REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SIEMENS AKTIENGESELLSCHAFT,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10797

Members:

BACORRO-VILLENA, *Acting Chairperson,* *and*
CUI-DAVID, ***JJ.***

Promulgated:
APR 24 2024
2:20 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner Siemens Aktiengesellschaft (**petitioner/Siemens AG**) pursuant to Section 3(a)(2)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 02 March 2022, Division Docket, Volume I, pp. 7-735, with exhibits.

[2] **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer

(**RRCTA**). It seeks the refund or tax credit in the total amount of **₱41,456,894.68**, allegedly representing the amount which petitioner erroneously paid to the Bureau of Internal Revenue (**BIR**) on the ground that its sale of shares in Siemens Power Operations, Inc. (**SPO**) is exempt from capital gains tax (**CGT**) under the Agreement between the Republic of the Philippines and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital (**RP-Germany Tax Treaty**).

PARTIES TO THE CASE

Petitioner is a corporation organized and existing under the laws of Germany with its registered seat in Berlin and Munich, Germany. It may be served with notices and other court processes through its counsel, Platon Martinez Flores San Pedro and Leaño Law Offices with address at 6/F Tuscan Building, 114 V.A. Rufino Street, Legaspi Village, Makati City, Metro Manila.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith, with authority, among others, to decide, approve and grant tax credits and/or refunds of erroneously paid CGT. He or she may be served with summonses, legal processes, orders and resolutions at Room 703 Litigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

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to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3 (a), Rule 8 of these Rules; and *Provided, still further*, **that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**. (Emphasis supplied)

[3] Paragraph 1, I. Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 789.

[4] Par. 2, id.

FACTS OF THE CASE

SPO is a corporation organized and existing under Philippine laws, with a principal office address at Sta. Rita and San Lorenzo Power Station, Sta. Rita, Batangas City.[5] Petitioner was the legal and beneficial owner of 100% of the total shareholdings of SPO, equivalent to 5,254 common shares (5,249 of which are registered under petitioner's name, and five [5] were held in trust by the nominal shareholders) out of SPO's authorized capital stock of 20,000 common shares.[6]

By virtue of the notarized Share Transfer Agreement dated 03 February 2020[7], petitioner transferred its 5,254 common shares in SPO to Siemens Gas and Power GmbH & Co. KG (**Siemens GmbH**), for a fair market value (**FMV**) consideration of **₱419,872,946.83**, in exchange for the latter's original issuance of its shares of stock ("**transaction**").

Thereafter, on 02 March 2020, petitioner filed its CGT Return (BIR Form No. 1707) and paid the CGT in the amount of ₱41,456,894.68 on the subject transaction.[8] On even date, petitioner also filed its Documentary Stamp Tax (**DST**) Return (BIR Form No. 2000-OT) and paid the DST amounting to ₱39,405.00.[9]

The BIR then issued to petitioner a Certificate Authorizing Registration (**CAR**) No. eCP201300185079 (eCAR No: C-2020-039-059717-M) dated 17 June 2020[10], thereby validating the payment of CGT and DST on the subject transaction and legalizing the transfer of SPO shares from petitioner to Siemens GmbH, ensuring compliance with tax laws and facilitating the proper documentation and registration of such transfer.

On 29 December 2021, petitioner filed a Tax Treaty Relief Application (**TTRA**) for exemption from CGT[11], along with supporting

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5 Exhibits "P-3" and "P-5", id., pp. 956-966 and 967-978, respectively.
6 Exhibits "P-4" and "P-24", id., pp. 953 and 1533, respectively.
7 Exhibit "P-6", id., pp. 991-998.
8 Exhibits "P-9" and "P-10", id., pp. 1010-1011 and 1012, respectively.
9 Exhibits "P-7" and "P-8", id., pp. 1007-1008 and 1009, respectively.
10 Exhibit "P-11", id., p. 955.
11 Exhibit "P-12", id., pp. 1013-1018.

documents, including BIR Form No. 0901-C[12], with the BIR's Litigation Division (albeit addressed to the Chief of the International Tax Affairs Division [**ITAD**]), requesting official confirmation that the sale or transfer of its shares in SPO to Siemens GmbH is exempt from CGT, pursuant to the RP-Germany Tax Treaty.

On 27 January 2022, petitioner filed with the BIR an Application for Tax Credits/Refund (BIR Form No. 1914)[13] to recover the alleged erroneously paid CGT amounting to ₱41,456,894.68 on the subject transaction.[14]

Subsequently, on 11 February 2022, petitioner filed with the BIR[15] a Supplemental TTRA[16] of even date, including a copy of SPO's Interim Financial Statements (**FS**) as of 31 January 2020. On the same day, petitioner also filed a Supplemental Application[17] (related to its administrative claim for refund) with the BIR's Revenue District Office (**RDO**) No. 39-South Quezon City. Petitioner therein requested the said RDO's confirmation that the sale or transfer of petitioner's shares in SPO to Siemens GmbH is exempt from CGT under the RP-Germany Tax Treaty, and that it is entitled to a refund of the CGT paid therefor.

PROCEEDINGS BEFORE THE COURT

With respondent's inaction on its administrative claim for refund[18] and to toll the two (2)-year prescriptive period under Section 229[19] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, petitioner elevated the matter to this Court by filing the instant Petition for Review[20] on 02 March 2022. The same was raffled to the Second Division and docketed as CTA Case No. 10797.[21]

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12 Id., pp. 1025-1026.

13 Exhibit "P-13", id., p. 1137.

14 BIR Form No. 1914 was attached to petitioner's Letter-Application for Administrative Refund filed with the BIR on 27 January 2022, id., pp. 1131-1136.

15 The specific office of the BIR where the said Letter dated 11 February 2022 was filed is not identifiable.

16 Exhibit "P-14", Division Docket, Volume II, pp. 1316-1356, with attached exhibit.

17 Letter to RDO No. 39-South Quezon City (Supplemental Application for Refund) dated 11 February 2022, Exhibit "P-15", id., pp. 1357-1399.

18 Supra at note 14.

19 **SEC. 229**. *Recovery of Tax Erroneously or Illegally Collected.*

20 Supra at note 1.

21 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

On 07 March 2022, the Court issued Summons[22] ordering respondent to file an Answer within thirty (30) days from service. Respondent received the said Summons on 10 March 2022.[23]

After the Second Division granted an extension of time to respondent[24], the Answer[25] was filed on 10 May 2022. There, respondent cited the following special and affirmative defenses: (1) taxes collected are presumed to be in accordance with laws and regulations; (2) petitioner's alleged refund claim is subject to the BIR's routine administrative investigation and is not *ipso facto* granted, as respondent must still investigate and ascertain the claim's validity; (3) before a taxpayer can credit excess payment to the succeeding taxable year and/or be granted a tax refund/credit, as the case may be, there is a need of investigation as a matter of procedure to enable the CIR to determine and/or ascertain the correctness of the corporate returns and the amount to be credited, if any; (4) since the administrative refund claim (for the alleged CGT erroneously paid on 02 March 2020) was filed only on 11 February 2022, petitioner's claim is still subject to administrative investigation by the BIR to determine the propriety of issuing a tax credit certificate (**TCC**); (5) taxation cannot easily be surrendered, and since statutes granting tax exemptions are considered a derogation of sovereign authority and refunds are in the nature of such exemptions leading to government revenue loss, there must be a categorical and express legal provision allowing tax refunds, or else they should not be permitted; (6) since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption; and, (7) petitioner bears the burden of proving that the right to such a tax refund indubitably exists, and any well-founded doubt is fatal to the claim.

On 18 May 2022, respondent forwarded to the Second Division the entire BIR Records of the present case consisting of 129 pages in one (1) folder.[26] The Second Division noted the same in the Minute Resolution dated 24 May 2022.[27]

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22 Division Docket, Volume II, p. 736.
23 Id.
24 See Order dated 30 March 2022, id., p. 742.
25 Id., pp. 743-746.
26 See Compliance dated 17 March 2022, id., pp. 748-750.
27 Id., p. 753.

On 19 May 2022, the Second Division issued a Notice of Pre-Trial Conference[28] and set the case for pre-trial on 08 August 2022. In compliance with the Court's order, respondent filed his or her Pre-Trial Brief[29] on 02 August 2022, while petitioner filed its Pre-Trial Brief[30] on 04 August 2022.

During the 08 August 2022 Pre-Trial Conference, the Second Division granted both parties 30 days, or until 07 September 2022, within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[31] On 07 September 2022, the parties submitted their JSFI.[32]

In the Resolution dated 21 September 2022[33], the Second Division admitted and approved the parties' JSFI, deemed terminated the pre-trial and set the initial presentation of petitioner's evidence on 17 November 2022.

On 17 October 2022, the Second Division issued a Pre-Trial Order[34] approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Alicia C. Argente (**Argente**), SPO's Finance & Accounting Manager; and, (2) Atty. Francis H. Tuliao (**Atty. Tuliao**), legal counsel of Siemens, Inc.

During the 17 November 2022 hearing, Argente identified her Judicial Affidavit dated 01 March 2022[35] where she declared essentially that: (1) she is SPO's Finance & Accounting Manager and has been employed with SPO since 24 February 1999; (2) as the Finance & Accounting Manager, her responsibilities include overseeing the preparation of SPO's financial statements to ensure their accuracy and timely presentation, certifying financial information and data related to

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28 Id., pp. 751-752.
29 Id., pp. 757-759.
30 Id., pp. 760-779.
31 See Minutes of the Hearing and Order, both dated 08 August 2022, id., pp. 785 and 786-788, respectively.
32 Id., pp. 789-792.
33 Id., p. 796.
34 Id., pp. 803-807.
35 Exhibit "P-20", id., pp. 1519-1525.

SPO's assets and liabilities, and maintaining custody of SPO's financial records; (3) SPO is a corporation organized and existing under Philippine laws; (4) SPO's Audited Financial Statements (**AFS**) as of 30 September 2019 shows that its Property and Equipment amount to €1,032,350 while its total assets amount to €360,634,626; (5) SPO's Interim FS as of 30 January 2020 shows that its Property and Equipment amount to €904,070 while its total assets amount to €374,648,371; and, (6) SPO's real property interest in the Philippines does not comprise more than 50% of its total assets.

Respondent did not conduct any cross-examination.[36]

Next to testify during the 17 November 2022 hearing was Atty. Tuliao, who identified his Judicial Affidavit dated 01 March 2022[37] where he declared that: (1) he is the legal counsel of Siemens, Inc. since 10 August 2015; (2) as legal counsel, his functions include the management of potential legal risk across the business, ensuring compliance with legal requirements of company transactions, supervision over corporate filings with government agencies, and coordination with external legal counsel; (3) he is testifying as petitioner's attorney-in-fact tasked to, among others, file and process its application for administrative and judicial claims for refund and for tax treaty relief under the RP-Germany Tax Treaty; (4) petitioner is an entity incorporated and residing in Germany, it is not registered either as a corporation or a partnership nor has it been issued a license to do business in the Philippines; (5) petitioner previously held 100% of SPO's total outstanding capital stock, equivalent to 5,254 common shares; (6) SPO is a corporation organized and existing under Philippine laws, with principal office address at Sta. Rita and San Lorenzo Power Station, Sta. Rita, Batangas City, Philippines; (7) SPO is principally engaged in the business of operating, maintaining, testing, commissioning, servicing (including user-training) and repairing power plants and all other infrastructures for or related to the generation of electric power; (8) as evidenced by the Share Transfer Agreement dated 03 February 2020[38], petitioner sold and transferred to Siemens GmbH all its right, title, and interests in and to the 5,254 common shares in SPO, for a purchase price of ₱419,872,946.83; (9) petitioner is a corporation

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36 TSN dated 17 November 2022, p. 7.

37 Exhibit "P-16", Division Docket, Volume II, pp. 820-864, with attached copies of the exhibits witness Atty. Francis H. Tuliao identified.

38 Exhibit "P-6", supra at note 7.

organized and existing under the laws of Germany with its registered seat in Berlin and Munich, Germany and principal place of business in Witte[l]sbacherplatz 2 803125 Munich, Germany; (**10**) on 02 March 2020, petitioner filed its DST return and paid DST in the amount of ₱39,405.00; (**11**) on 02 March 2020, petitioner timely filed its CGT and paid CGT amounting to ₱41,456,894.68; (**12**) on 17 June 2020, petitioner secured the CAR[39] and tax clearance on the subject transaction; (**13**) on 29 December 2021, petitioner filed a TTRA[40] with the BIR's ITAD to request confirmation that the subject transaction is exempt from CGT under the RP-Germany Tax Treaty, and on 11 February 2022, a Supplemental TTRA[41]; (**14**) on 27 January 2022, petitioner filed with the BIR an Application for Tax Credits/Refund (BIR Form No. 1914)[42] to recover the erroneously paid CGT amounting to ₱41,456,894.68, and on 11 February 2022, a Supplemental Application[43]; and, (**15**) since respondent failed to act on petitioner's administrative claim, petitioner was constrained to file the present Petition for Review[44] to toll the two (2)-year prescriptive period under Section 229[45] of the NIRC of 1997, as amended.

During cross-examination, Atty. Tuliao confirmed that the CGT Return, filed on 02 March 2020, and the Security Bank BTR-BIR Deposit Slip of even date are the proofs of payment[46] of the CGT on the subject transaction. He also answered affirmatively when asked whether petitioner filed the TTRA only on 11 February 2022 (as mentioned in Question No. 33 of his Judicial Affidavit), and whether petitioner filed the Application for Tax Credits/Refund (BIR Form No. 1914) earlier on 27 January 2022 (as mentioned in Question No. 28 of his Judicial Affidavit).[47]

Petitioner did not conduct any redirect examination.[48]

On 19 December 2022, after completing the presentation of its testimonial evidence, petitioner filed its "Formal Offer of Evidence with

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39 Exhibit "P-11", supra at note 10.
40 Exhibit "P-12", supra at note 11.
41 Exhibit "P-14", supra at note 16.
42 Exhibit "P-13", supra at note 13.
43 Exhibit "P-15", supra at note 17.
44 Supra at note 1.
45 Supra at note 19.
46 Exhibits "P-9" and "P-10", supra at note 8.
47 TSN dated 17 November 2022, pp. 9-11.
48 Id., p. 11.

Urgent Motion to Set Case for a Commissioner's Hearing"[49] (**FOE with Urgent Motion**) consisting of Exhibits "P-1" to "P-25", inclusive of sub-markings. Petitioner requested a Commissioner's Hearing to compare the originals of Exhibits "P-4", "P-11", "P-18" and "P-21" and to transfer the marking of Exhibit "P-13" from BIR Form No. 1914[50] to the Cover Letter dated 27 January 2022, which was addressed to and stamped as received by RDO No. 39-South Quezon City. Respondent filed his or her Comment/Opposition[51] thereto on 03 January 2023.

In the Resolution dated 11 January 2023[52], the Second Division cancelled the hearing on the Motion to Commission an ICPA previously set on 25 January 2023, as well as the presentation of the ICPA and the ICPA Report previously set on 13 April 2023, and submitted petitioner's FOE with Urgent Motion for resolution.

On 23 January 2023, petitioner filed its "Manifestation (Re: Comparison of Pre-Marked Evidence with the Originals)"[53] (**Manifestation**), asking the Second Division to hold in abeyance the resolution of its FOE with Urgent Motion until the completion of the additional Commissioner's Hearing for the comparison of Exhibits "P-4", "P-11", "P-18" and "P-21".

In the Resolution dated 31 January 2023[54], the Second Division granted petitioner's Manifestation. It also considered moot petitioner's Urgent Motion to Set Case for a Commissioner's Hearing, as the same had already been granted in the Resolution dated 15 December 2022. However, the Second Division granted petitioner's prayer for the setting of a Commissioner's Hearing to transfer the marking of Exhibit "P-13". Accordingly, the Second Division gave petitioner a period of five (5) days to submit the original hard copies of the duly marked exhibits. As such, the resolution of petitioner's FOE was held in abeyance pending the submission of the duly marked exhibits or the expiration of the given period.

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49 Division Docket, Volume II, pp. 879-893.
50 Exhibit "P-13", supra at note 13.
51 Id., pp. 895-897.
52 Id., p. 899.
53 Id., pp. 900-903.
54 Id., pp. 906-909.

On 20 February 2023, petitioner filed its Manifestation and Compliance[55], submitting the original hard copies of the exhibits as offered and the alleged original copy of the Cover Letter dated 27 January 2022, for the purpose of transferring the marking of Exhibit "P-13" from BIR Form No. 1914[56] to the original Cover Letter dated 27 January 2022.

In the Resolution dated 07 March 2023[57], the Second Division admitted all the exhibits in petitioner's FOE, and noted its Manifestation and Compliance. However, the Second Division denied petitioner's prayer to transfer the marking of Exhibit "P-13" from BIR Form No. 1914 to the original Cover Letter dated 27 January 2022 addressed to and stamped as received by RDO No. 39-South Quezon City, for its failure to transfer the said marking during the scheduled Commissioner's Hearing, and to submit the original copy of the Cover Letter dated 27 January 2022 in its Manifestation and Compliance. Accordingly, the document described as Application for Tax Credits/Refund (BIR Form No. 1914) remained marked as Exhibit "P-13", in accordance with the document offered in the FOE and identified in the Judicial Affidavit of Atty. Tuliao.[58] In the same Resolution, the Second Division gave the parties a period of 30 days within which to submit their respective memoranda.

On 11 April 2023, petitioner filed its Memorandum[59]. Respondent, on the other hand, filed his or her Memorandum[60] on 12 April 2023. Accordingly, on 25 April 2023, the Second Division considered the case submitted for decision. [61]

ISSUE

As the parties so stipulated[62], the sole issue for this Court's determination is —

55 Id., pp. 913-917.
56 Exhibit "P-13", supra at note 13.
57 Division Docket, Volume II, pp. 1536-1539.
58 Exhibit "P-16", supra at note 37, p. 827 (Q/A No. 28).
59 Division Docket, Volume II, pp. 1546-1571.
60 Id., pp. 1540-1545.
61 See Resolution dated 25 April 2023, id., p. 1575.
62 II. Issue, JSFI, supra at note 32, p. 791.

WHETHER PETITIONER SIEMENS AKTIENGESELLSCHAFT IS ENTITLED TO THE REFUND OF ITS ALLEGED ERRONEOUSLY PAID CAPITAL GAINS TAX (CGT) AMOUNTING TO ₱41,456,894.68.

ARGUMENTS

Petitioner contends that the gains it realized from the sale or transfer of its shares in SPO are exempt from CGT in the Philippines under the RP-Germany Tax Treaty. This claim is anchored on the fact that petitioner is a nonresident foreign corporation (**NRFC**), established under German laws, without a permanent establishment or fixed base in the Philippines.

Additionally, petitioner argues that SPO's shares of stock subject of the Share Transfer Agreement[63] between itself and Siemens GmbH are intangible personal properties. Pursuant to the RP-Germany Tax Treaty, these should only be taxable in the Contracting State where the alienator (which, in this case, is petitioner) is a resident.

Furthermore, petitioner claims that SPO's assets are not primarily composed of real property interests located in the Philippines. This fact allegedly supports petitioner's claim for CGT exemption on the gains from the sale or transfer of its shares in SPO to Siemens GmbH.

Petitioner also maintains that it has filed a written claim with respondent, therein stating a categorical demand for a refund, and that it timely filed its administrative and judicial claims for the refund of alleged erroneously paid and collected CGT.

Essentially, petitioner argues that the CGT it paid for the subject transaction was not due under the provisions of the RP-Germany Tax Treaty, and therefore, a refund is warranted.

Respondent, on the other hand, counter-argues that petitioner's refund claim is still undergoing an administrative investigation or examination. Consequently, until this investigation is concluded, a refund cannot be granted based solely on the filed claim. Furthermore,

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[63] Exhibit "P-6", supra at note 7.

respondent argues that before petitioner can seek recourse through the courts, all available administrative remedies must first be exhausted.

Moreover, respondent emphasizes that claims for refunds are construed strictly against the taxpayer and liberally in favor of the taxing authority. The general rule is that the taxpayer-claimant bears the burden of proving the factual basis of its claim. Since taxes are considered the lifeblood of the nation, statutes that allow exemptions are interpreted strictly against the grantee and liberally in favor of the government.

Lastly, respondent points out that BIR Ruling [DA-(C-196) 504-09][64] and BIR Ruling No. 621-2019[65] cited by petitioner are peculiar to the requesting party; thus, these are binding and applicable only between the BIR and the requesting party. On this note, respondent asserts that a BIR ruling is not equivalent to a law. Instead, it is an opinion issued at the taxpayer's request and can be revoked if the facts presented at the time of application later prove to be inaccurate or misleading. This underscores the provisional nature of BIR rulings and their dependence on the veracity and consistency of the facts provided by the taxpayer.

RULING OF THE COURT

Before the Court proceeds to resolve the merits of the case, the Court finds it propitious to first determine the timeliness of petitioner's administrative and judicial appeals as this is determinative of the Court's jurisdiction.

PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WERE TIMELY FILED; THUS THIS COURT HAS JURISDICTION OVER THE INSTANT PETITION.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously** or illegally collected taxes. Section 204

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64 SyCip Salazar Hernandez & Gatmaitan, 08 September 2009.

65 R.G. Manabat & Co., 16 October 2019.

applies to administrative claims for refund, while Section 229 to judicial claims for refund.[66] Thus:

> ...
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
> ...
>
> (c) Credit or refund taxes **<u>erroneously</u>** 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 <u>with the Commissioner</u> a claim for credit or refund <u>within two (2) years after the payment of the tax or penalty</u>**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund. [67]
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, provides:

> ...
> **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 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.[68]
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> ...

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66 *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015.

67 Italics in the original text, emphasis and underscoring supplied.

68 Emphasis supplied.

From the foregoing, it is clear that in cases of recovery of erroneously paid or illegally collected tax, *both* the claim for refund and the filing of the suit should be made before the expiration of two (2) years from the *date of payment* regardless of any supervening cause that may arise after payment.

In this case, the CGT subject of petitioner's refund claim was paid on **02 March 2020**, as shown in the machine validation portion of the Security Bank BTR-BIR Deposit Slip.[69] Counting two (2) years therefrom, petitioner's last day to file its administrative and judicial claims was on **02 March 2022**. Thus, petitioner seasonably filed its claims for refund when it filed the Application for Tax Credits/Refund (BIR Form No. 1914)[70] on **27 January 2022**[71] and the Supplemental TTRA dated **11 February 2022**[72] and received by respondent on the same date. Likewise, petitioner timely filed its judicial claim on **02 March 2022**.[73]

RESPONDENT'S DECISION ON THE ADMINISTRATIVE CLAIM IS *NOT* A CONDITION *SINE QUA NON* FOR FILING A JUDICIAL CLAIM FOR REFUND UNDER SECTION 229 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

Respondent contends that all administrative remedies must first be exhausted before a taxpayer can file a case before this Court. It further asserts that taxpayers often file their administrative and judicial claims toward the end of the two (2)-year prescriptive period. This timing effectively deprives respondent of the opportunity to act on the administrative claim.

Respondent's argument has no legal leg to stand on.

The issue of exhaustion of administrative remedies under Sections 204 and 229 of the NIRC of 1997, as amended, is not novel. The Supreme Court *En Banc* has extensively passed upon the same in the case of

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69 Exhibit "P-10", supra at note 8, p. 1012.
70 Exhibit "P-13", supra at note 13, p. 1137.
71 BIR Records, p. 118.
72 Exhibit "P-14", supra at note 16.
73 Petition for Review, supra at note 1.

Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.[74], to wit:

> ...
>
> A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a "reasonable period" for the Commissioner of Internal Revenue to act on a claim for refund of taxes.
>
> Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes. It gives the Commissioner "an opportunity to consider [their] mistake, if mistake has been committed," or to investigate and ascertain the veracity of the claim, before they are sued. This Court in *CBK Power Company*, citing *P.J. Kiener*, held that the primary purpose of filing an administrative claim is to serve as a *notice* or *warning* to the Commissioner that *court action would follow unless the tax or penalty is refunded*. This necessarily implies that the Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.
>
> On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or "inaction deemed denial" of the Commissioner in a claim for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner's "inaction" **only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax, the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.**
>
> Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.
>
> **Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue**

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74 G.R. No. 226592, 27 July 2021; Citations omitted, italics in the original text and emphasis supplied.

was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.

...

Clearly, from the foregoing, the law only stipulates that both the administrative and judicial claims must be filed within the two (2)-year reglementary period, regardless of how far apart or close together these filings occur. The silence or insufficiency in the law on the reasonable period for the CIR's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation.[75]

PETITIONER IS ENTITLED TO A TAX REFUND.

The Court shall now determine whether petitioner is entitled to a tax refund in the amount of ₱41,456,894.68 arising from the sale of its shares in SPO to Siemens GmbH (that is allegedly exempt from CGT under the RP-Germany Tax Treaty).

It is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

(1) The taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[76]

(2) If the administrative claim for refund is denied or not acted upon within said two (2)-year period, the judicial claim for refund must be filed with the CTA within 30 days from receipt of the denial AND within the said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening

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75 Id.

76 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

cause, otherwise, the claim for refund shall have prescribed;[77] and,

(3) The claim for refund must be a categorical demand for reimbursement.[78]

As previously stated, petitioner has faithfully complied with the ***first*** and ***second*** **requisites**.

Anent the ***third and last requisite***, a claimant must first file a written claim for refund, categorically demanding recovery of erroneously or illegally paid taxes with the CIR. With the principle that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government, and as tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which his or her right arises. It cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.[79]

Here, petitioner asserts that the sale or transfer of its SPO shares to Siemens GmbH should have been exempted from CGT under Article 13(2) of the RP-Germany Tax Treaty.

Respondent, on the other hand, invokes the well-settled rule that tax refunds are regarded as tax exemptions and, therefore, *strictissimi juris* against the person or entity claiming the exemption.

The Court finds for petitioner.

Section 28(B)(5)(c) of the NIRC of 1997, as amended (prior to the effectivity of Republic Act [**RA**] No. 11534, otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act"

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[77] See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

[78] *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

[79] Id.

[**CREATE**]), capital gains realized during the taxable year from the sale or other disposition of shares of stock in a domestic corporation made outside the stock exchange and any gain derived from such dealings in property derived by a foreign corporation are subject to income tax as follows:

> ...
> **SEC. 28.** *Rates of Income Tax on Foreign Corporations.* —
> ...
>
> (B) *Tax on Nonresident Foreign Corporation.* —
> ...
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* —
> ...
>
> (c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* — A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:
>
> Not over P100,000 — 5%
> On any amount in excess of P100,000 — 10%
>
> ...

However, under Section 32(B)(5) of the NIRC of 1997, as amended, such gains are exempt or partially exempt to the extent required by any treaty obligation of the Philippines, to wit:

> ...
> **SEC. 32.** *Gross Income.* —
> ...
>
> *(B) Exclusions from Gross Income.* — **The following items shall not be included in gross income and <u>shall be exempt from taxation</u> under this Title:**
> ...
>
> ***Income Exempt under Treaty.*** — **Income of any kind, <u>to the extent required by any treaty obligation</u> binding upon the Government of the Philippines.**[80]
> ...

[80] Italics in the original text, emphasis and underscoring supplied.

Clearly from the foregoing, an income may be exempted from taxation to the extent required by any treaty obligation binding upon the Government of the Philippines.

A treaty obligation may be embodied in bilateral treaties for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.[81]

One such bilateral agreement is the RP-Germany Tax Treaty. Paragraph 2, Article 13 thereof provides that gains from the alienation of shares and similar rights in a company, the assets of which consist, directly, indirectly, or principally of immovable property situated in a Contracting State, may be taxed in that State, as follows:

> ...
>
> ARTICLE 13
> *Capital Gains*
>
> (1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
>
> (2) Gains from the alienation of shares and similar rights in a company, **the assets of which consist — directly or indirectly — principally of immovable property situated in a Contracting State, may be taxed in that State.**
>
> ...
>
> (5) Gains from the alienation of any property other than that referred to in paragraphs 1 to 4, **shall be taxable only in the Contracting State of which the alienator is a <u>resident</u>.**[82]
>
> ...

[81] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, 25 June 1999.

[82] Italics in the original text, emphasis and underscoring supplied.

As can be gleaned from the foregoing tax treaty provisions, capital gains earned by an alienator of shares in a company, whose assets *principally* consist of immovable property situated in the Philippines, are subject to Philippine tax, such as CGT. Conversely, the subject capital gains may be exempt from Philippine tax if the interest being disposed of is in a corporation whose assets do not principally consist of immovable property located in the Philippines.

Corollarily, the term "resident", for purposes of the RP-Germany Tax Treaty, means "any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State, a Land and any political subdivision or local authority thereof."

Simply put, in order for petitioner to claim exemption from CGT under the RP-Germany Tax Treaty, petitioner has to establish the following:

(1) It is a resident of Germany;

(2) There is an alienation of shares of a domestic corporation; and,

(3) The assets of the domestic corporation do not principally consist of immovable property in the Philippines.

Petitioner presented in evidence a certified true copy of its Consularized Articles of Association (**AOI**)[83] and the corresponding English version thereof to show that it is a stock corporation duly organized and existing under the laws of Germany and that its registered offices are located in Berlin and Munich. Petitioner also proffered a Certificate[84] issued by the Tax Office of Munich, showing that it is a tax resident in Germany. In addition, petitioner submitted the Philippine Securities and Exchange Commission (**SEC**)-issued Certificate of Non-Registration[85] as of 25 June 2021 to prove that it is not registered

83 Exhibit "P-1", Division Docket, Volume II, pp. 919-949.
84 Exhibit "P-22", id., p. 1506.
85 Exhibit "P-17", id., p. 1411.

either as a corporation or as a partnership in the Philippines. Thus, the ***first*** **condition** was satisfied.

Likewise, the ***second*** **condition** was satisfied when petitioner presented in evidence the Share Transfer Agreement[86] executed between petitioner and Siemens GmbH and the BIR-issued CAR[87] to show that petitioner transferred its 5,254 common shares in SPO to Siemens GmbH on 03 February 2020.

As to the ***third*** and **last condition**, the term "principally" as generally used in tax treaties means more than fifty (50%) percent of the entire assets in terms of value.[88] To prove the same, petitioner proffered SPO's Comparative AFS as of the fiscal years (**FYs**) ended 30 September 2018 and 30 September 2019[89] and Interim FS as of 31 January 2020.[90]

An evaluation of SPO's Statement of Financial Position for the FYs ended 30 September 2018 and 30 September 2019, including the unaudited Interim FS as of 31 January 2020 would show the following real property interest:

SPO's Assets	**As of 30 September 2018**[91]	**As of 30 September 2019**[92]	**As of 31 January 2020**[93]
Property and equipment, Net Book Value[94]	€1,239,459	€994,221	€879,866
Total Assets	292,913,367	360,634,626	374,648,371
Percentage	**0.42%**	**0.28%**	**0.23%**

86 Exhibit "P-6", supra at note 7.
87 Exhibit "P-11", supra at note 10.
88 Section 4 of Revenue Regulations (RR) No. 4-86 provides:

...

SEC. 4. *Basis.* — The value of all the assets of the subject corporation both real and personal as appearing in its financial statement on the date of sale of the share or interest in such corporation, as verified by the BIR, shall be used as the basis for determining the composition of its assets.

In case the financial statement as of the date of the sale is not available, the most recent financial statement may be used, after the necessary adjustments are made to reflect transactions made during the period from the date of such financial statement to the date of the sale.

...

89 Exhibit "P-18", Division Docket, Volume II, pp. 1412-1466.
90 Exhibit "P-21", id., pp. 1467-1505.
91 Division Docket, Volume II, p. 1444.
92 Id.
93 Supra at note 90.
94 Excluding Transportation Equipment, which is, by nature, a movable property.

As computed, SPO's real property interest (at the time of sale or transfer of shares) did not exceed 50%; hence, it could not be deemed to have possessed assets consisting principally of immovable property in the Philippines. Resultantly, petitioner satisfied the ***third*** and **last condition**. As such, petitioner's capital gains derived from the sale of its shares of stock in SPO should be exempt from CGT in the Philippines pursuant to the RP-Germany Tax Treaty.

Taking all the above circumstances together, petitioner proved sufficiently that there was indeed an erroneous payment of CGT on the sale of its shares of stock in SPO to Siemens GmbH, by virtue of its exemption pursuant to the RP-Germany Tax Treaty.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Siemens Aktiengesellschaft on 02 March 2022, is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Siemens Aktiengesellschaft in the total amount of **₱41,456,894.68**, representing the erroneously paid CGT.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice