REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. (PHILIPPINE BRANCH),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8626

Members:

DEL ROSARIO, *PJ,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 01 2014, 8:33 p.m.

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RESOLUTION

DEL ROSARIO, PJ.:

This resolves respondent's **"MOTION FOR RECONSIDERATION"** filed on October 9, 2014, with petitioner's **"COMMENT"** filed on October 30, 2014.

Respondent seeks reconsideration of the Decision of this Court, dated September 17, 2014, the dispositive portion of which reads, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby ordered to refund or to issue a tax credit certificate in favor of petitioner **DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD (PHILIPPINE BRANCH)** in the amount of **NINE MILLION THREE HUNDRED TWENTY FIVE THOUSAND THREE HUNDRED TWENTY THREE PESOS** (₱9,325,323.00), representing its excess and unutilized creditable withholding taxes for the year ending December 31, 2010.
>
> **SO ORDERED.**"

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The motion is anchored on the grounds that petitioner is not entitled to the claim for refund for failure to exhaust administrative remedies and to comply with the documentary requirements prescribed under Revenue Memorandum Order (RMO) No. 53-98[1] and Revenue Regulation (RR) No. 2-2006.[2]

In its Opposition, petitioner contends that compliance with RMO 53-98 and RR 2-2006 is not a pre-requisite to the entitlement to a claim for refund of unutilized Creditable Withholding Tax (CWT) and that it exhausted administrative remedies when it filed with the Bureau of Internal Revenue (BIR) its administrative claim for refund of unutilized creditable withholding taxes on January 29, 2013.

After a careful evaluation of the parties' respective arguments, the Court finds no merit in the motion.

As correctly pointed out by petitioner, it exhausted the available administrative remedy by filing a claim for refund with the BIR on January 29, 2013, within the two (2) year prescribed period under Section 76 of the National Internal Revenue Code (NIRC), as amended. Thus, respondent was given the opportunity to resolve petitioner's claim prior to the filing of petitioner's judicial claim for refund before this Court on April 4, 2013.

With regard to respondent's claim that petitioner failed to comply with the documentary requirements to support its claim for refund, the Court finds the same bereft of merit.

RMO 53-98 prescribes the requirements in the administrative level of claims for refund/tax credit, wherein the taxpayer is required to submit for audit purposes, all pertinent documents/records to establish the veracity of his claim. on

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[1] "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket"

[2] "Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payment"

On the other hand, RR 2-2006 prescribes the attachment to the tax returns of a Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) when a taxpayer files a claim for refund.

Once the claim for refund reaches the judicial level, the taxpayer-claimant is required to establish or prove the following:

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

2) 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; and,

3) That the income upon which the taxes were withheld was included in the return of the recipient.[3]

In *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[4] the Supreme Court emphasized that under Section 8 of Republic Act No. 1125, as amended, the Court of Tax Appeals (CTA) is a court record and since cases filed before the CTA are litigated *de novo*, party litigants should prove every minute aspect of their cases. Thus, it is the evidence presented before the CTA by the taxpayer-claimant which is vital in proving its claim. In this case, the pieces of evidence submitted by petitioner were sufficient to establish its entitlement to the subject claim for refund or tax credit.

WHEREFORE, finding no valid or cogent reason to modify or reverse the Decision, respondent's **"MOTION FOR RECONSIDERATION"** filed on October 9, 2014 is hereby **DENIED** for lack of merit.

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[3] *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation [Formerly Mirant (Philippines) Operations Corporation]*, G.R. No. 185728, October 16, 2013.
[4] G.R. No. 153204, August 31, 2005.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice