# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

**HAVI FOOD SERVICES PHILIPPINES, INC.**
Petitioner,

- versus -

**C.T.A. CASE NO. 6123**

**COMMISSIONER OF INTERNAL REVENUE**
Respondent.

Promulgated:
JAN 10 2002

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## DECISION

This case involves a claim for refund in the amount of *seventeen million seven hundred one thousand four hundred fifty two pesos* (P17,701,452.00) allegedly representing unutilized creditable withholding taxes for taxable year 1998.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office located at Sumulong Highway, Marikina, Metro Manila. It is engaged in trading of food and packaging items as well as warehousing and distribution services (TSN, November 14, 2000, page 9).

On April 6, 1999, Petitioner filed its 1998 annual income tax return (Exhibit A) reflecting a taxable income of P543,904.00 and a minimum corporate income tax due of P461,487.00 which was offset against the creditable taxes withheld in 1998 of P18,162,939.00 (Exhibit A-2) leaving the balance of P17,701,452.00 (Exhibit A-3) as excess tax credits as of December 31, 1998. This overpaid income tax of P17,701,452.00 was opted by Petitioner as "To be refunded" (Exhibit A-4).

On April 26, 1999, Petitioner filed an administrative claim for refund corresponding to its reported 1998 excess creditable withholding taxes of P17,701,452.00 (Exhibit C). There being no action on the part of herein Respondent, Petitioner filed the instant Petition on June 26, 2000 citing as legal bases the following provisions of Section 76 in relation to Sections 204(C) and 229 of the Tax Code, thus:

> "**SEC. 76.** ***Final Adjustment Return***. Every corporation liable to tax under Section 27 shall file a final adjustment return covering the 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 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."
>
> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** —The Commissioner may –
>
> xxx xxx xxx

"(C) Credit or refund 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 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."

"**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 therefore, 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."

Respondent, in his Answer filed through registered mail on August 28, 2000, denied Petitioner's assertions and advanced the following Special and Affirmative Defenses:

"1.) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;

2.) Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

To support its claim, Petitioner presented several documents, which were identified by its Finance Director, Ms. Nora D. Miguel. Respondent, on the other hand, was declared to have waived his right to present evidence in a Resolution promulgated on July 10, 2001 (see page 403, CTA records).

The issues submitted by the parties for this Court's resolution are:

1.) Whether or not Petitioner's creditable withholding taxes for calendar year ended December 31, 1998 amounting to Eighteen Million One Hundred Sixty Two Thousand Nine Hundred Thirty Nine Pesos (P18,162,939.00) are duly supported by Certificates of Creditable Tax Withheld at Source;

2.) Whether or not the income from which the creditable taxes were withheld were duly declared as part of Petitioner's income in its Corporate Annual Income Tax Return for calendar year December 31, 1998;

3.) Whether or not Petitioner did not in fact carry over its 1998 unutilized creditable withholding taxes amounting to Seventeen Million Seven Hundred One Thousand Four Hundred Fifty Two Pesos (P17,701,452.00) to the succeeding calendar year ended December 31, 1999 and thus qualify as a proper subject for refund pursuant to Sections 204 and 229 of the Tax Code, as amended;

4.) Whether or not Petitioner had duly filed both the administrative and judicial claims for refund within the two-year period prescribed in Sections 204 and 229, respectively, of the Tax Code, as amended.

(Joint Stipulation of Facts and Issues, CTA records, pp 235-236)

There is no question that Petitioner's 1998 income tax return (Exhibit A) shows an income tax overpayment of P17,701,452.00 (Exhibit A-3). Inasmuch as Petitioner did not carry-over the said excess amount of P17,701,452.00 to the succeeding year 1999

(Exhibit B-4), the same may be the proper subject of a claim for refund under Section 76(C) of the Tax Code.

However, as oft-cited by this Court in a number of similar cases, that in order to be entitled to a refund of excess creditable withholding taxes, the Petitioner must prove:

1.) That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the Tax Code;

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 were included in the return of the recipient [*Section 2.58.3(B) of Revenue Regulations No. 2-98; Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

Records show that Petitioner complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*). The subject excess creditable withholding taxes were for taxable year 1998 for which Petitioner filed its annual income tax return on April 6, 1999 (Exhibit A). Counting from this latter date, Petitioner's administrative and judicial claims for refund filed on April 26, 1999 (Exhibit C-2) and June 26, 2000, respectively, fall within the two-year period prescribed under Section 204(C) in relation to Section 229 of the Tax Code.

To prove the fact of withholding of the reported 1998 creditable taxes of P18,162,939.00 (Exhibit A-2), Petitioner presented the Certificates of Creditable Tax Withheld at Source issued to it by various withholding agents for the year 1998 (Exhibits

D to LLLL, inclusive) which were summarized in Exhibit QQQQ. However, this Court noted that the summary included foreign taxes in the total amount of P103,014.09 withheld by HAVI Food Services, Thailand from its 1998 royalty payments to Petitioner in the amount of P686,759.15 (Exhibits MMMM, NNNN, OOOO & VVVV). It bears stressing that the creditable withholding taxes mandated under Section 57(B) of the Tax Code as implemented by Section 2.57.2 of Revenue Regulations No. 2-98 represent advance income tax payments by a taxpayer to the national government. Since the amount of P103,014.09 was withheld and remitted to the Thailand government, the same shall not be creditable against Petitioner's income tax liability and shall be disallowed from Petitioner's claim of P18,162,939.00. Hence, only the remaining claimed creditable taxes withheld of P18,059,924.91 were found to be properly supported by certificates.

We now go to the third requirement. As can be gathered from the certificates, out of the creditable withholding taxes of P18,059,924.91, the amount of P17,458,390.13 were withheld from contractor's fees, services fees and professional fees paid to Petitioner or from Petitioner's sale of services in the total amount of P1,742,495,454.16. The remaining creditable income taxes of P571,900.48 and P29,634.31 were withheld from Petitioner's sale of goods of P57,194,072.01 and rental income of P592,686.20, respectively, as shown below:

| Exhibit | Period Covered | Withholding Agent | Income Payment | Income Tax Withheld |
|---|---|---|---|---|
| *Payments for Contractor's fees* | | | | |
| D | Jan – Dec. '98 | McGeorge Food Industries, Inc. | P 1,721,342,754.13 | P17,213,427.54 |
| E | Jan – Mar '98 | McDonald's Sta. Mesa | 413,186.40 | 4,131.86 |
| F | Apr – June '98 | McDonald's Sta. Mesa | 422,231.07 | 4,222.31 |

| | | | | |
|---|---|---|---|---|
| G | July – Sept '98 | McDonald's Sta. Mesa | 310,517.09 | 3,105.18 |
| H | Oct – Dec '98 | McDonald's Sta. Mesa | 234,231.05 | 2,342.31 |
| I | July – Sept '98 | Alfonso Lee Ng | 112,738.45 | 1,127.38 |
| J | Oct - Dec '98 | Alfonso Lee Ng | 185,828.55 | 1,858.29 |
| K | Jan - Mar '98 | TGY & Kids, Inc. | 395,301.00 | 3,953.01 |
| L | Apr - June '98 | TGY & Kids, Inc. | 346,008.00 | 3,460.08 |
| M | July - Sept '98 | TGY & Kids, Inc. | 383,051.00 | 3,830.51 |
| N | Oct - Dec '98 | TGY & Kids, Inc. | 384,256.00 | 3,842.56 |
| W | Jan - Dec. '98 | GMC Foods, Inc. | 1,694,419.00 | 16,944.19 |
| SS | Jan - Mar '98 | McRey Enterprises | 213,837.60 | 2,138.37 |
| TT | Apr - June '98 | McRey Enterprises | 333,397.58 | 3,333.87 |
| UU | July - Sept '98 | McRey Enterprises | 349,516.99 | 3,495.17 |
| VV | Oct - Dec '98 | McRey Enterprises | 303,430.39 | 3,034.30 |
| AAA | Jan - Mar '98 | McMighty Food Corp. | 88,736.00 | 887.36 |
| BBB | Apr - June '98 | McMighty Food Corp. | 128,564.00 | 1,285.64 |
| CCC | July - Sept '98 | McMighty Food Corp. | 107,862.40 | 1,078.62 |
| DDD | Oct - Dec '98 | McMighty Food Corp. | 148,072.90 | 1,480.73 |
| HHH | Oct - Dec '98 | Geneva Food, Inc. | 349,748.60 | 3,497.48 |
| VVV | Jan - Sept '98 | Mariel Food Corporation | 482,573.94 | 4,825.74 |
| WWW | Oct - Dec '98 | Mariel Food Corporation | 182,911.00 | 1,829.11 |
| XXX | June - Dec. '98 | Mariel Food Corporation | 275,778.44 | 2,757.78 |
| *Payments for Professional fees* | | | | |
| O | Jan - Mar '98 | Edward Chan Gocheco | 130,322.00 | 1,303.22 |
| P | Apr - June '98 | Edward Chan Gocheco | 120,044.00 | 1,200.44 |
| Q | July - Sept '98 | Edward Chan Gocheco | 119,231.00 | 1,192.31 |
| R | Oct - Dec '98 | Edward Chan Gocheco | 287,868.00 | 2,878.68 |
| S | Jan - Mar '98 | Edward Chan Gocheco | 262,260.00 | 2,622.60 |
| T | Apr - June '98 | Edward Chan Gocheco | 276,051.00 | 2,760.51 |
| U | July - Sept '98 | Edward Chan Gocheco | 288,469.00 | 2,884.69 |
| V | Oct - Dec '98 | Edward Chan Gocheco | 127,098.00 | 1,270.98 |
| IIII | Jan - Mar '98 | MAN-GO Company, Inc. | 265,897.50 | 13,294.87 |
| JJJJ | Apr - June '98 | MAN-GO Company, Inc. | 212,039.25 | 10,601.97 |
| KKKK | July - Sept '98 | MAN-GO Company, Inc. | 185,223.75 | 9,242.25 |
| LLLL | Oct - Dec '98 | MAN-GO Company, Inc. | 173,103.75 | 8,655.19 |
| *Payments for Service fees* | | | | |
| X | Jan - Mar '98 | Ancel "A" Corp. | 172,621.60 | 1,726.22 |
| Y | Apr - June '98 | Ancel "A" Corp. | 224,989.44 | 2,249.89 |
| Z | July - Sept '98 | Ancel "A" Corp. | 196,342.78 | 1,963.44 |
| AA | Oct - Dec '98 | Ancel "A" Corp. | 226,588.55 | 2,265.89 |
| BB | Jan - Mar '98 | Ancel "A" Corp. | 172,621.60 | 1,726.22 |
| CC | Apr - May '98 | Ancel "A" Corp. | 111,876.04 | 1,118.76 |
| DD | June - Sept '98 | Ancel "A" Corp. | 205,374.84 | 2,057.76 |
| EE | Oct - Dec '98 | Ancel "A" Corp. | 172,164.68 | 1,721.65 |
| FF | Jan - Mar '98 | Double Rise Foods, Inc. | 129,907.60 | 1,299.08 |
| GG | Apr - June '98 | Double Rise Foods, Inc. | 201,507.99 | 2,015.09 |
| HH | July - Sept '98 | Double Rise Foods, Inc. | 152,618.23 | 1,526.18 |

| | | | | |
|---|---|---|---|---|
| II | Oct - Dec '98 | Double Rise Foods, Inc. | 198,102.87 | 1,981.03 |
| JJ | Jan - Mar '98 | Double Rise Foods, Inc. | 91,931.00 | 919.32 |
| KK | Apr - June '98 | Double Rise Foods, Inc. | 88,539.62 | 885.40 |
| LL | July - Sept '98 | Double Rise Foods, | 75,035.46 | 750.36 |
| MM | Oct - Dec '98 | Double Rise Foods, Inc. | 106,578.13 | 1,065.78 |
| NN | Jan - Mar '98 | Giant Arches Food Corporation | 380,737.00 | 3,807.37 |
| OO | Apr - June '98 | Giant Arches Food Corporation | 492,324.00 | 4,923.24 |
| PP | July - Sept '98 | Giant Arches Food Corporation | 474,085.00 | 4,740.85 |
| QQ | Oct - Dec '98 | Giant Arches Food Corporation | 505,610.00 | 5,056.10 |
| EEE | Jan - Sept '98 | McDaniel's Food Corporation | 559,163.89 | 5,591.64 |
| GGG | Jan - Sept '98 | Geneva Food, Inc. | 919,735.74 | 9,197.37 |
| III | Jan - Mar '98 | McColby's Inc. | 407,321.00 | 4,073.21 |
| JJJ | Apr - June '98 | McColby's Inc. | 389,677.00 | 3,896.77 |
| KKK | July - Sept '98 | McColby's Inc. | 398,568.00 | 3,985.68 |
| LLL | Oct - Dec '98 | McColby's Inc. | 404,173.00 | 4,041.73 |
| MMM | Jan - Mar '98 | McColby's Inc. | 77,155.00 | 771.55 |
| NNN | Apr - June '98 | McColby's Inc. | 94,042.00 | 940.42 |
| OOO | July - Sept '98 | McColby's Inc. | 111,812.00 | 1,118.12 |
| PPP | Oct - Dec '98 | McColby's Inc. | 117,927.00 | 1,179.27 |
| QQQ | Jan - Mar '98 | McColby's Inc. | 91,406.00 | 914.06 |
| RRR | Apr - June '98 | McColby's Inc. | 107,358.00 | 1,073.58 |
| SSS | July - Sept '98 | McColby's Inc. | 120,473.00 | 1,204.73 |
| TTT | Oct - Dec '98 | McColby's Inc. | 133,536.00 | 1,335.36 |
| YYY | Jan - Mar '98 | Nee Mee Food Corporation | 173,824.80 | 1,738.25 |
| ZZZ | Apr - June '98 | Nee Mee Food Corporation | 226,228.21 | 2,262.28 |
| AAAA | July - Sept '98 | Nee Mee Food Corporation | 198,410.73 | 1,984.11 |
| BBBB | Oct - Dec '98 | Nee Mee Food Corporation | 228,024.40 | 2,280.24 |
| *Payment for Freight & Cart* | | | | |
| UUU | Jan - Dec. '98 | McGill Food Ind., Inc. | 1,720,503.13 | 17,205.03 |
| | | Total – Sale of Services | P 1,742,495,454.16 | P17,458,390.13 |
| *Payments for Sale of goods* | | | | |
| RR | Jan - Dec. '98 | McJola, Inc. | P 30,990,300.07 | P 309,862.76 |
| WW | Jan - Mar '98 | Edsa Food Industries, Inc. | 6,151,799.00 | 61,517.99 |
| XX | Apr - June '98 | Edsa Food Industries, Inc. | 5,029,616.00 | 50,296.16 |
| YY | July - Sept '98 | Edsa Food Industries, Inc. | 5,842,460.00 | 58,424.60 |
| ZZ | Oct - Dec '98 | Edsa Food Industries, Inc. | 4,893,836.00 | 48,938.36 |
| FFF | Jan - Dec. '98 | McDaniel's Food Corporation | 772,644.39 | 7,726.45 |
| CCCC | Jan 31-Feb 28 '98 | Nestor S. dela Merced II | 924,879.55 | 9,248.79 |
| DDDD | Jan 1 - Mar 31 '98 | Blue Dairy Corporation | 6,165.00 | 61.65 |
| EEEE | Apr - June '98 | Blue Dairy Corporation | 29,353.00 | 293.53 |
| FFFF | July - Sept '98 | Blue Dairy Corporation | 25,953.00 | 259.53 |
| GGGG | Oct - Dec '98 | Blue Dairy Corporation | 27,079.00 | 270.79 |
| HHHH | Oct - Dec '98 | GenOSI, Inc. | 2,499,987.00 | 24,999.87 |
| | | Total –Sale of goods | P 57,194,072.01 | P 571,900.48 |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Payments for Rental of real property* | | | | | | |
| EEEE | Apr - June '98 | Blue Dairy Corporation | P | 88,205.00 | P | 4,410.25 |
| FFFF | July - Sept '98 | Blue Dairy Corporation | | 252,735.60 | | 12,636.78 |
| GGGG | Oct - Dec '98 | Blue Dairy Corporation | | 251,745.60 | | 12,587.28 |
| | | Total – Rental of real property | P | 592,686.20 | P | 29,634.31 |
| | | Grand Total: | | P1,800,282,212.37 | | P18,059,924.92 |

In its 1998 income tax return Petitioner reflected as part of its gross income the following income amounts:

| Nature of Income | | Income Amount |
|---|---|---|
| Sale of goods | (Exhibit A-6-2) | P2,169,909,726.00 |
| Sale of services | (Exhibit A-6-3) | 147,566,711.00 |
| Rental income | (Schedule 8 of Exhibit A-6) | 512,426.00 |

A comparison of the gross income amounts as reflected in the certificates and in the 1998 income tax return reveals the following discrepancies:

| | Income Tax Withheld | Income Payments Per Certificates | Income Payments Per 1998 ITR | Discrepancy |
|---|---|---|---|---|
| Sale of goods | 571,900.48 | 57,194,072.01 | 2,169,909,726.00 | 2,112,715,653.99 |
| Sale of services | 17,458,390.13 | 1,742,495,454.16 | 147,566,711.00 | (1,594,928,743.16) |
| Rental income | 29,634.31 | 592,686.20 | 512,426.00 | (80,260.20) |

Based on the above, Petitioner's income from sale of goods of P2,169,909,726.00 as shown in its 1998 ITR is higher than the income of P57,194,072.01 as reflected in the certificates by P2,112,715,653.99 It may then be inferred that Petitioner declared in its 1998 ITR all of the income of P57,194,072.01 from which the creditable income taxes of P571,900.48 were withheld. However, Petitioner's income from sale of services of

P147,566,711.00 and rental income of P512,426.00 as reported in its 1998 ITR were less than those shown in the certificates by P1,594,928,743.16 and P80,260.20, respectively. Hence, Petitioner failed to prove that it declared in its 1998 ITR all of the income pertaining to the creditable taxes withheld of P17,458,390.13 and P29,634.31. Accordingly, the withholding taxes corresponding to the discrepancies in Petitioner's income from sale of services and rental income should be deducted from the respective creditable taxes withheld of P17,458,390.13 and P29,634.31 as follows:

Schedule 1

| | | |
|---|---|---|
| 1998 Creditable taxes withheld per certificates | | |
| Sale of goods | | P 571,900.48 |
| Sale of services | | 17,458,390.13 |
| Rental income | | 29,634.31 |
| | | P 18,059,924.92 |
| Less: Creditable taxes related to the discrepancies in income | | |
| Sale of services | | |
| Income per 1998 ITR | P147,566,711.00 | |
| Multiply by w/tax rate | 1% | |
| Creditable taxes related to the declared income | P 1,475,667.11 | |
| Less: Creditable taxes withheld per certificates | 17,458,390.13 | |
| Creditable taxes related to the discrepancy in income | | 15,982,723.02 |
| Rental Income | | |
| Income per 1998 ITR | P 512,426.00 | |
| Multiply by w/tax rate | 5% | |
| Creditable taxes related to the declared income | P 25,621.30 | |
| Less: Creditable taxes withheld per certificates | 29,634.31 | |
| Creditable taxes related to the discrepancy in income | | 4,013.01 |
| 1998 Creditable taxes withheld related to the declared income per ITR | | P 2,073,188.89 |

Therefore, only the income corresponding to the creditable taxes withheld of P2,073,188.89 was properly declared by Petitioner in its 1998 income tax return.

In sum, this Court finds Petitioner to have sufficiently established its compliance with the requirements for the refund of unutilized creditable taxes withheld for the year 1998 but only to the extent of P1,611,701.89 computed as follows:

| | |
|---|---|
| Gross Income | P 23,074,328.00 |
| Less: Deductions | 22,530,424.00 |
| Taxable Income (Exhibit A) | P 543,904.00 |
| | |
| Minimum Corporate Income Tax Due | P 461,487.00 |
| Less: Creditable Taxes Withheld (see Schedule 1 above) | 2,073,188.89 |
| Income Tax Refundable | P (1,611,701.89) |

**WHEREFORE**, in view of the foregoing premises, the instant Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND** the amount of **ONE MILLION SIX HUNDRED ELEVEN THOUSAND SEVEN HUNDRED ONE & 89/100 PESOS (P1,611,701.89)** in favor of Petitioner representing unutilized creditable income taxes withheld for taxable year 1998.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**AMANCIO Q. SAGA**
Associate Judge

**JUANITO C. CASTAÑEDA, JR.**
Associate Judge

## CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Judge