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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

3M PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5118

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 25 1997

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DECISION

This is a claim for refund or tax credit of alleged overpaid withholding tax on royalties amounting to P2,155,813.10.

Petitioner, a domestic corporation organized and operating under Philippine laws, entered into a Patent and Trademark License and Technical Information Agreement with Minnesota Mining and Manufacturing Corporation (MMMC) (Exhs. B and A), a non-resident foreign corporation duly organized and existing under the laws of the State of Delaware, United States of America. Pursuant to this agreement, petitioner was granted the right to use the trademark, patent and technical information owned by the latter for the manufacture of household and industrial tapes, adhesives, abrasives, coatings and sealers, reflective paints and tapes and health care products.

The said license agreement as amended was duly registered with the Technology Transfer Registry of the Bureau of Patents, Trade Marks and Technology Transfer as evidence by Certificate of Registration No. 989-A (Exh. C).

For the use of the trademark or technology, petitioner was obligated to pay MMMC royalties computed at three and one-half percent (3.5%) of net sales for locally manufactured products and two and one-half percent (2.5 %) of net sales for converted products (Exh. A). These royalty payments were subjected to 25% withholding tax by the petitioner, acting as the withholding agent, for the period covering July 1992 to October 1993 in the total amount of P3,593,021.83 (Exh. "F" to "V", inclusive) and the same were remitted to the Bureau of Internal Revenue (BIR).

On April 18, 1994, petitioner filed with the BIR a claim for refund or tax credit of overpaid withholding taxes on royalties premised on the application of the most favored nation clause provision of the RP-US Tax Treaty in relation to the RP - West Germany Tax Treaty granting a preferential rate of 10% on royalties derived by a resident of the United States from sources within the Philippines (Exh. X).

Petitioner's claim for the refund of P2,155,813.10 was computed as follows: (Exh. W, p. 176, CTA rec.)

EXH.	MONTH/ YEAR	TECHNICAL SERVICE FEE	25% TAX PAID	10% (SHLD BE)	COLLECTIBLE FROM THE BIR
F	Oct. 1993	P1,402,259.04	P 350,564,76	P 140,225.90	P 210,338.86
G	Sep.	1,113,366.08	278,341.52	111,336.61	167,004.91
H	Aug.	957,567.32	239,391.83	95,756.73	143,635.10
I	Jul	874,171.72	218,542.93	87,417.17	131,125.76
J	Jun	728,519.11	182,129.78	72,851.91	109,277.87
K	May	879,324.83	219,831.21	87,932.48	131,898.73
L	Apr	561,380.16	140,345.04	56,138.02	84,207.02
M	Mar.	1,186,493.08	296,623.27	118,649.31	177,973.96
N	Feb.	1,005,301.42	251,325.36	100,530.14	150,795.22
O	Jan.	1,019,231.72	254,807.93	101,923.17	152,884.76
P	Dec. 1992	467,231.78	116,807.94	46,723.18	70,084.76
Q	Nov.	579,901.24	144,975.31	57,990.12	86,985.19
R	Oct.	1,095,175,75	273,793.94	109,517.58	164,276.36
T	Sep.	773,852.01	193,463.00	77,385.20	116,077.80
U	Aug.	724,790.66	181,197.67	72,479.07	108,718.60
V	Jul	1,003,521.36	250,880.34	100,352.14	150,528.20
		P14,372,087.28	P3,593,021.83	P1,437,208.73	P2,155,813.10

Respondent's inaction on the letter-request forced petitioner's to go to this Court by way of this petition which was filed on June 6, 1994.

The sole issue raised is: Whether or not petitioner is entitled to the claim for refund or tax credit in accordance with the most favored nation clause as provided in Article 13(2)(iii) of the RP - U.S. Tax

Treaty in relation to Article 12(2)(b) of the RP - West Germany Tax Treaty.

We answer in the affirmative.

In the case of **General Electric Philippines Meter and Instrument Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4158, December 5, 1991**, this Court ruled, thus:

> "On the basis of the most favored nation clause of the R.P. - U.S. Tax Treaty, Art. 13(2)(b)(iii), taken in relation to Article 12(2)(b) of the R.P. - West Germany 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..
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> 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.
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> 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 and paid resulting to an overpayment of P10,830.52."

Said decision was appealed to the Court of Appeals but due to the late filing of the petition for review within the time granted for its extension, the Court of Appeals denied due course to the petition of the Commissioner of Internal Revenue. An entry of judgment has been recorded in the Books of Entry of Judgment in the Court of Appeals on January 26, 1995 (**Commissioner of Internal Revenue vs. General Electric Philippines Meter and Instrument Co., Inc. C.A. G.R. No. 30674**).

And in a much later case, this Court reiterated the above-mentioned ruling, thus:

> "On the second issue, whether or not petitioner should be taxed at the reduced rate of 10% withholding tax on royalties in accordance with Article 12(2)(b) of the R.P. - West Germany Tax Treaty and not 25% withholding tax on royalties under Articles 13(2)(b)(iii) of the R.P. - U.S. Tax Treaty.
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> This Court is of the persuasion that petitioner's stand is correct and concurs with the opinion rendered by then Commissioner of Internal Revenue, Bienvenldo Tan, Jr. (BIR Ruling No. 456-88, supra., that under the most favored nation provision of the R.P. - U.S. Tax Treaty (Article 13 paragraph 2(b)(iii), the tax imposable on royalties derived by a resident of the United States from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state. Article 12, paragraph 2(b) of the R.P. - West Germany Tax Treaty, provides that royalties arising in the Philippines and paid to a resident of West Germany may also be taxed in the Phillppines, but the tax so charged shall not exceed 10% of the gross amount of royalties. Said treaty also provides that for as long as the transfer of technology under Philippine law, is subject to approval, the limitation of the tax rate in case of royalties arising in the Philippines, apply if the

> contract giving rise to such royalties has been approved by Philippine competent authorities.
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> Thus, inasmuch as the Agreement between World Trade and IBM Phils. as well as the Agreement between IBM and IBM Phils. had been approved by the Central Bank of the Philippines, royalties arising in the Philippines and payable to World Trade as well as to IBM by IBM Phils. should be taxed at the rate of 10% because said rate is indicated in the R.P. - West Germany Tax Treaty and pursuant to Article 13, paragraph 2(b)(iii), of the RP - US Tax Treaty. **(IBM Philippines, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 4308, March 31, 1993 pp. 10-12)**

The Entry of Judgment on said case was issued on January 17, 1994 after the Court of Appeals granted petitioner's (herein respondent) withdrawal of the case (**Commissioner of Internal Revenue vs. IBM Philippines, Inc., C.A. G.R.-SP No. 31791, December 15, 1993**).

We do not intend to depart from the wisdom of the said rulings and thus, the same should be applied in the case at bar. With the evidence presented by petitioner, we see no valid reasons why the same should be denied. The burden of proof in claims for refund or tax credit has overwhelming proven by petitioner.

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED to REFUND or in the alternative ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P2,155,813.10, representing overpaid withholding tax on royalty payments for the period beginning July 1992 to October 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals