REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

BALLAST NEDAM INTERNATIONAL B.V. – PHILIPPINE BRANCH, ***Petitioner,***	**C.T.A. CASE NO. 6670**
	Members:
	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	**Promulgated:**
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	JUN 20 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 76 of the National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, 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 therefore.

Is Ballast Nedam International B.V. Philippine Branch (hereafter "petitioner") entitled to a refund or tax credit in the amount of P7,765,121.00 representing the excess creditable withholding taxes for the taxable years 2000 and 2001?

THE CASE

This is the question raised in this Petition For Review. Petitioner seeks for the issuance of a Tax Credit Certificate in the amount of P7,765,121.00 representing the excess creditable withholding taxes for the taxable years 2000 and 2001.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties agreed on the following facts:

> "1. Petitioner is the Philippine branch of Ballast Nedam International B.V., a corporation organized and existing under the laws of the Netherlands, duly licensed to engage in business in the Philippines with principal office at Sta. Rita Power Plant, Sta. Rita, Batangas City.

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2. Respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid revenue taxes as provided by law with office at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes (admitted in paragraph 1, Answer).

3. On April 17, 2001, Petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Corporate Income Tax Return for the Calendar Year ended December 31, 2000.

4. On December 27, 2002, Petitioner filed with the BIR its Amended Annual Corporate Income Tax Return for the Calendar Year ended December 31, 2000.

5. In its Annual Corporate Income Tax Return for Calendar Year 2000, Petitioner marked the box 'to be carried over as tax credit next year/quarter', indicating its intention of using said excess tax credits in the following year.

6. On April 15, 2002, Petitioner filed with the Bureau of Internal Revenue (BIR) its tentative Annual Corporate Income Tax Return for the Calendar Year ended December 31, 2001.

7. On November 19, 2002, Petitioner filed with the BIR its final Annual Corporate Income Tax return for the Calendar Year ended December 31, 2001.

8. In its Final Annual Income Tax Return for Calendar Year 2001, Petitioner indicated its intention not to carry over its excess creditable withholding taxes for 2001 in the amount of Seven Million Seven Hundred Sixty-Five

Thousand, One Hundred Twenty One Pesos (P7,765,121.00) by marking the box 'To be Refunded'.

9. On February 27, 2003, Petitioner filed with BIR Revenue District Office No. 58, Batangas City, a formal letter requesting that it be refunded or issued a tax credit certificate covering its excess creditable withholding taxes for taxable years 2000 and 2001 in accordance with the provisions of Section 76 of the Tax Code.

10. To date, Respondent Commissioner has not yet decided on Petitioner's aforesaid claim for refund filed with the BIR RDO NO. 58."

The administrative claim for refund filed with the BIR not having been acted upon, the petitioner filed the present Petition For Review.

The Commissioner of Internal Revenue (hereafter "respondent"), in his Answer, alleged by way of Special and Affirmative defenses:

"4. Petitioner alleges in its petition for review that in its 2000 Annual Income Tax Return it marked the box 'to be carried over as tax credit next year/quarter'. Section 76 of the Tax Code provides, thus:

'Section 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) 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 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 therefore'. (Underscoring ours)

Hence, petitioner is not entitled to the refund of its excess creditable withholding tax for the year 2000.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;

6. The amount of P7,765,121.00 being claimed by petitioner as alleged excess creditable withholding taxes for the calendar year 2001 was not properly documented.;

7. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.

9. Claims for refund are construed strictly against the claimant for 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 1211).**"

Petitioner presented Nestor Verrano, as its lone witness, and documentary evidence, marked as Exhibits "A" to "I", together with their submarkings.

On the other hand, respondent submitted the case for decision without presenting any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda within thirty (30) days from notice.

Both parties have complied, and the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER'S EXCESS CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEARS ENDED DECEMBER 31, 2000 AND 2001 AMOUNTING TO SEVEN MILLION SEVEN

HUNDRED SIXTY-FIVE THOUSAND, ONE HUNDRED TWENTY ONE PESOS (P7,765,121.00) ARE DULY SUPPORTED BY CERTIFICATES OF CREDITABLE TAX WITHHELD AT SOURCE.

II

WHETHER OR NOT THE INCOME FROM WHICH THE CREDITABLE TAXES WERE WITHHELD WERE DULY DECLARED AS PART OF PETITIONER'S INCOME IN ITS CORPORATE ANNUAL INCOME TAX RETURN FOR CALENDAR YEARS ENDED DECEMBER 31, 2000 AND 2001.

III

WHETHER OR NOT THE EXCESS CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEARS ENDED DECEMBER 31, 2000 AND 2001 WERE CARRIED OVER TO THE SUCCEEDING CALENDAR YEAR AND APPLIED AGAINST ITS INCOME TAX LIABILITY OF THE PETITIONER FOR THE SAID PERIOD.

IV

WHETHER OR NOT THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WERE DULY FILED WITH THE RESPONDENT AND THIS HONORABLE COURT, RESPECTIVELY, WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD PURSUANT TO SECTION 204 AND 229 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF P7,765,121.00 REPRESENTING ALLEGED EXCESS CREDITABLE WITHHOLDING TAXES FOR THE CALENDAR YEARS ENDED 2000 AND 2001.

The above stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit in the amount of P7,765,121.00 representing the excess creditable withholding taxes for the taxable years 2000 and 2001.

THE COURT'S RULING

The petition is partly meritorious.

Petitioner contends that its excess creditable withholding taxes for calendar years 2000 and 2001 are duly supported by certificates of creditable tax withheld at source issued by its withholding agent, Siemens, Inc. (*Exhibits "I", "H", "I-2" and "H-2"*). Petitioner further argues that the income from which the creditable taxes were withheld was duly declared as part of petitioner's income in its Corporate Annual Income Tax Returns for calendar years 2000 and 2001. The excess creditable withholding taxes for calendar years 2000 and 2001 were not carried over to the succeeding year, which therefore entitles petitioner to the refund and/or issuance of a tax credit certificate of such unutilized creditable income taxes withheld.

Note should be taken, however, that petitioner is seeking refund for two taxable years, to wit:

Description	Amount
2000	P 2,011,395.00
2001	5,753,726.00
Total	P 7,765,121.00

Thus, there is a need for Us to discuss each taxable year separately.

Excess Creditable Withholding Taxes
For Calendar Year 2000

Undeniably, petitioner opted to carry over its alleged excess creditable withholding taxes as of the year 2000 to the succeeding year 2001, as evidenced by an "x" mark (*Exhibit "F-7"*) corresponding to the said choice in its Annual Income Tax Return for the year 2000 (*Exhibit "E"*) and Amended Annual Income Tax Return for the year 2000 (*Exhibit "F"*). However, petitioner failed to utilize said excess credit in the following year since it incurred net loss. As such, it is now seeking refund for the said amount.

On the other hand, respondent counters that petitioner's claim for refund is contrary to *Section 76 of the National Internal Revenue Code* (hereafter "NIRC"), as amended, that once the option to carry over has been made, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. Even if the calendar year excess tax credit was not actually utilized in 2001 because petitioner allegedly incurred a net loss in said year, the same is immaterial because the option to carry over is irrevocable regardless of whether or not the excess tax credit is actually utilized.

We rule in favor of the respondent.

Section 76 of the NIRC of 1997, as amended, provides:

> "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

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> 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."

Pursuant to the above provision, such choice once made is irrevocable, hence, it cannot claim for tax refund at the same time. The corporation must signify in its annual corporate adjustment return (by making the option provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other (*Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241*).

Petitioner is precluded from claiming a refund/tax credit certificate as it had already chosen, and in fact, had exercised the option of carry over. Having exercised such option, the same is irrevocable. Petitioner's only recourse is to carry over/apply the 2000 unutilized tax credit to the succeeding taxable years until the same is fully utilized.

Even if the year 2000 excess tax credit was not actually utilized because petitioner incurred an alleged net loss in 2001, the same is immaterial because by express mandate of *Section 76* the option to carry over is irrevocable regardless of whether or not the excess tax credit is actually utilized.

Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Accordingly, tax statutes must be strictly construed against the government and liberally in favor of the taxpayer (*Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667*). Tax refunds are in the nature of tax exemptions. Since taxes are the lifeblood of the nation, tax refunds are regarded as in derogation of sovereign authority. Statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority (*Commissioner of Internal Revenue vs. S.C. Johnson & Sons, Inc., 309 SCRA 87; Citibank, N.A. vs. CA, 280 SCRA 471*). A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefore is the exception (*Commissioner of Internal Revenue vs. CA, 298 SCRA 83*).

Excess Creditable Withholding Taxes
For Calendar Year 2001

It must be noted, however, that petitioner's aggregate claim for tax refund of P7,765,121.00 represents the excess creditable withholding taxes of the taxable years 2000 and 2001.

Clearly, as previously discussed, petitioner cannot anymore avail of the tax refund for the taxable year 2000. But, as for taxable year 2001, petitioner has made clear of its intention not to carry over the excess creditable withholding taxes. Petitioner opted to refund its excess creditable withholding taxes for year 2001, as evidenced by an "x" mark (*Exhibit "D-9"*) corresponding to the said choice in its 2001 Annual Income Tax Return (*Exhibit "D"*).

Scrutiny of Section 76, specifically relating to its irrevocable character, would be fitting before We discuss any further. It reads:

> "...X X X 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."(Emphasis supplied)

A perusal thereof demonstrates that the irrevocability pertains only to the specific excess taxes corresponding to the taxable year, at the time the option was exercised. As in the case at bar, the option to carry-over was to apply only to the excess taxes of the taxable year ending 2000. It was not meant to apply routinely to all subsequent excess taxes petitioner may have in the succeeding years. Hence, it should not be construed that the excess taxes pertaining to the taxable year ending 2001 amounting to **P5,753,726.00** will be carried over automatically to the succeeding year due to the fact that petitioner in the previous year opted for its corresponding excess of **P2,011,395.00** to be carried-over. The irrevocability only binds the petitioner to its excess taxes for the taxable year ending 2000, when the option to carry-over was exercised. However, as for the excess taxes of 2001, petitioner was unequivocal in its choice; the same was to be refunded.

Duly Substantiated and Verified

The excess creditable withholding taxes for calendar year 2001 is duly supported by certificates of creditable tax withheld at source issued by its withholding agent, Siemens, Inc. (*Exhibits "I-2" and "H-2"*). In addition, the income from which the creditable taxes were withheld was duly declared as part of petitioner's income in its Corporate Annual Income Tax Returns for calendar year 2001 (*Exhibit "D-4"*). Moreover, as can be shown in petitioner's tentative 2002 Annual Income Tax Returns (*Exhibit "B"*), the excess creditable withholding taxes for calendar year 2001 were not carried over to the succeeding year, which therefore entitles petitioner to the refund and/or issuance of a tax credit certificate of such unutilized creditable income taxes withheld.

Prescriptive Period to File for Refund

Finally on the issue of prescription, *Section 229 of the NIRC of 1977, as amended*, reads as follows:

> "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 maybe 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."

Petitioner filed its Annual Income Tax Return for the calendar year 2001 on April 15, 2002(*Exhibit "D"*). Therefore, petitioner had a period of two years or until April 15, 2004 within which to file an administrative claim for refund with the BIR and a judicial claim for refund with this Court. Petitioner filed its administrative claim for refund on February 27, 2003 (*Exhibit "G"*) and its judicial claim through this instant petition on April 14, 2003. Thus, We conclude that petitioner's administrative and judicial claims for refund were filed within the afore-quoted two-year prescriptive period.

WHEREFORE, premises considered, the present Petition For Review is hereby Partially Granted. Accordingly, respondent is hereby ordered to refund herein petitioner the amount of P **5,753,726.00**, representing the excess creditable withholding taxes for the taxable year ending 2001.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division