REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MILLENNIUM BUSINESS SERVICES, INC.,
Petitioner,

~ *versus* ~

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7441

Members:

Acosta, *PJ,*
Bautista, *and*
Casanova, *JJ.*

Promulgated:

DEC 09 2008 ;10:00am

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DECISION

ACOSTA, *PJ:*

The Case

Before Us is a Petition for Review seeking for a refund or issuance of tax credit certificate in the amount of P1,341,623.00 allegedly representing an unutilized creditable withholding tax for taxable year ended December 31, 2003.

The Facts

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and duly registered with the Bureau of Internal

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Revenue. It is principally engaged in the business of providing accounting and bookkeeping services.[1]

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds and/or the issuance of tax credit certificates for excess creditable withholding taxes.[2]

On April 15, 2004, petitioner filed its annual income tax return[3] for the calendar year ended December 31, 2003, declaring, *among others*, the following:

Sales/Revenues/Receipts/Fees	15,240,176.00
Less: Cost of Sales/Services	14,026,081.00
Gross Income from Operation	1,214,095.00
Add: Non-Operating & Other Income	62,960.00
Total Gross Income	1,277,055.00
Less: Deductions	649,327.00
Taxable Income	627,728.00
Tax Rate	32%
Tax Due	200,873.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	1,438,185.00
Creditable Tax Withheld for the First Three Quarters	1,057,316.00
Creditable Tax Withheld for the Fourth Quarter	284,307.00
Total Tax Credits/Payments	2,779,808.00
Total Amount Payable/(Overpayment)	(2,578,935.00)

(Underlines supplied)

In a letter dated April 7, 2006 and received by the BIR on the same date, petitioner requested for a refund or issuance of tax credit certificate in the amount of P2,578,935.00 representing its overpaid creditable withholding tax for the calendar year ended December 31, 2003 pursuant to the provisions of Sections 204 and 229 of the Tax Code, as amended.[4]

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[1] Paragraph 1, Joint Stipulation of Facts and Simplification of Issues; *Rollo, p. 73.*
[2] Paragraph 3, Joint Stipulation of Facts and Simplification of Issues; *Rollo, p. 74.*
[3] Exhibit A.
[4] Exhibit MMMMM-2.

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Alleging inaction[5] on the part of the BIR, petitioner filed a Petition for Review with this Court on April 12, 2006.

The respondent filed her Answer on July 14, 2006, and prayed for the dismissal of the Petition for lack of merit. She alleged therein the following Special and Affirmative Defenses:

> "5. Assuming but without admitting that Petitioner filed a claim for a tax credit certificate, the same is still subject to investigation by the Bureau of Internal Revenue;
>
> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 8. It is incumbent upon the Petitioner to show that its *(sic)* has complied with the provisions of Section 204(C) in relation to Section 223 of the Tax Code, as amended;
>
> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);*
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> 10. Claims for refund are construed strictly against the claimant the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*"

After trial, this case was submitted for decision on October 27, 2008 taking into consideration petitioner's Memorandum posted on October 13, 2008, *sans* respondent's Memorandum.

The Issues

The parties jointly stipulated on the following issues[6] for consideration and resolution of the Court:

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[5] Paragraph 9, Petition for Review, *Rollo, p 5.*
[6] Issues, Joint Stipulation of Facts and Simplification of Issues; *Rollo, pp 75 to 76.*

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1. Whether the income payments from which the taxes were withheld were included in Petitioner's gross income for the year 2003.

2. Whether Petitioner has excess and unutilized creditable withholding tax for the year 2003.

3. Whether Petitioner has carried-over to the succeeding taxable years the alleged excess and unutilized withholding tax for the year 2003.

4. Whether Petitioner's right to claim a refund of the alleged excess and unutilized withholding tax for the year 2003 is duly substantiated.

5. Whether Petitioner's aggregate income tax due for calendar year ended December 31, 2003 is less than its total tax credits, and, thus, the creditable taxes withheld for 2003 in the total amount of Php1,341,623.00 remain unutilized.

6. Whether Petitioner is entitled to a refund or issuance of tax credit certificate in the amount of Php1,341,623.00 representing alleged excess and unutilized withholding tax for the year 2003.

The Court's Ruling

The basic requirements[7] before a refund or issuance of tax credit certificate of excess creditable withholding taxes may be granted are as follows:

1. The claim for refund must be filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

2. The fact of withholding is established by a copy of a statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld were included in the return of the recipient.

Equally important, aside from the above-quoted requirements, is that petitioner must prove that it did not carry-over its excess creditable withholding taxes to the succeeding taxable year.[8]

Considering that the jointly stipulated issues are intertwined with the above mentioned important requirements before a refund or issuance of tax credit certificate

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[7] Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459 and Section 2.58.3(B) of Revenue Regulations No. 2-98 *cited in Golden Arches Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7201, May 17, 2007.*
[8] Golden Arches Realty Corporation vs. Commissioner of Internal Revenue, CTA (First Division) Case No. 7201, May 17, 2007.

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may be granted, a detailed discussion of the latter will at the same time serve as the resolution of the former.

We shall now determine petitioner's compliance with the requirements.

Going to the very first requirement, Section 204(C) of the Tax Code in relation to Section 229 of the same Code provide that the claim for refund both in the administrative and judicial levels must be filed within two (2) years from the date of payment of the tax. For reference, the said provisions of the Tax Code are hereunder reproduced:

> "Sec. 204. *Authority of the Commissioner to compromise, abate and refund/credit taxes.* – The Commissioner may –
>
> (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 or taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for tax credit or refund within 2 years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for refund."
>
> xxx xxx xxx
>
> "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 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: *Provided, however,* that the Commissioner, may even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

It is already settled that the reckoning point of the two-year prescriptive period for the filing of a claim for refund or tax credit certificate of excess creditable

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withholding tax is from the date of filing of the annual income tax return[9] because it is only from this time that the refund is ascertained.[10]

In the case at bar, petitioner's claim with the BIR on April 7, 2006 and its Petition for Review before this Court on April 12, 2006, were both filed within the two (2) year period prescribed by the Tax Code reckoned from April 15, 2004, the date the 2003 Annual Income Tax Return was filed. Thus, petitioner has complied with the first requirement.

In order to prove compliance of the second requirement concerning the fact of withholding of creditable taxes by the withholding agents on income subject to withholding tax, petitioner offered in evidence its Certificates of Creditable Tax Withheld at Source[11] issued by various withholding agents.

Judicious scrutiny of the Certificates reveals that except for the P2,315.38 taxes withheld relating to the total income payments of P36,335.61, which is a proper support of petitioner's creditable taxes withheld on its income for taxable year 2002,[12] the creditable taxes in the sum of P1,350,447.47 relating to the total income payments of P13,478,144.67, were withheld from petitioner's service income for taxable year 2003, detailed as follows:

Exhibits	Withholding Agent (Payor)	Income Payments	Tax Withheld
D	Nacap Nederland B.V.	36,000.00	3,600.00
E	Lemoon Philippines Inc.	104,926.90	10,492.69
F	Mayne (Pharma) Philippines, Inc.	24,000.00	2,400.00
G	Penpower Philippines Inc.	97,546.80	9,754.68
H	BMW Philippines Corporation	180,393.45	18,039.35
I	Carpal Holdings, B.V.	57,000.00	5,700.00
J	Carpet Raya Philippines, Inc.	50,000.00	5,000.00
K	CSA Holdings, Inc.	16,000.00	1,600.00
L	Convenience Food System (Thai) Ltd.	13,433.00	1,343.30
M	CK Holdings, Inc.	16,000.00	1,600.00
N	Philips Electronics and Lighting, Inc.	58,636.50	1,172.73

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[9] ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184; and The Commissioner of Internal Revenue vs. Asia Australia Express, Ltd., represented by Soviamont Steamship Agencies, Inc. and the Court of Tax Appeals, GR No. 85956, April 10, 1989.
[10] Commissioner of Internal Revenue vs. The American Life Insurance Co., 244 SCRA 446.
[11] Exhibits D to JJJ, LLL to NNN, PPP to XXX, ZZZ to JJJJ, MMMM to KKKKK, OOOOO to Q[7], S[7] to J[8], and L[8] to C[9].
[12] Exhibits K[9], L[9], M[9] and N[9].

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O	Anglo-Oriental Consulting Limited	22,500.00	2,250.00
P	EDS Electronic Data Systems (Phil.), Inc	16,000.00	1,600.00
Q	Export Consultant, Inc.	21,000.00	2,100.00
R	FAG Southeast Asia Pte. Ltd.	21,000.00	2,100.00
S	XYST Corporation	21,000.00	2,100.00
T	Sumitomo (SHI) Cyclo Drive Asia Pacific Pte. Ltd.	22,500.00	2,250.00
U	St. Agen Holdings, Inc.	23,000.00	2,300.00
V	Reach Networks Philippines, Inc.	29,091.00	2,909.10
W	Santiago Cruz & Marayag Law Offices	20,000.00	2,000.00
X	SCS Channels, Inc.	30,000.00	3,000.00
Y	Pulse Philippines, Inc.	93,000.00	9,300.00
Z	Nacap Philippines Inc.	36,000.00	3,600.00
AA	Ecolochem Holdings, Inc.	152,500.00	15,250.00
BB	Glaxosmithkline Phils Inc.	61,153.50	1,223.07
CC	Franke Contract Group Philippines, Inc.	37,938.60	3,793.86
DD	WMGS Philippines, Inc.	48,560.70	4,856.07
EE	Sumisetsu Philippines, Inc.	36,400.00	3,640.00
FF	Oshkosh B'Gosh, Inc.	30,000.00	3,000.00
GG	Navitaire International, LLC	342,007.10	34,200.71
HH	Int'l. Wave Communications Networks, Inc.	141,715.20	14,171.52
II	Institutional Shareholder Services, Inc.	71,583.60	7,158.36
JJ	AstraZeneca Pharmaceuticals (Phils)	33,000.00	3,300.00
KK	Penpower Philippines Inc.	94,859.40	9,485.94
LL	Carpal Holdings, B.V.	9,500.00	950.00
MM	Carpet Raya Philippines, Inc.	20,000.00	2,000.00
NN	CSA Holdings, Inc.	40,000.00	4,000.00
OO	Convenience Food System (Thai) Ltd.	53,978.90	5,397.89
PP	CK Holdings, Inc.	40,000.00	4,000.00
QQ	EDS Electronic Data Systems (Phils), Inc	24,000.00	2,400.00
RR	Ecolochem Holdings, Inc.	58,500.00	5,850.00
SS	WMGS Philippines, Inc.	32,396.70	3,239.67
TT	Sumitomo (SHI) Cyclo Drive Asia Pacific Pte.Ltd.	22,500.00	2,250.00
UU	St. Agen Holdings, Inc.	23,666.70	2,366.67
VV	St. Agen Et Fils, Ltd.	24,000.00	2,400.00
WW	Pulse Philippines, Inc.	93,000.00	9,300.00
XX	Oshkosh B'Gosh, Inc.	15,000.00	1,500.00
YY	Navitaire International, LLC	228,313.30	22,831.33
ZZ	Harris Corporation	24,000.00	2,400.00
AAA	Apple Philippines, Inc.	69,300.00	6,930.00
BBB	Singapore Press Holdings (Overseas) Limited	32,161.20	3,216.12
CCC	BMW Philippines Corporation	87,039.56	8,703.96
DDD	Int'l. Wave Communications Networks, Inc.	138,332.60	13,833.26
EEE	Institutional Shareholder Services, Inc.	80,000.00	8,000.00
FFF	XYST Corporation	22,666.67	2,266.67
GGG	The Lincoln Nat'l Life Insurance Company	7,000.00	700.00
HHH	FAG Southeast Asia Pte. Ltd.	27,000.00	2,700.00
III	Glaxosmithkline Phils Inc.	49,091.00	981.82
JJJ	AstraZeneca Pharmaceuticals (Phils)	88,000.00	8,800.00
LLL	Harris Corporation	24,000.00	2,400.00
MMM	Singapore Press Holdings (Overseas) Limited	32,373.80	3,237.38
NNN	Apple Philippines, Inc.	17,325.00	1,732.50
PPP	Int'l. Wave Communications Networks, Inc.	142,479.04	14,247.90
QQQ	Harris Corporation	45,250.00	4,525.00
RRR	Penpower Philippines Inc.	98,179.20	9,817.92
SSS	Sumitomo Electric Industries,Ltd.-Manila Branch	328.20	16,410.00
TTT	Nacap Philippines Inc.	24,000.00	2,400.00

UUU	EDS Electronic Data Systems (Phils.), Inc	25,600.00	2,560.00
VVV	Nacap Nederland B.V.	24,000.00	2,400.00
WWW	Pulse Philippines, Inc.	147,882.00	14,788.20
XXX	SCS Channels, Inc.	70,000.00	7,000.00
ZZZ	Mayne (Pharma) Philippines, Inc.	24,000.00	2,400.00
AAAA	Export Consultants, Inc.	33,166.70	3,316.67
BBBB	Corus Asia Ltd.	177,229.61	17,722.96
CCCC	Corus Asia Ltd.	131,568.55	13,156.85
DDDD	Export Consultants, Inc.	21,000.00	2,100.00
EEEE	Mayne Pharma (Philippines), Inc.	24,000.00	2,400.00
FFFF	Frigorex Philippines Inc.	106,778.75	10,677.88
GGGG	Anglo-Oriental Consulting Limited	22,500.00	2,250.00
HHHH	Nacap Nederland B.V.	36,000.00	3,600.00
IIII	Nacap Philippines Inc.	36,000.00	3,600.00
JJJJ	Corus Asia Ltd.	132,323.00	13,232.30
MMMM	Dek Asia Pacific Pte. Ltd	79,356.59	7,935.66
NNNN	Dek Asia Pacific Pte. Ltd	75,781.02	7,578.10
OOOO	Sanofi-Synthelabo Philippines Inc.	472,531.60	47,253.16
PPPP	Sanofi-Synthelabo Philippines Inc.	464,977.07	46,497.70
QQQQ	Singapore Press Holdings (Overseas) Limited	32,345.80	3,234.58
RRRR	CK Holdings, Inc.	24,000.00	2,400.00
SSSS	CSA Holdings, Inc.	24,000.00	2,400.00
TTTT	Convenience Food System (Thai) Ltd.	53,689.30	5,368.93
UUUU	Carpal Holdings, B.V.	47,500.00	4,750.00
VVVV	Sanofi-Synthelabo Philippines Inc.	226,692.89	22,669.29
WWWW	Baxter Healthcare Philippines, Inc.	196,060.40	19,606.00
XXXX	MMTI Marketing Philippines, Inc.	30,000.00	3,000.00
YYYY	MMTI Marketing Philippines, Inc.	45,000.00	4,500.00
ZZZZ	Brand Rex, Inc	30,000.00	3,000.00
AAAAA	Brand Rex, Inc	30,000.00	3,000.00
BBBBB	Brand Rex, Inc	30,000.00	3,000.00
CCCCC	Sumisetsu Philippines, Inc.	76,600.00	7,660.00
DDDDD	Virbac Philippines, Inc.	16,000.00	1,600.00
EEEEE	Virbac Philippines, Inc.	12,000.00	1,200.00
FFFFF	Virbac Philippines, Inc.	16,000.00	1,600.00
GGGGG	New Food Coatings (Phils.) Inc.	19,209.20	1,920.92
HHHHH	Institutional Shareholder Services, Inc.	78,000.00	7,800.00
IIIII	St. Agen Holdings, Inc.	22,000.00	2,200.00
JJJJJ	Sumitomo (SHI) Cyclo Drive Asia Pacific Pte. Ltd.	30,000.00	3,000.00
KKKKK	FAG Southeast Asia Pte. Ltd.	27,000.00	2,700.00
OOOOO	Parker Hannifin Singapore Pte. Ltd.	41,592.90	4,159.29
PPPPP	INGR Philippines, Inc.	40,000.00	4,000.00
QQQQQ	INGR Philippines, Inc.	40,000.00	4,000.00
RRRRR	Lemcon (Philippines), Inc.	117,722.35	11,772.24
SSSSS	St. Agen Et Fils, Ltd.	27,000.00	2,700.00
TTTTT	XYST Corporation	21,000.00	2,100.00
UUUUU	INGR Philippines, Inc.	80,000.00	8,000.00
VVVVV	Lemcon (Philippines), Inc.	114,000.00	11,400.00
WWWWW	Parker Hannifin Singapore Pte. Ltd.	31,331.30	3,133.13
XXXXX	Parker Hannifin Singapore Pte. Ltd.	31,958.78	3,195.88
YYYYY	Frigorex Philippines Inc.	41,222.00	4,122.21
ZZZZZ	Dek Asia Pacific Pte. Ltd	77,573.68	7,757.37
AAAAAA	A-Z Direct Marketing, Inc.	423,500.00	42,350.00
BBBBBB	Reach Networks Philippines, Inc.	20,000.00	2,000.00
CCCCCC	Reach Networks Philippines, Inc.	30,000.00	3,000.00
DDDDDD	Arysta Agro Phils., Inc.	90,000.00	9,000.00

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EEEEEE	Apple Philippines, Inc.	69,300.00	6,930.00
FFFFFF	Oshkosh B'Gosh, Inc.	75,000.00	7,500.00
GGGGGG	Burkert Contromatic Philippines, Inc.	213,215.50	21,321.55
HHHHHH	Burkert Contromatic Philippines, Inc.	104,080.50	10,408.05
IIIIII	Burkert Contromatic Philippines, Inc.	213,064.00	21,306.40
JJJJJJ	Alphasem Asia Ltd.	25,219.25	2,521.93
KKKKKK	Alphasem Asia Ltd.	23,463.20	2,346.32
LLLLLL	Alphasem Asia Ltd.	24,485.50	2,448.55
MMMMMM	Historical & Nautical Archeology Foundation Inc.	36,000.00	3,600.00
NNNNNN	Historical & Nautical Archeology Foundation Inc.	36,000.00	3,600.00
OOOOOO	Historical & Nautical Archeology Foundation Inc.	36,000.00	3,600.00
PPPPPP	Universal Electronic Assembly Phils. Corp.	60,000.00	6,000.00
QQQQQQ	Universal Electronic Assembly Phils. Corp.	60,000.00	6,000.00
RRRRRR	Universal Electronic Assembly Phils. Corp.	60,000.00	6,000.00
SSSSSS	Reach Networks Philippines, Inc.	20,000.00	2,000.00
TTTTTT	Reach Web Holdings, Inc.	15,500.00	1,550.00
UUUUUU	Reach Web Holdings, Inc.	10,000.00	1,000.00
VVVVVV	Reach Web Holdings, Inc.	20,000.00	2,000.00
WWWWWW	Parker Hannifin Singapore Pte. Ltd.	31,630.00	3,163.00
XXXXXX	Lemcon (Philippines), Inc.	132,444.35	13,244.44
YYYYYY	BMW Philippines Corporation	137,046.90	13,704.69
ZZZZZZ	BMW Philippines Corporation	61,414.80	6,141.48
AAAAAAA	EDS Electronic Data Systems (Phils.), Inc	35,200.00	3,520.00
BBBBBBB	Mayne Pharma (Philippines), Inc.	24,000.00	2,400.00
CCCCCCC	Franke Contract Group Philippines, Inc.	55,847.10	5,584.71
DDDDDDD	WMGS Philippines, Inc.	65,002.20	6,500.22
EEEEEEE	Anglo-Oriental Consulting Limited	22,500.00	2,250.00
FFFFFFF	Anglo-Oriental Consulting Limited	22,500.00	2,250.00
GGGGGGG	Brand Rex, Inc	20,000.00	2,000.00
HHHHHHH	XYST Corporation	21,000.00	2,100.00
IIIIIII	Promark Strategies, Inc.	80,000.00	8,000.00
JJJJJJJ	Regus Centres, Inc.	161,838.90	16,183.89
KKKKKKK	Regus Centers, Inc.	52,128.60	5,212.86
LLLLLLL	Regus Centres, Inc.	152,765.80	15,276.58
MMMMMMM	Regus Centers, Inc.	128,316.70	12,831.67
N^7	Penpower Philippines Inc.	99,220.80	9,922.08
O^7	Apple Philippines, Inc.	51,975.00	5,197.50
P^7	Universal Electronic Assembly Phils. Corp.	60,000.00	6,000.00
Q^7	Arysta Agro Agra Philippines Inc.	45,000.00	4,500.00
S^7	Apple Philippines, Inc.	38,712.90	3,871.29
T^7	Navitaire International, LLC	122,042.13	12,204.21
U^7	Sanofi-Synthelabo Philippines Inc.	452,920.10	45,292.01
V^7	CK Holdings, Inc.	24,000.00	2,400.00
W^7	CSA Holdings, Inc.	24,000.00	2,400.00
X^7	Franke Contract Group Philippines, Inc.	65,006.40	6,500.64
Y^7	Bank of New York, Manila Representaive Office	45,000.00	4,500.00
Z^7	Bank of New York, Manila Representaive Office	15,000.00	1,500.00
A^8	Pulse Philippines, Inc.	93,000.00	9,300.00
B^8	Alphasem Asia Ltd.	25,712.90	2,571.29
C^8	Carpal Holdings, B.V.	19,000.00	1,900.00
D^8	Singapore Press Holdings (Overseas) Limited	33,032.00	3,303.20
E^7	Convenience Food System (Thai) Ltd.	41,290.10	4,129.01
F^8	Export Consultants, Inc.	21,000.00	2,100.00
G^8	Corus Asia Ltd.	135,762.60	13,576.26
H^8	Harris Corporation	48,000.00	4,800.00
I^8	Institutional Shareholder Services, Inc.	79,000.00	7,900.00

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J^8	A-Z Direct Marketing, Inc.	247,441.30	24,744.13
L^8	Burkert Contromatic Philippines, Inc.	163,165.80	16,316.58
M^8	Carpal Holdings, B.V.	9,500.00	1,425.00
N^8	Ecolochem Holdings, Inc.	58,500.00	5,850.00
O^8	Ecolochem Holdings, Inc.	58,500.00	5,850.00
P^8	Oshkosh B'Gosh, Inc.	30,000.00	3,000.00
Q^8	Navitaire International, LLC	76,918.10	7,691.81
R^8	Nacap Nederland B.V.	36,000.00	3,600.00
S^8	Carpet Raya Philippines, Inc.	40,000.00	4,000.00
T^8	Carpet Raya Philippines, Inc.	30,000.00	3,000.00
U^8	WMGS Philippines, Inc.	49,779.60	4,977.96
V^8	Historical & Nautical Archeology Foundation Inc.	36,000.00	3,600.00
W^8	Int'l. Wave Communications Networks, Inc.	144,360.84	14,436.08
X^8	Dek Asia Pacific Pte. Ltd	79,125.99	7,912.60
Y^8	Touch Solutions, Inc.	24,000.00	2,400.00
Z^8	Touch Solutions, Inc.	24,000.00	2,400.00
A^9	Touch Solutions, Inc.	24,000.00	2,400.00
B^9	Touch Solutions, Inc.	16,000.00	1,600.00
C^9	Nacap Philippines Inc.	36,000.00	3,600.00
D^9	Frigorex Philippines Inc.	41,592.50	4,159.25
E^9	FAG Southeast Asia Pte. Ltd.	21,000.00	2,100.00
F^9	Sumitomo (SHI) Cyclo Drive Asia Pacific Pte.ltd.	22,500.00	2,250.00
G^9	INGR Philippines, Inc.	40,000.00	4,000.00
H^9	Franke Contract Group Philippines, Inc.	95,942.70	9,594.27
I^9	KPMG Consulting (Asia Pacific), Inc.	35,500.00	3,550.00
J^9	Sumitomo Electric Industries,Ltd.-Manila Branch	8,858.50	177.17
O^9	Nacap Nederland B.V.	36,000.00	3,600.00
TOTAL		**P13,478,144.67**	**P1,350,447.47**

Indubitably, petitioner was able to comply with the second requirement. It should be pointed out, however, that this Court will only consider the total creditable withholding taxes of P1,341,623.00 as reflected in the income tax return for taxable year 2003, which is lesser than the actual taxes withheld of P1,350,447.47 as shown in the Certificates, since the said lesser amount of creditable withholding taxes was the one declared in the income tax return and which became the basis of this instant claim for refund.

As regards the third requirement, this Court ascertained that petitioner's income from services amounting to P13,478,144.67, upon which the creditable taxes of P1,341,623.00 is withheld, were included as part of the gross income declared in its income tax return[13].

[13] Exhibit A.

As to the other requirement, petitioner was able to establish that it did not carry-over as a tax credit the claimed unutilized creditable withholding taxes of P1,341,623.00 to the succeeding taxable year as shown in its 2004 income tax return.[14]

Lastly, to be entitled to the full amount of its claim, it must be shown that the creditable taxes withheld were indeed unutilized. It should be noted that petitioner is claiming refund or issuance of tax credit certificate of unutilized creditable taxes withheld for 2003, thus, it must be proved that it is already cleared of income tax due for the year by substantiating its prior year's excess credit even only up to the extent of the tax due for the same year in order to convince this Court that indeed the creditable withholding taxes being claimed of remained unutilized. In *Goodyear Philippines, Inc. vs. Commissioner of Internal Revenue*,[15] it was unanimously ruled that "although the substantiation of petitioner's prior year's excess credit was an additional requirement set forth by the Court relative to petitioner's claim for refund of excess creditable taxes withheld, this was undoubtedly, was within the prerogative and power of the Court to do so, to enable it to decide this case with certainty. Otherwise, the Court will lack valid and justifiable reason in granting the unutilized or excess creditable income tax of the petitioner for the taxable year 2000."

Here, petitioner is not entitled to the full amount of its claim since it failed to prove that the tax due for the taxable year 2003 had been squarely settled by prior year's excess credit absent proofs of the existence of such prior year's excess credit. However, as earlier noted regarding the result of Our examination of Certificates of Creditable Tax Withheld at Source is that the amount of P2,315.38 creditable withholding taxes pertains to taxable year 2002, thus, the same can be taken as a partial support of petitioner's prior year's excess credit. Hence, petitioner is entitled to a refund or issuance of tax credit certificate in a reduced amount of P1,143,065.38, computed as follows:

Creditable Withholding Tax for 2003		P 1,341,623.00
Less: Unsubstantiated Tax Payment:		
Income Tax Due for 2003	P200,873.00	
Less: Substantiated Prior Year's Excess Credit	2,315.38	198,557.62
Refundable Amount of Unutilized CWT		P 1,143,065.38

[14] Exhibit B.
[15] CTA EB No. 104, January 16, 2006.

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WHEREFORE, the instant Petition for Review is hereby GRANTED. Respondent is hereby ORDERED to refund or issue tax credit certificate in a reduced amount of P1,143,065.38 in favor of the petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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 Justice

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