REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HAVI FOODS SERVICES PHILS., INC.,
(formerly known as PRODIGY
DISTRIBUTORS, INC.)
Petitioner,

- versus -

C.T.A. CASE NO. 5494

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
SEP 01 1998

x - x

DECISION

This case involves a claim for refund and/or tax credit in the total amount of One Million One Hundred Forty Six Thousand Five Hundred Seventy Two (P1,146,572.00) Pesos allegedly representing unutilized creditable income tax withheld at source for the calendar year 1994.

The facts of the case are undisputed.

Petitioner is a domestic corporation engaged in the cold and warm storage of perishable goods.

For the calendar year 1994, petitioner filed its Corporate Annual Income Tax Return on March 29, 1995 (Exh. A; TSN, Aug. 28, 1997, p. 38) reporting a net taxable income in the amount of P1,505,843.00 (Exh. A-1). The tax due for the period was P527,045.00 (Exh. A-2) while the creditable income taxes withheld at source amounted to P1,673,557.00. Thus, leaving the amount of P1,146,512.00 (not P1,146,572.00 as alleged by petitioner) as excess creditable income taxes withheld for said taxable year.

On April 11, 1996, petitioner filed its 1995 Corporate Annual Income Tax Return (Exh. DD) declaring a net loss in the sum of P451,653.00 (Exh. DD-1). Consequently, petitioner filed a claim for refund with the Bureau of Internal Revenue on March 29, 1996 (Exh. EE). Since there was no answer from the Bureau regarding the said claim (TSN, Aug. 28, 1997, p. 32), the instant Petition for Review was filed on April 11, 1997.

Respondent, by way of Special and Affirmative Defenses, avers, among others, that:

a) Petitioner's claim for refund had already been barred by prescription;

b) It is incumbent upon the petitioner to show that it has complied with provisions of Section 204 in relation to Section 230 of the Tax Code, as amended; and

c) Well-settled is the rule that claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax and it is incumbent upon the petitioner to show that it is entitled thereto under the law.

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No evidence was presented by the respondent nor did she file a memorandum.

The issues posed for consideration by this Court are:

1) Whether or not petitioner's claim for refund is barred by prescription; and

2) Whether or not petitioner is entitled to the refund of P1,146,512.00.

Anent the first issue, the provisions of Sections 230 and 69 of the Tax Code, as amended, are quite clear, to wit:

> 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.
>
> <u>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.</u> *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. (Underscoring supplied.)

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> SEC. 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 tax 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.

As already adverted to, petitioner's Corporate Annual Income Tax Return for the taxable year 1994 was filed with the BIR on March 29, 1995. The claim for refund was subsequently filed on March 29, 1996. The instant petition was filed on April 11, 1997. It cannot be denied therefore, that the Petition for review of the petitioner was filed beyond the two-year period prescribed by law.

The Supreme Court, in the case of **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.**, 22 SCRA 12, already held that:

> <u>The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.</u> If, however, the Collector takes time on deciding the claim, and

> the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the said Collector. (Emphasis supplied.)

Even the petitioner in its memorandum, stated, thus:

> **We submit that the said reglementary period within which Petitioner may file an administrative (as well as judicial) claim for refund was from March 29, 1995 to March 29, 1997. The said date was considered as the reckoning date as the same was the date the company's annual income tax return for Calendar Year 1994 was filed.** (CTA rec., p. 223).

Accordingly, finding that the Petition for review of herein petitioner was filed out of time, it is without a doubt that it is not entitled to the refund of P1,146,512.00.

WHEREFORE, the instant petition for review is hereby **DISMISSED** for being filed beyond the two-year reglementary period.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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CERTIFICATION

I hereby certify that the above 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

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