REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SYSTRA PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7178

Members:

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

Promulgated:

AUG 2 4 2007

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DECISION

UY, J.:

This is a Petition for Review praying for the issuance of a Tax Credit Certificate in the amount of ₱2,889,675.00 allegedly representing petitioner's unutilized excess creditable withholding taxes (CWT) for taxable years 2002 and 2003.

THE FACTS

Culled from the records of this case and as stipulated by the parties in their Joint Stipulation of Facts and Issues,[1] these are the facts of the case.

[1] Joint Stipulation of Facts and Issues (JSFI), Records, pp. 105-112.

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Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Unit 2204-D, 22nd Floor, West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City. It is primarily engaged in consultancy and management services for firms and entities engaged in the field of railways, train and mass transit systems and other areas in transportation and communications; and provides planning and development services, systems/project studies, construction supervision and project management, modernization and rehabilitation of networks, training of technical staff and other related services.[2] It is registered with the Bureau of Internal Revenue (BIR) as an income, value-added and withholding taxpayer with Tax Identification No. 004-665-254-000.[3]

On March 31, 2003, petitioner filed with the BIR its Annual Income Tax Return (ITR) for the calendar year (CY) ended December 31, 2002 indicating thereon its intention to carry-over its unutilized withholding tax credits of P1,588,639.00 to the succeeding CY 2003.[4] It reflected the computation of tax as follows:[5]

Sales Revenues/Receipts/Fees	16,856,626.00
Less:Cost of Sales/Services	12,140,697.00
Gross Income from Operation	4,715,929.00
Add: Non Operating & Other Income	135,265.00
Total Gross Income	4,851,194.00
Less: Deductions	4,850,042.00
Taxable Income	1,152.00
Tax Rate	32%
Income Tax	369.00
Minimum Corporate Income Tax (MCIT) Tax Due	97,024.00
Tax on transactions under Regular Rate	97,024.00

[2] Par. 3 of Admitted Facts, JSFI.
[3] Par. 4 of Admitted Facts, JSFI.
[4] Par. 8 of Admitted Facts, JSFI.
[5] Exhibit "A"; Docket, pp. 172-174; Par. 5 of Admitted Facts, JSFI.

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Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate	-
Balance	97,024.00
Aggregate Income Tax Due	97,024.00
Less: Creditable Tax Withheld for the First Three Quarters	1,155,984.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	529,679.00
Total Tax Credits/Payments	1,685,663.00
Tax Payable/Overpayment	(1,588,639.00)
Total Amount Payable	(1,588,639.00)

Then on April 2, 2004, petitioner filed its Annual Income Tax Return for CY 2003[6] with the BIR and indicated on the return, its intention to claim a tax credit certificate for its unutilized creditable withholding taxes as of December 31, 2003. The computation of tax was stated as follows:[7]

Sales Revenues/Receipts/Fees	14,438,084.00
Less:Cost of Sales/Services	9,098,319.00
Gross Income from Operation	5,339,765.00
Add: Non Operating & Other Income	6,111.00
Total Gross Income	5,345,876.00
Less: Deductions	5,401,257.00
Taxable Income	(55,381.00)
Tax Rate	0.32
Income Tax	NIL
Minimum Corporate Income Tax (MCIT) Tax Due	106,918.00
Tax on transactions under Regular Rate	106,918.00
Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate	-
Balance	106,918.00
Aggregate Income Tax Due	106,918.00
Less: Prior Year's Excess Credits	1,588,639.00
Creditable Tax Withheld for the First Three Quarters	949,235.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	458,718.00
Total Tax Credits/Payments	2,996,592.00
Tax Payable/Overpayment	(2,889,675.00)
Total Amount Payable	(2,889,675.00)

It appears in petitioner's Annual Income Tax Return for the Calendar Year 2004, that petitioner did not carry-over its unutilized creditable withholding taxes of December 31, 2003 to the following taxable year

[6] Par. 9 of Admitted Facts, JSFI.
[7] Exhibit "B", Docket, pp. 189-191.

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Calendar Year 2004. Neither did it utilize the same in payment of its income tax liabilities for the Calendar Year 2004.[8]

On January 6, 2005, petitioner filed with the BIR – Revenue District Office (RDO) No. 43, Pasig City, two administrative claims for the issuance of tax credit certificates for its unutilized creditable withholding taxes of ₱1,588,639.00 and ₱1,301,036.00 for 2002 and 2003, respectively, or a total of ₱2,889,675.00.[9] As respondent neither approved nor denied petitioner's claim for refund or issuance of tax credit certificate, petitioner instituted the present Petition for Review on March 30, 2005.

Respondent, in his Answer filed on May 30, 2005, alleges, among others, that the claim for refund is still under examination by the respondent's bureau; the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate; the grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; the taxes sought to be refunded were paid in accordance with law and the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.[10]

During trial, petitioner presented its documentary and testimonial evidence, while respondent's counsel submitted the case for decision without presenting any evidence because this case, allegedly, has no report of investigation. The Court directed both parties' counsel to file their respective

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[8] Exhibit "C", Docket, pp. 206-208; Par. 13 of Admitted Facts, JSFI.
[9] Par. 14 of Admitted Facts, JSFI.
[10] Answer, Docket, pp. 83-85.

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memorandum.[11] On October 26, 2006, this case was deemed submitted for decision after petitioner filed its memorandum, while respondent failed to file his memorandum within the given period.[12]

THE ISSUES

The parties stipulated the following issues for this Court's resolution:

> 1. Whether or not petitioner's withholding tax credits of ₱1,685,663.00 and ₱1,407,953.00 for the years 2002 and 2003, respectively, are duly substantiated by documentary evidence;
>
> 2. Whether or not the income from which the subject creditable taxes were withheld were reported as part of petitioner's revenues in its Annual Income Tax Returns for CYs 2002 and 2003;
>
> 3. Whether or not petitioner's unutilized creditable withholding taxes for 2002 and 2003 were applied against its income tax liability in the succeeding taxable year/s; and
>
> 4. Whether or not petitioner is entitled to refund (of) its excess/unutilized creditable withholding taxes in the amount of ₱2,889,675.00 for the years 2002 and 2003.

The four issues boil down to the central issue of whether or not petitioner was able to comply with legal and substantiation requirements with respect to its application for the refund of its unutilized excess creditable withholding taxes (CWT) for taxable years 2002 and 2003.

THE COURT'S RULING

The petition is partly meritorious.

[11] Minutes of hearing held on August 9, 2006, Docket, p. 330.
[12] Resolution dated October 26, 2006, Docket, p. 370.

Petitioner's subject claim for refund is anchored on the provisions of Section 76 of the National Internal Revenue Code (NIRC) of 1997, which provides:

> 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) Be credited or refunded with the excess amount paid, as the case may be.
>
> 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 therefore.** (Emphasis Ours.)

Section 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. These options are (1) filing for a tax refund or (2) availing of a tax credit. The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund. The second option works by applying the refundable amount as shown on the Final Adjustment Return (FAR) of a given taxable year, against the estimated quarterly income tax

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liabilities of the succeeding taxable year. These two options under Section 76 are alternative in nature. The choice of one precludes the other. [13]

Petitioner indicated on the face of its 2002 Income Tax Return (ITR) of its intention to carry-over its excess tax credit of ₱1,588,639.00 to the succeeding taxable quarter/year through an "X" mark on the box indicating the option: To be carried over as tax credit next year/quarter. And petitioner actually exercised said option to carry-over by applying its excess credit for taxable year 2002 against the 2003 tax liabilities as reflected under line 27-A of its Annual Income Tax Return for taxable year 2003. [14]

This matter was admitted by petitioner's witness, its former Deputy Branch Manager, Kirsten Colleen Carvajal, when she testified in court. We quote:

> " Q: How much withholding tax credits were withheld from SPI's income in CY 2003?
>
> A: For CY 2003, the company had withholding tax credits in the amount of ₱1,407,953.00. However, we carried over our excess and unutilized creditable withholding taxes for CY 2002 in the amount of ₱1,588,639.00 to CY 2003. Hence, we reported total withholding tax credits of ₱2,996,592.00 in our Annual Income Tax Return for CY 2003.
>
> Q: How much of SPI's withholding tax credits for CY 2003 remained unutilized by December 31, 2003?
>
> A: The company had unutilized and excess withholding tax credits in the aggregate amount of ₱2,889,675.00 as of the end of CY 2003. This amount includes the excess withholding tax credits for CY 2002 of ₱1,588,639.00 which we carried over to 2003, and the excess withholding tax credits for 2003 of ₱1,301,036.00."[15] (Underscoring Ours.)

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[13] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, 477 SCRA 761 (2005).
[14] Exhibit "B", Supra. at p. 189.
[15] Page 5 of Exhibit "S"; Docket, p. 232.

Based on the foregoing oral testimony of petitioner's witness, it is admitted that petitioner carried over its excess and unutilized withholding tax credits for CY 2002 in the amount of ₱1,588,639.00 to the succeeding calendar year 2003. As held by the Supreme Court in the case of ***Paseo Realty and Development Corporation vs. Court of Appeals***, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed.[16] And, the phrase "taxable period" is applied to the year when the "option to carry-over" was made.[17]

Consequently, petitioner is precluded from applying for the issuance of a tax credit certificate on its unutilized tax credits for the taxable year 2002 in the amount of ₱1,588,639.00.

With respect to petitioner's remaining claim for the excess/unutilized creditable withheld taxes for the year 2003 amounting to ₱1,301,035.00, it appears that petitioner selected the option "To be issued a Tax Credit Certificate" of its total excess creditable tax withheld in 2003.[18] Petitioner did not carry-over the excess tax credits from 2003 to the succeeding year 2004.[19]

To be entitled to the subject claim for refund of excess creditable income tax, petitioner must comply with the following requirements:

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[16] 440 SCRA 235 (2004).
[17] United International Pictures AB vs. Commissioner of Internal Revenue, CTA Case No. 6240, March 11, 2003.
[18] Exhibit "B-7"; Docket, p. 189.
[19] Exhibit "C-1"; Docket, p. 206.

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1) That the claim for refund was filed within the two years period under Section 229 (previously Section 230) of the NIRC,

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,

3) That the income upon which the taxes were withheld were included in the return of the recipient.[20]

It is clear from the records that petitioner has complied with the first requirement. The remaining excess unutilized withholding taxes being claimed for the issuance of a tax credit certificate were for the taxable year 2003. Petitioner filed its original annual ITR for 2003 on April 2, 2004. Petitioner's administrative claim for the issuance of a tax credit certificate was filed on January 6, 2005,[21] while its Petition for Review was filed before this Court on March 30, 2005. Hence, both the administrative and the judicial claims were filed within the two (2)-year period pursuant to Section 229 of the NIRC of 1997.

The second requirement was likewise complied with by petitioner.

To prove the fact of withholding, petitioner presented the Certificates of Creditable Tax Withheld at source issued by Systra-Philippine Branch (SPB) and Maunsell Philippines Inc. (MPI) for the taxable year 2003 reflecting creditable withholding taxes in the amount of ₱1,407,594.23, which is lower by ₱358.77 than the reported amount of ₱1,407,953.00, detailed as follows:

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[20] 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.
[21] Paragraph 14 of Admitted Facts, JSFI, Docket, p. 108.

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Exhibit	Period Covered	Payor's Name	Income Payment	Tax Withheld
L	01-01-2003 to 03-31-2003	Systra-Philippines Branch	3,942,024.60	394,202.46
M	04-01-2003 to 06-30-2003	Systra-Philippines Branch	2,173,717.50	217,371.75
N	07-01-2003 to 09-30-2003	Systra-Philippines Branch	3,535,995.80	353,599.58
O	10-01-2003 to 12-31-2003	Systra-Philippines Branch	4,363,636.50	436,363.65
P	10-01-2003 to 12-31-2003	MPI	60,567.90	6,056.79
			14,075,942.30	**1,407,594.23**

As to the third requirement, the gross revenues reported in petitioner's 2003 ITR is ₱14,438,084.00, which is higher by ₱362,141.70 as compared from the total income payments amounting to ₱14,075,942.30 as shown above. The difference of ₱362,141.70 was brought about by the fact that "*(a)* an income in the amount of ₱148,376.41 was reported as part of petitioner's revenues for September 2003 but no corresponding Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) was issued thereto; *(b)* the petitioner's income in the amount of ₱213,574.83 was accrued and reported as part of its revenues for November 2003 although it was not collected during the year; and *(c)* the income reported in petitioner's creditable withholding tax certificate for November 2003 was only ₱1,560,568.00, but what was recorded in the books was ₱1,560,758.98."[22]

In other words, petitioner properly declared in its 2003 ITR the income of ₱14,075,942.30 corresponding to the substantiated withholding taxes of ₱1,407,594.23. Thus, petitioner sufficiently complied with the substantiation requirements with respect to its claim of excess/unutilized tax credits for the CY 2003 in the reduced amount of ₱1,300,676.23 computed as follows:

Gross Income	₱	5,345,876.00
Less: Deductions		5,401,257.00
Net Loss		(55,381.00)
Minimum Corporate Income Tax Due		106,918.00
Less: Substantiated Creditable Withholding Taxes		1,407,594.23
Tax Overpayment Available for Refund	₱	**1,300,676.23**

[22] Par. 27 of Petitioner's Memorandum; docket, pp. 348-349. See also Exhibit "Q."

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WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of ONE MILLION THREE HUNDRED THOUSAND SIX HUNDRED SEVENTY SIX and 23/100 PESOS (₱1,300,676.23) representing excess/unutilized creditable withholding taxes for taxable year 2003.

On the other hand, petitioner's claim for the refund of its excess/unutilized creditable withholding taxes for the taxable year 2002 in the total amount of ₱1,588,639.00 is **DENIED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR :

JUANITO C. CASTAÑEDA, JR.
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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