REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MANILA ELECTRIC COMPANY (MERALCO),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7107

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
OCT 16 2006, 1:00 PM

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DECISION

ACOSTA, E., PJ.:

Before this Court is petitioner's claim for refund or issuance of a tax credit certificate in the amount of TWO HUNDRED SIXTY FOUR MILLION ONE HUNDRED TWENTY THOUSAND ONE HUNDRED EIGHTY ONE PESOS AND FORTY FOUR CENTAVOS (₱264,120,181.44) allegedly representing erroneously remitted final withholding taxes on interest paid by petitioner to Norddeutsche Landesbank Gironzentrale, Singapore Branch, for the taxable years January 1999 to September 2003.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Lopez Building, Ortigas Avenue, Pasig City.

Respondent is the duly appointed government official empowered to perform the duties of his office, which includes, among others, the duty to act on and approve claims for refund or issuance of tax credit certificate of erroneously paid or overpaid internal revenue taxes as provided by law; with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 6, 1998, petitioner obtained a loan in the amount of ONE HUNDRED TWENTY MILLION U.S. DOLLARS (US$120,000,000.00) from Norddeutsche Landesbank Gironzentrale, Singapore Branch and with ING Barings South East Asia Limited (ING Barings) as the Arranger. Petitioner's loan with Norddeutsche Landesbank Gironzentrale, Singapore Branch was restructured on April 7, 2000, with ING Barings again as the Arranger.

On September 4, 2000, petitioner executed another loan agreement with Norddeutsche Landesbank Gironzentrale, Singapore Branch, for a loan facility in the amount of ONE HUNDRED MILLION U.S. DOLLARS (US$100,000,000.00), with Citicorp International Limited as Agent. Paragraphs 9.1 and 10.4 of the said agreements read:

> 9.1 No Deductions or Withholdings. All sums payable by the Borrower under this Agreement shall be paid in full without set-off or counterclaim or any restriction or condition and free and clear of any tax or other deductions or withholdings of any nature required under Philippine law. If the Borrower or any other person is required by any Philippine law or regulation to make any deduction or withholding (on account of tax or otherwise) from any payment for the account of the Lender or any Arranger, the Borrower shall, together with such payment, pay such additional amount as will ensure that the Lender or such Arranger receives (free and clear of any tax or other deductions or withholdings) the full amount which it would have received if no such deduction or withholding had been required. The Borrower shall promptly forward to the Lender copies of official receipts or other evidence showing that the full amount of any such deduction or

withholding has been paid over to the relevant taxation or other authority.

10. Taxes. The Borrower shall pay all present and future stamp and other like duties and taxes and all notarial, registration, recording and other like fees which may be payable in respect of this Agreement and shall indemnify the Lender against all liabilities, costs and expenses which may result from any default in paying such duties, taxes or fees.

Pursuant to the loan agreements, petitioner paid/remitted to the Bureau of Internal Revenue (BIR) the corresponding ten percent (10%) final withholding tax on its interest payments to Norddeutsche Landesbank Gironzentrale, Singapore Branch. Petitioner's payments are summed up as follows:

Year	Month	NORD/LB ING BARINGS	NORD/LB CITICORP.	Date Paid
1999	January	₱ 21,576,265.83		02/25/1999
	July	19,115,555.70		08/25/1999
2000	January	22,104,821.11		02/28/2000
	April	16,578,994.45		05/24/2000
	July	12,038,282.23		08/25/2000
2001	January	30,569,755.85		02/26/2001
	April		22,105,276.22	05/25/2001
	October'		16,946,251.85	11/12/2001
	November	25,210,216.30		12/10/2001
TOTAL			₱186,245,419.54	

On 2001, petitioner discovered that Norddeutsche Landesbank Gironzentrale, Singapore Branch, is a foreign government-owned financing institution of Germany. Thus, on December 20, 2001, it filed with the respondent, through the Law Division, a request for a BIR ruling as to the tax exempt status of Norddeutsche Landesbank Gironzentrale, Singapore Branch, pursuant to Section 32(B)(7)(a) of the National Internal Revenue Code of 1997.

While waiting for the BIR ruling, petitioner continued to pay/remit ten percent (10%) final withholding tax on its interest payments to Norddeutsche Landesbank Gironzentrale, Singapore Branch, to wit:

Year	Month	NORD/LB ING BARINGS	NORD/LB CITICORP	Date Paid
2002	January	₱17,811,700.15		02/11/2002
	April		9,683,810.50	05/10/2002
	July	11,019,996.46		08/12/2002
	December		8,802,300.00	01/15/2003
2003	January	12,054,798.32		02/10/2003
	April		7,756,536.65	05/12/2003
	May	5,106,767.96		06/10/2003
	September		5,638,851.86	10/18/2003
TOTAL			₱77,874,761.90	

On October 7, 2003, the BIR issued Ruling No. DA-342-2003 and declared therein that interest payments made to Norddeutsche Landesbank Gironzentrale, Singapore Branch is tax exempt from the ten percent (10%) final withholding tax since it is a financing institution owned and controlled by the foreign government of Germany.

Consequently, on July 13, 2004, petitioner filed with the respondent its claim for refund or issuance of a tax credit certificate in the amount of Two Hundred Sixty Four Million One Hundred Twenty Thousand One Hundred Eighty One Pesos and Forty Four Centavos (₱264,120,181.44), representing the erroneously paid or overpaid final withholding tax on interest payments made to Norddeutsche Landesbank Gironzentrale, Singapore Branch.

On November 5, 2004, petitioner received from respondent the letter denying its claim for refund. Pertinent portion of the said letter reads:

> "Taking into consideration the ruling issued to your company, we however, regret to inform you that since you filed the claim only last July 30, 2004, your claim for refund of final withholding tax for the period January, 1999 to April 2002 amounting to P213,740,920.19 is hereby denied on the grounds that the period within which to claim for a refund has already prescribed pursuant to Section 204(C) of the 1997 Tax Code which provides that no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner of Internal Revenue a claim for credit or refund within two (2) years after the payment of the tax or penalty."

Hence, this petition.

Both parties stipulated on the following issues for the Court to decide:

1. Whether petitioner's claim for refund of withholding taxes on interest payments made from February 25, 1999 to August 12, 2002 has prescribed;

2. Whether interest payments of petitioner to Norddeutsche Landesbank Gironzentrale, Singapore Branch, is exempt from the 10% withholding tax; and

3. Whether petitioner is entitled to refund or issuance of a tax credit certificate for taxes allegedly withheld and remitted to the BIR from December 2002 to September 2003.

A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim.[1]

Section 229 of the 1997 National Internal Revenue Code reads:

> 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 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.

In relation thereto, Section 204(C) of the same Code provides that the Commissioner of Internal Revenue may:

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[1] *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., et al*, 244 SCRA 332.

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

Under the above-quoted provisions, it is clear that the claim for refund must be filed, or the suit or proceeding therefor must be commenced in court, within two (2) years from date of payment of the tax or penalty regardless of any supervening cause. Non-compliance with this condition precedent bars the taxpayer from recovering the erroneously paid tax.[2]

Petitioner however argues that its claim has not yet prescribed considering that the prescriptive period should commence to run only from the time that the refund is ascertained. In its case, only on October 7, 2003, when BIR Ruling No. DA-342-2003 declaring Norddeutsche Landesbank Gironzentrale to be exempt from Philippine income tax, was received by petitioner.

Petitioner anchors its arguments on the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.*[3]. To quote:

> "Section 292 (now Section 230) stipulates that the two-year prescriptive period to claim refunds should be counted from date of payment of the tax sought to be refunded. When applied to tax payers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code which respectively provide:
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> > 'Section 68. *Declaration of Quarterly Income Tax. —* Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax, as provided in Title II of this Code shall be levied,

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[2] *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue,* C.T.A. Case Nos. 1331, 1354, 1361, 1393, 1409 & 1424, November 7, 1965.

[3] 244 SCRA 446.

collected and paid. The Tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year.

'Section 69. *Final Adjustment Return.* — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:

(a) Pay the excess still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.'

"It may be observed that although quarterly taxes due on are required *to be paid* within sixty days from the close of each quarter, the fact that the amount shall be *deducted* from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.

"This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.

"Therefore, when private respondent paid P3,246,141.00 on May 30, 1983, it would not have been able to ascertain on that date, that the said amount was refundable. The same applies with cogency to the payment of P396,874.00 on August 29, 1983.

"Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review as brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier said in the *TMX Sales* case, Sections 68, 69, and 70 on

> Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it.
>
> "Moreover, even if the two-year period had already lapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances."

We do not agree with the petitioner. The above Supreme Court decision is not applicable in the present case. It must be noted that the tax involved in the cited *Philippine American Life Insurance Co.* case was income tax wherein the petitioner therein was required to file quarterly and final adjustment return. It follows that the prescriptive period within which to file its claim for refund or issuance of a tax credit certificate was reckoned on the date petitioner therein filed its final adjustment return.

In the case at bench, however, the reckoning period within which petitioner should file its claim for refund or issuance of tax credit certificate is the date when petitioner should file its monthly remittance return/final income tax withheld as required under Section 2.58(A)(2)(a) & (b) of Revenue Regulations No. 2-98, implementing R.A. No. 8424 (The Tax Reform Act of 1997).[4]

Moreover, the concept of final withholding tax on income was further explained in Sec. 2.57(A) of Revenue Regulations No. 2-98, to wit:

> **Sec. 2.57. WITHHOLDING OF TAX AT SOURCE**
>
> ***(A) Final Withholding Tax.*** — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.

[4] Which is within 10 days after the end of each month except for taxes withheld for December which shall be filed on or before the 25th day of January the following year and for large taxpayers it shall be within 25 days after the end of each month.

Pursuant to said regulations, petitioner, as the withholding agent/payor, must deduct and withhold tax at the time an income payment is paid or payable, whichever comes first,[5] or the income payment is accrued or recorded as an expense or asset, which is applicable, in its books. Such taxes deducted and withheld shall be paid upon the filing of monthly remittance tax returns with the Bureau of Internal Revenue within the prescribed period.[6]

This Court cannot disregard the provisions requiring the claim for refund or issuance of a tax credit certificate within two (2) years from date of payment. We do not agree with petitioner that the two-year period, is not jurisdictional and may be suspended for reasons of equity and other special circumstances as ruled in its cited case of *Philam* and *Ramie Textile vs. Mathay*, G.R. No. L-32364, April 30, 1979. As correctly argued by the respondent, there is no basis that the subject exemption was provided and ascertained only through BIR Ruling No. DA-342-2003 since said BIR Ruling is not the operative act from which an entitlement to refund is determined. Simply put, there is no requirement in the law that petitioner must request first for a ruling from the BIR for exemption before it can file a claim for refund in cases of erroneous payment or overpayment of taxes. The 1997 National Internal Revenue Code provides for the exemption as well as the period within which to file a claim for refund of erroneously paid taxes and not the BIR Ruling which merely echoes whatever is provided by the law.

Now therefore, considering the date of filing of returns and payment of taxes and the date when petitioner administratively filed its claim with the respondent[7] and the date when it judicially filed the instant case before this Court,[8] petitioner's claim for the refund of the following taxes paid has already prescribed:

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[5] Section 2.57.4 ("Time of Withholding") of R.R. No. 2-98.
[6] Section 2.58 (A)(2)(b) of R.R. No. 2-98.
[7] July 13, 2004.
[8] December 6, 2004.

Year	Month	NORD/LB ING BARINGS	NORD/LB CITICORP.	Date Paid	Last Day To File Claim
1999	January	₱21,576,265.83		02/25/1999	02/26/2001
	July	19,115,555.70		08/25/1999	08/24/2001
2000	January	22,104,821.11		02/28/2000	02/27/2002
	April	16,578,994.45		05/24/2000	05/24/2002
	July	12,038,282.23		08/25/2000	08/26/2002
2001	January	30,569,755.85		02/26/2001	02/26/2003
	April		22,105,276.22	05/25/2001	05/26/2003
	October		16,946,251.85	11/12/2001	11/12/2003
	November	25,210,216.30		12/10/2001	12/10/2003
2002	January	17,811,700.15		02/11/2002	02/11/2004
	April		9,683,810.50	05/10/2002	05/10/2004
	July		11,019,996.46	08/12/2002	08/12/2004
TOTAL			₱224,760,926.65		

However, petitioner's claim for refund for the remaining ₱39,359,254.79 for the period starting from December 2002 to September 2003 has not prescribed. Hence, what is left to determine is whether petitioner is entitled to be refunded of the amount of ₱39,359,254.79.

Section 32(B)(7)(a) of the 1997 National Internal Revenue Code provides that income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities or from interest on deposits in banks in the Philippines by foreign governments; financing institutions owned, controlled, or enjoying refinancing from foreign governments; and international or regional financial institutions established by foreign governments; are exempt from income taxation.

As proof that Norddeutsche Landesbank Gironzentrale is owned by a foreign government, petitioner presented as witness its Vice President, German F. Martinez, Jr., Head of Tax and Tariff,[9] who testified that petitioner requested a certification from Germany to prove that Norddeutsche Landesbank Gironzentrale was created by law and owned by the Federal Republic of Germany. He also presented a certification issued by the Embassy of the Federal Republic of Germany dated March 7, 2002, which reads:

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[9] TSN, June 14, 2005.

Mr. G.S. San Diego
Sr. Asst. Vice President & Head
Legal Services
MERALCO
Ortigas Avenue
Pasig City

Dear Mr. San Diego

Regarding your letter dated March 1, 2002, I can confirm the following:

NORD/LB is owned by the State (Land) of Lower Saxony to the extend of 40%, by the States of Sexony-Anhalt and Mecklenburg-Western Pomerania to the extend of 10% each. The Lower Saxony Savings Bank and Central Savings Bank Association have a share of 2666%. The Savings Bank Association Saxony-Anhalt and the Savings Bank Association Mecklenburg-Western Pomerania have a share of 666% each.

As the regional bank for Lower Saxony, Saxony-Anhalt and Mecklenburg-Western Pomerania, NORD/LB offers support in public sector financing. It fulfills as Gironzentrale the function of a central bank for the savings banks in these three states (Länder).

Yours sincerely,

b.o.
(sgd.)
Lars Leymann
First Secretary

The Court gives probative value to the testimony of said witness and the certification issued by the Embassy of the Federal Republic of Germany, without any strong evidence to disprove the truthfulness of the claim that Norddeutsche Landesbank Gironzentrale is owned by a foreign government.

Evidence, both testimonial and documentary, established the facts that petitioner filed the monthly returns and paid the taxes due; and that the Bureau of Internal Revenue received the taxes withheld and remitted by the BIR's withholding agents. In fact, in denying petitioner's claim for refund, respondent admitted the tax-exempt status of Norddeutsche Landesbank Gironzentrale but nonetheless denied the claim on ground of prescription. However, it bears stressing that the prescribed claim amounted only to

P213,740,920.19 which covered the period January, 1999 to April, 2002. Respondent was silent with respect to the balance.[10]

In view thereof, this Court grants petitioner's claim for refund/tax credit in the amount of ₱39,359,254.79 representing the final withholding taxes it paid for the period starting December 2002 to September 2003. This ruling finds basis in the doctrine of *solutio indebiti*, which mandates that no person shall unjustly enrich himself at the expense of another. Even the Government is not exempted from the application thereof.[11]

IN VIEW OF THE FOREGOING, petitioner's claim in the amount of TWO HUNDRED TWENTY FOUR MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED TWENTY SIX PESOS & SIXTY FIVE CENTAVOS (₱224,760,926.65) representing erroneously paid and remitted final income taxes for the period January 1999 to July 2002 is hereby **DENIED** on the ground of prescription. However, petitioner's claim in the amount of THIRTY NINE MILLION THREE HUNDRED FIFTY NINE THOUSAND TWO HUNDRED FIFTY FOUR PESOS & SEVENTY NINE CENTAVOS (P39,359,254.79) is hereby **GRANTED**.

Accordingly, respondent is ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE to petitioner in the amount of THIRTY NINE MILLION THREE HUNDRED FIFTY NINE THOUSAND TWO HUNDRED FIFTY FOUR PESOS & SEVENTY NINE CENTAVOS (P39,359,254.79) representing the final withholding taxes erroneously paid and remitted for the period December 2002 to September 2003.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

[10] Exhibit "A".
[11] *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co., et al.,* March 9, 1987, No. L-30644.

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division