REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MAERSK FILIPINAS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7073

Members:

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

Promulgated:

APR 0 4 2007

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DECISION

UY, J.:

Before Us is the Petition for Review filed by petitioner Maersk Filipinas, Inc., against respondent Commissioner of Internal Revenue, seeking for the refund or tax credit of the total amount of ONE MILLION THREE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED NINETY THREE PESOS AND 66/100 (P1,324,693.66) allegedly representing withholding taxes on compensation it overpaid on October 14, 2002. The overpayment was allegedly caused by the malfunction of respondent's electronic filing and payment system.

THE PARTIES

Maersk Filipinas, Inc. (petitioner) is a domestic corporation organized and existing under the laws of the Philippines with principal office located at the 51st Floor, PBCom Tower 6795 Ayala Avenue, Makati City.[1]

On the other hand, Commissioner of Internal Revenue (respondent) is the chief official of the Bureau of Internal Revenue (BIR) vested by law to decide claims for refunds and tax credits and to enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, which holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

As culled from the records and as stipulated by the parties in their Joint Stipulation of Fact and Statement of Issues, these are the facts of the case.

Pursuant to Revenue Regulations No. 02-2002, respondent implemented the mandatory electronic filing and payment system (EFPS) on July 1, 2002. On October 14, 2002, petitioner filed thru EFPS its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for September 2002 showing a tax due of P662,346.83.[2]

Allegedly, the amount of tax was also paid electronically (using the EFPS - e-payment) upon filing of the tax return through Union Bank of the Philippines (Union Bank). However, the EFPS did not confirm the payment of the tax. Hence, petitioner repeated the transaction by pressing the "authorize

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[1] Joint Stipulation of Fact and Statement of Issues, paragraph 2 of Summary of Admitted Facts, Records, p. 65.
[2] Exhibits "A" , Records, p. 335

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to e-pay" button. But again, no confirmation of payment was given by the EFPS.[3]

Petitioner believed that the two e-payments made on October 14, 2002 were failed transactions. As a consequence thereof, it made a third e-payment through the EFPS on the following day in order to avoid the penalties for late payment. This time, the payment was confirmed by the EFPS.[4]

When petitioner obtained the Statement of Account-Checking (bank statement) from Union Bank,[5] it discovered that all three e-payments of P662,346.83 each were completed. Union Bank certified that it had successfully received and processed the three e-payments of petitioner made on October 14 and 15, 2002.[6]

Having overpaid the withholding tax on compensation by P1,324,693.66 representing the two e-payments made on October 14, 2002, petitioner filed a request with respondent for reimbursement or permission to credit the amount overpaid against its future month's withholding tax liabilities on January 24, 2003.[7]

Despite three follow-up letters dated May 30, 2003,[8] December 12, 2003,[9] and August 6, 2004,[10] respondent did not act on petitioner's request. Thus, on October 12, 2004, petitioner filed the instant petition since the statutory period of two (2) years within which to file the judicial claim is about to prescribe.

[3] Exhibits "B" , Records, p. 336.
[4] Exhibits "C" , Records, p. 337.
[5] Exhibit "D-1", Records, p. 339.
[6] Exhibits "D" , Records, p. 338.
[7] Exhibits "E", Records, p. 340-341.
[8] Exhibit "F", Records, p. 342.
[9] Exhibit "G", Records, p. 343.
[10] Exhibit "H", Records, p. 344-346.

In his Answer, respondent submits the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
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> 5. Petitioner must prove that it overpaid the Withholding Taxes on Compensation for the period in question;
>
> 6. Petitioner must prove that the alleged overpaid Withholding Taxes on Compensation, were erroneously or illegally collected taxes as contemplated under Section 229 of the Tax Code;
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> 7. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code;
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> 8. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 9. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation. [11]"

During trial, petitioner presented its evidence, both testimonial and documentary. This included the testimony of petitioner's Finance and Accounting Manager, Edwin Marasigan, who was the one who actually filed and paid the Monthly Remittance Return of Income Taxes Withheld on Compensation for September 2002 through the EFPS.[12] After the admission of petitioner's evidence in the Resolutions dated January 16, 2006 and March 7, 2006,[13] presentation of respondent's evidence was set on March 29, 2006. However, on June 14, 2006, counsel for respondent waived his right to present any evidence and the parties were directed to file their respective

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[11] Records, pp. 40-42.
[12] Minutes during the hearings held on August 10 and October 26, 2005; and Affidavit of Direct Examination of Mr. Edwin Marasigan, Records, pp. 184, 187, 197-203, respectively.
[13] Resolutions, Records, pp. 585-586 and 626.

memoranda. Only petitioner filed its Memorandum on July 17, 2006,[14] and this case was considered submitted for decision in the Order dated August 16, 2006 adopting respondent's special and affirmative defenses as stated in his Answer as his Memorandum. Hence, this Decision.

THE ISSUES

As jointly stipulated by the parties, these are the issues submitted for this Court's resolution:

> "1. Whether petitioner paid withholding taxes on compensation for September 2002.
>
> 2. Whether such alleged withholding taxes on compensation were erroneously or illegally collected taxes as contemplated under Section 229 of the Tax Code.
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> 3. Whether petitioner's claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code.
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> 4. Whether or not petitioner is entitled to reimbursement, refund or tax credit of the erroneously paid tax in the total amount of One Million Three Hundred Twenty Four Thousand Six Hundred Ninety Three (Pesos) and Sixty Six Centavos (P1,324,693.66) representing the two erroneous e-payments of P662,346.83.
>
> 5. Whether or not respondent has a bounden duty to act on claim(s) for refund of erroneously paid taxes when the erroneous payments were caused directly by the malfunction of respondent's electronic filing and payment system (EFPS).
>
> 6. If respondent has a bounden duty to act on the administrative claim for refund, whether or not requiring respondent to pay interest to petitioner is just and equitable under the premises."

The issues above can be summarized into three main issues, to wit:

1. Whether or not petitioner's claim was timely filed;

[14] Records, pp. 641-651.

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2. Whether or not petitioner is entitled to its claim for tax refund or credit arising from its erroneous e-payments which resulted in the overpayment of P1,324,693.66; and

3. Whether or not petitioner is entitled to interest on the refund.

THE COURT'S RULING

First Issue: Prescription of Claim

In filing a claim for refund or credit for tax erroneously collected, Sections 229 and 204 (C) of the NIRC of 1997 provide as follows:

> "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 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 therefor, 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." *(Underscoring ours)*
>
> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund of 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

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> 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."

In the case at bench, petitioner made the alleged overpayment on October 14, 2002;[15] filed its administrative claim with the respondent on January 24, 2003;[16] and filed its judicial claim before this Court on October 12, 2004. Applying the foregoing provisions herein, We find petitioner to be well within the two (2)-year prescriptive period in filing both its administrative and judicial claims for the alleged overpayment with respondent and this Court, respectively.

Second Issue: Entitlement to the Claim

We now proceed to the core issue of this case.

Petitioner contends that it is entitled to a refund or tax credit in the amount of P1,324,693.66 representing the two erroneous e-payments of P662,346.83 it made on October 14, 2002. The erroneous e-payments allegedly came about when the EFPS did not confirm the e-payments of the subject tax for the first two transactions made on October 14, 2004. To support its claim, petitioner further posits that it did not apply the overpaid withholding taxes to its succeeding tax liabilities as evidenced by the withholding tax returns it subsequently filed.[17]

Respondent, on the other hand, merely argues that petitioner must first prove that there was overpayment of the withholding tax before it may be entitled to any refund or tax credit.

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[15] Exhibits "A" and "B".
[16] Exhibit "E".
[17] Exhibits "I" to "MM" and "OO" to "RR", Records, pp. 347-438, 441-451, respectively.

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We rule for the petitioner.

Section 9.1 of Revenue Regulations No. 9-2001, as amended by Revenue Regulations No. 9-2002, explicitly provides:

> "Section 9. *CONFIRMATION OF RECEIPT OF RETURN/DOCUMENTS AND PAYMENT/S OF TAXES.*
>
> 9.1 **e-Filing and e-Payment**. – The return is deemed filed, on the date appearing in, and after a Filing Reference Number is generated and issued to the taxpayer via the EFPS. The tax due thereon is deemed paid after a Confirmation Number is issued to the taxpayer and to the BIR by the AAB.[18] In addition, an Acknowledgement Number shall be issued by the AAB to the BIR to confirm that the tax payment has been credited to the account of the government or recognized as revenue (internal revenue tax collection) by the Bureau of Treasury." *(Underscoring Ours)*

Petitioner, in the present case, was not issued a Confirmation Number when its Finance and Accounting Manager, Edwin Marasigan, made the two e-payments on October 14, 2002. For this reason, petitioner cannot be faulted for making the two e-payments since it was reasonable to assume that no payments were made for the first two transactions. Petitioner was only issued a Confirmation Number under the EFPS System when it made the third e-payment on October 15, 2002.[19]

The fact that petitioner overpaid the withholding taxes is evidenced by the BIR-EFPS Certification issued by Union Bank[20] stating that the three e-payments made by petitioner were successfully received and processed. Likewise, petitioner's bank statement with Union Bank[21] clearly shows that petitioner made two e-payments on October 14, 2002 and another one on

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[18] Section 2.2 (a) Authorized Agent Bank – refers to any bank as certified by the Bangko Sentral ng Pilipinas (BSP) which has satisfied the criteria on accreditation and is actually accredited to collect internal revenue taxes.
[19] Exhibit "C".
[20] Exhibit "D".
[21] Exhibit "D-1".

October 15, 2002. And the BIR Revenue Accounting Division[22] in fact issued a Certification confirming the three e-payments of withholding tax on compensation for September 2002 made by petitioner.

Moreover, a careful evaluation of the Monthly Remittance Returns of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the succeeding months (October 2002 to August 2005)[23] clearly shows that petitioner indeed did not apply the overpaid withholding tax to the succeeding months.

Undoubtedly, considering the above premises, there was an overpayment made by petitioner in the total amount of P1,324,693.66 thru error or mistake and respondent accepted the same. Thus, pursuant to Section 229 of the NIRC of 1997, in relation to Section 204(C) of the same Code and Article 2154 of the New Civil Code which provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises[24], respondent has the bounden duty to return the erroneously paid withholding taxes made by petitioner.

It is worthy to mention that the quasi-contract of *solutio indebiti* under Article 2154 of the New Civil Code is one of the concrete manifestations of the principle that no one shall enrich himself at the expense of another. Hence, it would seem unedifying for the government, knowing it has no right at all to collect or receive money for alleged taxes paid by mistake, to be reluctant to

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[22] Exhibits "NN", "NN-1", "NN-2", "NN-3", Records, pp. 439-440..
[23] Exhibits "I" to "MM", "OO" to "RR".
[24] Otherwise known as the contract of *solutio indebiti*.

return the same.[25] Accordingly, respondent is mandated to refund or issue a tax credit certificate in the amount of P1,324,693.66 in favor of petitioner.

Third Issue: Interest on Refund

Petitioner asserts that the actions of respondent were attended with arbitrariness, bad faith and grave abuse when he ignored its simple and clear request for reimbursement despite several follow-ups which therefore prompted petitioner to file the instant case. According to petitioner, respondent should take full responsibility for causing the two erroneous e-payments it made considering that such payments were the result of the failure of respondent's EFPS to acknowledge the same. As a consequence thereof, petitioner believes that respondent should be held liable for interest that is just and equitable under the premises based on the legal costs, fees and expenses it incurred.

We rule against the petitioner.

It bears stressing that the EFPS was developed primarily to provide Philippine taxpayers with top quality and convenient service through a much faster processing and immediate confirmation of filing of tax returns and payment of taxes due thereon. It is an alternative mode of filing returns and payment of taxes which deviates from the conventional manual process of encoding paperbound tax returns filed which is highly susceptible to human errors and intervention. The system allows the taxpayers to directly encode, submit their tax returns and pay their taxes due on-line over the internet through the BIR website. Its aim is to reduce the government's administrative

[25] Ramie Textiles, Inc. vs. Mathay, Sr., 89 SCRA 586 (1979).

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and operational costs in interacting with taxpayers and in collecting taxes.[26] Thus, Revenue Regulations No. 9-2001 dated August 3, 2001 was promulgated by the then Secretary of Finance Jose Isidro N. Camacho upon recommendation of the respondent pursuant to Section 244 of the NIRC,[27] in relation to Section 27 of Republic Act (R.A.) No. 8792,[28] to regulate the electronic filing of tax returns and payment of taxes.

Clearly, the very purpose of the EFPS was to give the Philippine taxpayers top quality and convenient service. But like any new system, several glitches can be expected from the EFPS. Petitioner itself admitted[29]

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[26] Revenue Memorandum Order No. 05-2002 dated April 1, 2002.

[27] Section 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

[28] Otherwise known as "Electronic Commerce Act"

Section 27. *Government Use of Electronic Data Messages, Electronic Documents and Electronic Signatures.* — Notwithstanding any law to the contrary, within two (2) years from the date of the effectivity of this Act, all departments, bureaus, offices and agencies of the government, as well as all government-owned and -controlled corporations, that pursuant to law require or accept the filing of documents, require that documents be created, or retained and/or submitted, issue permits, licenses or certificates of registration or approval, or provide for the method and manner of payment or settlement of fees and other obligations to the government, shall —

(a) accept the creation, filing or retention of such documents in the form or electronic data messages or electronic documents;
(b) issue permits, licenses, or approval in the form of electronic data messages or electronic documents;
(c) require and/or accept payments, and issue receipts acknowledging such payments, through systems using electronic data messages or electronic documents; or
(d) transact the government business and/or perform governmental functions using electronic data messages or electronic documents, and for the purpose, are authorized to adopt and promulgate, after appropriate public hearing and with due publication in newspapers of general circulation, the appropriate rules, regulations, or guidelines, to among others, specify —

1) the manner and format in which such electronic data messages or electronic documents shall be filed, created, retained or issued;
2) where and when such electronic data messages or electronic documents have to be signed, the use of an electronic signature, the type of electronic signature required;
3) the format of an electronic data message or electronic document and the manner the electronic signature shall be affixed to the electronic data message or electronic document;
4) the control processes and procedures as appropriate to ensure adequate integrity, security and confidentiality of electronic data messages or electronic documents or records or payments;
5) other attributes required of electronic data messages or electronic documents or payments; and
6) the full or limited use of the documents and papers for compliance with the government requirements: *Provided*, That this Act shall by itself mandate any department of the government, organ of state or statutory corporation to accept or issue any document in the form of electronic data messages or electronic documents upon the adoption, promulgation and publication of the appropriate rules, regulations, or guidelines.

[29] Memorandum for the Petitioner, Records, p. 641.

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that the system was relatively new when it made the e-payment on October 14, 2002. It would be unreasonable then to put the blame on respondent's shoulders when the EFPS was not perfectly functioning during the time that petitioner paid its withholding taxes on compensation for the September 2002.

Respondent's inaction on its claim whether simple or not cannot be considered as arbitrary, abusive or in bad faith to entitle petitioner to interest on its refund because such claim has to undergo some processes before it can be fully acted upon by the respondent. Finally, respondent's refusal to stipulate on certain facts cannot be attributed as arbitrary or abusive so as to warrant the payment of interest since he is not compelled to enter into a stipulation on facts which he may disagree or, at that time, not willing or ready to agree upon.

In ***Philex Mining Corporation vs. Commissioner of Internal Revenue***,[30] the Supreme Court enunciated:

> "[T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. x x x"

Considering that the erroneous e-payments made by petitioner were caused by a malfunction in the EFPS, such glitch can hardly be considered arbitrary on respondent's part as to entitle petitioner to interest on refund. In view of the foregoing, We cannot grant petitioner's prayer for interest.

WHEREFORE, petitioner's claim for refund is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE A TAX**

[30] 306 SCRA 126, 134 (1999).

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CREDIT CERTIFICATE in favor of petitioner the amount of **ONE MILLION THREE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED NINETY THREE PESOS and 66/100 (P1,324,693.66)** representing overpaid withholding tax on compensation for September 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division

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