REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SONOMA SERVICES, INCORPORATED,
Respondent.

CTA EB CASE NO. 697
(CTA CASE NO. 7613)

Present:

Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

APR 2 0 2012 ~~Apolinario~~ 2:00 p.m.

x - x

DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed by petitioner, Commissioner of Internal Revenue, pursuant to Section 11 of Republic Act ("RA") No. 1125, as amended, by Section 18 of RA Nos. 9282 and 9503. Petitioner assails the Decision dated June 18, 2010,[1] and Resolution dated October 5, 2010,[2] of the Former Second Division of this Court ("Court in Division"), which partly granted the claim for refund or issuance of tax credit certificate of unutilized creditable

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[1] *Rollo*, (CTA EB CASE No. 697), pp. 19 – 39; Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr., and Erlina P. Uy, concurring.
[2] *Ibid.*, pp. 41 – 49.

withholding taxes for calendar year 2004 of Sonoma Services, Incorporated, in the reduced amount of P4,357,499.04.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with the authority to carry out all the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve, and grant refunds, and/or tax credits of overpaid and erroneously paid or collection internal revenue taxes. She presently holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, Sonoma Services, Inc., ("SSI") is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal place of business at the 35th Floor, Tower One, Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. SSI was incorporated with the primary purpose of carrying on and conducting a general services business with any party, including the rendering of management and allied services within the limits allowed by law, including office and clerical support services, maintenance services of any kind, or otherwise, to engage in any preservation, maintenance or repair work upon any and every kind of property, to enter into and execute contracts therefore or relating thereto. SSI is a registered taxpayer of the Bureau of Internal Revenue ("BIR"), Revenue Region No. 8, Revenuer District Office ("RDO") No. 50, with Taxpayer Identification No. 220-868-954-000.[3]

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[3] *Records*, (CTA Case No. 7613), pp. 52 – 53.

Antecedent Facts

The relevant antecedents are stated by the Court in Division in its Decision dated June 18, 2010 as follows:

"**THE FACTS**

In their "Joint Stipulation of Facts," the parties stipulates as follows:

> '1. Petitioner's Articles of Incorporation and the Covering Certificate of Incorporation issued by the Securities and Exchange Commission on October 23, 2002 are authentic and duly executed.
>
> 2. Petitioner was incorporated with the primary purpose of carrying on and conducting a general services business with any party, including the rendering of management and allied services within the limits allowed by law, including office and clerical support services, maintenances services of any kind, or otherwise, to engage in any preservation, maintenance or repair work upon any and every kind of property, to enter into and execute contracts therefore or relating thereto.
>
> 3. Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50, with Taxpayer Identification No. 220-868-954-000.
>
> 4. Petitioner's BIR certificate of Registration dated October 29, 2002 is authentic and duly executed.
>
> 5. Petitioner filed with the BIR its Annual Income Tax Return for CY 2004 on April 14, 2005.
>
> 6. Petitioner filed with the BIR, RDO No. 50 its administrative claim for refund of excess creditable withholding taxes for CY 2004 in the amount of P5,188,970.00 on May 6, 2005.
>
> 7. To date, respondent has neither denied nor approved petitioner's administrative claim for refund

of excess and unutilized creditable withholding taxes for CY 2004 in the amount of P5,188,970.00.'

In order to preserve its right and toll the running of the prescriptive period for its judicial claim, on April 16, 2007, petitioner filed the instant Petition for Review.

In his Answer, respondent by way of special and affirmative defences, averred that petitioner's claim for refund is still subject to administrative routinary investigation/examination by respondent; that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable; that petitioner's claim in the amount of P5,188,970.00, as alleged excess and unutilized creditable income taxes withheld for taxable year 2004, was not fully substantiated by proper documentary evidence; that petitioner failed to prove that the amount of P5,188,970.00 as alleged excess and unutilized creditable income taxes withheld for taxable year 2004 was included as part of its gross income for taxable year 2004, and that it did not carry over to the succeeding taxable quarter/year the subject of its claim and that the same was not utilized in payment of its income tax liability for the succeeding taxable quarter/year; that petitioner failed to prove that the amount subject of its claim went into the coffers of the government; that petitioner's claim for refund had already prescribed; that it is incumbent upon petitioner to show that it has complied with the provisions of *Section 204*, in relation to *Section 229*; and that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

Petitioner presented Marivic Lao and Katherine Constantino as witnesses, and documentary evidence, marked as *Exhibits 'A'* to *'O'* and *'AA'* to *'BBBB-2'*, inclusive of their sub-markings, which were all admitted by the Court in its Resolutions dated July 18, 2008 and July 3, 2009, respectively.

On the other hand, in a Resolution dated August 7, 2009, upon motion of counsel for petitioner, respondent's right to present evidence was considered waived for the repeated failure of counsel for respondent to appear at the trial for the initial presentation of the evidence for the respondent.

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

> Considering respondent's 'Manifestation and Motion' filed on September 28, 2009 that he is submitting the case for decision based on the pleadings, which was granted by the Court in a Resolution dated October 22, 2009, and petitioner's "Memorandum" filed on November 10, 2009, this case was deemed submitted for decision on November 13, 2009."[4]

The Ruling of the Court in Division

The Court in Division found the petition to be partly meritorious. The Court in Division stated that while SSI's excess withholding tax credits for the taxable quarter/year is automatically allowed as a refund or credit for the purposes of filing its income tax return for the taxable quarter/year immediately succeeding the taxable quarter/year in which said credit arose, the right to refund is not automatic. SSI must satisfy the three conditions for the grant of a claim for refund or creditable withholding tax, which are:

1. that the claim is filed with the CIR, within the two (2) year period from the date of payment of the tax;
2. that the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom; and
3. that it is shown on the return of the recipient that the income payment received was declared as part of gross income.[5]

The Court in Division found that while SSI was able to comply with the first two requisites, there was a marked discrepancy between income as declared in SSI's Income Tax Return for taxable year 2004 and as reflected in the certificates of

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[4] *Rollo*, (CTA EB CASE No. 697), pp. 20 – 23.
[5] Banco Filipino Savings and Mortgage Bank vs. CA *et al.*, G.R. No. 155682, March 27, 2007, 519 SCRA 93.

creditable tax withheld presented, the latter being higher, resulting in an under declaration of gross income. The Court in Division ruled that since SSI was unable to account for the discrepancy in gross income, it was not declared as part of SSI's taxable income in accordance with the third condition. Accordingly, the Court in Division found it proper to disallow the corresponding creditable withholding taxes from the claim. Thus, on June 18, 2010, the Court in Division promulgated its Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Sonoma Services, Inc. in the reduced amount of **FOUR MILLION THREE HUNDRED FIFTY SEVEN THOUSAND FOUR HUNDRED NINETY NINE AND 04/100 PESOS** (P4,357,499.04), representing the unutilized creditable withholding taxes for the calendar year 2004.
>
> **SO ORDERED.**"[6]

On July 6, 2010, CIR filed her "Motion for Reconsideration,"[7] arguing that SSI failed to substantiate its claim for refund in violation of Section 76 of the 1997 Tax Code; that SSI's failure to present its quarterly returns for taxable year 2004 is fatal to its claim; and that SSI impliedly indicated in its annual ITRs for taxable years, 2004 and 2005 the intention to carry over its claimed unutilized creditable withholding taxes for the year 2004 to the succeeding year.

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[6] *Rollo*, (CTA EB CASE No. 697), pp. 38.
[7] *Records*, (CTA Case No. 7613), pp. 592 – 599.

On July 8, 2010, SSI filed its "Motion for Partial Reconsideration,"[8] arguing that the Court erred in applying a quantum of evidence that is more stringent than a mere preponderance of evidence, and that the evidence it submitted proves that the income from which the creditable withholding taxes were withheld was declared as part of taxable income.

On October 5, 2010, the Court promulgated a Resolution denying both the CIR's "Motion for Reconsideration" and SSI's "Motion for Partial Reconsideration" for lack of merit.[9]

Consequently, the CIR filed a Petition for Review before the Court *En Banc* on November 8, 2010.

The Issues Raised

The CIR assigns the following errors in her Petition for Review, *viz*:

"I.

THE FORMER SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS PARTIALLY ENTITLED TO ITS CLAIMED REFUND OF UNUTILIZED CREDITABLE WITHHOLDING TAXES IN THE REDUCED AMOUNT OF P4,357,499.04 FOR TAXABLE YEAR 2004.

II.

THE FORMER SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS NOT REQUIRED UNDER SECTION 76 OF THE 1997 TAX CODE TO PRESENT ITS QUARTERLY INCOME TAX RETURNS FOR 2004 AND 2005 IN SUPPORT (SIC) ITS CLAIM FOR REFUND OF UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR 2004."

[8] *Records*, (CTA Case No. 7613), pp. 568 – 591.
[9] *Rollo*. CTA EB CASE No. 697, pp. 41-48.

The Ruling of the Court En Banc

Petitioner, CIR, asserts that Section 76 of the 1997 Tax Code requires the presentation of SSI's quarterly income tax returns for taxable years 2004 and 2005 to support its claim for refund of unutilized creditable income taxes withheld for 2004. The CIR maintains that since SSI failed to present its quarterly incomes tax returns for taxable years 2004 and 2005, it cannot be determined with reasonable certainty whether SSI exercised its option to carry-over its excess unutilized creditable withholding taxes for 2004 to the succeeding taxable year, and such is vital to prove its entitlement to the refund.

On the other hand, respondent argues, in its "Memorandum," that the presentation of quarterly income tax returns in order to substantiate a claim for refund is not mentioned anywhere in Section 76 or its implementing laws, thus it is not a requirement for a valid claim for refund. Respondent states further that the option to carry over excess creditable withholding tax only arises when the taxpayer files his annual ITR or Final Adjustment Return because it is only then can the amount of tax due be ascertained.

The Court *En Banc* agrees with the petitioner, the presentation of respondent's Quarterly Income Tax Returns for the succeeding quarters of taxable year 2005 are necessary to establish that respondent did not exercise his option to carry-over excess and unutilized creditable withholding tax.

For reference, Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides as follows:

"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) 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 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 tax credit certificate shall be allowed therefor."

Pursuant thereto, Section 2.58.3 of Revenue Regulations No. 2-98,[10] provides as follows:

SECTION 2.58.3. *Claim for Tax Credit or Refund.* –

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax

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[10] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, dated April 17, 1998.

statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Proof of remittance is the responsibility of the withholding agent.

(C) *Excess Credits* – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

(2) Sample computation of application of excess credits-ordinary.

	Taxable Period			
	1997	1998-QTR1	1998-QTR2	1998-QTR3
Tax Due	1,000	200	200	500
Less: Tax Withheld	(1,500)	(500)	(300)	0
Net Tax Payable / Creditable	(500)	(300)	(100)	500

> In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of ₱500 in 1997.

From the foregoing, and as enunciated by this Court in the case of *SC & C Cosmetech Co., Inc., v. Commissioner of Internal Revenue*,[11] a corporation entitled to a tax credit or refund of excess estimated quarterly income taxes paid has two (2) options, *viz*: (1) to carry over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. Once the option to carry over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed. The irrevocability rule when taken with the phrase "for that taxable period" refers to that taxable period which the taxpayer made the choice of carry over and not to the next taxable year when the said excess or unutilized tax credits be carried over.

Due to the irrevocability rule, when claiming for a refund, it is imperative that the taxpayer prove that his excess creditable withholding taxes were not carried over to the succeeding quarters.

In the present case, while SSI did offer its Annual ITRs / Final Adjustment Returns for taxable years 2003, 2004, and 2005, in compliance with the requirements for the grant of a claim for refund for creditable withholding tax, it failed to present its Quarterly Income Tax Returns for 2005. Consequently, SSI was not able to prove that it did not exercise its option to carry-over its excess creditable withholding tax.

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[11] CTA Case No. 6650, June 6, 2005.

In the case of *Millennium Business Services, Inc., v. Commissioner of Internal Revenue*,[12] the Court sitting *En Banc* ruled in this wise:

> Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, **the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.**
>
> Significantly, a taxpayer may amend its quarterly income tax return or annual Income tax return or Final Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.
>
> The presentation of the final adjustment return does not shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. **It goes without saying that the final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.**
>
> The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. **The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due.** These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund

[12] CTA EB Case No. 510 (CTA Case No. 7441), September 28, 2010.

> without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund.
>
> In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.
>
> Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed. (*Boldfacing supplied.*)

While, in the case of *Benguet Management Corporation v. Commissioner of Internal Revenue*,[13] the Court *En Banc* agreed with the denial of the claim made by the Second Division of the Court, stating as follows:

> After a close review of the records, We agree with the following findings of the Court in Division that petitioner is already barred from claiming a refund or a tax credit certificate corresponding to its unutilized tax credits for the year 2001:
>
> > "However, petitioner carried over the declared overpayment for 2001 in the amount of ₱6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits (*Annexes C* to *E*, Petition for Review, *Records*,

[13] CTA EB Case No. 200, April 4, 2007.

pp. 10-12). As petitioner's own evidence would show (original/tentative annual ITR for CY 12/2001, *Exhibit "A"*), the total declared overpayment of ₱6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002 filed on June 11, 2002 (Quarterly Income Tax Return for the 1st Quarter of 2002, *Annex C*, Petition for Review). When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of ₱6,249,534.00 as prior year's excess credits (Quarterly Income Tax Return for 2nd Quarter of 2002, *Annex D*, Petition for Review). For the third quarter of 2002, petitioner still carried over the same amount of ₱6,249,534.00 as prior year's excess credits (Quarterly Income Tax Return for 3rd Quarter of 2002, *Annex E*, Petition for Review). The total amount of ₱5,700,272.00 subject of this claim, formed part of the ₱6,249,534.00 overpayment for calendar year 2001 (*Exhibit A-1*).

xxx xxx xxx

We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year (*Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No, 6274, April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, April 3 2003 and Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, May 16, 2003*).

Although petitioner did not indicate any chosen option in its 2001 income tax return filed on April 15, 2002, it nevertheless actually carried over the claimed excess credits to the succeeding quarters of 2002, as discussed above. Besides, if the taxpayer fails to signify his option by marking with an "x" the appropriate box in the return, "the excess payments shall be automatically carried-over to the next taxable period" (BIR Form No. 1702, p. 4). And under the law, once the option of carry over has been exercised, it becomes irrevocable pursuant to Section 76 of the 1997 NIRC above quoted.

In this case, petitioner actually exercised the right to carry over its excess credits to the succeeding taxable quarters. Thus, it can no longer claim for a cash refund or issuance of a tax credit certificate for the subject period.

It is noteworthy that when petitioner filed its amended return for the subject period on November 20, 2002, it still reflected the amount ₱6,249,534.00, as total overpayment to which the claimed amount of ₱5,700,272.00 formed a part of (*Exhibit B-1*).

When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of ₱6,249,534.00 as prior year's excess credits (*Exhibit F, Records*, pp. 91-93). The fact that petitioner amended its 2002 tax return on October 9, 2003 (*Exhibit G, Records*, pp. 94-96) does not alter the fact that petitioner in fact carried over the amount of ₱6,249,534.00 which the claimed amount of ₱5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits.

Otherwise stated, petitioner may have amended its 2001 income tax return on October 9, 2003 (*Exhibit G*) but this amendment did not undo the act/s already made or exercised. Otherwise, Section 76 is rendered nugatory by a mere act of a taxpayer amending its return.

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. It is Our considered view that the amendment of returns allowed by Section 6 of the 1997 Tax Code does not extend to changing of taxpayer's chosen option, much more, an actual exercise of such option under Section 76 of the same Code.

Thus, taking into account that petitioner actually carried over its prior year's excess tax credits of ₱6,249,534.00 for the calendar year 2001 to the taxable quarters of the succeeding taxable year 2002 (*Annexes C* to *E*, Petition for Review), as well as to its original annual corporate income tax return for calendar year 2002 (*Exhibit*

> *F*), it is already barred from claiming a refund or a tax credit certificate corresponding to the unutilized tax credits for the year 2001."

This Court is not strictly governed by technical rules of evidence. However, with the foregoing jurisprudence, the presentation of the succeeding Annual Income Tax Return is not sufficient to establish that respondent did not apply its claimed unutilized creditable withholding taxes for the succeeding quarters of 2005.

Furthermore, the Court *En Banc* stresses that tax refunds, like tax exemptions, are construed strictly against the taxpayer.[14] Since tax refunds are of this nature, and are regarded as in derogation of sovereign authority; the same shall be construed *strictissimi juris* against the person claiming such exemption. Consequently, the taxpayer has the burden of proving that it is entitled to its claim.

The Court *En Banc* finds that respondent did not sufficiently support its claim for the issuance of tax credit certificate of excess and unutilized creditable income taxes withheld for the year 2004.

WHEREFORE, petitioner Commissioner of Internal Revenue's Petition for Review is hereby **GRANTED**. Accordingly, the impugned Decision of the Former Second Division dated June 18, 2010, and Resolution dated October 5, 2010, are hereby **REVERSED** and **SET ASIDE** and Petition for Review, docketed as CTA Case No. 7613, is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

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[14] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Wellness Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Wellness Leave)
ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

(On Wellness Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

CTA EB No. 697
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-versus-

Members:

Acosta, *P.J.*,
Castañeda, Jr.,
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Cotangco-Manalastas, *JJ.*

SONOMA SERVICES, INCORPORATED,
Respondent.

Promulgated:
APR 2 0 2012

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DISSENTING OPINION

CASANOVA, J.:

This case involves the refund or the issuance of tax credit certificate of P5,188,970.00 representing Sonoma Services, Inc.'s ("Sonoma") excess and unutilized creditable taxes withheld for calendar year 2004.

In ruling for Sonoma, the former Second Division issued a Decision dated June 18, 2010 ordering the Bureau of Internal Revenue ("BIR") to refund or to issue TCC in the reduced amount of P4,357,499.04 representing unutilized creditable withholding tax ("CWT") for calendar year 2004.[1]

Acting upon Sonoma and the CIR's motions for reconsideration of the assailed Decision dated June 18, 2010, the Court in Division denied the same as shown in the Resolution dated October 5, 2010. Emphasizing that there is no need to present Sonoma's quarterly income tax returns for the subsequent year, the Court in Division ruled that:

> "The requirement of the presentation of petitioner's quarterly ITRs and a certification from the BIR that taxes withheld were remitted to the BIR despite the submission of petitioner's 2004 and 2005 annual ITRs and the Certificates of Creditable Taxes Withheld, in requesting a tax refund, has no basis in law and jurisprudence.
>
> To begin with, nowhere in *Section 76 of the 1997 NIRC*, as amended, nor in its implementing laws can be found the requirement of the presentation of quarterly ITRs. Although we agree with respondent CIR that petitioner has the burden of proving its entitlement to its claim for refund, jurisprudence dictates that taxpayers are not mandated to prove whether they have carried over their claimed excess tax credits to the succeeding taxable years, as long as they have proven their entitlement to the refund sought for the particular taxable year.
>
> xxx xxx xxx Since quarterly ITRs are required to be filed with the BIR, it is basic that the BIR ought to have on file its own copies of quarterly ITRs filed by taxpayers. On the basis of the said ITRs, respondent CIR could rebut petitioner's claim that it did not carry-over its unutilized and excess creditable withholding taxes for taxable year 2004 to the succeeding taxable quarters of taxable 2005. In the case of *Commissioner of Internal Revenue v. PERF Realty Corporation* (557 SCRA 177), the Supreme Court ruled that the verification process is not incumbent on the claimant-taxpayer and that it is the duty of the CIR to verify whether or not said claimant-taxpayer had carried over its alleged excess income taxes. However, records show that respondent CIR failed to present any evidence to dispute petitioner's claim. Respondent CIR's failure to present such vital document before this Court support his contention against the grant of a tax refund to petitioner, is fatal. Respondent CIR was negligent in his duty

[1] Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

> to overcome the disputable presumption in favor of correctness of returns."[2]

Dissatisfied, the CIR appealed before the Court *en banc*.

As the *ponente*, Associate Justice Lovell R. Bautista recommended for the reversal and setting-aside of the Decision dated June 18, 2010 and the Resolution dated October 5, 2010 in CTA Case No. 7613 due to insufficiency of evidence, specifically on the failure to present 2005 quarterly income tax returns.

I respectfully disagree with the majority on the following grounds:

I. **THE SUPREME COURT'S RULINGS IN PHILAM, STATE LAND, MIRANT AND PERF CASES ARE BINDING UPON THIS COURT.**

II. **IN A REFUND CLAIM OF EXCESS CREDITABLE WITHOLDING TAXES, THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE SUBMISSION OF RETURNS FOR THE SUBSEQUENT YEARS IS UNNECESSARY.**

THE SUPREME COURT'S RULINGS IN THE PHILAM, STATE LAND, MIRANT AND PERF CASES ARE BINDING UPON THIS COURT.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.[3] In the case of *Systra Philippines, Inc. v. Commissioner of Internal Revenue*[4] penned by Chief Justice Renato C. Corona, it was emphasized that "**All courts must take their bearings from the decisions of this Court**".

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[2] Rollo, pp. 45-46.
[3] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.
[4] *Systra Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781 citing *Republic of the Philippines v. Maj. Gen. Garcia, G.R. No. 167741, 17 July 2007.*

Maintaining stability in jurisprudence is of paramount importance under the principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled. Where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[5] That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[6] The doctrine of *stare decisis* explains why the cases of ***Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation***[7], ***Philam Asset Management, Inc. v. Commissioner of Internal Revenue***[8], ***State Land Investment Corporation v. Commissioner of Internal Revenue***[9] **and** ***Commissioner of Internal Revenue v. PERF Realty Corporation***[10] are binding upon this Court. Clearly, there is no justifiable reason to reverse and set-aside the Decision dated June 18, 2010 and the Resolution dated October 5, 2010 issued by the former Second Division all in consonance with the law and existing jurisprudence.

IN A REFUND CLAIM OF EXCESS CREDITABLE WITHOLDING TAXES, THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE SUBMISSION OF RETURNS FOR THE SUBSEQUENT YEARS IS UNNECESSARY.

In the case of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,*[11] the Supreme Court exhaustively discussed the reasons

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[5] *Negros Navigation Co., Inc.., v. Court of Appeals, et al.*, G.R. No. 110398, November 7, 1997, 281 SCRA 534.
[6] *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231, February 21, 2002, 377 SCRA 509 citing *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, June 20, 2000, 334 SCRA 114.
[7] G.R. Nos. 171742 and 176165, June 15, 2011.
[8] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 156637/162004, December 14, 2005, 477 SCRA 761.
[9] *State Land Investment Corporation v. Commissioner of Internal Revenue,* G.R. No. 171956, January 18, 2008, 542 SCRA 114.
[10] *Commissioner of Internal Revenue v. PERF Realty Corporation, 163345,* July 4, 2008, 557 SCRA 165.
[11] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,supra.*

why the Income Tax Return (ITR) or the Final Adjustment Return (FAR) of the succeeding year is no longer necessary when a taxpayer requests for a tax refund. It categorically ruled that the said requirement has no basis in law and jurisprudence. The Supreme Court held:

> **"Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.**
>
> xxx **Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* -- not the succeeding -- taxable year.** Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the *tax credits* are originally being applied should also be presented to the BIR." (Emphasis ours)

Citing the case of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, the Supreme Court made a similar ruling in the case of *State Land Investment Corporation v. Commissioner of Internal Revenue*[12] attesting as unnecessary the presentation of the final adjustment return for the subsequent year as follows:

> "As previously mentioned, after paying P4,187,523.00 as income tax due in 1998, there remained an unutilized tax credit of P9,742,270.51. **It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, we held that the Tax Code merely requires the filing of the final adjustment return for the preceding — not the succeeding — taxable year.** Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. **Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.**" (Emphasis ours.)

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[12] *State Land Investment Corporation v. Commissioner of Internal Revenue, supra.*

In the recent case of *The Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,*[13] the Supreme Court mentioned that a tax credit or refund of creditable withholding tax requires compliance with only three (3) requisites as follows:

> 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
>
> 2) It must be shown on the return that the income received was declared as part of the gross income; and
>
> 3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[14]

In the said case, the Court granted the refund claim without requiring the submission of the original quarterly income tax returns of the subsequent year upon showing that the claimant opted to refund its excess CWT and has complied with the above legal requisites.

The presentation of subsequent ITRs is a mere superfluity as declared by the Supreme Court in the case of *Commissioner of Internal Revenue v. PERF Realty Corporation,*[15] *viz*:

xxx xxx xxx

> **"Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund."** (Emphasis ours.)

Considering that in the cases of *Philam*, *State Land*, *Mirant* and *PERF*, the Supreme Court explicitly stated that the submission of FAR of the succeeding taxable year is not required under the law to prove the claimant's

[13] The *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corp., supra.*
[14] See *Commissioner of Internal Revenue v. FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417 and *Banco Filipino v. Court of Appeals*, March 27, 2007, G.R. No. 155682, 519 SCRA 93.
[15] *Commissioner of Internal Revenue v. PERF Realty Corporation, supra.*

entitlement to excess or unutilized creditable withholding tax; logically, the submission of quarterly income tax returns for the subsequent taxable period is unnecessary. To put it succinctly, there is no justifiable reason to deviate from the existing rulings of the Supreme Court.

I vote to affirm the Decision dated June 18, 2010 and the Resolution dated October 5, 2010 issued by the former Second Division.

CAESAR A. CASANOVA
Associate Justice