REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MCKINSEY & CO., (PHILS.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8472

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 24 2015
10:52 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration**, filed through registered mail on May 8, 2015 and received by the Court on May 29, 2015, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration)**, filed on July 6, 2015.

Respondent seeks reconsideration of the Court's Decision promulgated on April 17, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of ₱62,476,710.65 representing its unutilized excess tax credits for calendar years 2009 and 2010.

SO ORDERED."[1]

Respondent argues that the assailed Decision is contrary to the facts and applicable law, rules and regulations. In the subject motion, respondent raises the following grounds:

1. There is no showing on petitioner's Annual Income Tax Return (ITR) for the years 2009 and 2010 that the income payments subjected to withholding tax were declared as part of its gross income since there were no entries in the "Creditable Tax Withheld Column" on page 2 of the said ITRs;

2. Petitioner failed to comply with the invoicing requirements under Sec. 113 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, as it issued billing invoices instead of official receipts for services which they have rendered to their clients;

3. Petitioner failed to show proof of "Authority to Print" (ATP) Sales Invoices and Official Receipts mandated by Sec. 238 of the NIRC of 1997, in relation to Sec. 113 of the same Code; and

4. The certificates of creditable taxes withheld accomplished by its withholding agents showing the amount declared and withheld from its income in support of the tax refund do not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income.

Petitioner, on the other hand, cites the recent case of *Commissioner of Internal Revenue vs. Sonoma Services, Inc.*[2], (*Sonoma* case) where the CTA *En Banc* held that failure to indicate the amount of creditable withholding taxes (CWT) in the "Creditable Tax Withheld" column of the taxpayer's ITR is not sufficient basis to deny the claim.

[1] Docket, p. 1252.
[2] CTA EB Case No. 931, December 11, 2013.

In addition, petitioner maintains that proof of actual remittance to the BIR of taxes withheld is dispensable in a claim for refund of excess CWTs citing *Sonoma* case. The requirement is to establish the fact of withholding through the withholding tax certificates duly issued by its payors.

Petitioner further avers that it was able to present all the necessary documents in support of its claim. In fact, its documentary exhibits will show that aside from the billing invoices, it was able to present the official receipts issued for the services rendered to its clients. As regards the presentation of ATP, petitioner argues that it is only necessary if the ATP is not indicated in the official receipts. It avers that all its receipts bear the ATP number or BIR Permit Number which is 9AU0000009567 2-16-99.

We DENY respondent's Motion for Reconsideration for lack of merit.

To reiterate, petitioner was able to show that it complied with the basic conditions set forth under the pertinent provisions of law and existing jurisprudence in a claim for refund or issuance of a tax credit certificate representing excess or unutilized CWT, to wit:

1. the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;

2. it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and

3. the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.[3]

As regards the first argument, it must be noted in the case of *Commissioner of Internal Revenue vs. Sonoma Services, Inc.*[4], the CTA *En Banc* clarified that mere failure to make entries in the *"Creditable Tax Withheld"* column does not automatically deny a

[3] *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*, G.R. No. 179260, April 2, 2014, 720 SCRA 385.
[4] CTA EB Case No. 931 (CTA Case No. 7911), December 11, 2013.

taxpayer of its entitlement to refund if there are other evidence to support the claim, it was ruled:

> "Stated otherwise, failure on the part of a taxpayer to make an entry in the *'Creditable Tax Withheld'* column found in page 2 of the Annual Income Tax Return, specifically Schedule 1 or the *'Schedule of Sales/Revenues/Receipts/Fees'* is not a sufficient basis to conclude that the taxpayer failed to comply with the requirement that *'the income upon which the taxes were withheld were included in the return of the recipient'* when the taxpayer has offered other evidence to establish its compliance with this requirement."[5]

Likewise, in the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communications*[6], it was held that the "failure to fill up the entry in the "Creditable Tax Withheld" column in page 2 of the Annual ITR is not fatal to a claim for refund of unutilized CWT, to wit:

> "Thus, **failure to fill up the entry in the 'Creditable Tax Withheld' column in Schedule 1 of the Annual ITR is not fatal to a claim for refund as neither law nor jurisprudence requires it**. Section 2.58.3 of Revenue Regulations No. 2-98 and the applicable jurisprudence merely require that the taxpayer declares as part of its gross income in the Annual ITR the income payment from which the withholding was made.
>
> An entry into the 'Creditable Tax Withheld' column found in page 2 of the Annual ITR, specifically Schedule 1 or the 'Schedule of Sales/Revenues/Receipts/Fees' may expedite the determination of respondent's compliance with the requirement that the income payments from which the withholding of taxes were made formed part of its gross income declared in its Annual ITR. However, it does not follow that the Court should readily jump into conclusion that respondent failed to satisfy the legal requirements for refund/tax credit for the record is pregnant with other evidence showing respondent's

[5] *Ibid.*
[6] CTA EB Case No. 1085 (C.T.A. Case No. 8084), March 23, 2015.

> compliance with the requirements for the grant of the relief sought."[7] (emphasis ours)

Second, let it be emphasized that the invoicing requirements under Sec. 113 of the NIRC of 1997, as amended by RA No. 9337, are under the Value-Added Tax provisions of the law, whereas the subject claim here is the excess CWTs. Even if the invoicing requirements were to apply here, a perusal of the records shows that petitioner presented both the billing invoices[8] and official receipts[9] it issued for services rendered to its clients.

Similarly, the ruling in the case of *Silicon Philippines, Inc., (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[10] pertains to a claim for refund of unutilized input VAT on zero-rated sales, and not to a claim for refund of excess CWT. Even assuming the said ruling applies here, petitioner was able to secure an ATP from the BIR prior to the printing of its invoices or receipts.

An examination of petitioner's billing invoices and official receipts shows that these documents bear the ATP Number or the BIR Permit No. 9AU0000009567 2-16-99. The invoices and receipts contain the number of booklets allowed to be printed, the series numbers, and the name of the printer. These details demonstrate that petitioner has secured or obtained an ATP prior to the printing of its billing invoices and official receipts. Hence, petitioner's invoices and official receipts were duly registered and have probative value for refund purposes.

Finally, it has been settled in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[11] that "the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates." Besides the Supreme Court clearly ruled that "proof of actual remittance is not a condition to claim for a refund of unutilized tax credits"[12].

[7] *Ibid.*
[8] Exhibits "FF" to "CCC", docket vol. 2, pp. 920-943.
[9] Exhibits "JJJJ" to "VVVV", docket vol. 2, pp. 995-1007.
[10] G.R. No, 172378, January 17, 2011, 639 SCRA 521.
[11] G.R. No. 180290, September 29, 2014, 736 SCRA 609.
[12] *Ibid.*

WHEREFORE, in view of the foregoing, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice