REPUBLIC OF THE PHILIPPINES

Court Of Tax Appeals

MANILA

SECOND DIVISION

COMSYS PHILIPPINES INC.,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6651

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 28 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 therefor.

Is Comsys Philippines, Inc. (herein "petitioner") entitled to a refund or tax credit in the total amount of P7,162,216.00 representing the excess/unutilized creditable income 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 P7,162,216.00 or in the alternative, for a refund of said amount, representing the excess/unutilized creditable income taxes as of December 31, 2001.

THE FACTS

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

> "1. Petitioner is a domestic corporation duly organized and existing by virtue of Philippine laws.

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2. It may be served with pleadings and other legal processes through the undersigned counsels at their office at 6760 Ayala Avenue, Makati City.

3. Respondent is the duly appointed Commissioner of Internal Revenue who is vested by law with power and authority to decide, approve and grant applications for refund or tax credit of excess internal revenue tax payments, as well as to enforce the provisions of the National Internal Revenue Code (Tax Code). He may be served with summons and other legal processes of this Honorable Court at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

4. Petitioner is engaged in the business of telecommunications as a contractor.

5. In 2000, petitioner's principal office was located at Penthouse I (West Wing), Hanston Building, Emerald Avenue, Ortigas, Pasig City. As such, it was registered with the Bureau of Internal Revenue (BIR) as corporate taxpayer, as evidenced by its certificate of registration issued by the BIR on December 29, 1995.

6. On April 11, 2001, petitioner filed its annual corporate income tax return for the calendar year (CY) ended December 31, 2000.

7. On April 12, 2002, petitioner filed its annual corporate income tax return for the calendar year (CY) ended December 31, 2001.

8. On April 4, 2003, petitioner filed an administrative claim for refund with the BIR RDO No. 43 for its unutilized creditable taxes withheld for calendar year

2000 amounting to P537,818.00 pursuant to Section 204 (C) of the Tax Code.

9. On April 4, 2003, petitioner filed an administrative claim for refund with the BIR RDO No. 40 for its unutilized creditable taxes withheld for calendar year 2001 amounting to P6,624,398.00 pursuant to Section 204 (C) of the Tax Code.

10. To date, respondent has not approved the administrative claims for refund or the issuance of a TCC in favor of the Petitioner."

The administrative claim for tax refund filed with the BIR not having been acted upon, the petitioner elevated its claim to this Court via the present Petition For Review.

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

"7. The claim for refund is still under examination by the respondent's Bureau;

8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

9. The grant of a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is

> upon the petitioner-claimant to show with clear and unambiguous provisions of law supporting the same."

Petitioner presented Mr. Koi Otsu, as witness, and submitted documentary evidence, marked as Exhibits "A" to "Z", 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 respective memoranda within thirty (30) days from October 20, 2004. Only the petitioner complied thereto, thus the case was deemed submitted for decision.

THE ISSUES

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

I

> WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P537,818.00 AND P6,624,398.00 REPRESENTING OVERPAID QUARTERLY INCOME TAX AND UNUTILIZED CREDITABLE TAX WITHHELD FOR CALENDAR YEARS 2000 AND 2001, RESPECTIVELY.

II

WHETHER OR NOT PETITIONER HAS SHOWN COMPLIANCE WITH THE PROVISIONS OF SECTION 204 (C) AND 229 OF THE TAX CODE.

THE COURT'S RULING

As regards the first issue, petitioner maintains that it has an aggregate tax credit in the amount of P14,779,546.00, representing the sum of the prior year's excess credit of P8,155,148.00 and creditable taxes withheld during the year 2001 in the amount of P6,624,398.00. Thus, as of December 31, 2001, petitioner's income tax overpayment amounted to P12,794,688.00, computed as follows:

Sales/Revenues/Receipts/Fees		P 516,623,631.00
Less: Cost of Sales/Services		418,910,986.00
Gross Income from Operation		P 97,712,645.00
Add: Non-Operating & Other Income		1,530,275.00
Total Gross Income		P 99,242,920.00
Less: Deductions		326,471,356.00
Net Loss		P (227,228,436.00)
Minimum Corporate Income Tax Due		P 1,984,858.00
Less: Tax Credits		
Prior Year's Excess Credits	8,155,148.00	
Creditable Taxes Withheld -		
First Three Quarters	783,925.00	
Fourth Quarter	5,840,473.00	14,779,546.00
Tax Overpayment		P 12,794,688.00

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Petitioner alleged that the MCIT liability of P1,984,858.00 was offset against the creditable taxes withheld during the year 2000 in the amount of P2,522,676.00 which formed part of the prior year's excess credit of P8,155,148.00. Consequently, petitioner was left with a balance of prior year's excess credit as of December 31, 2001 in the amount of P6,170,290.00, representing the sum of the 1999 excess credits of P5,632,472.00 and unapplied creditable taxes withheld for taxable year 2000 of P537,818.00, computed below:

1999 Excess Credits		P 5,632,472.00
2000 Creditable Taxes Withheld	P2,522,676.00	
Less: 2001 MCIT liability	1,984,858.00	537,818.00
Balance of prior year's excess credits as of Dec. 31, 2001		**P6,170,290.00**

The above balance of P6,170,290.00 prior year's excess credits and the unutilized creditable taxes withheld during the year 2001 of P6,624,398.00 allegedly constitutes petitioner's income tax overpayment of P12,794,688.00 as of December 31, 2001, thus:

Balance of prior year's excess credits as of Dec. 31, 2001	P 6,170,290.00
Add: Unutilized creditable taxes withheld during 2001	6,624,398.00
Tax Overpayment as of Dec. 31, 2001	**P 12,794,688.00**

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 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 aforequoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, is allowed two (2) options: (a) be credited or refunded (either in the form of cash or tax credit certificate) with the excess amount paid; or (b) carry-over the excess credit. However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such action becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

In the case at bench, petitioner's claimed amount of P7,162,216.00 represents the sum of the unutilized creditable withholding taxes for taxable years 2000 and 2001 in the respective amounts of P537,818.00 and P6,624,398.00. Pursuant to *Section 76 of the NIRC of 1997*, petitioner's claim for taxable year 2000 in the amount of P537,818.00 should be denied. As can be seen in its 2000 income tax return, petitioner opted to carry-over/apply the 2000 excess creditable withholding taxes of P2,522,676.00 to the succeeding taxable year 2001 by writing an "x" mark corresponding to the said choice (*Exhibit "A"*). In its 2001 income tax return, petitioner actually carried-over the said amount as part of the prior year's excess credit of P8,155,148.00 (*Exhibit "B"*). After applying the 2000 creditable withholding taxes of P2,522,676.00 against the 2001 minimum corporate income tax (MCIT) liability of P1,984,858.00, although there still remained an unutilized amount of P537,818.00 petitioner is precluded from claiming a refund/tax credit certificate therefor. Petitioner had already chosen, and in fact, had exercised the option of carry-over insofar as the 2000 excess creditable withholding taxes of P2,522,676.00 is concerned. Having exercised such option, the same is irrevocable. Petitioner's only recourse is to carry-over/apply the 2000 unutilized tax credits of P537,818.00 to the succeeding taxable year until the same is fully utilized (*Subic Bay Distribution, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6640, November 3, 2004*).

While a taxpayer is given the choice whether to claim for refund or have its excess taxes applied as tax credit for the succeeding taxable year, such election is not final. Prior verification and approval by the Commissioner of Internal Revenue is required. The availment of the remedy of tax credit is not absolute and mandatory. It does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses. Neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer (*San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, 228 SCRA 135*).

As regards the remaining claim of P6,624,398.00 in its 2001 income tax return (*Exhibit "B"*), petitioner did not indicate any option insofar as the 2001 excess creditable withholding taxes of 6,624,398.00 is concerned. Likewise, in its 2002 income tax return (*Exhibit "TTT"*), petitioner did not carry-over the amount of P6,624,398.00 as the prior year's excess credit, but only the amount of P5,632,472.00 which corresponds to the 1999 excess tax credits. Accordingly, the Court finds that the 2001 unutilized creditable withholding taxes of P6,624,398.00 may be a proper subject of a claim for the issuance of a tax credit certificate in accordance with *Section 76 of the NIRC of 1997*.

Nonetheless, petitioner must prove compliance with the following basic requirements prescribed under *Section 2.58 of Revenue Regulations No. 2-98, as amended*, in order to be entitled to the claimed amount of P6,624,398.00:

1.) That the claim for refund was filed within the two-year prescriptive period provided under *Section 204(C)*, in relation to *Section 229 of the NIRC of 1997*;

2.) That the fact of withholding is established by a copy of a statement (BIR Form 1743-1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3.) That the income upon which the taxes were withheld was included in petitioner's income tax return (*Citibank NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957*).

Based on the evidence on record, petitioner complied with the two-year prescriptive period within which to file a claim for refund/tax credit certificate of excess quarterly income tax payments or creditable withholding taxes that is, from the date of filing of the final adjustment return (*ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184*). Petitioner filed its income tax return for taxable year 2001 on April 12, 2002 (*Exhibit B*). Counting from this date, petitioner had until April 12, 2004 within which to file a claim for refund/tax credit certificate both in the administrative and judicial levels. Therefore, both petitioner's administrative claim filed on April 4, 2003 (*Exhibit KKKK*) and the instant Petition for Review filed on April 11, 2003 were filed within the two-year period prescribed under *Section 204(C)*, in relation to *Section 229 of the NIRC of 1997*. It provides:

> "SEC. 230. *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 excessive 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.
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> In any case, no such suit or proceeding shall be begun after the expiration of two 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."

The fact of withholding was likewise established through petitioner's presentation of the Certificates of Creditable Tax Withheld at Source (*Exhibits "SS" to "ZZ", "AAA" to "ZZZ", "AAAA", "BBBB", "GGGG" to "IIII"*) duly issued to it by various withholding agents. As correctly indicated in the Summary of Certificates of Creditable Tax Withheld at

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Source for the year 2001 (*Exhibit "DDDD"*), the creditable withholding taxes amounted to P6,624,397.92.

However, a perusal of the certificates reveals that the 2001 creditable withholding taxes of P6,624,397.92 pertain to the gross income payments received by petitioner in the amount of P469,610,991.78 (*Annex 3, Exhibit "MMMM"*). In its 2001 income tax return, petitioner's declared gross revenues from contracts and services amounted to P516,623,631.57 (*Exhibit B*), which is higher by P47,012,639.79 when compared with the income payment of P469,610,991.78 reflected in the certificates. As clearly illustrated by petitioner in its "Reconciliation of W/tax Certificate Received and Revenue Recognized" (*Exhibit "MMMM"*), such discrepancy was merely brought about by the timing difference between the recognition of petitioner's sales and the withholding of the corresponding tax by its customers, forex rates variance and revenue corresponding to withholding tax certificates of previous year's collections. In other words, petitioner properly declared in its income tax return the income pertaining to the creditable withholding taxes of P6,624,397.92.

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*).

WHEREFORE, premises considered, the Petition For Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of

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the petitioner in the amount of SIX MILLION SIX HUNDRED TWENTY FOUR THOUSAND THREE HUNDRED NINETY SEVEN AND 92/100 PESOS (P6,624,397.92) representing its unutilized creditable withholding taxes for taxable year 2001.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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

Pursuant to Article VIII, Section 13 of the Constitution, 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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