REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NISSAN MOTOR PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6273

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 13 2003

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DECISION

This case involves a claim for cash refund or the issuance of a tax credit certificate in the amount of P3,658,458.00 allegedly representing unutilized withholding tax credits for the calendar year ended December 31, 1998.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Nissan Technopark, Barangay Pulong Sta. Cruz, Sta. Rosa, 4026, Laguna. (*par. 1, Facts Admitted*).

On April 15, 1999, petitioner filed its annual income tax return for the calendar year ended December 31, 1998 reflecting a net loss of P618,964,397.00 and a minimum corporate income tax (MCIT) due of P3,117,771.00 which was applied against the creditable taxes withheld in 1998 of P6,598,313.00 leaving an excess tax credit of P3,480,542.00 as of December 31, 1998. Petitioner indicated the excess tax credit of P3,480,542.00 as "To be refunded" (*Exhibit A*).

However, on July 29, 1999, petitioner filed its 1998 amended annual income tax return reporting the same MCIT due of P3,117,771.00 but deducting a higher amount of creditable taxes withheld in 1998 of P6,776,229.00, resulting to an increased excess tax credit of P3,658,458.00 as of December 31, 1998. The latter amount was marked in the return as "To be issued as Tax Credit Certificate" (*Exhibit B*).

On August 12, 1999, petitioner filed with the BIR an administrative claim for the issuance of a tax credit certificate corresponding to its reported 1998 excess tax credit in the amount of P3,658,458.00 (*page 13, CTA records*) pursuant to the following provisions of Section 204(C) of the Tax Code:

> "***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, x x x"

Since respondent did not act on the aforesaid claim, petitioner filed the instant Petition for Review on April 11, 2001 in order to beat the two-year prescriptive period provided for under Section 229 of the Tax Code, to wit:

> "***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: x x x"

Respondent, in his Answer filed on May 17, 2001, interposed the following Special and Affirmative Defenses:

"3. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau;

4. Petitioner failed miserably to show that the total amount of Php: 3,658,458.00 claimed as unutilized withholding tax credits was erroneously or illegally collected or that the same was properly documented;

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

6. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

7. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code; and

8. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

In their Joint Stipulation of Facts and Issues filed on August 27, 2001 and approved by this court on August 29, 2001, the parties submitted the following issues for resolution:

1. Whether or not the income payments from which the taxes were withheld were included in petitioner's return for the calendar year ended December 31, 1998;

2. Whether or not the total amount of P6,776,229.00 representing creditable income taxes withheld in favor of petitioner for the calendar year ended December 31, 1998 are duly substantiated by the necessary certificates of creditable income tax withheld at source;

3. Whether or not the amount of excess/unutilized creditable income tax as of the end of taxable year 1998 in the amount of P3,658,458.00 was utilized or carried over to the succeeding taxable year; and

4. Whether or not petitioner is entitled to the refund of the amount of P3,658,458.00 representing unutilized withholding tax credits for the calendar year ended December 31, 1998.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, manifested that he is submitting his case for decision sans his evidence (*page 122, CTA records*).

After a careful examination of all the relevant documents submitted by the petitioner with this court, coupled by the respondent's failure to refute the same, we find petitioner entitled to the claim.

Section 76 of the Tax Code provides, thus:

> "**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. 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."

The foregoing provisions clearly allow the issuance of a tax credit certificate as one of the options available to a corporate taxpayer relative to the excess amount of tax withheld/paid over the actual income tax computed and shown in its final adjustment return in a given taxable year.

As can be seen in its 1998 amended annual income tax return (*Exhibit B*), petitioner's reported creditable taxes withheld of P6,776,229.00 exceeded its MCIT due of P3,117,771.00, resulting to an overpayment of P3,658,458.00 as of December 31, 1998. The return likewise shows that petitioner properly marked with an "x" the box referring to the choice "To be issued as Tax Credit Certificate" (*Exhibit B-4*). Hence, the amount of P3,658,458.00 maybe claimed by petitioner in the form of a tax credit certificate pursuant to Section 76 of the Tax Code, as aforequoted.

However, as oft-cited by this court in a number of similar cases, the refund of excess creditable withholding taxes is dependent on petitioner's compliance with the following three basic requirements:

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 [***Revenue Regulations No. 2-98; Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***].

Records reveal 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, supra)***. The claimed excess creditable withholding taxes pertain to calendar year ended December 31, 1998 for which petitioner filed its original annual income tax return on April 15, 1999 (*Exhibit A*). Counting from this latter date, the two-year period provided under Section 204(C) in relation to Section 229 of the Tax Code expired on April 14, 2001 considering that the year 2000 is a leap year. Therefore, petitioner's administrative claim for refund filed on August 12, 1999 and the Petition for Review filed before this court on April 11, 2001 fall within the two-year prescriptive period.

To establish the fact of withholding of the reported creditable taxes withheld in 1998 of P6,776,229.00, petitioner presented various Certificates of Creditable Tax Withheld at Source (*Exhibits D to Z & DD to GG),* the details of which are summarized below:

Exhibit	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
D	1st qtr 1998	Mantrade Devt. Corp.	P 144,208,420.59	P 1,442,084.21
E	2nd qtr 1998	Mantrade Devt. Corp.	93,601,457.80	936,014.58
F	3rd qtr 1998	Mantrade Devt. Corp.	93,059,602.02	930,596.02
G	4th qtr 1998	Mantrade Devt. Corp.	67,685,115.10	676,851.49
H	01/01/98-03/31/98	Nissan Valley, Inc.	33,084,301.00	330,843.01
I	04/01/98-06/30/98	Nissan Valley, Inc.	25,728,698.00	257,286.98
J	07/01/98-09/30/98	Nissan Valley, Inc.	42,007,735.00	420,077.35

K	10/01/98-12/31/98	Nissan Valley, Inc.	46,080,574.00	460,805.74
L	Jan -March 1998	Univille Motors Corp.	50,245.19	502.45
M	Apr-June 1998	Univille Motors Corp.	60,411.36	604.11
N	07/01/98-12/31/98	Univille Motors Corp.	429,971.40	4,299.71
O	1/1/1998-03/31/98	Masco Auto Sales, Inc.	12,957,758.00	129,577.58
P	06/01/98-06/30/98	Masco Auto Sales, Inc.	12,498,471.00	124,984.71
Q	07/01/98-09/31/98	Masco Auto Sales, Inc.	19,183,188.00	191,831.88
R	10/1/1998-12/31/98	Masco Auto Sales, Inc.	19,571,637.00	195,716.37
S	04/01/98-06/30/98	The Japanese Asso, Mla, Inc.	150,000.00	1,500.00
T	10/01/98-12/31/98	The Japanese Asso, Mla, Inc.	150,000.00	1,500.00
U	Apr 1-June 30 1998	Nissan Auto Parts Mfg. Corp.	1,710,000.00	47,100.00
V	01/01/98-03/31/98	Sta. Cruz Island Corporation	150,000.00	7,500.00
W	04/01/98-06/30/98	Sta. Cruz Island Corporation	150,000.00	7,500.00
X	07/01/98-09/30/98	Sta. Cruz Island Corporation	150,000.00	7,500.00
Y	10/01/98-12/31/98	Sta. Cruz Island Corporation	150,000.00	7,500.00
Z	01/01/98-12/31/98	Metro Motors Sales, Inc.	17,791,623.47	177,915.96
CC	07/01/98-09/30/98	Nissan Auto Parts Mfg. Corp.	1,552,000.00	15,520.00
CC	07/01/98-09/30/98	Nissan Auto Parts Mfg. Corp.	750,000.00	37,500.00
DD	10/01/98-12/31/98	Nissan Auto Parts Mfg. Corp.	1,422,000.00	44,220.00
EE	01/01/98-03/31/98	Nissan Auto Parts Mfg. Corp.	4,382,000.00	73,820.00
FF, GG	Jan - Dec 1998	World Cars, Inc.	24,507,707.00	245,077.07
		Total:	P 663,222,915.93	P 6,776,229.22

Finally, as to the third requirement, the above enumerated Certificates of Creditable Tax Withheld at Source show that the creditable taxes of P6,776,229.22 were withheld from income payments made to petitioner for sale of goods, contractor's fees and professional fees in the total amount of P663,222,915.93. As clearly illustrated by petitioner in Exhibits HH and JJ, the total income payment of P663,222,915.93 formed part of petitioner's gross income from sale of goods of P2,379,300,978.00 (*Part II, Schedule 1 of Exhibit II*), fees/commission of P11,253,039.00 and miscellaneous income of P1,222,740.00 (*Part II, Schedule 8 of Exhibit II*) declared in its 1998 income tax return.

Moreover, petitioner proved that the claimed 1998 excess creditable withholding taxes of P3,658,458.00 were not carried over to the succeeding taxable year 1999 as there was no amount of prior year's excess credits indicated in its 1999 income tax return (*Exhibit C-3*).

In sum, this court finds petitioner to have sufficiently proven its entitlement to the issuance of a tax credit certificate corresponding to its reported 1998 excess creditable withholding taxes in the amount of P3,658,458.00.

WHEREFORE, in the light of the foregoing, the instant petition is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P3,658,458.00 representing unutilized withholding tax credits for the calendar year ended December 31, 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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