REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HAVI FOOD SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5745

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 08 2001

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to P9,169,692.24, allegedly representing unutilized creditable withholding tax for the calendar year ended December 31, 1996.

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of cold and warm storage of perishable goods with office address located at Sumulong Highway, Marikina, Metro Manila (Joint Stipulation of Facts and Issues, p. 54, CTA records).

On March 26, 1997, Petitioner filed its Corporate Annual Income Tax Return for the year 1996 showing a net refundable income tax of P15,785,198.00 (Exh. B). However, said return was subsequently amended on December 9, 1998, this time reflecting a refundable amount of P9,169,692.00 after excluding its prior year's excess credit of P6,615,506.00 (Exh. C), detailed as follows:

Gross Income		P79,670,280.00
Less: Deductions		(80,178,747.00)
Net Loss		508,467.00
Tax Due		- nil -
Less: Tax Credits/Payments		
Prior Year's Excess Credit	---	
Quarterly Payments/Credits Made This Year	9,169,692.00	9,169,692.00
Tax Payable (Refundable)		**(P9,169,692.00)**

Petitioner opted to have the said amount refunded as indicated in its 1996 Income Tax Returns, both original and amended. Thus, on May 26, 1997, Petitioner filed with Revenue District No. 45, Marikina, Metro Manila of the Bureau of Internal Revenue a letter-claim for the refund of the amount of P9,169,692.24 (Exh. F). Petitioner anchored its claim on Sections 69, 204 and 230 of the Tax Code, to state:

> "**Sec. 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> (a) Pay the tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount

shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

"**Section 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:

x x x x x x x x x

(3) 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 years after the payment of the tax or penalty."

"**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 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 begun 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."

As there was no immediate action on the part of herein Respondent, the instant Petition was filed on March 19, 1999.

Respondent, in his Answer filed on April 28, 1999, raised the following Special and Affirmative Defenses:

> "4. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 5. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

In their Joint Stipulation of Facts and Issues dated June 8, 1999, the parties submitted the following issues for this Court's resolution:

"1. Whether or not Petitioner has excess or unutilized creditable withholding taxes as of December 31, 1996 arising from various income from rentals, services, contractor's fees and from payments made by top 5,000 corporations to local suppliers of goods which is a proper object of a claim for refund pursuant to Section 69 (now Section 76) of the National Internal Revenue Code, as amended;

2. Whether or not the said creditable withholding taxes of Petitioner for the year ended December 31, 1996 are substantiated by documentary evidence;

3. Whether or not said excess/unutilized creditable withholding taxes as of December 31, 1996 were applied as tax credit against Petitioner's tax liability for the succeeding taxable year/s; and

4. Whether or not the Petitioner is entitled to the refund of P9,169,692.00 representing excess unutilized creditable withholding taxes for calendar year ended December 31, 1996."

However, since the foregoing issues are interrelated, the same shall be discussed jointly.

Petitioner, to support its case, offered the following in evidence:

Exhibits	Nature and Description
A	Certified Machine Copy of the Certificate of Filing of Amended Articles of Incorporation of Havi Food Services Philippines, Inc., issued by the Securities and Exchange Commission (SEC) on September 7, 1995
B	Corporation/Partnership Annual Income Tax Return of Havi Food Services Philippines, Inc. for calendar year ended December 31, 1996
C	Amended Corporation/Partnership Annual Income Tax Return of Havi Food Services Philippines, Inc. for calendar year ended December 31, 1996
D	Corporation/Partnership Annual Income Tax Return of Havi Food Services Philippines, Inc. for calendar year ended December 31, 1997
E	Amended Corporation/Partnership Annual Income Tax Return of Havi Food Services Philippines, Inc. for calendar year ended December 31, 1997
F	Letter Claim for refund of overpaid/unutilized creditable withholding tax for calendar year ended December 31, 1996 addressed to Revenue District Officer Oscar L. Sevilla of BIR Revenue District Office No. 45
G to HH	Certificates of Creditable Tax Withheld at Source during the year 1996
B-6	Audited Financial Statements of Havi Food Services Philippines, Inc. for calendar year ended December 31, 1996, attached to the Corporation/Partnership Annual Income Tax Return of Havi Food Services Philippines, Inc., for calendar year ended December 31, 1996

II	Certified Machine Copy of the Certificate of Filing of Amended Articles of Incorporation of Havi Food Services Philippines, Inc. with the Amended Articles of Incorporation of Havi Food Services Philippines, Inc. issued by the Securities and Exchange Commission (SEC)
JJ	Schedule of Certificates of Creditable Taxes Withheld of Havi Food Services Philippines, Inc., for calendar year ended December 31, 1996 prepared by Ms. Nora D. Miguel, Finance Director

Respondent, on his part, presented no evidence and submitted the case on the basis of the pleadings and records (p. 125, CTA Records). He also failed to file his Memorandum.

We find for the Petitioner.

To be entitled to a refund of excess creditable withholding taxes, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

2. That the income upon which the taxes were withheld were included in the return of the recipient; and

3. That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance**

Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994].

It is worthy to note that the aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459.**

Petitioner's claim for refund filed with the Bureau of Internal Revenue on May 26, 1997 as well as its Petition for Review filed with this Court on March 19, 1999 are both within the two-year period from the date of the filing of the return on March 26, 1997.

Second, the Original and Amended Income Tax Returns of Petitioner for 1996 (Exhs. B and C) likewise revealed that the income upon which the taxes were withheld was included in said return. While the amount of income reported per Petitioner's 1996 income tax return (Schedules 1, 2 and 3 of Section C) was higher than the amount of the total income payments per Certificates of Creditable Tax Withheld at Source, the discrepancy was explained by Petitioner to have resulted from the fact that not all income payors are liable to withhold taxes from their income payments in accordance with Revenue Memorandum Circular No. 28-94 in relation with Revenue Regulations No. 6-85, as amended, for they do not belong to the top 5,000 corporations.

And third, the fact of withholding was also established by Petitioner's submission of the various Certificates of Creditable Income Tax Withheld at Source.

Moreover, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for 1996 which it was not able to apply against any tax liability for the said year as it ended up in a net loss position, its 1997 Income Tax Return was submitted by Petitioner to prove that during that year, Petitioner did not utilize the amount sought to be refunded.

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P9,169,692.24 representing unutilized creditable withholding tax for the calendar year ended December 31, 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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