REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC., ***Petitioner,***

-versus-

COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***

C.T.A. CASE NO. 7828

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
JAN 4 2011
ABFernando 2:29 p.m.

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DECISION

PALANCA-ENRIQUEZ , J.:

A taxpayer is entitled to a claim for tax refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and judicial claims would result in the denial of his claim

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(Commissioner of Internal Revenue vs. Aichi Forging Company Asia, Inc., G.R. No. 184823, October 6, 2010).

THE CASE

This is a Petition for Review filed by Philippine Airlines, Inc. (hereafter "petitioner PAL") praying for the issuance of a Tax Credit Certificate (TCC) in the total amount of P826,639.45, representing the 5% final VAT erroneously withheld from petitioner PAL's charter price of P16,411,500.00 for transporting 291 passengers of the Overseas Workers Welfare Administration (hereafter "OWWA") from the Philippines to Damascus and Bangkok, and back.

THE PARTIES

Petitioner PAL 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 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City.

On the other hand, respondent Commissioner of Internal Revenue (hereafter "CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue, which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, under the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

In their Joint Stipulation of Facts and Issues, the parties stipulated, as follows:

1. Petitioner PAL is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City, where it may be served with summons.

2. Respondent Commissioner of Internal Revenue is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, of the National Internal Revenue Code (NIRC).

3. On August 21, 2008, PAL filed with the Office of the Commissioner of the Internal Revenue, a formal written request for a refund of the amount of PHP 826,639.45, representing the 5% Final VAT withheld by the Overseas Workers Welfare Administration (OWWA) from PHP 16,532,789.00 billed by PAL to OWWA under its Charter Agreement.

As culled from the records, it further appears that on July 31, 2006, petitioner PAL entered into a Charter Agreement with OWWA to transport 288 passengers from Manila to Damascus and Bangkok, and back to Manila, for the charter price of U.S.$315,000.00 or P16,411,500.00 (U.S.$=P52.10), plus U.S.$ 8YQ tax per passenger.

After actually transporting 291 passengers, petitioner PAL issued two invoices to OWWA, to wit:

INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT
30687	07/29/06	P 16,411,500.00
30688	07/29/06	121,289.00
TOTAL AMOUNT DUE		**P 16,532,789.00**

Invoice numbers 30687 and 30688 were paid by OWWA under PAL Official Receipt No. 13805, dated August 10, 2006, but with the following deductions made by OWWA:

INVOICE NUMBER		O.R. AMOUNT
30687		P 16,411,500.00
30688		121,289.00
SUB-TOTAL		P 16,532,789.00
LESS: 2% CREDITABLE INCOME TAX	P 330,655.78	
5% FINAL VAT (BIR Form No. 2306)	826,639.45	1,157,295.23
TOTAL PAID		P 15,375,493.77

Consequently, petitioner PAL tried to recover the 5% final VAT from OWWA since the transaction involving the transport of passengers from the Philippines to a foreign country by petitioner PAL, a VAT registered carrier, is subject to zero percent (0%) VAT, under *Section 108 (B)(6) of the NIRC of 1997, as amended.*

OWWA refused to pay the amount withheld because the same was already remitted to the BIR on September 6, 2006, as evidenced by BIR Tax Payment Deposit Slip issued by the Land Bank of the Philippines, Masagana Branch, and validated in their Alpha list of payees, subject to the Expanded Withholding Tax Report submitted to the BIR on January 24, 2007.

On August 21, 2008, petitioner PAL filed with respondent CIR an administrative claim for refund in the total amount of P826,639.45, representing the 5% final VAT withheld by OWWA from the P16,532,789.00 billed by petitioner PAL to OWWA under their Charter Agreement.

In view of respondent CIR's inaction, on September 3, 2008, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7828.

In her Answer, respondent CIR alleged by way of special and affirmative defenses:

> " xxx xxx
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> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
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> 5. The amount of P 826,639.45 being claimed by petitioner allegedly representing erroneously withheld 5% Final Value-Added Tax (VAT) by the Overseas Workers Welfare Administration (OWWA) was not properly documented.
>
> 6. In an action for refund, 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.
>
> 7. 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 such, they are looked upon with disfavor *(Wester Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*."

Petitioner PAL presented Aleth Maria B. Calderon, as witness, and documentary evidence, marked as *Exhibits "A" to "O"*, inclusive of their submarkings, which were admitted by the Court, except for *Exhibit "A-4"* for failure of petitioner PAL to present the original.

On the other hand, respondent CIR 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 having complied thereto, the case was deemed submitted for decision on October 19, 2010.

ISSUES

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

I

WHETHER OR NOT THE PETITIONER IS A VAT REGISTERED AIR CARRIER AND THE TRANSACTION INVOLVED REFERS TO THE TRANSPORT OF PASSENGERS BY THE PETITIONER FOR THE OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA) FROM THE PHILIPPINES TO A FOREIGN COUNTRY AND BACK.

II

WHETHER OR NOT THE P826,639.45, 5% FINAL VAT WAS ACTUALLY WITHHELD BY OWWA FROM ITS

PAYMENT OF THE CHARTER PRICE OF P16,411,500.00 TO PAL AND REMITTED TO THE BUREAU OF INTERNAL REVENUE.

III

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE P826,639.45, 5% FINAL VAT WITHHELD BY OWWA AND REMITTED TO THE BUREAU OF INTERNAL REVENUE.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner PAL, a VAT registered air carrier, is entitled to a refund of P826,639.45, representing the 5% final VAT erroneously withheld by OWWA under their Charter Agreement.

THE COURT'S RULING

The petition is meritorious.

Petitioner PAL's Arguments

Petitioner PAL argues that it erroneously and improperly paid the total amount of P826,639.45, representing the 5% final VAT remitted by OWWA to respondent. Considering that the transaction involved the transport of passengers by petitioner PAL, a VAT registered air carrier, from the Philippines to a foreign country, said transaction is subject to zero percent (0%) VAT, under *Section 108 (B)(6) of the NIRC of 1997, as amended*; thus, withholding by

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OWWA of the P826,639.45, representing the 5% final VAT from its payment of the charter price to petitioner PAL, was erroneous and should therefore, be refunded to petitioner PAL.

Respondent CIR's Counter-Arguments

On the other hand, respondent CIR counter-argues that petitioner PAL is not entitled to the refund of the alleged unapplied creditable income tax withheld because petitioner PAL failed to prove that the creditable withholding tax amounting to P826,639.45 is duly supported by valid Certificates of Creditable Tax Withheld at Source; that petitioner PAL failed to prove that the alleged withheld taxes were actually remitted to the BIR; and petitioner PAL failed to discharge its burden of proving its entitlement to a refund.

We rule for petitioner PAL.

Section 108 (B) of the NIRC of 1997, as amended, provides:

> **"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.-**
>
> (A) xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx
>
> xxx xxx

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(6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country.

xxx xxx."

Corollary thereto, *Section 4.108-5 of Revenue Regulations No. 16-2005*, implementing the Value-Added Tax provisions of the *NIRC of 1997, as amended,* provides:

"**SEC. 4.108-5. Zero-Rated Sale of Services-**

xxx xxx

(b) Transactions Subject to Zero Percent (0%) VAT Rate.

xxx xxx

(6) Transport of passengers and cargo by domestic air or sea carriers from the Philippines to a foreign country. Gross receipts of international air carriers doing business in the Philippines and international sea carriers doing business in the Philippines are still liable to a percentage tax of three percent (3%) based on their gross receipts as provided for in Section 118 of the Tax Code but shall not be liable to VAT.

xxx xxx"

Pursuant to the above-quoted provisions, the transport of passengers by a domestic air carrier is a transaction subject to zero-percent (0%) VAT rate. The two prescribed requisites are: (1) that the domestic carrier is a VAT-registered person; and (2) that transport of passengers and/or cargo is from the Philippines to a foreign country.

After a careful examination of the evidence adduced by petitioner PAL, the Court finds that it has faithfully complied with the aforesaid prescribed requirements. As regards the first requisite, to prove that that petitioner PAL is a VAT registered air carrier, petitioner PAL offered in evidence its Certificates of Registration with the BIR Large Taxpayers Division *(Exhibits "M" and "M-1")*.

As regards the second requisite, petitioner PAL presented its Charter Agreement with OWWA to prove that the transaction between petitioner PAL and OWWA involved transport of passengers from the Philippines to a foreign country (*Exhibit "A"*).

It is clear, therefore, that petitioner PAL's transaction with OWWA is subject to zero-rated sale of services. Although OWWA is legally obliged to automatically withhold the 5% final VAT from its transaction, being a government agency and pursuant to *Section 114 (C) of the NIRC of 1997, as amended*; however, petitioner PAL is not liable to pay the withholding tax on the said transaction; hence, petitioner PAL is entitled to a refund of the erroneously withheld amount of P826,639.45 from the aforesaid transaction.

As regards the substantiation of its claim, petitioner PAL presented a Certificate of Final Tax Withheld at Source (BIR Form No. 2306) for the month of August *(Exhibit "E")* and a copy of the Monthly Remittance Return of VAT and other Percentage Taxes (BIR Form No. 1600) with Alpha list, and the Annual Information Return of Creditable Income taxes Withheld (BIR Form No. 1604-E) for the year 2006 *(Exhibits "I-2" to "I-5").* Clearly, petitioner PAL has fully substantiated its claim that the erroneously withheld P826,639.45 was actually remitted by OWWA to respondent CIR.

As to the timeliness of petitioner PAL's claim for refund, *Section 229 of the NIRC of 1997, as amended*, provides that a taxpayer may file a claim for refund of erroneously collected tax, within two years from the date of payment of the tax, thus:

> "**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 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 therefor, 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."

CLW

There is no dispute that petitioner PAL timely filed its claim for refund. Records show that OWWA remitted the amount of P826,639.45 to the BIR on September 6, 2006; thus, petitioner PAL has two years from September 6, 2006 or until September 6, 2008 to file a claim for refund. Petitioner PAL filed its administrative claim for refund with the BIR on August 21, 2008; while its judicial claim for refund was filed with this Court on September 3, 2008.

Accordingly, petitioner PAL is clearly entitled to the refund of the erroneously paid withholding taxes in the total amount of P826,639.45. Well-settled is the rule that no person shall unjustly enrich himself at the expense of another. Under the principle of *solutio indebiti* found under *Article 2154 of the New Civil Code*, the BIR has the obligation to refund the taxes which it has no right to receive. It goes without saying that the Government is not exempted from the application of this doctrine *(Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, 516 SCRA 93).*

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner PAL in the total amount of **EIGHT HUNDRED TWENTY-SIX THOUSAND, SIX HUNDRED THIRTY-NINE**

AND 45/100 PESOS (P826,639.45), representing the 5% final VAT erroneously withheld by OWWA under the Charter Agreement.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA COTANGCO- MANALASTAS
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice