REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STABLEWOOD PHILIPPINES, INC. (Formerly: Rolls Royce Philippines, Inc.)
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA E.B. No. 712
(C.T.A. Case No. 7706)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, Jr.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO- MANALASTAS, *JJ.*

Promulgated:
NOV 15 2011 ArApolinario 2:00 p.m.

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DECISION

Acosta, PJ:

The Petition for Review, filed by the petitioner Stablewood Philippines, Inc. (formerly Rolls Royce Philippines, Inc. and hereinafter referred to as "Stablewood") on 20 January 2011 pursuant to Section 2, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, seeks for this Court En Banc to reverse and set aside the

Decision of the Court's Second Division promulgated on 23 July 2010. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, petitioner's claim for refund or issuance of tax credit certificate for its alleged excess/unutilized creditable withholding tax in the amount of Php4,125,251.76 for taxable year 2005 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Petitioner likewise prays for the setting aside of the Resolution dated 17 December 2010 that affirmed the 23 July 2010 Decision and which dispositive portion reads:

> **WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.
>
> **SO OREDERED.**

Below are the facts as culled from the records of the case:

Petitioner Stablewood is a domestic corporation, duly organized and existing under the laws of the Republic of the Philippines. It is the successor-in-interest of Orca Plant Operations ("Orca Plant"), which was dissolved by operation of law by virtue of its merger with Rolls-Royce Power Ventures (Philippines), Inc. and Orca Energy, Inc. effective 01 January 2008. The surviving corporation from the merger was Orca Energy, Inc., which changed its name to Rolls-Royce Philippines, Inc. and later, Stablewood Philippines, Inc.

The respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties and fines connected therewith. She holds office at the BIR, National Office Building, Diliman, Quezon City.

On 06 April 2006, Orca Plant filed its 2005 Annual Income Tax Return (ITR) through the BIR's electronic payment and filing system (EFPS), indicating therein that its excess creditable withholding tax (CWT) is "To be refunded". On 20 December 2006, an administrative claim for refund of the excess CWT for the year 2005, in the amount of Php4,125,251.76, was filed by Orca Plant through SGV & Co. Thereafter, due to the inaction of the BIR on the claim, a Petition for Review was filed with this Court on 15 November 2007.

As stated earlier, the Court in Division denied the refund claim or the issuance of a tax credit certificate for petitioner's alleged excess/unutilized creditable withholding tax in the amount of Php4,125,251.76 for taxable year 2005. The denial was based on the ground that petitioner carried-over its excess tax credits of 2005, inclusive of the claimed amount of Php4,125,251.76, as "Prior Year's Excess Credits" in its Quarterly ITRs for the first three quarters of taxable year 2006. Petitioner's original option to refund the said amount was thus negated by its very act of carrying over said excess amount to the succeeding taxable quarters of 2006.

In its Petition for Review before the Court En Banc, petitioner assigns as a reversible error the Court in Division's sole reliance on the first to third quarter ITRs of 2006 in denying the refund claim, in effect, totally disregarding Orca Plant's categorical choice to be refunded its 2005 CWT in its 2005 Annual ITR and the failure of the corporation to carry over such 2005 CWT in its filed 2006 and 2007 Annual ITRs. Petitioner argues that there was no basis for the Court in Division to conclude that it actually exercised the option to carry-over its 2005 excess CWT based only on the first, second and third quarter ITRs for 2006. Petitioner further advances that the figures reported in the quarterly tax returns for the taxable year of 2006 were not final and were, in fact, revised in the 2006 Annual ITR to make it consistent with the 2005 Annual ITR. Likewise, petitioner argues that its original option is to refund the excess CWT and thus, properly, it is this option that should be treated as irrevocable.

In the alternative, should the Court En Banc decide against a refund of the claim, petitioner avers that it is already impossible to actually carry over the excess 2005 CWT to the succeeding taxable quarters since the former Orca Plant, the actual owner of the excess CWT sought to be refunded, was already dissolved by operation of law upon its merger with herein petitioner, Stablewood.

On 28 March 2011, respondent CIR filed her Comment/Opposition, which basically reiterated the Second Division's point that petitioner's act of carrying over its 2005 excess CWT to the succeeding taxable quarters of 2006 negated its original option to be refunded or to be issued a tax credit in the amount of Php4,125,251.76. On the issue regarding the dissolution of Orca Plant, the CIR faults such argument of petitioner to be misplaced, false, misleading and bereft of factual and legal basis. The CIR counters that as a result of the merger, the surviving corporation, Stablewood, acquired all the assets and liabilities of Rolls-Royce Power Ventures (Philippines), Inc. and Orca Plant.

After the Court gave the petition due course and the parties submitted their respective Memoranda, the case was submitted for decision.

After a perusal of the case records and a survey of pertinent authorities, this Court finds no cogent reason or overriding justification to disturb the assailed Decision and subsequent Resolution of the Court's Second Division.

Section 76 of the National Internal Revenue Code (NIRC) of 1997 states:

> 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. <u>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</u>. *(Underscoring supplied)*

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The law is clear. It is the option to carry-over and apply the excess tax against income tax due for the succeeding taxable quarters that is considered irrevocable. In a recent resolution of the Supreme Court in the case of Belle Corporation vs. Commissioner of Internal Revenue (GR No. 181298, 02 March 2011), it was therein explained that:

> Section 76 provides that a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over, however, is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied pursuant to Section 76 of the NIRC.

Thus the act of petitioner in carrying over all its 2005 excess CWT to the three quarters of the taxable year 2006, by declaring the same in its "Prior Year's Excess Credits" for all three quarters, effectively changed its option to refund its 2005 excess CWT, in the amount of Php4,125,251.76, to the irrevocable option of carrying over the same as tax credit to the succeeding quarters. It is immaterial that petitioner revised its 2006 Annual ITR, reverting to the 2005 Annual ITR option of refunding the excess CWT, since its 2006 quarterly ITRs already bound it to the option to carry-over the claimed excess CWT.

Moreover, the matter of the weight of the quarterly ITRs in a Section 76 refund claim has already been settled by this Court in the recent case of ***Millennium***

Business Services, Inc. vs. The Commissioner of Internal Revenue, CTA EB Case No. 510, 28 September 2010, *viz*:

> "...the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters. Significantly, <u>a taxpayer may amend its quarterly income tax return or annual income tax return or Fiscal Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.</u>
>
> xxx. It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters. The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund. (Underscoring supplied.)

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The Court takes this opportune time as well to point out Section 2.58.3 (C)(2)[1] of Revenue Regulations No. 2-98, implementing Section 76 of the 1997 NIRC, which provides that if the option to carry over and apply the excess credit is initiated in the first quarter, the taxpayer can no longer avail of a refund/tax credit certificate of the excess credit. Therefore, there is no merit in petitioner's submission that the 2006 Annual ITR no longer carried over the claimed amount of Php4,125,251.76, as the act of carrying-over the excess CWT was already initiated and consummated the moment it was included in the first quarter ITR.

This Court frowns upon petitioner's misleading statement that it did not carry over and apply its excess CWT against income tax due for the taxable quarters of 2006 when its third quarter ITR proves otherwise[2]. An inspection of the return shows that

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[1] "Section 2-58-3. Claim for Tax Credit or Refund. - xxx
(C) Excess Credits - An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.
1. If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefore, within two years after the payment of the tax (Ref. Sees. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.
2. Sample computation of application of excess credits-ordinary
xxx
In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is **initiated** in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit cet1ificate of the excess credit of P500 in 1997-"
(Emphasis Suppf/ecl)

[2] Exhibit "GG".

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Orca Plant applied the total tax credit/payments of Php22,311,294.04 against the tax due for the quarter in the amount of Php138,780.42.

Finally, this Court cannot countenance petitioner's arguments with respect to the issue of the dissolution of Orca Plant by operation of law upon approval by the Securities and Exchange Commission of its merger with petitioner. There is no basis in law for an absorbed corporation to claim for a refund of excess CWT that was irrevocably opted to be carried over to succeeding taxable quarters by virtue of its merger with another corporate entity. According to Section 80 of the Corporation Code, included in the effects of a merger or consolidation are:

> Sec. 80. Effects or merger or consolidation. - The merger or consolidation shall have the following effects:
>
> xxx
>
> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and
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> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

By operation of law, the surviving corporation, petitioner, acquired all the assets and liabilities of the constituent corporations. The excess CWT from 2005 is a tax asset of Orca Plant that should have properly been transferred to the books of the surviving corporation, petitioner herein.

It cannot be gainsaid that an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly.[3] In this case, Orca Plant, through petitioner, unfortunately failed to satisfy this Court that it is entitled to the refund that it claims

WHEREFORE, finding no sound reason to reverse, amend or modify the Decision and Resolution of this Court's Second Division dated 23 July 2010 and 17 December 2010, respectively, petitioner's **Petition for Review** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[3] *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(ON WELLNESS LEAVE)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Official Business)
AMELIA COTANGCO- MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice