REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SCHNEIDER ELECTRIC, S.A.
Petitioner,

- versus -

C.T.A. CASE NO. 6036

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 08 2002

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DECISION

This is a judicial claim for refund or issuance of a tax credit certificate in the amount of P9,179,524.58 allegedly representing unutilized creditable Value-Added Tax (VAT) withheld for the four quarters of taxable year 1998 and first, second and third quarters of 1999.

The facts are as follows:

Petitioner is a resident foreign corporation organized and existing under the laws of France with a license to do business in the Philippines under SEC Reg. No. A1997-2663 issued by the Securities and Exchange Commission. It is duly registered with the Bureau of Internal Revenue as a VAT-enterprise with Taxpayer Identification No. 048-005-179-971 (*pars. 1 & 2, Joint Stipulation of Facts*).

On November 22, 1996, Petitioner entered into a contract with the National Power Corporation (NPC, for brevity), a government-owned and controlled corporation, for the furnishing and delivery of substation equipment and materials and the construction/expansion of the San Jose, 500/230 KV Substation located in San Jose Del Monte, Bulacan (*par. 4, Joint Stipulation of Facts; Exhibit C*).

Pursuant to Section 110(c) [now 114(C)] of the Tax Code, as amended, NPC withheld 6% creditable VAT on its income payments to petitioner for services rendered by the latter relative to the aforesaid contract. From the fourth quarter of 1997 until the third quarter of 1999, the creditable VAT withheld by NPC amounted to P12,355,920.98, broken down as follows:

Period Covered	Exhibit	Creditable VAT Withheld	
1997 4th qtr	M-1	P 191,776.37	
	N-1	129,369.02	
	O-1	289,622.48	
	P-1	1,039,726.87	
	Q-1	1,039,995.63	P 2,690,490.37
1998 1st qtr	R-1	P 1,138,261.26	
	S-1	2,381,739.93	3,520,001.19
	T-1	P 744,123.88	
2nd qtr	U-1	507,448.90	1,251,572.78
3rd qtr	V-1		2,604.91
	W-1	P 1,983,557.55	
4th qtr	X-1	396,448.18	2,380,005.73
	Y-1	P 218,855.71	
	Z-1	535,801.62	
1999 1st qtr	AA-1	521,201.48	1,275,858.81
	BB-1	P 314,860.00	
	CC-1	367,486.07	
2nd qtr	DD-1	1,468.83	683,814.90
3rd qtr	EE-1		551,572.29
		Total:	P12,355,920.98

In paying off its output VAT liability from the fourth quarter of 1997 to the second quarter of 1998, petitioner utilized an aggregate creditable VAT withheld of P3,176,396.40 (the sum of P954,675.44, P1,735,814.94 and P485,906.03) as shown below:

	4th qtr 1997	1st qtr 1998	2nd qtr 1998
Per Exhibit	D	E	F
Output VAT	P 4,484,150.64	P 5,866,668.65	P 2,085,954.62
Input VAT			
Carried-over from previous qtr	P 1,660,945.76	P -	P 1,600,048.59
Add: Input VAT this qtr	1,868,529.44	5,730,902.30	4,629,064.72
Total Available Input VAT	P 3,529,475.20	P 5,730,902.30	P 6,229,113.31
Less: Applied Input VAT	3,529,475.20	4,130,853.71	1,600,048.59
Carried-over to next qtr	P -	P 1,600,048.59	P 4,629,064.72
Output VAT after Offsetting Input VAT	P 954,675.44	P 1,735,814.94	P 485,906.03
Creditable VAT Withheld			
Carried-over from previous qtr	P -	P 1,735,814.94	P 3,520,001.19
Add: Cred VAT W/held this qtr	2,690,490.38	3,520,001.19	1,251,572.78
Total Available Cred VAT W/held	P 2,690,490.38	P 5,255,816.13	P 4,771,573.97
Less: Applied Cred VAT W/held	954,675.44	1,735,814.94	485,906.03
Carried-over to next qtr	P 1,735,814.94	P 3,520,001.19	P 4,285,667.94
Balance of Output VAT	P -	P -	P -

However, from the third quarter of 1998 up to the third quarter of 1999, petitioner was unable to apply the remaining creditable VAT withheld of P9,179,524.58 (P12,355,920.98 less P3,176,396.40) as its accumulated input VAT far exceeded its output VAT liability for each of the said quarters as shown below:

	3rd qtr 1998	4th qtr 1998
Per Exhibit	G	H
Output VAT	P 4,341.51	P 4,331,435.72
Input VAT		
Carried-over from previous qtr	P 4,629,064.72	P 8,434,098.52
Add: Input VAT this qtr	3,809,375.31	4,572,906.29
Total Available Input VAT	P 8,438,440.03	P 13,007,004.81
Less: Applied Input VAT	4,341.51	4,331,435.72
Carried-over to next qtr	P 8,434,098.52	P 8,675,569.09
Output VAT after Offsetting Input VAT	P - -	P - -

Creditable VAT Withheld		
Carried-over from previous qtr	P 4,285,667.94	P 4,288,272.85
Add: Cred VAT W/held this qtr	2,604.91	2,380,005.73
Total Available Cred VAT W/held	P 4,288,272.85	P 6,668,278.58
Less: Applied Cred VAT W/held	-	-
Carried-over to next qtr	P 4,288,272.85	P 6,668,278.58
Balance of output VAT	P -	P -

	1st qtr 1999	2nd qtr 1999	3rd qtr 1999
Per Exhibit	I	J	K
Output VAT	P 2,286,438.50	P 614,924.84	P 919,287.15
Input VAT			
Carried-over from previous qtr	P 8,675,569.09	P 7,391,992.54	P 7,428,393.92
Add: Input VAT this qtr	1,002,861.95	651,326.22	436,305.93
Total Available Input VAT	P 9,678,431.04	P 8,043,318.76	P 7,864,699.85
Less: Applied Input VAT	2,286,438.50	614,924.84	919,287.15
Carried-over to next qtr	P 7,391,992.54	P 7,428,393.92	P 6,945,412.70
Output VAT after Offsetting Input VAT	P -	P -	P -
Creditable VAT Withheld			
Carried-over from previous qtr	P 6,668,278.58	P 7,944,137.39	P 8,627,952.29
Add: Cred VAT W/held this qtr	1,275,858.81	683,814.90	551,572.29
Total Available Cred VAT W/held	P 7,944,137.39	P 8,627,952.29	P 9,179,524.58
Less: Applied Cred VAT W/held	-	-	-
Carried-over to next qtr	P 7,944,137.39	P 8,627,952.29	P 9,179,524.58
Balance of output VAT	P -	P -	P -

Consequently, on March 30, 2000, petitioner, through its tax adviser, Sycip, Gorres, Velayo & Co, filed an administrative claim for refund corresponding to the unutilized creditable VAT withheld for the first quarter of 1998 to the third quarter of 1999 of P9,179,524.58 (*page 178, CTA records*). On even date, petitioner judicially filed the aforesaid claim with this court pursuant to the following provisions of Sections 204(C) and 229 of the Tax Code:

"**SEC. 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: x x x "

"**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, 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."

Respondent, in his Answer filed on May 22, 2000, interposed the following Special and Affirmative Defenses:

"4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended;

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**.

In their Joint Stipulation of Facts and Issues dated July 26, 2000 (*pages 219-220, CTA records*), the parties submitted the following issues for this court's resolution:

1. Whether or not the NPC withheld a total amount of P12,355,920.99, representing 6% creditable VAT, from its payments to the petitioner pursuant to the then Section 110(c) of the NIRC of 1977, as amended by Republic Act No. 7716.

2. Whether or not the petitioner has unutilized creditable VAT withheld for the four quarters of taxable year 1998 and first, second and third quarters of 1999 in the total amount of P9,179,524.58 which entitles it to a claim for refund/tax credit.

3. Whether or not the petitioner's claim for refund of unutilized creditable VAT withheld for the four quarters of 1998 and first, second and third quarters of 1999 are substantiated by documentary evidence.

Petitioner, to support its claim, presented testimonial and documentary evidence. Respondent's counsel, on the other hand, did not present any controverting evidence and manifested during the hearing on September 20, 2001 that he is submitting his case for decision as there was no report of investigation.

On January 11, 2002, the case was submitted for decision sans the memorandum of the respondent.

After a careful review of petitioner's evidence, the laws and regulations applicable in the instant case, this court grants petitioner's claim.

The legal basis of the withholding of the creditable VAT is Section 110(c) [now Section 114(C)] of the Tax Code, as amended, to wit:

> "**c)** ***Withholding of Creditable Value-Added Tax.*** — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of its purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however*, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further*, That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.
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> The value-added tax withheld under this section shall be remitted within ten (10) days following the end of the month the withholding was made."

Corollary thereto, Section 102 [now 108] of the Tax Code, as amended, provides:

> "**Section 102.** ***Value-added tax on sale of services and use or lease of properties***. – (a) Rate and base of tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
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> "The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; x x x x."

Likewise, Section 8 of Revenue Regulations No. 10-93 states that:

"***SECTION 8.*** ***Nature of Tax Withheld***. — The amount of tax herein withheld and paid as evidenced by the Certificate of Value Added Tax Withheld on Government Payments (BIR Form ___) shall be creditable against the value-added tax liability of the payee/seller of goods or services, provided that the payments received from which the taxes were deducted and withheld are included in the tax return/declaration as part of his declared sales or receipts.

It is clear from the foregoing provisions that the creditable VAT withheld by NPC to petitioner shall be creditable against the latter's output VAT liability when it is shown that: 1) the creditable VAT withheld is duly supported by a Certificate of Creditable Value-Added Tax Withheld on Government Payments and 2) the gross sales (in the case of sale of goods) or receipts (in the case of sale of services) corresponding to the creditable VAT withheld were declared as part of petitioner's declared sales/gross receipts.

Records reveal that the creditable VAT of P12,355,920.98 withheld by NPC from the fourth quarter of 1997 up to the third quarter of 1999 was duly supported by Certificates of Creditable Tax Withheld at Source (*Exhibits M-1, N-1, O-1, P-1, Q-1, R-1, S-1, T-1, U-1, V-1, W-1, X-1, Y-1, Z-1, AA-1, BB-1, CC-1, DD-1 & EE-1*). Also, it was established that the gross receipts corresponding to the creditable VAT withheld of P12,355,920.98 were declared by petitioner in its quarterly VAT returns for the said period (*Exhibits D to K*). Hence, petitioner can validly apply/utilize the creditable VAT withheld of P12,355,920.98 against its output VAT liability.

However, as earlier mentioned, petitioner was able to utilize only the amount of P3,176,396.40, as shown in its quarterly VAT returns from the fourth quarter of 1997 to the second quarter of 1998. It was observed, though, that petitioner should have utilized its creditable VAT withheld only for the fourth quarter of 1997 and 1st quarter of 1998. It is quite evident from petitioner's quarterly VAT returns that its accumulated input VAT payments on domestic purchases of goods/services for the second quarter of 1998 until the third quarter of 1999 were more than enough to offset its output VAT liabilities in each of the said quarters (*Exhibits F to K*). As of the third quarter of 1999, petitioner had accumulated excess input VAT payments of P6,945,412.70 (*see table above*) on its domestic purchases of goods/services. In spite of the fact that the commissioned auditing firm, C.L. Manabat & Co., recommended for a disallowance of P2,239,423.01 (*Exhibit II*) on petitioner's reported input VAT payments for 1998 to the third quarter of 1999, there still remained a balance of P4,705,989.69 (P6,945,412.70 less P2,239,423.01) accumulated excess input VAT as of the third quarter of 1999. Since petitioner had no more output VAT liability against which the excess creditable VAT withheld of P9,179,524.58 may be applied or credited, the same appears to have been excessively paid and refundable in accordance with Section 204(C) in relation to Section 229 of the Tax Code.

Finally, in its amended 1999 fourth quarterly VAT return (*Exhibit HH*), petitioner did no longer carry-over the excess creditable VAT withheld of P9,179,524.58. Petitioner likewise complied with the two-year period prescribed for the filing of a claim for refund/tax credit under Sections 204(C) and 229 in relation to Section 114(A) of the Tax Code. The earliest quarter covered by the claimed excess creditable VAT withheld of P9,179,524.58 is the first quarter of 1998 for which petitioner filed its original quarterly VAT return on April 27, 1998 (*attached to Exhibit E*). Counting from April 27, 1998, both the administrative and judicial claims for refund filed on March 30, 2000 (*page 178, CTA records*) fall within the two-year prescriptive period.

WHEREFORE, in view of the foregoing premises, the instant petition for review is hereby **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **NINE MILLION ONE HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED TWENTY FOUR & 58/100 PESOS (P9,179,524.58)** in favor of petitioner representing unutilized creditable VAT withheld for the four quarters of taxable year 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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