REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SUBIC BAY DISTRIBUTION, INC.,
Petitioner,

C.T.A. EB No. 72
(C.T.A. Case No. 6640)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 2 3 2006

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DECISION

BAUTISTA, J.:

Assailed via a Petition for Review are the Decision and Resolution of the Court's Second Division promulgated on November 3, 2004 and February 23, 2005, respectively, denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P15,794,318.00 allegedly representing excess and unutilized creditable withholding taxes for the calendar year ending December 31, 2000, on the ground that petitioner has already exercised its option to carry-over the same as prior year's excess tax credits.

The facts as culled from the records are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 32nd Floor, LKG Tower, 6801 Ayala Avenue, Makati City.

On April 16, 2001, petitioner filed with the Bureau of Internal Revenue its Annual Corporate Income Tax Return for the calendar year ending December 31, 2000, showing a tax loss position in the amount of P491,309,530.00. The return likewise reflected an overpayment of tax in the amount of P28,422,664.00, computed as follows:

Aggregate Income Tax Due		
Less: Tax Credits/Payments		
Prior Year's Excess Credits		P12,628,346.00
Tax Payments for the First Three Qs		-
CWT for the First Three Qs	P1,025,974.00	
CWT for the Fourth Qs (BIR Form 2307)	14,768,344.00	15,794,318.00
Total Tax Credits/Payments		28,422,664.00
Total Payable/(Overpayment)		(P28,422,664.00)

Of the P28,422,664.00 tax overpayment reported in its annual income tax return for the calendar year 2000, petitioner has unutilized creditable taxes withheld at source amounting to P15,794,318.00, broken down as follows:

CWT for the First Three Qs	P1,025,974.00
CWT for the Fourth Qs (BIR Form 2307)	14,768,318.00
Total	P15,794,318.00

In its annual income tax return for the calendar year 2000, petitioner opted to secure a tax credit certificate for the unutilized creditable taxes withheld for the said year amounting to P15,794,318.00.

On July 16, 2001, petitioner filed an administrative claim for the issuance of a tax credit certificate of its alleged unutilized creditable taxes withheld for the calendar years

1999-2000 with the Bureau of Internal Revenue through the Large Taxpayers Service, Excise Group.

Again, on March 10, 2003, petitioner reiterated its request for the issuance of a tax credit certificate for its unutilized creditable taxes withheld for calendar year 2000 in the aggregate amount of P15,794,318.00 through the filing of a letter-request dated February 28, 2003 with the BIR Large Taxpayers Audit and Investigation Division.

On April 4, 2003, petitioner filed a Petition for Review with this Honorable Court to toll the running of the two-year prescriptive period.

On November 3, 2004, the Court's Second Division rendered a Decision, denying the petition for review for lack of merit. Petitioner, thereafter, filed its Motion for Reconsideration on November 26, 2004. The Court's Second Division denied the motion for reconsideration in a Resolution dated February 23, 2005 for lack of merit which was received by petitioner on March 1, 2005.

Petitioner filed on March 16, 2005, a "Motion for Extension of Time to File Petition for Review" with the Court *en banc,* asking for a fifteen (15) day extension to file the said petition. The motion was granted and petitioner was a given a non-extendible period of fifteen (15) days from March 16, 2005 or until March 31, 2005 within which to file its petition for review.

The instant petition for review was filed on March 31, 2005. Hence, the same was filed on time.

In support of its petition, petitioner raised the following grounds, to wit:

1. Petitioner clearly exercised its option to be issued a tax credit certificate from the very beginning.

2. Petitioner did not change its option to be issued a tax credit certificate for excess tax credits incurred in taxable year 2000 when it amended its Annual Income Tax Return for the succeeding taxable year.

The main issue to be resolved by the Court *en banc* is: "Whether or not petitioner clearly exercised its option to be issued a tax credit certificate for the taxable year 2000 notwithstanding the actual carry-over of the subject claim to the succeeding taxable year."

Petitioner's main arguments center on the fact that it has clearly exercised its option to be issued a tax credit certificate for its unutilized excess credits for the taxable year 2000 in the amount of P15,794,318.00. As gleaned from the 2000 Annual Income Tax Return, petitioner marked the box corresponding to the phrase "to be issued a Tax Credit Certificate". It has likewise filed an administrative claim for refund on July 16, 2001. And on March 10, 2003, it reiterated its request for the issuance of a tax credit certificate for its unutilized creditable taxes withheld for calendar year 2000 by filing a letter-request dated February 28, 2003 with the BIR Large Taxpayers Audit and Investigation Division.

Petitioner further asserts that it did not make any change or modification to its 2000 Annual Income Tax Return, supporting its stance that it really intended to be issued a tax credit certificate for its unutilized creditable withholding taxes for the taxable year 2000. Otherwise, if it intended to carry-over the excess tax credits, it would have indicated such choice when it filed its 2000 Annual Income Tax Return.

Furthermore, petitioner insists that it has explicitly made its option to be issued a tax credit certificate and that it was the 2001 Annual Income Tax Return that was modified in order to correct the error in indicating the prior year's excess credits in its Annual Income Tax Return for the succeeding year, 2001. It explained further that since petitioner intended to be issued a tax credit certificate, an intention which it made manifest from the time it filed its 2000 Annual Income Tax Return, petitioner had to amend its income tax return for the taxable year 2001 in order to remove the prior year's excess credits which was reflected therein. These facts and series of events clearly show that the inclusion of the prior year's excess tax credits in the 2001 Annual Income Tax Return was a mere error or inadvertence on the part of petitioner and that petitioner had no intention to change its chosen option of being issued a tax credit certificate.

Moreover, petitioner submits that the filing of an amended tax return is allowed under Section 6 of the Tax Code and in the case of ***Commissioner of Internal Revenue vs. Citicorp Capital Philippines, Inc.***[1], the Court of Appeals ruled that an amendment of an income tax return for the purpose of correcting any misstatement or error in the original return is allowed.

It further claims that if the taxpayer in the aforementioned case may be allowed to amend its return for the purpose of correcting an error, then it is clear that petitioner may not be denied the same right particularly, when petitioner in this case, never changed its option to be issued a tax credit certificate.

Petitioner further pointed out that the cases[2] cited in the assailed Decision involved taxpayers which explicitly opted at the very first instance to carry-over their unutilized tax credits to the succeeding quarters or year and then later made an application for refund or issuance of a tax credit certificate. On the other hand, petitioner at the outset made an explicit option to claim a tax credit certificate for its unutilized

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[1] C.A. G.R. Sp. No. 68554, April 12, 2002

[2] Family Medicare Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6453, June 7, 2004; Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003; Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, May 2, 2002

creditable withholding taxes for the taxable year 2000 when it filed its Annual Income Tax Return for the same year.

We do not agree with petitioner's arguments.

Section 76 of the 1997 National Internal Revenue Code 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 amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters for 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.

Based on the foregoing law, petitioner has the option to either carry-over and apply the excess quarterly income tax payments against income tax due for the taxable quarters of the succeeding taxable year or to have such excess amount paid credited or refunded. If the option to carry-over the amount is exercised, the same shall be irrevocable.

The law is clear and unambiguous leaving no room for any other interpretation that what it literally conveys, that is, when an option has been exercised, the same shall be irrevocable for that taxable period.[3]

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[3] Philippine Banking Corporation, now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6820, August 16, 2001; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, May 2, 2002

A perusal of petitioner's 2000 Annual Income Tax Return[4] shows that, indeed, petitioner marked the box "To be issued a Tax Credit Certificate". However, upon further verification of its 2001 Annual Income Tax Return[5], the amount of P28,422,664.00 was found to have been carried-over as the same was included as prior year's excess credits in its 2001 return, which amount included the subject claim amounting to P15,794,318.00. Thereby leading to the conclusion that petitioner has actually exercised the option to carry-over the excess creditable taxes withheld for the year 2000 due to its inclusion in the 2001 Annual Income Tax Return.

Applying Section 76 of the 1997 National Internal Revenue Code earlier quoted, petitioner's option to carry-over its excess tax credits shall be considered irrevocable for the taxable year 2000. Thus, it shall not be allowed to apply for the issuance of a tax credit certificate for that taxable period.

The Court *en banc* observed that petitioner's 2001 Annual Income Tax Return was amended twice. In the first amendment[6] which was filed with the Bureau of Internal Revenue on December 20, 2002, the amount of P28,422,664.00 representing prior year's excess credits was still included therein in spite of the fact that petitioner has filed its administrative claim for refund with the BIR on July 16, 2001. This goes to show that there was no inadvertence or error in including the prior year's excess credits as declared by the petitioner. It was only in the second amendment[7] which was filed on March 12, 2003, that the said amount was no longer shown on the blank provided for as "prior year's excess credits", which brings us to the conclusion that it was plainly made in order to suit the claim for the issuance of a tax credit certificate which was reiterated by the petitioner on March 10, 2003.

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[4] Petitioner's Exhibit "A", CTA Docket
[5] Petitioner's Exhibit "HHH", CTA Docket
[6] Petitioner's Exhibit "E", CTA Docket
[7] Petitioner's Exhibit "C", CTA Docket

While in the 2000 Annual Income Tax Return, petitioner opted to claim for the issuance of a tax credit certificate, the real intention of petitioner was verified in its 2001 Annual Income Tax Return where it was manifested therein that it has actually exercised the option to carry-over the excess tax credits for the taxable year 2000 by including the same as prior year's excess credits in the 2001 Annual Income Tax Return.

It should be stressed at this point that petitioner's second amendment of its return to show that the amount subject of the claim for issuance of a tax credit certificate was no longer carried-over, does not alter the fact that it has clearly manifested its true intention to carry-over the same as shown in the tentative and first amended 2001 return. Therefore, under the afore-quoted provision of law, petitioner is already bound by the irrevocability rule.

As aptly ruled by the Court's Second Division in the assailed Decision, and We quote:

> "We do not subscribe to petitioner's view that the second amendment of its income tax return for the year 2001 superseded the first amendment thereby amending its actual exercise of the choices given under Section 76. Otherwise, Section 76 is rendered nugatory by a mere act of a taxpayer amending its return. Petitioner in fact admitted that the second amendment was purely for the purpose of removing the "prior year's excess tax credits" alleged to be erroneously stated in its first amendment. Any taxpayer can easily aver mistake or error in its declaration and amend its return not only once but several times, as the case may be. But we do not agree that the amendment of returns allowed by Section 6 of the 1997 Tax Code extends to changing a taxpayer's chosen option and actual exercise of such option under Section 76 of the same Code. As we already stated, to do so would render Section 76 ineffectual.
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> In sum, considering that petitioner already exercised the option to carry-over its prior year's excess tax credits of P28,422,664.00 to the taxable quarters of the succeeding taxable year, it is already barred from claiming a refund or a tax credit certificate corresponding thereto."

Lastly, tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption.[8]

WHEREFORE, the Court *en banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on November 3, 2004 and the Resolution dated February 23, 2005, respectively.

Accordingly, the instant Petition for Review is hereby **DENIED** and the assailed Decision and Resolution are **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[8] Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp. 204 SCRA 377

CAESAR A. CASANOVA
Associate Justice

(ON OFFICIAL BUSINESS)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice