Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

***FIRST DIVISION***

**SMOE PTE. LTD.,**
Petitioner,

- versus -

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

**C. T. A. CASE NO. 7116**

Members:

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

**Promulgated:**

JAN 22 2009 10:05 am

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## DECISION

***CASANOVA, J.:***

This is a Petition for Review filed by petitioner, **SMOE PTE. LTD.** (SMOE), praying for the refund or issuance of a tax credit certificate in the amount of P5,905,763.96, allegedly representing 8% final tax that was erroneously withheld and remitted *twice* to the Bureau of Internal Revenue (BIR).

## THE FACTS

Petitioner, SMOE[1], is a non-resident foreign corporation organized and existing under the laws of Singapore and a general contractor engaged in the business of providing offshore oil and gas engineering[2] construction services.[3] Its business address is at 60 Admiralty Road West, #01-02, Singapore 759947.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

In the year 2000, Halliburton Multinational, Inc. Philippines (HMI) entered into a petroleum operations service contract, the main contract[4], with Shell Philippines Exploration (SPEX). HMI is allegedly licensed to operate a branch in the Philippines and is engaged in the business of providing technical and specialty services to oil, gas and other energy industries or companies like SPEX.

On May 24, 2000, SPEX obtained BIR Ruling No. 024-2000[5] from respondent's Deputy Commissioner Romeo S. Panganiban. The ruling confirmed that the implementation of SPEX's "direct-billing method", whereby each of its subcontractors, at whatever tier, issues an invoice directly to SPEX and is paid directly by SPEX, is acceptable for tax purposes, as it insures that the 8% final income tax is withheld and paid by SPEX on the amounts invoiced by and paid to the subcontractors at whatever tier.

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[1] *Formerly known as "Sembcorp Engineering International Pte. Ltd.", "Sembawang Engineering and Construction International Pte. Ltd." And "Sembawang Projects Engineering Company Pte. Ltd."; Exhibits "A".*

[2] *Exhibits "A-5" and "A-6".*

[3] *1st Par. Of Joint Stipulation of Facts and Simiplification of Issues ("JSF"), Rollo, pp. 100-102, duly approved by this Court in a Resolution dated May 20, 2005, Rollo, p. 103.*

[4] *Exhibit "H".*

[5] *Exhibit "L".*

In the year 2001, SMOE's services were engaged by HMI under a petroleum operations subcontract[6].

Pursuant to the subcontract between SMOE and HMI, petitioner performed services from March 23, 2001 to July 12, 2001. SMOE issued an invoice[7] to HMI in the amount of $1,377,599.78 for services rendered pursuant to the subcontract between the two corporations.[8]

On November 12, 2001, HMI allegedly withheld the 8% final tax, in the amount of US$110,204.98[9] (with reported peso equivalent at that time of P5,642,845.88[10]), imposed on subcontractors of service contractors in petroleum operations in accordance with Section 1 of Presidential Decree (P. D.) No. 1354[11] and remitted the same to the BIR using its Monthly Remittance Return of Final Income Taxes Withheld or BIR Form 1601-F[12]. This was the *first* withholding and remittance.

On January 10, 2003, SPEX allegedly made the second withholding and remittance of the same 8% final tax, also in the amount of US$110,204.98[13] (with reported peso equivalent at that time of P5,905,763.96[14]) when it filed its own final income tax return or BIR Form 1601-F[15] to the BIR. Petitioner explained that this was brought about by SPEX's implementation of its "direct-

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[6] *Exhibit "F" and "G".*
[7] *Exhibit "D".*
[8] *3rd Par. JSF, Rollo. P. 101.*
[9] *Exhibit "D-2".*
[10] *Exhibit "B-4".*
[11] *Section 1 of P.D. No. 1354 states the following:*

*"Section 1 – Tax on subcontractors. – Every subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a **final income tax** equivalent to **eight percent (8%) of its gross income derived from such contract**, such tax to be in lieu of any and all taxes, whether national or local: Provided, however, that any income received from all other sources within and without the Philippines in the case of domestic subcontractors and within the Philippines in the case of foreign subcontractors shall be subject to the regular income tax under the National Internal Revenue Code. The term "gross-income" means all income earned or received as a result of the contract entered into by the subcontractor with a service contractor engaged in petroleum operations in the Philippines under Presidential Decree No. 87." (Underscoring Ours)*

[12] *Exhibit "B".*
[13] *Exhibits "K" and "J-2".*
[14] *Exhibit "J-2".*
[15] *Exhibit "K".*

billing method" under BIR Ruling No. 024-00. Since petitioner-SMOE is SPEX's subcontractor, SPEX directly paid SMOE for the services done also for the period March 23, 2001 to July 12, 2001 and withhold and remitted the aforementioned 8% final tax. Petitioner-SMOE alleged that, as a result of SPEX's application of the "direct-billing method," the invoice previously issued by SMOE to HMI was cancelled and another one was issued to SPEX for the same fees originally charged to HMI.

On December 23, 2004, because of the alleged double withholding and remittance, SMOE filed an administrative claim for refund[16] with the BIR in the amount of P5,905,763.96 representing the peso equivalent of the 8% final tax withheld and remitted to the BIR by SPEX.

Respondent has neither granted nor acted upon SMOE's claim for refund.

Hence, on December 28, 2004, SMOE filed the instant Petition for Review[17] before this Court praying that such claim for refund in the amount of P5,905,763.96 representing 8% final withholding tax be granted.

On March 21, 2005, respondent filed her *Answer* to the Petition for Review, raising the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
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> 5. To support its claim, it is imperative for petitioner to prove that the payments made in its behalf were erroneously paid and illegally collected;
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> 6. Petitioner must likewise prove that SPEX and HMI indeed remitted and paid to the Bureau the withholding taxes arising from petitioner's transactions with them;

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[16] *Exhibit "M".*
[17] *Rollo, pp. 1-6.*

> 7. Corrolla[ry], petitioner must be able to show that only one of the two companies claimed as deduction from expenses in their ITRs [returns] the billings of petitioner;
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> 8. Furthermore, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund. Failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {PI} v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670);
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> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

During the trial, petitioner presented several witnesses and submitted its documentary evidence. No evidence was submitted by respondent.

On April 21, 2008, respondent filed her *Memorandum*[18]. On the other hand, petitioner did not file its memorandum despite due notice. Hence, on May 7, 2008, the case was submitted for decision *sans* petitioner's memorandum.[19]

## THE ISSUES

The parties jointly stipulated the following issues for resolution of this Court:

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[18] *Rollo, pp. 240-246.*
[19] *Rollo, p. 248.*

1. Whether or not HMI withheld the 8% final tax from the amount paid by the former to SMOE pursuant to the subcontract between both corporations in relation to the petroleum operations service contract of HMI with SPEX;

2. Whether or not HMI remitted to respondent's Bureau the peso equivalent of US$110,204.98 as the corresponding 8% final tax;

3. Whether or not SPEX withheld from the fees it paid to SMOE the same 8% final tax;

4. Whether or not SPEX remitted to respondent's Bureau the peso equivalent of the same 8% final tax;

5. Whether or not petitioner is entitled to a refund in the amount of P5,905,763.96, representing alleged erroneously paid final tax on contractors/subcontractors.

The main issue to be resolved is whether or not petitioner-SMOE is entitled to refund the amount of P5,905,763.96 representing 8% final tax on subcontractors that was allegedly withheld and remitted twice.

## THE COURT'S RULING

Applicable here are Sections 204(C) and 229 of the National Internal Revenue Code of 1997 (NIRC), as amended. We quote hereunder the provisions for easy reference, to wit:

**"Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may –

xxx xxx xxx

"(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."

**"Section 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 (sic) 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 therefore, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid."

Sections 204(C) and 229 of the 1997 NIRC require that both the administrative and judicial claim for refund must be filed within two (2) years from the date of payment or the tax or penalty.

A close scrutiny of the records revealed that the amount SMOE is praying to refund is the 8% final tax that SPEX withheld and remitted[20] to the BIR on January 10, 2003. Hence, it is from this date that the two (2)-year prescriptive period in accordance with Sections 204(C) and 229 of the 1997 NIRC, as amended, commences to run. Petitioner, therefore, had until January 10, 2005 within which to file the administrative claim for refund with the BIR and the judicial claim for refund with the Court of Tax Appeals.

SMOE filed its administrative claim for refund before the BIR on December 23, 2004[21] and this Petition on December 28, 2004, clearly within the two (2)-year prescriptive period required by Sections 204(C) and 229 of the 1997 NIRC, as amended, that will end January 10, 2005.

After considering and scrutinizing the evidence presented by the petitioner and the testimonies of its witnesses, this Court is convinced that there was indeed double withholding and remittance of the 8% final tax on subcontractors engaged in petroleum operations for payments made for the same service done by SMOE during the period March 23, 2001 to July 12, 2001.

The first was on November 12, 2001 done by HMI in the amount of US$110,204.98 (*Exhibits "B" to "B-4" inclusive and "D" to "D-3" inclusive*). The second was done by SPEX on January 10, 2003 with the same amount (*Exhibits "I", "J" to "J-2" inclusive and "K"*).

However, even though the Court was convinced that there was in fact double remittance of the 8% final tax as shown above, the Court is not persuaded to grant petitioner's claim for refund.

[20] *Exhibits "K" and "J-2".*
[21] *Exhibit "M".*

It is not disputed that petitioner was paid twice in the amount of US$1,267,355.00 representing 92% of the total price [US$1,377,559.78] of the service it made on March 23, 2001 to July 12, 2001, net of the 8% final tax in the amount of US$110,204.98, by both HMI and SPEX. Petitioner-SMOE alleged that the invoice it previously issued to HMI was cancelled and another one was issued by SPEX for the same fees originally charged to HMI[22]. However, petitioner failed to present as evidence the cancelled invoice and failed to establish with clarity, through a reconciliation schedule, proof of payments, accounting records or other means that it returned in full, 100% [US$1,377,559.78] of the payment made, including the 8% final tax to HMI.

Here, assuming that this claim for refund was granted to petitioner-SMOE, wherein the 8% final tax was given to SMOE, it will result to an absurd situation where SMOE will end up getting 100% [US$1,377,559.78] of the price of the service [8% final tax (US$110,204.98) plus the 92% (US$1,267,355.00) payment from SPEX]. In effect, it will be like no final tax was ever imposed on SMOE's income on such service.

We also noted that petitioner was not able to show that only one of the two companies, HMI or SPEX, claimed as expense the billings of petitioner in their respective Income Tax Returns.

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[23]

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[22] *Par. 9, Petition for Review, Rollo, p. 3.*

[23] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; Commissioner of Internal Revenue v. Tokyo Shipping Company, Ltd., 244 SCRA 332; and Commissioner of Customs v. Court of Tax Appeals, 328 SCRA 822.*

**WHEREFORE**, for failure of petitioner to properly substantiate its claim, the Petition for Review is **DISMISSED** for lack of merit. Accordingly, petitioner's refund claim in the amount of P5,905,763.96 is hereby **DENIED**.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
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's Division.

**ERNESTO D. ACOSTA**
Presiding Justice
Chairperson, First Division