REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NISSAN MOTOR PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5545

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: FEB 12 1999

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DECISION

This case involves a claim for refund of alleged overpaid corporate income tax in the amount of Four Hundred Twenty Eight Thousand Six hundred Five Pesos (P428,605.00) resulting from an excess payment of creditable withholding taxes for fiscal year ended March 31, 1995.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address located at 222 E. Rodriquez Sr. Blvd. Quezon City. It is principally engaged in the business of assembly and sale of NISSAN Motor vehicles and spare parts.

On July 17, 1995, Petitioner filed its Corporate Annual income tax return for fiscal year ended March 31, 1995 under which it paid its corporate income tax liability in the amount of P12,767,371 (Exhibit A). In said return, Petitioner declared as part of its gross income the payments made by its various dealers.

On April 15, 1997, Masco Auto Sales, Inc., one of the dealers of the petitioner, allegedly amended two(2)

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of its Certificate of Creditable tax withheld at source (BIR Form 1743-750) previously issued to Petitioner, reflecting the folowing amounts:

PERIOD COVERED	ORIGINAL AMT. OF TAX WITHHELD	AMENDED AMT. OF TAX WITHHELD
(January) October to December 1994	₱157,129.88 (Exh. B-4)	₱295,453.88 (Exh. D)
January to March 1995	221,683.85 (Exh. B-5)	511,982.85 (Exh. E)

Thus, the petitioner's claim for refund of alleged overpayment of income tax for Fiscal year ended March 31, 1995 is computed as follows:

. INCOME TAX ON TAXABLE INCOME per original ITR (Exh. A)		₱37,886,433.00
LESS:	Quarterly tax payments	16,162,666.00
	Creditable tax withheld per original ITR	8,956,396.00
	. Additional creditable withholding tax credit as per amended certificate	428,605.00
. "should be" income payable		12,338,736.00
. Income tax paid		12,767,371.00
. Erroneous payment		₱ 428,605.00

(Petitioner's memorandum, CTA records p. 185)

The inability of petitioner to take up or report the additional withholding tax credit in the amount of ₱428,605.00 in its income tax return for fiscal year ended March 31, 1995 was due to the belated issuance of Masuo of the amended Certificate of Withholding tax which was issued only on April 15, 1997. On that same day,

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petitioner filed an amended annual income tax return for fiscal year ended March 31, 1995 to reflect the correct amount of withholding tax credits.

On June 20, 1997, Petitioner filed with the Bureau of Internal Revenue, a letter-claim for refund (Exh. H) in the amount of ₱428,605.00 as overpaid income tax for fiscal year ended March 31, 1995 in accordance with section 204(3) in relation to Sec. 230 of the 1995 Tax Code.

Since respondent has neither granted nor acted upon the claim for refund, petitioner was left with no recourse but to file the instant petition for Review on July 14, 1997 in order to toll the running of the 2 year prescriptive period allowed under Sec. 230 of the Tax Code, as amended.

On September 16, 1997 respondent filed his answer and denied the allegations of the petitioner. Upon these facts, respondent advanced the following special and affirmative defenses, to wit:

1) That petitioner's claim for refund is pending administrative investigation.

2) claims for refund are construed in strictissimi juris against the taxpayer (Rogan vs. CIR 30 SCRA 968; Asturias Sugar Central Inc. vs. CIR 29 SCRA 617)

3) taxes paid and collected are presumed to have been made in accordance with laws and regulations.

4. It is incumbent upon the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action.

In order to support its entitlement to the refund petitioner presented the following documents:

Exhibit	Description
A, C	Corporate Annual Income Tax Return and Audited financial statement for fiscal year ended March 31, 1995 and for Calendar Year Ended December 31, 1995
B-1 to B-25	Certificates of Creditable Income tax withheld at source issued by petitioner's various dealers
F, G	Amended Corporate Annual Income Tax Return for FY ended March 31, 1995 and for CY ended December 31, 1995
D, E	Masco Auto Sales Inc's Amended Certificate of creditable income tax Withheld for the period October to December 1994 and for the period January to March 1995
H	Letter-claim for refund dated June 11, 1997
I	Schedule of Creditable Withholding tax for FY ended March 1995 of Nissan Motors
J, M	Annual Information Return of Income Tax Withheld on Compensation, EWT and FWT for the year 1994 of Nissan Auto Parts Mfg. Corp. and Sta. Cruz Island Corp.
J-1, N	Schedule of EWT for the year 1994 of Nissan Auto Parts Mfg. Corp. and of Sta. Cruz Island Corp.
K	Certificate of Creditable Withholding tax withheld at source for the period January to March 1994 of Nissan Auto Parts Mfg. Corp.

L Schedule of Certificate of Creditable Tax from Nissan Auto Parts Mfg. Corp. for the year 1994.

The aforementioned documents were all admitted by this Court in a Resolution dated April 17, 1998 (CTA rec. p. 162)

On the other hand, respondent's counsel submitted his case for decision without presentation of any evidence (see minutes of the session, June 25, 1998, CTA rec. p. 168)

Both parties submitted their respective memoranda.

This Court is now confronted with the following issues:

1) whether or not petitioner is legally entitled to the refund sought in the amount of ₱428,605.00; and

2) whether or not petitioner has fully substantiated with proper evidence, its claim for refund.

Anent the first issue, petitioner cites as legal bases Sections 204 and 203 of the 1995 Tax Code, as amended, the pertinent portions of which are quoted hereunder:

> Sec. 204. Authority of the Commissioner to compromise, abate and refund/credit taxes. The Commissioner may x x x
>
> (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamp 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 or claim for credit or refund within 2 years after the payment of the tax or penalty
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> Sec. 230. Recovery of tax erroneously or illegally collected. No suit or proceeding shall be maintained in any Court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive as 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 begun after the expiration of two years from date of payment of the tax or penalty regardless of any supervening cause that may arise after payment x x x x.

The above provisions of law settles the Petitioner's legal entitlement to the refund of an excess income tax payment. Thus, apropos to the issue of prescription, the claim for refund was seasonably filed within the two(2) year prescriptive period provided by law. As resolved by the Supreme Court in the case of CIR vs. TMX Sales, Inc. et al. (GR No. 83736, January 15, 1992), the two(2) year prescriptive period within which to claim a refund commences to run at the earliest, on the date of the filing of the adjusted final tax return or Annual tax Return and the final payment of the income tax. Records show that petitioner filed its Corporate Annual Income tax Return for the Fiscal year ending March 31, 1995 on July 17, 1995 (Exh. A-I). The letter-claim for refund was filed on June 20, 1997 (Exh. H-I) and the instant petition on July 14, 1997, all of which show that the claim for refund was made within the two(2) year period prescribed by law.

We now delve on the second issue which is the factual aspect of the case.

Petitioner substantiated its claim by presenting various evidence to further bolster its contention that it is indeed entitled to the refund. Although the focus of the instant petition is the correctness of the amended certificates that would determine the tenacity of the claim for refund, petitioner likewise played it safe by submitting various documents, such as:

> 1. The income tax return (both the original and the amended) showing that the income payment it received was declared as part of the gross income (pursuant to Sec. 10, Revenue Reg. No. 6-85)
>
> 2. BIR Form 1743.1 duly issued by the payor (withholding agent) to the payee, showing the amount of income paid

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> and the amount of the tax withheld therefrom (ibid.)
>
> 3. Evidence showing that it seasonably filed its claim for refund within the two(2) year period prescribed under Sec. 230 of the Tax Code.

Petitioner's compliance with the basic requirements for the refund of overpaid creditable withholding taxes is clearly indicative of its meritorious claim of the refund sought for.

On the issue of whether the amended certificates of creditable withholding taxes could be a sufficient basis for refund of the overpaid income tax due, we answer in the affirmative.

After a careful examination of the evidence presented, we are convinced that the said claim for refund was satisfactorily proven by Petitioner.

Respondent, in his memorandum, questions the correctness of the certificates of Creditable Withholding Tax (CWT) issued by MASCO specifically the inconsistencies of the periods and dates of payment contained therein. This fact could be explained by the change of Petitioner's accounting period. Records show that Petitioner changed its accounting period from fiscal year to calendar year as evidenced by two annual income tax returns submitted (Exh. A and C). Thus, the entry in the amended certificate of creditable withholding tax

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issued by MASCO is more reliable. The amended certificates of Creditable Withholding Tax (Exhibits D and E) reflect the true tax withheld and it merely corrected the errors contained in the original certificates of Creditable Withhoding Tax. (Exhibits B-4 and B-5)

Furthermore, judging from the records of the case, it does not appear that the respondent offered any evidence controverting the correctness of the certificates. Thus, as held by this Court in the case of Ateneo de Manila University vs. CIR, CTA Case No. 3213 dated July 28, 1989:

> "No controverting evidence was presented by respondent. Neither was any evidence disputing petitioner's entitlement to its claim for refund was pesented by respondent and this case having been submitted for decision x x x respondent may be considered to have no serious objection as opposition to petitioner's entitlement to the refund. The circumstances obtaining x x x compels Us therefore to sustain x x x the petitioner's right to the refund x x x based on the evidence and pleadings."

Absent any evidence pointing out to the falsity and superfluity of the amended certificates, and considering the fact that MASCO's accounting Manager verified the correctness of the said certificates under pain of

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perjury, this Court gives credence to the amended certificates of Creditable Withholding Tax.

Accordingly, as all the required documentary evidence were completely submitted, and its factual concents verified, this Court upholds the veracity of the amended certificates and likewise grants the refund of the overpaid income tax sought for.

WHEREFORE, in view of the foregoing, petitioner **NISSAN MOTOR PHILIPPINES, INC.**, is entitled to the refund of overpaid creditable withholding tax for fiscal year ended March 31, 1995, computed as follows:

NET INCOME (Exh. F-2)		₱108,246,952.00
TAX DUE (108,246,952 x 35%)		37,886,433.00
Less:		
1) Quarterly payments	₱28,930,037.00	
2) Creditable tax withheld (Exh. B-1 to B-3, B-6 to B-25, D and E)	9,385,001.00	38,315,038.00
AMOUNT REFUNDABLE		₱ 428,605.00

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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