REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MSF TIRE AND RUBBER INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6025

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 29 2001

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DECISION

Before Us for consideration is a judicial claim for the refund of the amount of P5,891,725.86, filed by the Petitioner on March 8, 2000, representing alleged overpaid or excess final tax withheld on royalty payments to Compagnie Generale covering taxable periods from January 1998 to November 1999.

The facts of this case are undisputed:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines.

Records reveal that on January 1, 1997, Petitioner entered into a Technical Assistance and License Agreement with Compagnie Generale and Mickeling Recherche Et Technique, S.A., a corporation organized and existing under the laws of France; effective for ten (10) years beginning January 1, 1997 to December 31, 2006 (Exhibits A, A-3). Under the said agreement, Petitioner is required to pay Compagnie Generale and Michelin Recherche, a license fee based on the annual Net Sales of the Licensed Products manufactured and sold by Petitioner in accordance with the rates provided in the agreement.

Beginning February 1997 to December 1997, Petitioner allegedly withheld and remitted to the Bureau of Internal Revenue the 25% final withholding tax on royalty payments to Compagnie Generale pursuant to paragraph 2 (b) of the RP-France Tax Treaty which requires that the withholding tax on royalty payments to French recipients shall be 25%, if the payor is not registered with the Board of Investments.

On January 1, 1998, a protocol which amended the RP-France Tax Treaty took effect reducing the tax on gross royalty payments from the rates of 15% and 25% to a single rate not to exceed 15%.

Allegedly unaware of the existence of the said protocol, Petitioner continuously withheld the 25% final withholding tax under the original Article 12 of the RP-France Tax Treaty. As a result of the said amendment, Petitioner allegedly overpaid the withholding tax on royalty payments to Compagnie Generale in the amount of P5,891,725.86 covering the period from January 1998 to November 1999.

On March 7, 2000, Petitioner filed its claim for the refund of the aforesaid amount with the Bureau of Internal Revenue. On March 8, 2000, Petitioner then ventilated its grievance to this Court by filing a Petition for Review.

In an Answer filed on April 12, 2000, the Respondent denied Petitioner's assertions in the Petition for Review and interposed the following Special and Affirmative Defenses, wit:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigations/examination by the Respondent's Bureau;

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5. Petitioner failed miserably to show that the total amount of P5,891,725.86 claimed as excess or overpaid final tax withheld on royalty payment is refundable;

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

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

8. 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;

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

In a resolution promulgated on January 23, 2001, this case was considered submitted for decision sans the memorandum of the Respondent.

The issues raised in this case are as follows:

1. Whether or not the royalty payments made by the Petitioner to Compagnie Generale for the period beginning January 1998 to November 1999 are subject to the 15% withholding tax rate on royalties as provided in the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic instead of the 25% final withholding tax.

2. Whether or not the withholding of the 25% final tax on royalty payments made by the Petitioner to Compagnie Generale for the period beginning January 1998 to November 1999 is erroneous, improper and without legal basis, as such, entitling the Petitioner to a tax refund or tax credit in the total amount of FIVE MILLION EIGHT HUNDRED NINETY ONE THOUSAND SEVEN HUNDRED TWENTY FIVE PESOS AND EIGHTY SIX CENTAVOS, (PHP5,891,725.86) representing the excess or overpaid final tax withheld on royalty payments to Compagnie Generale.

For the proper disposition of the issues at hand, the following provisions of the RP-France Tax Treaty and the Protocol amending the said treaty are hereunder reproduced, thus:

Article 12 (2) RP-FRANCE Tax Treaty

"However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State. However, the tax so charged shall, provided that the royalties are taxable in the other Contracting State, not exceed:

a) in the case of the Philippines, 15 per cent of the gross amount of the royalties

(i) paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities, or

(ii) paid in respect of cinematographic films or works recorded for broadcasting or television;

b) in all other cases, 25 per cent of the gross amount of the royalties."

PROTOCOL AMENDING THE RP FRANCE TAX TREATY:

ARTICLE 6

"However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, <u>the tax so charged shall not exceed 15 per cent of the gross amount of the royalties</u> (Underscoring Ours)

ARTICLE 11
ENTRY INTO FORCE

(2) its provisions shall have effect for the first time,

"a) as regards taxes withheld at source, for amounts payable on or after the first day of January of the

> calendar year in which the Protocol entered into force;"

Prescinding from the above, this Court finds it ineluctable to grant the claim.

It is quite clear from the tax convention between Philippines and France, more particularly the protocol which amended the original treaty, that the tax to be imposed on royalty payments shall not exceed 15 percent if the beneficial owner is a resident of the other contracting state. In the case at bar, Petitioner was able to establish that the recipient of the royalty payments from which it withheld the 25% final withholding tax is a corporation duly organized under the laws of France, a country which is a party to the bilateral treaty subject matter of the controversy. It appearing in this case, that the Respondent failed to refute and, in fact, even admitted the existence of the said Protocol amending the RP-France Tax Treaty and the date of its effectivity, which reduced the rate of final withholding tax from 25% to 15%, this Court has no other recourse but to give merit to the refund sought for.

We now proceed to Petitioner's compliance with the substantiation rule.

A careful scrutiny of the evidence reveals that Petitioner was able to substantiate only the amount of P5,686,256.56 out of the total claim of P5,891,725.86, as excess final taxes withheld on the royalties it paid to Compagnie Generale from January 1998 to November 1999.

It is quite clear from the various monthly credit memoranda issued by Petitioner to Compagnie Generale (Exhs. C to C-23, inclusive) that the former withheld 25% final tax from the gross royalty fees due to the latter from January 1998 to November 1999. Thus, Petitioner's royalty remittances to Compagnie Generale for the same period were net of

25% final withholding tax as evidenced by Petitioner's Application for Cable Transfer with Bank of America (Exhs. Q & R), Credit Advices issued by Bank of America to Petitioner (Exhs. Q-1 & R-1) and Remittance Memos issued by Petitioner to Compagnie Generale (Exhs. Q-2 & R-2).

In the same breath, there is no dispute that Petitioner remitted, as admitted by the parties in the Joint Stipulation of Facts, the amounts of P6,514,318.86 and P8,365,894.83 as final withholding taxes on its royalty payments to Compagnie Generale for the years 1998 and 1999, respectively. Inasmuch as the said final withholding taxes were computed at 25% of the gross royalty fees instead of 15% except for December 1999, Petitioner, in effect, has overpaid final withholding taxes in the total amount of P5,891,725.86 computed as follows:

	1998 (Exh. L)	1999 (Exh. M)	Total (1998 & 1999)
Actual Final Taxes Withheld	P 6,514,318.86	P 8,365,894.83	P 14,880,213.69
Should-be Final Taxes Withheld	3,908,591.31	5,079,896.52	8,988,487.83
Excess Final Taxes Withheld	P 2,605,727.55	P 3,285,998.31	P 5,891,725.86

Be that as it may, this Court disallows the amount of P205,469.30 pertaining to January 1998 from the above total excess final taxes withheld of P5,891,725.86, since the same had already prescribed. Section 229 of the Tax Code requires that the claim for refund must be filed within two years from the date of payment. In the case at bar, the Monthly Remittance Return for January 1998 (Exh. D) indicates that the excess amount of P205,469.30 was remitted on February 10, 1998 which is not within the two-year period of prescription since the judicial claim was filed with this Court on March 8, 2000.

Thus, only those remittances from March 10, 1998 to December 27, 1999 shall be considered in the computation of the refundable amount:

	1998	1999	Total
Excess Final Taxes Withheld	P 2,605,727.55	P 3,285,998.31	P 5,891,725.86
Less: Prescribed amount	205,469.30		205,469.30
Net Refundable Amount	P 2,400,258.25	P 3,285,998.31	P 5,686,256.56

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to Refund or in the alternative, to **ISSUE** a Tax Credit Certificate in the amount of P5,686,256.56, in favor of the Petitioner, representing overpaid final withholding tax for taxable years 1998 and 1999.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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