withholding Agent	Period Covered	Amount of Tax Withheld
K-1	Republic Cement Corporation	Jan to Mar 2002	P 781,820.01
K-2	Republic Cement Corporation	Apr to Jun 2002	1,955,218.28
K-3	Republic Cement Corporation	Jul to Sep 2002	1,566,317.51
K-4	Republic Cement Corporation	Oct to Dec 2002	1,607,109.60
K-5	Mirant (Philippines) Industrial Power Corp.	Oct to Dec 2002	1,123,874.00
Total 2002 Tax Withheld			**P 7,034,339.40**

[16] Par. 5, Jointly Stipulated Facts. JSFI, Docket, p. 275.
[17] Par. 6, Jointly Stipulated Facts. JSFI, Docket, p. 275.
[18] G.R. No. 155682, March 27, 2007.

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L-1	Republic Cement Corporation	Jan to Mar 2003	1,443,426.63
L-2	Republic Cement Corporation	Apr to Jun 2003	1,886,028.61
L-3	Republic Cement Corporation	Jul to Sep 2003	1,789,226.40
L-4	Republic Cement Corporation	Oct to Dec 2003	1,583,627.55
L-6	Solid Development Corporation	Oct to Dec 2003	3,432,101.01
Total 2003 Tax Withheld			**P 10,134,410.20**
Total Taxes Withheld for 2002 & 2003			**P 17,168,749.60**

The aggregate amount of P17,168,749.60 constitutes the creditable withholding taxes withheld from the Certificates of Creditable Tax Withheld at Source on its services to Republic Cement Corporation, Mirant (Philippines) Industrial Power Corporation and Solid Development Corporation for taxable years 2002 and 2003.

Regarding the third requisite, the income from which the creditable taxes were withheld were duly declared as part of petitioner's income in its Annual Income Tax Returns for 2002[19] and 2003[20], showing the following:

	2002	2003
Gross Income	P 40,116,829.00	(44,470,276.00)
Add: Non-Operating and other Income	-	1,103,514.00
Total Gross Income	40,116,829.00	(43,366,762.00)

The abovementioned declarations are further supported by the testimonies[21] of Ms. Imelda Dela Cruz Tagama, petitioner's Accounting Manager and Mr. Ruben R. Rubio, the Independent Certified Public Accountant (ICPA) duly commissioned by the Court, proving that the total amount of Creditable Withholding Tax per petitioner's Annual ITRs for calendar years ended December 31, 2002 and December 31, 2003 agrees with the total amount of Creditable Withholding Tax presented on petitioner's Schedule of Creditable Withholding Tax Certificates for the calendar years

[19] Exhibit "I".
[20] Exhibit "J".
[21] Exhibits "G", "H", T", and "U".

ended December 31, 2002[22] and December 31, 2003[23]. Moreover, the total amount of gross sales/revenue reported in the Annual ITRs for calendar years 2002 and 2003 is equal to the amounts recorded in the General Ledger Listing of the Creditable Withholding Tax on the Transfer of Real Property and Sale of Electricity, 2002 Reconciliation of Revenue per ITR and per General Ledger.[24] Hence, the third requirement is satisfied.

To recapitulate, since petitioner has complied with the requirements for tax refund claim provided in Section 204 of the NIRC of 1997 and applicable jurisprudence; thus, petitioner is entitled to the refund of its unutilized creditable withholding taxes computed as follows:

Taxable Year 2002				
Minimum Corporate Income Tax	P	802,337.00		
Less: Creditable Withholding Tax		7,034,339.39		
Excess Tax Credits			P	(6,232,002.39)
Taxable Year 2003				
Tax Due		-		
Less: Creditable Withholding Tax	P	10,134,410.20		
Excess Tax Credits				(10,134,410.20)
Total Excess Tax Credits			**P**	**(16,366,412.59)**

WHEREFORE, the instant "Petition for Review" is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the modified amount of **SIXTEEN MILLION** THREE HUNDRED **SIXTY-SIX THOUSAND FOUR HUNDRED TWELVE AND 59/100 (P16,366,412.59)**, representing petitioner's

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[22] Exhibit "N".
[23] Exhibit "O".
[24] Exhibits "M-1" to "M-15".

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excess and unutilized creditable withholding taxes for calendar years 2002 and 2003.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.
Associate Justice
Chairperson

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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.

ERNESTO D. ACOSTA
Presiding Justice

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