REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UNIVATION MOTOR PHILIPPINES, INC. (FORMERLY, NISSAN MOTOR PHILIPPINES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9027

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 31 2018 4:08 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 22 September 2017)**, filed on October 10, 2017, with petitioner's **Comment (Re: Motion for Partial Reconsideration dated October 10, 2017)**, filed on November 24, 2017.

Respondent moves for the reconsideration of the Decision promulgated on September 22, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO**

> **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱7,091,999.52** in favor of petitioner, representing the latter's excess and unutilized CWT for taxable year 2012.
>
> **SO ORDERED.**"

Respondent contends that the Court erred in ruling that petitioner is entitled to refund of unutilized excess Creditable Withholding Tax (CWT) for taxable year 2012 in the reduced amount of ₱7,091,999.52 despite no evidence of actual remittance to the Bureau of Internal Revenue (BIR). On the other hand, petitioner argues that the presentation of Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitute sufficient proof of the existence and validity of a taxpayer's CWT.

The Court agrees with petitioner.

The motion is but a reiteration of the arguments previously set forth in respondent's Memorandum. Nevertheless, it is worthy to emphasize that proof of actual remittance is not a condition for a taxpayer to claim for a refund of unutilized tax credits, as held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[1] which reads:

> "Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.
>
> This court's ruling in Commissioner of Internal Revenue v. Asian Transmission Corporation, citing the Court of Tax Appeals' explanation, is instructive:
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> > . . . **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of** ℊ

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[1] G.R. No. 180290, September 29, 2014.

> **taxes to petitioner**. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents." (*Emphasis supplied*)

Moreover, in the same case, it was ruled that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.

It must be noted that petitioner was able to present the Schedule of Creditable Taxes Withheld and the related Certificates (BIR Form No. 2307) duly issued by its various withholding agents for the calendar year (CY 2012), reflecting CWTs in the total amount of ₱7,281,271.00 with related income payments of ₱696,467,957.31 in order to prove the fact of withholding of the subject CWT. Upon examination of the documents presented, petitioner was able to prove that the income payments of ₱677,555,047.37 (₱696,467,957.31 less ₱18,912,909.94) with corresponding CWT of ₱7,091,999.52 (₱7,281,271.00 less ₱189,271.48) formed part of the gross income declared in its Annual Income Tax Returns (ITRs).

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the National Internal Revenue Code (NIRC) in order to successfully pursue one's claim.[2] Consequently, once the requirements laid down under the NIRC and other pertinent tax laws and regulations have been met, a claimant should be considered successful in discharging its burden of proving its right to refund.

WHEREFORE, premises considered, **Motion for Partial Reconsideration (Re: Decision promulgated 22 September 2017)**, is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[2] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.