

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

**COCA-COLA BOTTLERS
PHILIPPINES, INC. (CCBPI),**
Petitioner,

C.T.A. CASE NO. 6592

Members:

- versus -

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

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

JUN 19 2007

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DECISION

UY, J.:

This is a Petition for Review seeking for a tax refund or issuance of a tax credit certificate in the amount of SEVENTY MILLION EIGHT HUNDRED SIXTY EIGHT THOUSAND FIVE HUNDRED SIXTY ONE and 92/100 (P70,868,561.92) PESOS, allegedly representing creditable withholding taxes that were erroneously remitted twice to the Bureau of Internal Revenue ("BIR") covering the same transactions for the taxable period January 1999 to December 2000.



THE FACTS

As culled from the records and evidence presented by the parties, these are the facts of the case.

Petitioner is a domestic corporation organized and existing under the Philippine laws, with principal office at San Miguel Properties Centre, No. 7 St. Francis Avenue, Ortigas Center, Mandaluyong City and engaged in the manufacture and sale of carbonated beverages. On the other hand, respondent is vested by law with the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes; and holds office at the Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is one of the top five thousand (5,000) corporations of the Philippines as determined by the respondent. Thus, it is required to withhold one percent (1%) creditable Expanded Withholding Tax ("EWT") on income payments to its local suppliers of goods pursuant to Section 2.57.2(M) of Revenue Regulations No. 2-98 ("RR 2-98"), as amended.

The Coca-Cola Export Corporation ("TCCEC") and San Miguel Corporation ("SMC") are among the local suppliers of the petitioner. Petitioner made several purchases of goods from TCCEC and SMC on various dates from December 1998 to December 2000. On these purchases, petitioner withheld and remitted to the BIR the total amount of ₱70,868,561.92 on different dates representing 1% EWT on its payments to TCCEC and SMC. The EWT withheld shall be referred to as the "First Remittance" and broken down as follows:



Name of Supplier	EWT Remitted
1. TCCEC	P 60,799,252.43
2. SMC	10,069,309.49
Total	P 70,868,561.92

On January 25, 2001, petitioner filed with the respondent its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of December 2000 in the amount P113,298,812.90.

On January 16, 2003, petitioner filed a claim for tax refund or tax credit in the amount of P70,868,561.92, representing the creditable withholding tax, claimed as twice remitted to the BIR. Petitioner alleged therein:

“At the close of December 2000 all purchases for the period that were already received but which have not undergone invoice verification were retrieved from the SAP computer accounting system and the corresponding withholding tax amounting to P89,394,730.01 (TCCEC-P66,959,093.93 + SMC-P10,958,463.65 + Other Suppliers-P11,477,172.43) was taken up unmindful of the fact that some purchases from TCCEC and SMC were paid manually and the corresponding withholding tax thereon were already taken up manually and remitted to your office previously (since as earlier stated manual payments of invoices, the corresponding manual take up of the withholding tax and remittance of the withholding tax to your office will not be captured by the SAP-AP Module). The said amount of P89,394,730.01 that was taken up as withholding tax on purchases which have not undergone invoice verification was included in the amount of P113,298,812,90 remitted by the CCBPI to your office on January 25, 2001, which remittance is evidenced by Land Bank Official Receipt No. 7060941. It is also included in CCBPI’s Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) – BIR Form No. 1601-E for the month of December 2000 which was filed with your office on the same date. Out of the amount of P89,394,730.01 that was taken up as withholding tax on purchases that have not undergone invoice verification, P70,868,5671.92 (TCCEC-P60,799,252.43 + SMC-P10,069,309.49) were for purchases that were already manually paid and the withholding tax thereon taken up and/or remitted to your office previously. Hence, there was double remittance of withholding tax in the amount of P70,868,561.92. But while CCBPI remitted the withholding tax on the said purchases twice, the actual withholding of the tax



was done only once since the invoices were already paid at the time of the second take up of the withholding tax. Therefore, the amount of withholding tax that was remitted to your office for the month of December 2000 was in excess by P70,868,561.92 of the amount that is required to be, and actually, withheld from local suppliers of goods and services pursuant to Sec. 2.57.2(M) of R.R. 2-98."

On January 24, 2003, petitioner filed the instant Petition for Review as respondent failed to act on petitioner's claim for refund and the period to appeal shall expire on January 25, 2003.

On February 21, 2003, respondent filed his Answer and raised the following special and affirmative defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation by the BIR;

"5. Petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected;

"6. The amount of P70,868,561.92 representing alleged creditable withholding tax was not properly documented;

"7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

"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/credit;

"9. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

"10. Well-settled is the rule that claims for tax refund/credit are construed in strictissimi juris against the taxpayer as they partake the nature of exemption from tax and it is incumbent upon petitioner to show that it is entitled thereto under the law."

During trial, petitioner presented testimonial and documentary



evidence, which includes the reports of the commissioned independent certified public accountant (CPA) in support of its claim; while respondent did not present any evidence. During the February 22, 2006 hearing for the respondent's initial presentation of evidence, counsel for respondent manifested that this case has no report of investigation and requested for thirty (30) days to file memorandum. The Court granted both parties a thirty (30)-day period within which to file their respective memoranda. On May 5, 2006, petitioner filed its memorandum. In a Resolution dated July 14, 2006, this Court admitted petitioner's memorandum and, for failure of respondent to file his memorandum, considered the case as deemed submitted for decision.

THE ISSUE

The lone issue, which the parties stipulated for the Court to decide, is whether or not there were double remittances of Creditable Income Taxes Withheld (Expanded) covering the same transactions during the period January 1999 to December 2000.

THE COURT'S RULING

To prove its claim, petitioner presented the following documentary evidence:

1. Monthly Remittance Return of Income Taxes Withheld (BIR Form 1601) for the months of January 1999 to December 2000;
2. Official Receipts of the EWT remitted to the BIR;
3. Schedule of total remittance;
4. Letter from the BIR designating petitioner as withholding agent of 1% creditable withholding tax;
5. Waiver and Quit Claim from SMC;
6. Waiver and Quit Claim from TCCEC;
7. Independent CPA Report (Partial) dated November 3, 2003;

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8. Schedule of TCCEC purchases with manual payments (December 1998 to November 2000);
9. Payment arrangements between CCBPI and TCCEC for the CYs 1998, 1999 and 2000;
10. TCCEC sales invoices and debit/credit memos for the CY 1998 to 2000;
11. Financial Accounting (FI) documents/Purchase Order (PO) history documents evidencing goods receipt (GR) amount for the CYs 1998, 1999 and 2000;
12. SAP Payment Booking Schedules with Payment Request Forms, Official Receipts and Checks evidence manual payment of EWT for the CYs 1999 and 2000;
13. Schedule of EWT Balances Per General Ledger (1999-2000);
14. Schedule of EWT remittance for CY 1999-2000;
15. 1999 and 2000 Details of EWT Remittance;
16. Schedule of Withholding Tax Accruals for TCCEC for December 2000;
17. Schedule of Withholding Tax Accruals for the CYs 1998, 1999 and 2000 which were remitted in December 2000;
18. Alphalist of payees subjected to EWT for December 2000;
19. Independent CPA Report (Partial) dated February 11, 2004;
20. Schedule of SMC Purchases with Over-remitted EWT (February 1999 to November 2000) or "the Lead Schedule" for brevity;
21. SMC Sales Invoices for the CY 2000;
22. Financial Accounting (FI) Documents/Material Documents/Purchase Order (PO) History Documents Evidencing Goods Receipt (GR) amount for the CYs 1999 and 2000;
23. SAP Payment Booking Schedules with Payment Request Forms, Official Receipts and Checks Evidencing Manual Payment of EWT for the CYs 1999 and 2000;
24. Delivery Summary Accompanying Payment Documents;
25. 2000 Details of EWT Remittance for SMC (excerpts);
26. Details of Withholding Tax Accruals for SMC for December 2000;
27. Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the month of December 2000 under the name of SMC;
28. Final and Consolidated Independent CPA Report dated August 20, 2004;
29. SMC's Statement of Accounts for CY 2000;
30. Process Verification Flowchart for TCCEC and SMC;
31. General Process Verification Flowchart for TCCEC and SMC;



32. Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the months of January, April, June, July, August, September, November, December 2000 under the name of SMC; and
33. Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the first, second, third quarters of the year 2000 under the name of TCCEC.

As regards to petitioner's supplier TCCEC, the CPA reported that it adopted several procedures and, subsequently, "verified the actual remittances of EWT for the months of January 1999 to December 2000 by tracing each manual payment against the 1999 and 2000 Details of EWT Returns (Exhibits MM and NN) checking machine validation in the returns and Official Receipts issued by the Land Bank of the Philippines." In a tabular form, the CPA made the following findings:¹

Finding	EWT Remitted Related to Purchases from TCCEC	EWT Remittance Included again In the Dec-00 return	Reference
Traced to January 1999 EWT Return	5,546,131.53	50,128.25	Annex K
Traced to February 1999 EWT Return	4,714,693.43	51,933.40	Annex L
Traced to March 1999 EWT Return	4,753,582.23	322,197.50	Annex M
Traced to April 1999 EWT Return	3,955,110.11	162,476.80	Annex N
Traced to May 1999 EWT Return	5,428,294.97	276,923.25	Annex O
Traced to June 1999 EWT Return	6,078,263.90	238,044.60	Annex P
Traced to July 1999 EWT Return	5,582,892.61	209,491.80	Annex Q
Traced to August 1999 EWT Return	1,587,365.85	420,837.80	Annex R
Traced to September 1999 EWT Return	4,540,301.76	332,207.65	Annex S
Traced to October 1999 EWT Return	4,392,087.28	621,561.50	Annex T
Traced to November 1999 EWT Return	4,922,836.16	1,594,531.10	Annex U
Traced to December 1999 EWT Return	5,594,318.20	1,550,986.77	Annex V
Traced to January 2000 EWT Return	5,698,622.50	1,949,662.69	Annex W
Traced to February 2000 EWT Return	3,922,311.11	3,767,292.71	Annex X
Traced to March 2000 EWT Return	3,570,938.31	3,571,521.05	Annex Y
Traced to April 2000 EWT Return	4,330,076.95	4,481,521.75	Annex Z
Traced to May 2000 EWT Return	5,690,551.72	5,600,215.27	Annex AA
Traced to June 2000 EWT Return	6,204,600.73	6,194,933.24	Annex BB
Traced to July 2000 EWT Return	5,354,375.64	5,424,330.07	Annex CC
Traced to August 2000 EWT Return	4,183,784.48	4,106,642.99	Annex DD
Traced to September 2000 EWT Return	5,167,762.72	5,166,865.10	Annex EE
Traced to October 2000 EWT Return	4,457,580.51	4,456,894.16	Annex FF
Traced to November 2000 EWT Return	4,940,662.87	4,939,823.06	Annex GG
Traced to December 2000 EWT Return	4,732,160.97	4,266,059.45	Annex HH

¹ Please see the final and consolidated report, Exhibit AAA, pp. 8-9.

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Not traced to Returns		1,042,170.86	Annex II
Unaccounted Difference		(0.40)	
Total	<u>115,349,306.50</u>	<u>60,799,252.42</u>	

Of the ₱60,799,252.42 which petitioner claimed to be remitted twice, ₱1,042,170.86 were not traced to EWT returns and, thus, leaving the amount of ₱59,757,081.56 as possible double remittance. To summarize the figures:

Supplier	TCCEC
Amount claimed as remitted twice	P 60,799,252.42
Less: Amount not traced to returns	<u>1,042,170.86</u>
Possible amount of double remittance	P <u><u>59,757,081.56</u></u>

For supplier SMC, the amount being claimed is ₱10,069,309.49. The CPA reported that it adopted several procedures and, subsequently, "verified actual remittance of EWT withheld on manually-processed payments (outside the normal SAP process) to SMC amounting to P10,069,309.49 for the months of March 1999 to December 2000 by tracing each manual payment against the 2000 Details of EWT Returns (Excerpts) (*Exhibit XX*) and checking machine validation in the returns and Official Receipts issued by the Land Bank of the Philippines. [It] also traced the EWT withheld on manually-processed payment (outside the normal SAP process) to check if these were again included in the amount of accrued EWT of the petitioner in December 2000 and remitted in January 25, 2001 by tracing the document number and receipt number from the supporting document and receipt number from the supporting documents (*Exhibit VV*) to the Lead Schedule-SMC (*Exhibit SS*)."

The CPA made the following findings:²

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² Procedure 5.2, p. 13 of Exhibit AAA.

Finding	EWT Remitted Related to Purchases from SMC	EWT Remittance Included again in The December 2000 return	Reference
Traced to February 1999 Return	2,408,470.52	9,893.43	Annex XX
Traced to March 1999 Return	2,830,673.21	21,770.86	Annex YY
Traced to April 1999 Return	4,133,768.45	28,024.78	Annex ZZ
Traced to June 1999 Return	5,287,821.99	140,477.78	Annex AAA
Traced to July 1999 Return	641,395.42	8,787.00	Annex BBB
Traced to September 1999 Return	63,391.61	2,214.41	Annex CCC
Traced to October 1999 Return	163,611.91	495.40	Annex DDD
Traced to December 1999 Return	865,485.16	4,954.04	Annex EEE
Traced to January 2000 Return	1,844,673.40	416,814.56	Annex FFF
Traced to March 2000 Return	1,929,808.35	1,122,478.88	Annex GGG
Traced to April 2000 Return	1,157,084.21	1,508,174.84	Annex HHH
Traced to June 2000 Return	2,652,728.28	1,727,032.88	Annex III
Traced to August 2000 Return	860,720.77	898,598.34	Annex JJJ
Traced to September 2000 Return	1,863,536.20	1,730,070.39	Annex KKK
Traced to November 2000 Return	1,221,725.16	98,273.49	Annex LLL
Traced to December 2000 Return	1,893,804.21	1,027,467.26	Annex MMM
Not traced to Returns		1,323,781.22	Annex NNN
Unaccounted Difference		(0.07)	
Total	29,818,662.85	10,069,309.49	

Of the ₱10,069,309.49 being claimed by the petitioner as remitted twice for SMC, ₱1,323,781.22 were not traced to EWT returns, leaving the amount of ₱8,745,528.27 as possible double remittance. To summarize the figures:

Supplier	SMC
Amount claimed as remitted twice	P 10,069,309.49
Less: Amount not traced to returns	<u>1,323,781.22</u>
Possible amount of double remittance	<u><u>P 8,745,528.27</u></u>

After considering and scrutinizing the evidence presented by the petitioner, including the final and consolidated report of the CPA, this Court is convinced there was double remittance of EWT being claimed for refund or credit. In sum, the amount of double remittance is computed as follows:

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Supplier		SMC		TCCEC		TOTAL
Amount claimed as remitted twice	P	10,069,309.49	P	60,799,252.42	P	70,868,561.91
Less: Amount not traced to returns		1,323,781.22		1,042,170.86		2,365,952.08
Amount of double remittance	P	<u>8,745,528.27</u>	P	<u>59,757,081.56</u>	P	<u>68,502,609.83</u>

However, this Court is not persuaded to grant petitioner's prayer to refund or credit the EWT in the amount of P68,502,609.83 twice remitted for the reasons mentioned hereunder.

Pursuant to Section 58 (B) of the National Internal Revenue Code (NIRC) of 1997, as implemented by Revenue Regulations No. 2-98, as amended, taxes withheld under the Withholding Tax System must be covered by withholding tax certificates which are to be issued by the withholding agent or payor to the income recipient or payee. Taxes withheld which are supported by the aforesaid certificates shall be allowed as tax credit against the payees' income tax liabilities.

Considering the foregoing, petitioner has the duty, not only to establish the fact of double remittance but also, to prove that there was no double utilization of the claimed creditable withholding taxes on the part of petitioner's suppliers, namely: TCCEC and SMC.

In its attempt to establish the fact that there is indeed no double utilization of the subject creditable withholding taxes, petitioner presented as evidence the waivers and quitclaims issued by the respective officers of TCCEC and SMC, which state that they did not avail and utilize the excess Expanded Withholding Tax remitted by petitioner as credit against their

income tax liabilities.³ Likewise, in the Supplemental Joint Stipulation of Facts filed on July 4, 2005, the parties agreed that there was already an examination of the taxpayer's original copies of the Annual Income Tax Return of TCCEC and SMC.

This Court rules that the abovementioned documentary evidence are insufficient to prove that there was no double utilization of the subject claimed creditable withholding taxes.

As a matter of fact, this Court observed that there were discrepancies between the parties' Supplemental Joint Stipulation of Facts and the CPA's final and consolidated report.

For instance, in the Supplemental Joint Stipulation of Facts, "only the amount of ₱62,963,874.46 represents creditable withholding tax claimed and reported by TCCEC on the gross payments that petitioner made to it for the year ended December 31, 2000 xxx broken down as follows:"⁴

Payee's Name	Payor's Name	Period	Tax Withheld
The Coca-Cola Export Corporation ("TCCEC")	CCBPI	4th Quarter 1999	17,812,217.00
TCCEC	CCBPI	2nd Quarter	30,445,734.63
TCCEC	CCBPI	3rd Quarter	14,705,922.83
TOTAL			<u>62,963,874.46</u>

When compared with the figures in the CPA's final and consolidated report,⁵ the tax withheld for the 4th and 2nd quarters did not match. Only the amount of ₱14,705,922.83 for the 3rd quarter for the year 2000 matched.

Another instance, in the Supplemental Joint Stipulation of Facts, "only the amount of ₱9,573,010.00 represents creditable withholding tax claimed

³ Exhibits AA-3 and BB-3.

⁴ Please see paragraph 2(b) of the Supplemental Joint Stipulation of Facts; docket, p. 526.

⁵ Exhibit AAA, pp. 8-9.



and reported by SMC on the gross payments that Petitioner made to it for the year ended December 31, 2000 xxx broken down as follows:"⁶

Payee's Name	Payor's Name	Period	Tax Withheld
San Miguel Corporation ("SMC")	Coca-Cola Bottlers Philippines, Inc. ("CCBPI")	4th Quarter 1999	1,676,444.94
SMC	CCBPI	January to March 2000	4,086,752.82
SMC	CCBPI	April 2000	1,157,084.21
SMC	CCBPI	June 2000	2,652,728.28
TOTAL			<u>P9,573,010.00</u>

When compared with the figures in the CPA's final and consolidated report,⁷ the tax withheld for April 2000 in the amount of ₱1,157,084.21 and June 2000 in the amount of ₱2,652,728.28 tallied. However, the tax withheld for the 4th quarter of 1999 and 1st quarter of 2000 were different.

In view of the foregoing findings, this Court cannot therefore determine with utmost certainty whether petitioner's suppliers SMC and TCCEC utilized **twice** the creditable withholding tax certificates issued to them by petitioner. Petitioner should have presented a reconciliation report, summarizing in detail the creditable withholding tax certificates issued to its suppliers, the suppliers' income tax returns for years 1999 and 2000 and 2001, general ledgers, related to invoices or receipts, or such other evidence where the Court can trace and ascertain that there was no double utilization of the creditable withholding taxes by TCCEC and SMC.

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity

⁶ Please see paragraph 1(b) of the Supplemental Joint Stipulation of Facts; docket, pp. 525-526.

⁷ Supra at p. 13.

claiming it.⁸ In the present case, petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.


ERLINDA P. UY
Associate Justice

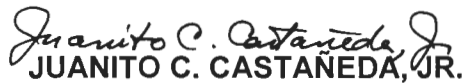
WE CONCUR:


JUANITO C. CASTANEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

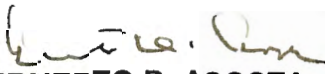
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson

⁸ *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, 309 SCRA 87; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 332; and *Commissioner of Customs vs. Court of Tax Appeals*, 328 SCRA 822.

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