REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL ELECTRIC PHILIPPINES
METER AND INSTRUMENT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4158

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

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D E C I S I O N

This case involves a claim for tax credit in the amounts of P10,830.52 and P27,247.86, or a total amount of P38,078.38, representing overpaid withholding tax on Technical Service Fees paid in 1985 and royalties for 1984 paid in 1985 to General Electric Company U.S.A.

Petitioner is a domestic corporation existing under the Philippine law. On the other hand, General Electric Company is a corporation engaged under the laws of New York U.S.A. not engaged in business in the Philippines.

On May 8, 1987, petitioner filed a claim for tax credit (Exhibit A, pp. 39 to 41 CTA rec.) on the overpaid royalties in 1984 but paid in 1985 in the amount of P27,247.86, and overpaid technical service fee paid in 1985 in the amount of P10,830.52 or the total sum of P38,078.38.

The alleged refundable amount of P38,078.38 was due to reduction of rates of tax brought about by the effectivity of the RP-West German Treaty on January 1, 1985, particularly Article 12(2) (b) thereof, in relation to Article 13(2) (b) (ii) of the RP - US Tax Treaty as follows:

a.) ten percent (10%) tax - from twenty five percent (25%) tax on royalties.

b.) ten percent (10%) tax - from fifteen (15%) tax on technical service fee.

The issues are as follows:

1. Whether or not petitioner is entitled to tax credit of P27,247.86, allegedly representing overpaid withholding tax on accrued royalties in 1984 but paid in 1985;

2. Whether or not petitioner is entitled to tax credit of P10,830.52, representing overpaid withholding tax on technical service fee paid in 1985; and

3. Whether or not the claim for tax credit has prescribed.

We will now come to the 1st and 2nd issue. On the basis of the most favored nation provision of the RP - U.S. Tax Treaty, Art. 13 (2) (b) (iii), taken in relation to Article 12 (2) (b) of the RP-West German Tax Treaty and BIR Ruling No. 263-86, petitioner should have withheld and paid only 10% tax instead of 25% on the royalties paid by petitioner to General Electric Company in the U.S.

Of the accrued royalties in 1984 in the amount of P15,570,208.22 paid in 1985 - 25% tax was actually paid by petitioner on May 10, 1985 by way of withholding tax in the amount of P81,743.59 (Exhs. I, K & J, pp. 53-54, CTA rec.) Since the tax due thereon is only 10%, according to the above provision of law, the sum of P54,495.73 was due and paid resulting to an overpayment of P27,247.86.

Of the technical service fee of P168,474.91, petitioner paid on June 10, 1985 the 15% withholding tax in the sum of P25,271.23. (Exhs. E, G & F, pp. 50-51 CTA rec). Since the tax due is only 10%, according to the above provision of law, the sum of P14,440.71 was due and paid resulting to an overpayment of P10,830.52.

All in all, there is a total amount refundable to petitioner in the sum of P38,078.38.

On the 3rd issue as to whether or not the action has prescribed, payment in these two cases having been made on May 10, 1985 (Exhs. I, K & J, ibid) and June 10, 1985 (Exhs. E, G & F, ibid), and the claim for tax credit filed on May 8, 1987 (Exh. A, pp. 39-41 CTA rec.) and the Petition for Review filed on May 8, 1987, the claim for tax credit and petition for review was filed well within the two-year period prescribed by law counted from the period of payment. The judicial claim for a tax credit is, therefore, filed on time.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit to petitioner General Electric Philippines Meter and Instrument Co., Inc. the sum of P38,078.38, without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 5, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Associate Judge

CERTIFICATION

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

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals