REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

STAR PERFORMANCE INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A CASE NO. 6639

Members:

CASTAÑEDA, JR., *Chairman*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAR 2 4 2006

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DECISION

CASTAÑEDA, JR., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P2,297,485.00 allegedly representing excess creditable withholding taxes for taxable year 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at J.Y. & Sons Industrial Compound, Phividec Industrial Complex, Taguig, Metro Manila. Petitioner is registered

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with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number 004-001-798-590 (*pars. 1 & 3, Summary of Admitted Facts, pp. 51-52, Records*).

On April 4, 2001, petitioner filed its 2000 Annual Income Tax Return (*Exhibit A*) declaring neither taxable income nor loss but reflecting a minimum corporate income tax (MCIT) liability of P830,940.00 which was offset against the creditable taxes withheld of P3,128,425.00 leaving an income tax overpayment of P2,297,485.00, computed as follows:

Sales	P314,875,416.00
Less: Cost of Sales	273,947,874.00
Gross Income from Operation	P 40,927,542.00
Add: Non-Operating & Other Income	619,476.00
Gross Income	P 41,547,018.00
Less: Deductions	41,547,018.00
Taxable Income	-
Minimum Corporate Income Tax	P 830,940.00
Less: Tax Credits	
Creditable Tax Withheld for the First Three Quarters	P 2,416,437.00
Creditable Tax Withheld for the Fourth Quarter	711,988.00
Total Tax Credits	P 3,128,425.00
Overpayment	P 2,297,485.00

Petitioner opted to have the excess amount of P2,297,485.00 refunded. Also, petitioner did not carry-over the excess tax credits of P2,297,485.00 in its income tax return for the succeeding taxable year 2001 (*Exhibit M*).

On April 6, 2001, petitioner filed with the Bureau of Internal Revenue a letter claiming for the refund of its excess/unutilized creditable withholding taxes for the years 1998 to 2000 in the aggregate amount of P8,878,132.00 (*Exhibit B*), broken down as follows:

1998	P 3,370,050.00
1999	3,210,597.00
2000	2,297,485.00
	P 8,878,132.00

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On April 18, 2002, petitioner filed another letter with the BIR reiterating its request for the refund and/or issuance of a tax credit certificate corresponding to its excess creditable withholding taxes for taxable year 2000 in the amount of P2,297,485.00 (*Exhibit C*).

Due to the inaction of the respondent and in order to toll the running of the two-year prescriptive period provided under Section 229 of the NIRC of 1997, petitioner filed the instant Petition for Review with this Court on April 3, 2003.

In his Answer filed on June 5, 2003, respondent asserted the following Special and Affirmative Defenses:

4. Petitioner has not shown proof that the excess withholding taxes claimed was not utilized for the succeeding years;

5. Petitioner' has not shown proof that the income from which the withholding taxes were withheld and subject matter of the claim was reported in its income tax returns for the year 2000;

6. Petitioner failed to substantiate its claim by proper documentary evidence;

7. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue 67 SCRA 95);

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

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

In their Joint Stipulation of Issues filed on October 22, 2003, the parties presented the following for the resolution of this Court:

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1. Whether or not the excess or unutilized creditable tax withheld in the amount of P2,297,485.00 are duly supported by documents showing the amount paid and the amount of tax withheld therefrom;

2. Whether or not the income upon which creditable taxes were withheld by the income payors were included and reported as part of Petitioner's gross income in its income tax return for taxable year 2000;

3. Whether or not the amount of P2,297,485.00 representing unutilized withholding tax credits of Petitioner for taxable year 2000 was utilized or applied against its income tax liability for the subsequent taxable year;

4. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P2,297,485.00 representing unutilized/excess creditable withholding taxes for calendar year ended December 31, 2000.

Petitioner anchors its claim for refund on Sections 76 and 204(C) of the National Internal Revenue Code of 1997 which provide:

"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 said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

"(A) Pay the balance of tax still due; or

"(B) Carry-over the excess credit; or

"(C) <u>Be credited or refunded with the excess amount paid, as the case may be.</u>

"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 quarters of the succeeding 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.* – The Commissioner may –
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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."

Based on the afore-quoted law, petitioner may seek the refund of excess income tax payments shown in its final adjustment return. However, before petitioner can be entitled to the refund thereof, it must show compliance with the following requisites:

1) That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;

2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A), showing the amount paid and the amount of tax withheld therefrom; and

3) That the income upon which the taxes were withheld was included in the return of the recipient (*Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459;*).

Records show that petitioner complied with the first requisite. The subject claim pertains to taxable year 2000 for which petitioner filed its income tax return on April 4, 2001. Counting from this date, petitioner had until April 4, 2003 within which to file its claim for refund/tax credit both in the administrative and judicial levels. Thus, the administrative claim for refund originally filed on April 4, 2001 and the Petition for Review filed on April 3, 2003 were timely filed within the two-year prescriptive period.

To prove the fact of withholding, petitioner submitted various Certificates of Creditable Tax Withheld at Source showing creditable withholding taxes in the amount of P3,128,425.21 on sale of goods it made to Avon Cosmetics and Triumph International (Phils.) Inc. for taxable year 2000 in the amount of P312,844,244.44, detailed as follows:

Exh.	Period Covered	Withholding Agent	Income Payment	Tax Withheld
D	1/01/00 - 3/31/00	Avon Cosmetics	P 6,850,189.00	P 68,501.89
E	4/01/00 - 6/30/00	Avon Cosmetics	10,047,100.00	100,471.00
F	7/01/00 - 9/30/00	Avon Cosmetics	7,167,480.00	71,674.80
H	1/01/00 - 3/31/00	Triumph International (Phils), Inc.	72,188,627.92	721,886.29
I	4/01/00 - 6/30/00	Triumph International (Phils), Inc.	62,597,384.57	625,973.83
J	7/01/00 - 9/30/00	Triumph International (Phils), Inc.	82,791,869.49	827,929.63
		Subtotal	**P241,642,650.98**	**P2,416,437.44**
G	10/01/00 – 12/31/00	Avon Cosmetics	P 15,810,125.00	P 158,101.25
K	10/01/00 – 12/31/00	Triumph International (Phils), Inc	55,391,648.46	553,886.52
		Subtotal	**P 71,201,773.46**	**P 711,987.77**
		Total	**P312,844,424.44**	**P3,128,425.21**

As to the third requisite, the Schedule of Sales for the year ended December 31, 2000 (*Exhibit N*) and Trial Balance as of December 31, 2000 (*Exhibit O-1*) submitted by petitioner show that the gross sales amount of P314,875,416.00 reflected in its 2000 income tax return (*Exhibit A*) pertains to the sales made by petitioner to its only clients Avon Cosmetics and Triumph International (Phils.), Inc.. This gross sales figure of P314,875,416.00 included the amount of P312,844,424.44 which relates to the creditable withholding taxes of P3,128,425.21 as testified to by petitioner's Accounting Manager, Ms. Jennylyn Barrera *(June 10, 2004, TSN, pages 10-15*). Thus, petitioner properly declared in its 2000 income tax return the income related to the reported creditable withholding taxes of P3,128,425.21.

In sum, petitioner has complied with all the above requisites and has sufficiently proven its claim for refund/tax credit of excess creditable withholding taxes for the year 2000 in the amount of P2,297,485.00.

WHEREFORE, the Petition for Review is hereby **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to the petitioner in the amount of P2,297,485.00 representing excess creditable withholding taxes for taxable year 2000.

SO ORDERED.

Juanito C. Castañeda, Jr.
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.
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

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