Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

IRONCON BUILDERS AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6502

Members:

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 05 2006

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DECISION

CASTAÑEDA, JR., *J.*:

The instant Petition for Review involves a claim for refund in the aggregate sum of P22,853,082.68 allegedly representing excess creditable expanded withholding tax in the amount of P4,799,367.04 and excess creditable value-added tax (VAT) in the amount of P18,053,715.64 as of December 31, 2000.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines with principal office address at 471 General Luna Street, Walled City, Intramuros, Manila. It is registered with the Bureau of Internal Revenue (BIR) as a

Value-Added Tax (VAT) taxpayer with Taxpayer Identification Number (TIN) 200-278-264-000.[1]

For taxable year 2000, petitioner filed its income tax return on April 10, 2001[2] declaring a taxable income of P3,020,409.86 with the income tax due thereon of P966,531.16 which was offset against the accumulated tax credits of P5,765,898.20 leaving an income tax overpayment of P4,799,367.04, computed as follows:

Gross Income		P 15,997,195.02
Less:	Deductions	12,976,785.16
Taxable Income		P 3,020,409.86
Income Tax Due (32%)		P 966,531.16
Less:	Tax Credits/Payments	
	Prior Year's Excess Credits	3,654,342.91
	Creditable Taxes Withheld for the First Three Quarters	2,111,555.29
	Total Tax Credits/Payments	P 5,765,898.20
Tax Overpayment		P 4,799,367.04

Petitioner opted to carry-over the excess tax credits of P4,799,367.04 to the succeeding taxable year 2001 by putting an "x" mark on the corresponding box in the return. However, in its amended 2000 income tax return filed on October 10, 2001 petitioner revised its chosen option from "To be carried as tax credit next year/quarter" to "To be issued a tax credit certificate".[3]

For the same taxable year 2000, petitioner seasonably filed its quarterly VAT returns reflecting VAT overpayment as of December 31, 2000 in the amount of P18,053,715.64, representing the sum of its accumulated excess input VAT in the amount

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[1] As admitted by respondent in his Answer filed on July 24, 2002
[2] Exhibit H
[3] Exhibit I

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of P13,073,061.16 and creditable VAT withheld in the amount of P4,980,654.48, detailed as follows:

Year 2000	Annexed to the Petition as	Output VAT (a)	Input VAT: Carried-over fr. Previous Qtr (b)	Input VAT: This Quarter (c)	Input VAT: Accumulated Excess Input VAT (d) (b) + (c) – (a)	Creditable VAT Withheld (e)	Total VAT Overpayment (f) (d) + (e)
1st qtr	D-5	2,219,576.81	10,314,202.97	3,609,240.65	11,763,866.81	1,195,382.45	12,959,249.28
2nd qtr	D-4	4,524,967.21	12,959,249.28	3,356,135.83	11,790,417.90	2,005,889.48	13,796,307.38
3rd qtr	D-2	5,397,598.92	13,796,307.38	4,544,083.42	12,942,791.88	2,845,832.07	15,788,623.95
4th qtr	D	7,931,279.68	15,788,623.95	5,215,715.89	13,073,061.16	4,980,654.48	18,053,715.64

On May 10, 2001, petitioner filed a letter with the Bureau of Internal Revenue (BIR) requesting for the refund of its alleged excess creditable expanded withholding tax in the amount of P6,979,759.72 and excess creditable VAT in the amount of P18,655,707.99 totaling to P25,635,467.71.[4]

However, on October 26, 2001, petitioner filed another letter with the BIR reducing its original claims for refund of excess creditable expanded withholding and value-added taxes to the amounts of P4,799,367.04 and P18,053,715.64, respectively, or in the sum of P22,853,082.68.[5]

Due to the respondent's inaction on its claims, petitioner elevated its case before this Court on July 1, 2002.

Respondent, in his Answer to the Petition for Review, interposed the following Special and Affirmative Defenses:

> 6. Petitioner's claim for refund is still pending administrative investigation;

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[4] Exhibit J
[5] Annex E, Petition for Review

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7. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are *presumed* to have been collected in accordance with laws and regulations (Caltex Phils, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986).

8. Claims for refund of taxes are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation. Failure on the part of petitioner to prove the same is fatal to its claim for tax refund (Manila Electric Co. v. Commissioner of Internal Revenue, 67 SCRA 351; Commissioner of Internal Revenue v. Ledesma, 31 SCRA 95).

9. Petitioner must likewise prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable years;

10. The existence of an excess creditable withholding taxes alone does not per se entitle petitioner to a refund. The petitioner must prove that, (1) its claim for refund is filed with the respondent within the two year period from the date of payment of the tax required under Section 204 of the 1997 Tax Code, (2) it must be shown on petitioner's return that *the income payment received was declared as part of its gross income*, and (3) the *fact of withholding* is established by copies of statement duly issued by *petitioner's payor* showing the *amount paid* and the *amount of taxes withheld* (Citytrust Finance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Paseo Realty & Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993); and

11. Petitioner must show that it has complied with the provisions of Section 204(C) and Section 229 of the 1997 Tax Code.

In their Joint Stipulation of Facts filed on September 25, 2002,[6] the parties agreed to limit the issues as to:

1. Whether or not the claim for tax refund, for expanded withholding tax, and creditable expanded value-added tax, are valid; and

2. Whether or not the claim for refund is fully substantiated.

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[6] page 148, CTA Records

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For failure of petitioner to present its evidence despite the final warning issued by the Court on June 16, 2003, petitioner was declared to have waived its right to present its evidence in a Resolution issued by the Court on July 23, 2003.[7]

Petitioner moved for reconsideration but the same was denied in a Resolution dated September 22, 2003.[8]

Instead of presenting his evidence, respondent on October 13, 2003, filed a Motion to Dismiss[9] which this Court on January 22, 2004 granted and declared the case closed and terminated.[10]

However, on February 11, 2004, petitioner filed a Motion for Reconsideration (With Prayer to Re-open the Case).[11] On June 29, 2004, a collaborating counsel for petitioner filed a Supplemental Motion for Reconsideration.[12]

On July 16, 2004, this Court issued a Resolution granting petitioner's motion, ordering the reinstatement of the Petition for Review and setting the case for the presentation of petitioner's evidence.[13]

After the trial on the merits, the case was submitted for decision on July 12, 2005.

As stated earlier, the subject claim amounting to P22,853,082.68 covers petitioner's alleged: 1) excess creditable expanded withholding tax in the amount of

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[7] page 227, CTA Records
[8] pages 229-231; 286, CTA Records
[9] pages 291-295, CTA Records
[10] pages 383-387, CTA Records
[11] pages 389-398, Records
[12] pages 404-409, Records
[13] pages 417-419, Records

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P4,799,367.04; and 2) excess creditable VAT in the amount of P18,053,715.64 as of December 31, 2000.

We shall first rule on the validity of the claimed excess creditable withholding taxes as of December 31, 2000 in the amount of P4,799,367.04.

Petitioner, maintains that it is entitled to the amount of P4,667,116.90 which was found to be duly substantiated by the Court commissioned auditing firm, Punongbayan and Araullo, as shown in the latter's report dated September 22, 2003.[14] Since no countervailing evidence was ever presented by the respondent to dispute or refute the said finding, petitioner prays that the reduced amount of P4,667,116.90 be granted relying upon Section 69 of the old National Internal Revenue Code (NIRC) and Section 229 of the present NIRC.

Respondent, on the other hand, contends that pursuant to Section 76 of the NIRC of 1997, petitioner can no longer claim for a refund of the amount of P4,799,367.04 because it had earlier availed of the option to carry-over and apply the same as tax credit to the succeeding taxable year 2001.

We agree with respondent.

Inasmuch as the subject claim covers the taxable years 1999 and 2000, the applicable law is not Section 69 but Section 76 of the National Internal Revenue Code (NIRC) of 1997 which took effect on January 1, 1998, to wit:

> "SEC. 76. ***Final Adjustment Return.*** — Every corporation liable to pay tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said

[14] Exhibit A

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> taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> "(A) Pay the balance of tax still due; or
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> "(B) Carry-over the excess credit; or,
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> "(C) Be credited or refunded with the excess amount paid, as the case may be.
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> "In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit shall be allowed therefor."

Based on Section 76 afore-cited, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried-over/applied to the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.

A scrutiny of petitioner's income tax return for taxable year 2000 filed on April 10, 2001[15] shows that the reported excess tax credits as of December 31, 2000 in the amount of P4,799,367.04 consisted of the prior year's (1999) excess credits of P2,687,811.75 and creditable taxes withheld during the year 2000 of P2,111,555.29, thus:

Income Tax Due for the year 2000	P 966,531.16
Less: Prior year's (1999) excess credits	3,654,342.91
Balance of prior year's (1999) excess credits	P 2,687,811.75
Add: Creditable taxes withheld during the year 2000	2,111,555.29
Total unutilized excess tax credits as of December 31, 2000	P 4,799,367.04

[15] Exhibit H

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Petitioner elected to carry-over the excess tax credits of P4,799,367.04 to the succeeding year 2001 as can be seen by the "x" mark in the box provided for the said option in the return. On October 10, 2001, petitioner filed an amended income tax return for taxable year 2000[16] only to reflect therein its request for the issuance of a tax credit certificate instead of its previous option of carry-over. Despite such amendment, petitioner still reflected the amount of P4,799,367.04 as prior year's excess credits and applied the same against the income tax due of P690,639.72 in its 2001 income tax return filed on April 15, 2002.[17]

Based on the evidence presented by the petitioner, it had chosen and in fact actually exercised the option of carry-over insofar as the excess tax credits as of December 31, 2000 amounting to P4,799,367.04 is concerned. Such option is *irrevocable* and petitioner is precluded from claiming a refund/tax credit certificate of the amount of P4,799,367.04 pursuant to the provisions of Section 76, as quoted earlier.[18] Although petitioner amended its 2000 income tax return indicating the option "To be issued a tax credit certificate", it nevertheless actually carried-over its excess tax credits of P4,799,367.04 to the succeeding taxable year 2001 and applied the same against its income tax liability for the period.[19] The amendment made by petitioner in its 2001 income tax return on June 27, 2002 declaring no amount of prior year's excess credits does not change the fact that petitioner originally chose and exercised the option to carry-

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[16] Exhibit I
[17] Exhibit N
[18] SC & C COSMETECH CO., INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE No. 6650, June 6, 2005
[19] Exhibit N

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over the excess tax credits of P4,799,367.04 to the said succeeding taxable year.[20] The amendment of returns allowed by Section 6 of the NIRC of 1997 does not extend to changing a taxpayer's chosen option and actual exercise of such option under Section 76 of the same Code. To allow such amendment would render Section 76 ineffectual.[21]

We shall now proceed to the issue of whether or not petitioner's claimed excess creditable VAT as of December 31, 2000 in the amount of P18,053,715.64 is valid.

In concluding that out of the total claimed excess creditable VAT of P18,053,715.64, only the amount of P9,332,597.99 represents petitioner's valid excess input VAT for the year 2000, the Court commissioned auditing firm, Punongbayan and Araullo, in its report dated September 22, 2003,[22] summarized petitioner's output, input and creditable VAT payments for the years 1999 and 2000 as follows:

II. Net input value-added tax

Output tax, January 1 - December 31, 1999, per Exhibit II			P 34,599,807.17
Less:			
Excess tax credit in 1998		P 657,235.96	
6% VAT withheld, per Exhibit III		18,079,105.75	
Allowable input tax			
Total input VAT, per Exhibit I	P 21,634,405.61		
Less: exceptions noted, per Exhibit V	2,634,949.46	18,999,456.15	37,735,797.86
Excess tax credit			P 3,135,990.69
Output tax, January 1 - December 31, 2000, per Exhibit II			P 20,073,422.63
Less:			
Excess tax credit in 1999		P 3,135,990.69	
6% VAT withheld, per Exhibit III		11,027,758.51	
Allowable input tax			
Total input VAT, per Exhibit I	P 16,942,928.36		
Less: exceptions noted, per Exhibit V	1,700,656.93	15,242,271.43	29,406,020.62
Total net input VAT			P 9,332,597.99

[20] Exhibit M
[21] SUBIC BAY DISTRIBUTION, INC. vs. THE COMMISSIONER OF INTERNAL REVENUE, CTA. CASE NO. 6640, November 3, 2004
[22] Annexed as Exhibit IV of Exhibit A

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Relying on the above CPA findings and respondent's alleged failure to present countervailing evidence to disprove the same, petitioner prays that it be issued a tax credit certificate or refunded for the CPA verified input VAT amount of P9,332,597.99.

Respondent, for his part, argues that petitioner is not entitled to a refund of its alleged excess input VAT for taxable year 2000. Section 110(B) in relation to Section 112 of the NIRC of 1997, clearly mentions that excess input VAT may be refunded at the option of the taxpayer only in cases when the input VAT is attributable to the purchase of capital goods or to a zero-rated sales by a VAT-registered person. Unfortunately, petitioner failed to establish that it falls squarely with any of those instances where excess input VAT may be refunded, hence, petitioner's claim must be denied.

A cursory review of the summary of output/input VAT prepared by Punongbayan and Araullo, shows that petitioner's 6% creditable VAT withheld in the amounts of P18,079,105.75 and P11,027,758.81 for the years 1999 and 2000, respectively, were first fully utilized to pay for petitioner's respective output VAT liabilities of P34,599,807.17 and P20,073,422.63. Consequently, the resulting excess amount of P9,332,597.99 as of December 31, 2000, pertains to the remaining *input* VAT that was not applied against petitioner's output VAT liabilities for 1999 and 2000.

Section 110(B) and Sections 112(A) & (B) of the NIRC of 1997 provide as follows:

> "**SEC. 110.** ***Tax Credits.*** —
>
> xxx xxx xxx
>
> "(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax

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attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

"**SEC. 112. *Refunds or Tax Credits of Input Tax.*** –

"(A) *Zero-rated or Effectively Zero-rated Sales.*-Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx

"(B) *Capital Goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

As correctly pointed out by the respondent, the foregoing provisions allow the refund/tax credit of excess input VAT only in two instances, namely: a) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and b) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person. Inasmuch as petitioner failed to show that the CPA verified excess input VAT of P9,332,597.99 was attributable either to its zero-rated sales or to capital goods purchases for taxable year 2000, the same cannot be the proper subject of a claim for refund/tax credit under Section 110(B), in relation to Sections 112(A) and (B) of the NIRC of 1997.

However, as can be seen in its Quarterly Value-Added Tax Returns for 2000, petitioner's input VAT payments were applied first against the reported output VAT liabilities. Accordingly, at the end of the fourth quarter of 2000, the remaining amount of

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P9,332,598.00 represents petitioner's excess 6% creditable VAT withheld instead of input VAT, as shown below:

II. Net input value-added tax

Output tax, January 1 - December 31, 1999, per Exhibit II			P 34,599,807.17
Less:			
Excess tax credit in 1998		P 657,235.96	
Allowable input tax			
Total input VAT, per Exhibit I	P 21,634,405.61		
Less: exceptions noted, per Exhibit V	2,634,949.46	18,999,456.15	
6% VAT withheld, per Exhibit III		18,079,105.75	37,735,797.86
Excess Creditable VAT Withheld			P 3,135,990.69
Output tax, January 1 - December 31, 2000, per Exhibit II			P 20,073,422.63
Less:			
Excess tax credit in 1999		P 3,135,990.69	
Allowable input tax			
Total input VAT, per Exhibit I	P 16,942,928.36		
Less: exceptions noted, per Exhibit V	1,700,656.93	15,242,271.43	
6% VAT withheld, per Exhibit III		11,027,758.51	29,406,020.63
Excess Creditable VAT Withheld			P 9,332,598.00

The legal basis of the withholding of the creditable VAT is Section 114(C) of the NIRC of 1997, to wit:

> "**SEC. 114. *Return and Payment of Value-Added Tax.* –**
>
> xxx xxx xxx
>
> (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 each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 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

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this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

"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 108 of the NIRC of 1997, provides:

"**SEC. 108.** ***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.

"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"

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 government agencies from income payments made 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.

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Records reveal that the creditable VAT of P18,079,105.75 and P11,027,758.51 withheld by various government agencies from income payments made to petitioner for the years 1999 and 2000 are duly supported by Certificates of Creditable Tax Withheld at Source.[23] Also, it was established that the gross receipts corresponding to the creditable VAT withheld were declared by petitioner in its quarterly VAT returns for the said periods.[24] Therefore, petitioner can validly apply/utilize the creditable VAT withheld of P18,079,105.75 and P11,027,758.51 against its output VAT liabilities for 1999 and 2000, respectively.

As earlier mentioned, petitioner was unable to fully utilize the creditable VAT withheld of P18,079,105.75 and P11,027,758.51 in the years 1999 and 2000, respectively, because petitioner had input VAT payments in the amounts of P18,999,456.15 and P15,242,271.43 against which the output VAT liabilities of P34,599,807.17 and P20,073,422.63 for the years 1999 and 2000, respectively, maybe offset. Since petitioner had no more output VAT liability against which the creditable VAT withheld of P9,332,598.00 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. To quote:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes***. — The Commissioner may —
>
> "(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

[23] Exhibits F-001 to F-012; G-001 to G-007
[24] Annexed as Exhibit II of Exhibit A

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> 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.
>
> "**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.

From the foregoing, in order that petitioner's claim deserves merit, it must be shown that: a) the claim was filed within the two-year prescriptive period; and b) the claim was not utilized or carried over to the succeeding quarters.

Anent the two-year prescriptive period, records show that the claimed excess creditable VAT withheld covers the second, third and fourth quarters of 2000. Counting from July 24, 2000,[25] the date when petitioner filed its VAT return for the second quarter of 2000 (the earliest quarter covered by the instant claim), both the original and amended administrative claims filed on May 10, 2001 and October 26, 2001, respectively, as well as the Petition for Review filed on July 1, 2002 were timely filed within the two-year prescriptive period.

[25] Annex D-4 of the Petition for Review

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However, as to the issue of whether or not the claimed amount of P9,332,598.00 was utilized or carried over to the succeeding quarters, records reveal that petitioner did not submit its VAT returns for the succeeding quarters of 2001 in order for this Court to verify with certainty that the claimed amount of P9,332,598.00 was not utilized or carried over to the said quarters. It must be emphasized that the amount of P9,332,598.00 formed part of the excess creditable VAT of P18,053,715.64 as of the end of the fourth quarter of 2000 which was to be carried-over to the succeeding first quarter of 2001. Without convincing proof that the claimed amount of P9,332,598.00 was not applied against any output VAT liability in the succeeding quarters of 2001, this Court cannot grant petitioner's claim.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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.

ERNESTO D. ACOSTA
Presiding Justice

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