REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WALLEM MARITIME SERVICES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5181

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 03 1996

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DECISION

This is a petition seeking for the refund of P189,842.35 representing the 5% expanded withholding tax alleged to be erroneously and/or illegally withheld and collected from the "Contributions" from February 1992 to February 1993.

The facts of the case are simple.

Petitioner is a manning or crewing agency duly organized and existing as a corporation under and by virtue of the laws of the Philippines, and is duly licensed and authorized by the Philippine Overseas and Employment Administration (POEA) to hire, recruit and deploy Filipino seamen for overseas employment.

Petitioner, in consequence of its business of recruiting, hiring and deploying Filipino seamen for overseas employment for and in behalf of different foreign shipping principals/employers, received almost every month in 1991 and 1992 from the latter, sums of money as remittances/contributions (the "Contributions") to the seamen's Family Medical and Dental Plan (the "Plan"), which is furnished by aforesaid foreign shipping employers/principals as a means of promoting the health, goodwill, contentment and efficiency of the seamen (Exhs. A to B-7, inclusive).

The Plan is being managed by a local labor union or organization called Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) to which all of said seamen are affiliated with as union members.

The aforesaid "Contributions" being remitted by the said foreign principals/employers amount to US$8.00 or P200.00 more or less, a month per seaman, which in turn are being remitted by the petitioner to AMOSUP in accordance with the pertinent provisions of the collective bargaining agreement (Exhs. A to A-2, inclusive).

Believing that said "Contributions" formed part of the seamen's compensation, the petitioner, from January 1992 to January 1993 deducted and withheld therefrom the total amount of P189,842.35 as expanded withholding taxes (Exhs. C to M-2, inclusive). Said taxes were remitted and paid to the respondent through United Coconut Planters Bank (UCPB) (Exhs. O to Q, inclusive).

Subsequently, the petitioner received a letter, dated March 22, 1993 (Exhs. N and N-1), from the President of AMOSUP informing them of their exemption from tax as a right of a legitimate labor organization. AMOSUP through this letter demanded from the petitioner the return of the sum withheld from the "Contributions".

On September 28, 1994, after obtaining a definitive ruling of tax exemption from the respondent (Exhs. R and R-1), petitioner filed an administrative claim for refund (Exhs. S to S-2, inclusive) with the Bureau of Internal Revenue for the recovery of the alleged erroneously and/or illegally withheld taxes.

Considering that the two-year period mandated by law under Sections 204 and 230 of the Tax Code is about to expire, inaction of the respondent on the aforementioned claim prompted the petitioner to file the instant petition before Us on December 21, 1994.

Petitioner formally offered in evidence the following documents which were properly identified by its witness:

1. Collective Bargaining Agreement between the seamen's union (AMOSUP) and one of the foreign shipowners/principals (Exh. A to A-2, inclusive) and representative sample copy of the breakdown of some of the Family Medical & Dental Plan remittances from different foreign vessels and the amount of US$8.00 credited to each seaman every month (Exhs. B to B-7, inclusive);

2. Monthly Remittance Returns (BIR Form No. 1743W) of income taxes withheld from January 1992 to January 1993 (Exhs. C, D, E, F, G, H, I, J and K);

3. Breakdown of expanded withholding tax payable from January 1992 to January 1993 (Exhs. C-1, D-1, E-1, F-1, G-1, H-1, I-1, J-1 and K-1);

4. Check payments to the BIR for expanded withholding tax from January 1992 to January 1993 (Exhs. C-2, D-2, E-2, F-2, G-2, H-2, I-2, J-2 and K-2)

5. Check payments to AMOSUP for the months covering September 1991 to November 1992 (Exhs. C-3, C-5, D-3, E-3, F-3, G-3, G-5, H-3, H-5, I-3, J-3 and K-3);

6. Official Receipts issued by AMOSUP for the said amounts (Exhs. C-4, C-6, D-4, E-4, F-4, G-4, G-6, H-4, H-6, I-4, J-4 and K-4);

7. Annual Information Returns (BIR Form No. 1743-B/1743-IR) of creditable income tax withheld for calendar years 1992 and 1993 (Exhs. L and M, respectively);

8. Alpha List of creditable income tax withheld for the calendar years 1992 (Exhs. L-1 to L-3, inclusive) and 1993 (Exh. M-1);

9. Certificates of Creditable Income Tax Withheld at Source (BIR Form No. 1743-T/1743-750) for 1992 and 1993 (Exhs. L-4 and M-2, respectively);

10. Demand letter of AMOSUP to petitioner, dated March 22, 1993 (Exhs. N and -N-1);

11. Certification from the remitting bank (UCPB), dated November 3, 1994, stating that petitioner had paid the monthly remittance return of income taxes withheld from February 1992 to February 1993 (Exh. O);

12. Certification from the Revenue Accounting Division of the BIR, dated November 23 and December 2, 1994 (Exhs. P and Q, respectively), stating that the taxes withheld for the period February 1992 to February 1993 have actually been remitted and received by the BIR;

13. Letter of the BIR addressed to the petitioner, dated September 12, 1994 (Exhs. R and R-1) ruling on the exemption from tax of the Plan's contributions; and

14. Letter of the petitioner to the Commissioner of Internal Revenue, dated September 28, 1994 claiming for the refund of P189,842.35 (Exhs. S to S-2, inclusive).

Respondent for her part failed to present evidence to substantiate the denials and affirmative defenses raised in her answer. She also manifested in open court through her counsel that she will no longer submit a memorandum in support of her case.

The lone issue to be resolved in this case is whether or not the petitioner is entitled to the refund of P189,842.35 alleged to have been erroneously and/or illegally withheld from the "Contributions" to the "Plan" from February 1992 to February 1993.

We answer in the affirmative.

Section 2(a) of Revenue Regulations No. 6-82, as amended by Revenue Regulations No. 12-86, implementing Section 28 of the National Internal Revenue Code, as amended, provides, thus:

> "Section 2. ***Compensation.*** - (a) In general. - For purposes of withholding tax, the term "compensation" means all remuneration for services performed by an employee for his employer unless specifically excepted under Sections 28, 29 and 90 of the National Internal Revenue Code.
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> x x x x x x x x x
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> Ordinarily, facilities or <u>privileges</u> (such as entertainment, medical services, or so called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, <u>are not considered</u>

> compensation subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees." (Underscoring supplied.)

Evidently, the aforementioned Revenue Regulations mandates that privileges offered by an employer to his employees which are of relatively small value are NOT considered as compensation subject to withholding. In the case at bar, the foreign employer's "CONTRIBUTIONS" to the seamen's Family Medical and Dental Plan in the amount of US$8.00 or more or less P200.00 a month per seamen, are relatively of small value and offered to the employees to promote goodwill, contentment and efficiency. This is done in consonance with the provisions of the collective bargaining agreement between AMOSUP and the foreign shipowners or principals.

In addition, the respondent herself through a letter, dated September 12, 1994, has ruled that the "Contributions" is not subject to withholding tax. A portion of said ruling is quoted hereunder:

> "Such being the case, the contributions of P200.00 a month per seaman to the seamen's Family Medical and Dental Plan by the foreign employers of the said seamen need not be included as compensation subject to withholding tax since the same is of relatively small value and offered by the foreign employers to promote goodwill, contentment and efficiency of their employees (BIR Ruling No. 030-92 dated January 20, 1992).

Finding the amounts deducted and withheld from the "Contributions" to be erroneous, a refund is in order. Petitioner is entitled to a refund of P189,842.35, computed as follows:

Date of Payment	Amount
February 10, 1992	P 37,348.00
April 10, 1992	17,886.78
May 13, 1992	19,427.64
July 10, 1992	16,064.87
August 10, 1992	31,023.45

October 9, 1992	31,075.99
December 10, 1992	14,816.36
January 11, 1993	5,032.40
February 10, 1993	17,166.86
TOTAL	P189,842.35

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund in favor of the petitioner the amount of P189,842.35 representing 5% expanded withholding a tax erroneously and/or illegally withheld from the "Contributions" from February 1992 to February 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals