Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

First Division

NEC LOGISTICS PHILIPPINES, INC., Petitioner,	CTA Case No. 8533
	Members:
-versus-	**DEL ROSARIO,** ***Chairperson*** **UY,** ***and*** **MINDARO-GRULLA,** ***J.J.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 18 2014 ; 4:10p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by NEC Logistics Philippines, Inc. (NEC) seeking the refund or issuance of a tax credit certificate (TCC) in the amount of Nineteen Million Seven Hundred Eighty Three Thousand Seven Hundred Thirty Nine Pesos and Fifty One Centavos (₱19,783,739.51) allegedly representing petitioner's excess and unutilized creditable withholding taxes as of fiscal year ending March 31, 2010.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and is in the process of dissolution; it is represented herein by SCS Global, a corporation organized and existing under Philippine laws with office address located at 14th floor, 6788 Ayala Avenue, Oledan Square, Legaspi Village, Makati City.[1]

[1] CTA Docket, p. 5.

Respondent is the duly-appointed Commissioner of Internal Revenue (Commissioner). She is vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of her office, including, *inter alia*, the power to decide disputed assessments, cancellation and abatement of tax liabilities, and grant of tax refund or issuance of tax credit certificates, pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (NIRC) and other laws, rules and regulations.[2]

THE FACTS

On October 15, 2009, the Board of Directors of NEC held a meeting wherein, among other things, they adopted a resolution to dissolve the corporation, *viz*:

> "RESOLVED, that the Corporation dissolve its corporate existence by shortening its corporate term to 28 February 2010 pursuant to Section 210 of the Corporation Code of the Philippines and, to that end, Article FOURTH of the Corporation's Articles of Incorporation shall be amended to read as follows:
>
> '**FOURTH**: The term for which the Corporation is to exist shall expire on 28 February 2010.'"

During the same meeting, SCS Global was appointed by NEC's Board of Directors as its trustee for the purpose of liquidation and winding up pursuant to Section 122 of the Corporation Code of the Philippines.

On March 11, 2010, petitioner applied for the cancellation of its registration with the Bureau of Internal Revenue (BIR) and for the issuance of a Tax Clearance Certificate.[3]

On August 20, 2010, NEC filed its Corporate Annual Income Tax Return (ITR) for the fiscal year ending March 31, 2010, wherein it reported that it incurred Total Excess and Unutilized Tax Credit Withheld of ₱28,683,719.00.[4]

On March 4, 2011, NEC, through counsel, filed a written claim for refund of or issuance of a tax credit certificate for the excess/unutilized

[2] CTA Docket, p. 66.
[3] Exhibit "II"
[4] CTA Docket, p. 67.

creditable withholding taxes for the fiscal year ending March 31, 2010, in the aggregate amount of ₱28,683,719.00.[5]

On August 17, 2012, in order to preserve its right and to toll the running of the two-year prescriptive period of its judicial claim, petitioner filed the subject Petition for Review.[6]

On October 9, 2012, respondent filed her Answer, raising the following Special and Affirmative Defenses:

> "4. Revenue Memorandum No. 53-98 dated June 1, 1998, provides for the checklist of documents to be submitted by a taxpayer upon audit of his tax liabilities as well as of the mandatory reporting requirements to be prepared by a revenue officer all of which comprise a complete tax docket.
>
> REVENUE MEMORANDUM ORDER NO. 53-98
>
> SUBJECT : Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket
>
> TO : All Internal Revenue Officers Employees and Others Concerned
>
> I. Background
> It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.
> For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.
>
> II. Objective
> This order is issued to:
> a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and
> b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.
>
> III. List of Requirements per Tax Type
> Income Tax/ Withholding Tax
>
> Annex A
> Income Tax/ Withholding Tax
> A) Requirement from Taxpayer
> 1) Certified Financial Statements, including comparative Profit and Loss Statement, with Statement of Cost of Goods Manufactured and Sold, if applicable
> 2) Proof of claimed tax credit/s, if applicable
> 3) Proof of the claimed "Interest Expense," if applicable

[5] CTA Docket, p. 67.
[6] CTA Docket, pp. 5-6.

4) Proof of claimed Bad Debts/worthlessness of credits, if applicable
5) Reconciliation of "Book Income" and "Taxable Income"
6) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
7) Proof of Exemption under special laws, if applicable
8) Certification of the appropriate regulatory agency as to taxpayer's entitlement to tax incentives, if applicable
9) Xerox copy of used Tax Credits Certificate with annotation of issued TDM at the back, if applicable
10) Proof of payment of deficiency tax, if applicable
a) current year/period
b) previous year/period
11) Reports submitted to applicable regulatory agency that reflects the financial condition and result of operation of the taxpayers e.g., Annual Statement prepared by insurance companies submitted to the Insurance Commission etc., if applicable

5. In order for the Revenue Officer to completely examine and ascertain the veracity of the Annual Tax Return, the above stated documents must be submitted. A complete examination of the Annual Income Tax Return is necessary to determine whether the petitioner is entitled to the refund or credit claimed.

6. Petitioner should further comply with the provisions stated in the Revenue Regulation 6-85 and the requirements enumerated in the case of CIR vs. PERF Realty Corp., G.R. No. 163345 dated July 4, 2008, which states that:

> The CTA, citing Section 10 of Revenue Regulation 6-85 and Citibank, N.A. v. Court of Appeals, determined the requisites for a claim for refund, thus:
>
> 1)That the claim for refund was filed within the two (2) year period as prescribed under Section 230 (now Section 229) of the National Internal Revenue Code;
>
> 2) That the income upon which the taxes were withheld was included in the return of the recipient;
>
> 3) That the fact of the 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.

7. Revenue Regulation 12-94 dated June 27, 1994, amended Revenue Regulation 6-85 which further strengthened the requirement stated in No. 3, before a withholding agent can claim tax refund or credit.

> REVENUE REGULATIONS NO. 12-94
>
> SUBJECT : Amendments to Revenue Regulation No. 6-85, as amended, Otherwise Known as the Expanded Withholding Tax Regulations
>
> TO : All Internal Revenue Officers, Withholding Tax Agents, and Others Concerned
>
> Pursuant to the provisions of Section 245, in relation to Section 50 (b), both of the National Internal Revenue Code, these regulations, amending Sections 1, 2, 4, 6, and 10 of Revenue Regulation No. 6-85, as amended, are hereby promulgated.

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> SECTION 5. Section 10 of the Revenue Regulation No. 6-85 is hereby amended to read as follows:
>
> xxx xxx xxx
>
> Sec. 10. Claim for Tax Credit or Refund
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

8. The income upon which the taxes were withheld at source should be included as part of the income declared in the income tax return of the recipient. Failure to do so is fatal to one's claim for tax refund.

9. The amount of Nineteen Million Seven Hundred Eighty Three Thousand Seven Hundred Thirty Nine Pesos and 51/100 (P19,783,739.51) being claimed by petitioner as excess/unutilized creditable withholding income taxes as of fiscal year ending March 31, 2010 was not sufficiently nor properly documented and proved. It was not shown on the return of the petitioner that the income payment received has been declared as part of the gross income and the fact of withholding was not established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

10. Petitioner failed to prove and support its claim for refund by proper and sufficient documents to show that they are entitled to tax refund or credit. No tax refund or credit shall be granted, unless the taxpayer-claimants' entitlement thereto has been first duly established through a prior audit or verification.

11. Petitioner must show that it has complied with the provisions of Section 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

12. Petitioner must prove that the option to carry over was not exercised as provided in Section 76 of the NIRC of 1997.

13. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

14. Taxes collected are presumed to be in accordance with laws and regulations.

15. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest

> grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.
>
> 16. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[7]

After filing their respective Pre-Trial Briefs,[8] both parties entered into a Joint Stipulation of Facts and Issues,[9] which the Court approved on November 21, 2012.[10] In the same resolution, the Pre-Trial was deemed terminated and the parties were ordered to proceed to trial.

In the meantime on December 20, 2012, a Certificate of No Outstanding Liability was issued by BIR Revenue District No. 57, Biñan, Laguna certifying that as of December 20, 2012, petitioner has no outstanding internal tax liability with the BIR.[11]

During trial, petitioner presented on the witness stand Mr. Glenn Ian D. Villanueva as the Independent Certified Public Accountant of this case, and Ms. Ma. Isabel Lopez, its Assistant Manager for Finance & Administration. Its pieces of documentary evidence were admitted in the Court's Resolution dated July 16, 2013.[12]

On the other hand, respondent presented as her witness Revenue Officer Michelle A. Delos Santos of Revenue District No. 057-Biñan, Laguna. In the Resolution dated January 24, 2014,[13] the Court admitted in evidence the documentary exhibits offered by respondent. Petitioner submitted its Memorandum on December 12, 2013 while respondent submitted her Memorandum on March 31, 2014. On April 7, 2014, this case was submitted for decision.

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[7] CTA Docket, pp. 35-44. *Citations omitted.*
[8] Respondent's Pre-Trial Brief filed on October 25, 2012; Petitioner's Pre-Trial Brief filed on November 5, 2012, CTA Docket, pp. 49-63.
[9] CTA Docket, p. 66.
[10] CTA Docket, p. 70.
[11] Exhibit "L"
[12] CTA Docket, p. 143.
[13] CTA Docket, p. 195.

ISSUES

Based on the Joint Stipulation of Facts and Issues filed by both parties on November 19, 2012,[14] the following issues are submitted for the Court's resolution:

1. Whether or not petitioner is entitled to a tax refund or a tax credit certificate of its excess/unutilized creditable withholding income taxes for fiscal year ending March 31, 2010 in the amount of ₱19,783,739.51.

2. Whether or not petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/paid provided in the NIRC, as amended.

3. Whether or not petitioner has complied with the submission of complete documents in support of its claim for refund.

4. Whether or not the income payment received by petitioner has been declared as part of the gross income.

5. Whether or not the fact of withholding is established by a copy of withholding tax statement issued by the payor to petitioner showing the amount paid and the amount of tax withheld.

RULING OF THE COURT

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, states as follows:

> "**SEC. 76.** ***Final Adjustment Return.*** - Every corporation liable to 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 taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> 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**

[14] CTA Docket, p. 66-68.

> **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 a tax credit certificate shall be allowed therefor."** *(Emphasis added)*

Under the afore-quoted provisions of law, a corporation's excess income tax credit or overpaid income tax in a given year may either be refunded (in the form of cash or tax credit certificates) or carried over and applied against the income tax liabilities of the succeeding taxable years. Once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall then be allowed.

In exercising its option, the corporation is mandated to signify in its Annual Income Tax Return (by marking the option box provided in an appropriate BIR Form) its intention either to carry over the excess credit or to claim a refund; the remedies are in the alternative and the choice of one precludes the other.

In its short-period FY 2010 Annual Income Tax Return[15] filed with the BIR on August 20, 2010,[16] petitioner reflected an income tax overpayment of ₱28,683,719.00 and marked the option "To be issued a Tax Credit Certificate."[17] The overpayment of ₱28,683,719.00 consisted of the unutilized prior year's excess credits in the amount of ₱24,246,032.00 and creditable taxes withheld during the FY 2010 in the amount of ₱4,437,687.00,[18] as shown below:

Minimum Corporate Income Tax	₱ 216,298.00
Less: Prior Year's Excess Credits	24,462,330.00
Balance of Prior Year's Excess Credits	₱ 24,246,032.00
Add: Creditable Taxes Withheld during FY 2010	4,437,687.00
Excess Tax Credits	**₱ 28,683,719.00**

The instant claim of ₱19,783,739.51 covers creditable taxes withheld during FYs 2007, 2008 and 2009, in the amounts of ₱7,674,102.00, ₱3,085,904.51 and ₱4,586,046.00, respectively, which were included in the carry-over amount of ₱24,462,330.00[19] prior year's excess credits and creditable taxes withheld during the FY 2010 in the amount of ₱4,437,687.00, with details as follows:

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[15] Exhibit "F".
[16] JSFI, Facts Admitted, par. 2, CTA Docket, p. 67.
[17] Exhibit "F", line 33.
[18] Exhibit "F", lines 30C and 30D.
[19] Exhibit "F", line 30A. Prior year's excess credits, which originated from years **prior to FY 2010**.

Exhibit	Fiscal Year	Income Tax Due / MCIT	Prior Year's Excess Credits	Balance Due / Refundable	CWT for the Year	Excess CWT End of the Year
"M"	2006	₱ 3,378,109.00	₱ 5,581,873.00	₱ 2,203,764.00	₱ 12,124,643.00	₱ 14,328,407.00
"C"	2007	₱ 2,078,485.00	₱ 14,328,407.00	₱ 12,249,922.00	**₱ 7,674,102.00**	₱ 19,924,024.00
"D"	2008	897,067.82	19,924,024.00	19,026,956.18	**3,085,904.51**	22,112,860.69
"E"	2009	570,178.00	22,112,861.00	21,542,683.00	**4,586,046.00**	26,128,728.00
"F"	2010	216,298.00	24,462,330.00	24,246,032.00[20]	**4,437,687.00**	28,683,719.00[21]
Total Creditable Withholding Taxes for FY 2007 to 2010					**₱ 19,783,739.51**	

Evidently, petitioner actually exercised the option to carry over its prior years' excess credits to the succeeding year 2010. Applying Section 76 above quoted, petitioner can no longer exercise the option to claim a refund of the excess tax credits for FYs 2007, 2008 and 2009 in the respective amounts of ₱7,674,102.00, ₱3,085,904.51 and ₱4,586,046.00, or in the total amount of ₱15,346,052.51. Thus, only the excess tax credits for FY 2010 in the amount of ₱4,437,687.00 may be the proper subject of a claim for the issuance of TCC pursuant to Section 76 of the NIRC of 1997, as amended.

In the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue,*[22] the Supreme Court ruled:

> "Where, however, the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex.*"

Based on the foregoing, in the event of cessation of business, petitioner may nonetheless opt to claim for refund/TCC even if it had previously chosen or exercised the irrevocable option of carry-over since there is no more opportunity for it to utilize such excess credits.

In order to be excluded from the irrevocability rule, however, petitioner must prove that it has indeed permanently ceased its business operations. A corporation is considered dissolved only if it complies with Sections 52 (C) and 235 (e) of the NIRC of 1997, as amended, which state:

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[20] While petitioner reported in its Amended and Originally filed Annual Income Tax Return for fiscal year 2009 a total amount of ₱26,128,728.00 representing its excess CWT as of end of the year, only ₱24,246,032.00 is reported as its prior year's excess credit under its Short-period Income Tax Return for fiscal year 2010.

[21] Out of the total amount of ₱28,683,719.00 representing petitioner's excess CWT as of the year as reported in its Short-period Income Tax Return for fiscal year 2010, petitioner in the subject case for refund claims only the total amount of ₱19,783,739.51

[22] G.R. No. 176290, September 21, 2007.

> "SEC. 52. *Corporation Returns.* —
>
> xxx xxx xxx
>
> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* — Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission; or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
>
> **The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.**" (*Emphasis added*)
>
> "SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.* —
>
> xxx xxx xxx
>
> (e) xxx All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. **Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.**" (*Emphasis added*)

A dissolving corporation must abide by the requirements as stated in the afore-quoted provisions before it could be considered legally dissolved for tax purposes, *viz.*, (1) to secure a Certificate of Tax Clearance from the BIR, and (2) to secure a Certificate of Dissolution from the Securities and Exchange Commissioner (SEC).[23]

While petitioner duly informed the BIR of its intention to cease business operations and permanently close the corporation[24] and was issued a Certificate of No Outstanding Liability[25] by the BIR, there is no indication that petitioner has already been dissolved or has permanently ceased its business operations as petitioner failed to present its SEC-approved

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[23] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, C.T.A. Case No. 8251, February 27, 2014.
[24] Exhibit "II".
[25] Exhibit "L".

amended articles of incorporation and the certificate of dissolution issued by the SEC. Thus, this Court cannot exclude petitioner from the application of the irrevocability rule under Section 76 of the NIRC of 1997, as amended.

More importantly, petitioner's claim for refund covering FYs 2007 to 2009 cannot be granted as the same is already barred by prescription.

As oft-cited in a number of similar cases, in order to be entitled to a claim for refund or issuance of a tax credit certificate of excess/unapplied creditable withholding taxes, petitioner must satisfy the following requirements:

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

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

3. That the income upon which the taxes were withheld were included in the return of the recipient.[26]

As to the first requirement, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide as follows:

> "**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 stamped 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**: *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

[26] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation v. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals*, G.R. No. 96322, December 20, 1991.

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, 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 therefore, 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." *(Emphasis added)*

Following the Supreme Court's ruling in *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al., supra*, the reckoning of the two-year prescriptive period for the filing of a claim for refund of excess income tax paid/withheld commences from the date of filing of the final adjustment return. As stated earlier, the instant claim of ₱19,783,739.51 covers creditable taxes withheld during the FYs 2007 to 2009 in the aggregate amount of ₱15,346,052.51,[27] which originated from years prior to FY 2010 and carried forward to FY 2010 as part of the prior year's excess credits and creditable taxes withheld during the FY 2010 in the amount of ₱4,437,687.00. Reckoned from July 13, 2007, July 14, 2008, September 23, 2009[28] and August 20, 2010[29], the respective dates when petitioner filed its Annual Income Tax Returns for FYs 2007, 2008, 2009 and 2010, petitioner's claim for refund both in the administrative and judicial levels should have been filed on the dates indicated below:

Deadline for Filing the Administrative/Judicial Claims

Exhibit	Fiscal Year	Date of Payment of the Tax	End of two (2) year period	Date of Filing Administrative Claim	Date of Filing Judicial Claim	Creditable Taxes Withheld During the Year
C	2007	07/13/07	07/13/09	03/04/11[30]	08/17/12	₱ 7,674,102.00
D	2008	07/14/08	07/14/10			3,085,904.51
E	2009	09/23/09	09/23/11			4,586,046.00
F	2010	08/20/10	08/20/12			4,437,687.00
Total						**₱ 19,783,739.51**

The above table shows that petitioner's administrative and judicial claims for refund of creditable taxes withheld for the FY 2010 fall within the two-year prescriptive period. With regard, however, to the unutilized prior year's excess credits, although the administrative claim for the FY 2009 is

[27] The sum of ₱7,674,102.00, ₱3,085,904.51 and ₱4,586,046.00.
[28] Date indicated is based on the amended return.
[29] JSFI, Facts Admitted, par. 2, docket, p. 67.
[30] Exhibit "JJ', docket, pp. 131-133; JSFI, Facts Admitted, par. 3, docket, p. 67.

well within the two-year prescriptive period, the administrative claim for the FYs 2007 to 2008 and the judicial claim for the FYs 2007 to 2009 fall beyond the period prescribed by law. In view thereof, and as aforestated, the Court's evaluation will be limited only to the creditable taxes withheld for the FY 2010 in the amount of ₱4,437,687.00.

In compliance with the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source[31] [BIR Form 2307] issued to it by various withholding agents for the FYs 2007 to 2010, which were examined by the Court-commissioned Independent CPA (ICPA), Reyes Tacandong & Co., through its Partner, Mr. Glenn Ian D. Villanueva. In his Report dated March 8, 2013,[32] Mr. Villanueva summarized his findings as follows:

Reference	Nature	Amount
Annex B-1 Page 16	CWTs which are properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2007	₱ 2,521,621.67
Annex C-1 Page 33	CWTs which are properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2008	2,238,815.14
Annex D-1 Page 46	CWTs which are properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2009	2,475,524.01
Annex E-1 Page 56	CWTs which are properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2010	472,271.46
Annex B-2 Page 19	CWTs which are properly supported by certified true copies of Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2007	4,991,114.11
Annex C-2 Page 35	CWTs which are properly supported by certified true copies of Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2008	756,969.46
Annex D-2 Page 48	CWTs which are properly supported by certified true copies of Certificates of Creditable Tax	1,335,479.89

[31] Exhibits "M-1", "N-1", "N-2", "N-3", "N-4", "O-1", "O-2", "O-3", "O-4", "P-1" "P-2", "P-3", "Q-1", "Q-2", "Q-3" and "Q-4".
[32] Exhibit "A", pp. 7-9.

cm

	Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2009	
Annex E-2 Page 59	CWTs which are properly supported by certified true copies of Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2010	3,278,470.84
Total CWTs which are properly supported by either original or certified true copies of Creditable Tax Withheld at Source		**₱ 18,070,266.58**
Exceptions:		
Reference	**Nature**	**Amount**
Annex B-3 Page 24	CWTs for the FY 2007 not supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2007	₱ 114,480.73
Annex C-3 Page 38	CWTs for the FY 2008 not supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2008	74,065.70
Annex D-3 Page 50	CWTs for the FY 2009 not supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2009	285,547.67
Annex E-3 Page 62	CWTs for the FY 2010 not supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2010	86,210.68
Annex B-4 Page 25	CWTs for the FY 2007 supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2007	1,886.00
Annex C-4 Page 39	CWTs for the FY 2008 supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2008	8,538.83
Annex E-4 Page 63	CWTs for the FY 2010 supported by photocopied Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307)	5,658.79
Annex B-5 Page 26	Overclaimed CWTs in the FY 2007	45,000.00
Annex D-4 Page 51	Overclaimed CWTs in the FY 2009	0.11
Annex E-5 Page 64	Overclaimed CWTs in the FY 2010	0.07
Annex NS-08	CWTs for the FY 2008 which are not supported	7,515.39

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Page 40	by any document	
Annex NS-09 *Page 52*	CWTs for the FY 2009 which are not supported by any document	489,495.62
	CWTs for the FY 2010 which are not supported by any document	595,073.33
	Unaccounted difference from FY 2007	0.01
Total		**₱ 1,713,472.93**
Total		**₱ 19,783,739.51**

Based on the above table, the remaining claim for FY 2010 in the amount of ₱4,437,687.00[33] is summarized as follows:

Reference	**Nature**	**Amount**
Annex E-1 *Page 56*	CWTs which are properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2010	₱ 472,271.46
Annex E-2 *Page 59*	CWTs which are properly supported by certified true copies of Certificates of Creditable Tax Withheld at Source issued in the name of the Company with payor's signature and dated within the FY 2010	3,278,470.84
Total		**₱ 3,750,742.30**
Exceptions:		
Annex E-3 *Page 62*	CWTs for the FY 2010 not supported by original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) issued in the name of the Company but not dated within the FY 2010	₱ 86,210.68
Annex E-4 *Page 63*	CWTs for the FY 2010 supported by photocopied Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307)	5,658.79
Annex E-5 *Page 64*	Overclaimed CWTs in the FY 2010	0.07
	CWTs for the FY 2010 which are not supported by any document	595,073.33
Total		**₱ 686,942.87**
GRAND TOTAL		**₱ 4,437,685.17**

The Court finds that while the CWT of ₱686,942.87 under the caption "Exceptions" must be disallowed for the reasons stated therein, petitioner was able to substantiate by proper withholding tax certificates the creditable withholding taxes in the amount of ₱3,750,742.30 for fiscal year 2010.

[33] There is a minor difference of ₱1.83 (₱4,437,687.00 less ₱4,437,685.17).

This brings us to the third requirement of whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its income tax returns.

A perusal of the records shows that the revenues per audited financial statements[34] and general ledger summary[35] for FY 2010 tallied with the total revenues reported in the short-period Annual Income Tax Return for FY 2010.[36]

To account for the income related to the claimed CWT for FY 2010, the Court-commissioned ICPA compared petitioner's revenues per general ledger with those reflected in petitioner's sales books and found the following:[37]

Revenues per GL	Exhibit "A", Annex I-1	**₱333,023,352.19**
Various GL Adjustments	Exhibit "A", Annex I-3	(2,601,690.59)
Revenues per Sales Books	Exhibit "A", Annex I-2	**₱330,421,661.60**

The ICPA used the revenues per Sales Books[38] amounting to ₱330,421,661.60 for FY 2010 and compared it with the total tax base as reflected in the Certificates of Creditable Taxes Withheld at Source and revealed differences as follows:

Revenues per Sales Books	Exhibit "F"	₱ 330,421,661.60
Revenues per CWT Certificates	Exhibit "A", Annex E-1 to E-4	263,285,992.17
Difference		**₱ 67,135,669.43**

Revenues per sales books are detailed on a per customer basis,[39] to wit:

Customer Name	Revenues per Sales Book	Revenues / Income Payment per CWT Certificates	Difference CWT Certs is (over)/under	CWTs supported by orig CWT certs (Annex E-1)	CWTs supported by certified true copies of CWT certs (Annex E-2)	Total CWTs
JAE Philippines Inc.	₱238,599,081.43	₱ 243,159,128.89	₱ (4,560,047.46)	₱ -	2,708,501.13	₱2,708,501.13
Kodo Co. Ltd.	6,330,918.71	47,569.69	6,283,349.02	2,378.48	-	2,378.48
Laguna Dai-ichi Inc.	13,916,891.71	10,335,631.94	3,581,259.77	196,810.66	176,021.65	372,832.31
NEC Corporation Manila Branch	597,543.85	366,906.78	230,637.07	7,975.64	-	7,975.64
NEC Tokin Electronics Phils Inc.	3,059,660.67	5,836,413.80	(2,776,753.13)	212,697.12	339,173.64	551,870.76

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[34] Exhibit "U", p. 5.
[35] Exhibit "A", Annex I-1, pp. 151-152. Minor difference of ₱0.19.
[36] Exhibit 'F", line 17C, p. 1 and line 43, p. 2.
[37] Exhibit "A", No. 3, pp. 10-11.
[38] Exhibit "A", part 2 of 2, Annex I-2, pp. 153-155.
[39] Exhibit "A", part 2 of 2, Annex I-4, pp. 172-173.

NEC Toppan Circuit Solutions Phils. Inc.	1,238,683.67	1,066,103.74	172,579.93	51,835.96	54,774.42	106,610.38
PHCP Inc.	11,340.00	8,280.00	3,060.00	165.60	-	165.60
Terumo (Philippines) Corporation	20,400.00	19,400.00	1,000.00	408.00	-	408.00
Subtotal	**₱263,774,520.04**	**₱ 260,839,434.84**	**₱ 2,935,085.20**	**₱ 472,271.46**	**₱3,278,470.84**	**₱3,750,742.30**
AAI Freightmovers Worldwide Inc.	₱ 605,387.96	₱ 462,634.33	₱ 142,753.63	-	-	
Celestica Philippines Inc.	1,522,997.66	1,341,380.80	181,616.86	-	-	
Enomoto Phil. Mfg. Inc.	731,904.24	498,563.00	233,341.24	-	-	
Laguna Electronics Phils Inc.	78,890.00	5,610.00	73,280.00	-	-	
Okada Ind. Phils. Corp.	659,074.80	118,019.20	541,055.60	-	-	
Toyota Tsusho Phils. Corp.	55,350.00	20,350.00	35,000.00	-	-	
***OTHERS	62,993,536.90					
Subtotal	**₱ 66,647,141.56**	**₱ 2,446,557.33**	**₱ 1,207,047.33**			
Total	**₱330,421,661.60**	**₱ 263,285,992.17**	**₱ 4,142,132.53**	**₱ 472,271.46**	**₱3,278,470.84**	**₱3,750,742.30**

The above table will show that petitioner's substantiated creditable taxes for FY 2010 of ₱3,750,742.30 were withheld on income payments it received amounting to ₱260,839,434.84. It may be true that petitioner reported a total income per sales books of ₱330,421,661.60, which undeniably was reported in its Annual Income Tax Return for FY 2010. There are discrepancies, however, between the total revenues per sales books and per certificates. The ICPA noted that the differences in cases when revenues per sales books were lower than the income payments per CWT certificates might be due to timing differences between the recording of revenues in petitioner's books of accounts and the period of claim of the CWT certificates.[40] He also noted that the revenues per CWT certificates for which the excess CWTs sought to be claimed for refund/issuance of TCC were lower than the revenue per sales books[41].

To further support its claim, petitioner submitted its FYs 2006 to 2010 Annual Income Tax Returns;[42] FYs 2006 to 2010 Quarterly Income Tax Returns and the related Quarterly Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Tax at Source (SAWT);[43] FYs 2007 to 2010 Audited Financial Statements;[44] FYs 2007 to 2010 General Ledger of Revenue-related accounts;[45] FYs 2007 to 2010 Sales Books;[46] FYs 2007 to 2010 Cash Receipts Journal.[47] Although petitioner's revenues in its sales books in the amount of ₱263,774,520.04 was higher by ₱2,935,085.20 when compared with the income payments of ₱260,839,434.84 reflected in the certificates, it cannot be established that petitioner reported the income related to the claimed creditable withholding taxes of ₱3,750,742.30. Petitioner failed to fully account for the

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[40] Exhibit "A", part 1 of 2, last paragraph of no. 4b, p. 14.
[41] Exhibit "A", part 1 of 2, last paragraph of no. 4a, p. 12.
[42] Exhibits "M", "C", "D", "E" and "F".
[43] Exhibits "M", "G", "H", "I" and "J".
[44] Exhibits "R", "S", "T" and "U".
[45] Exhibits "V", "W", "X" and "Y".
[46] Exhibits "AA", "BB", "CC" and "DD".
[47] Exhibits "EE", "FF", "GG" and "HH".

discrepancies. Moreover, it cannot be determined and verified from the sales books whether the income payments subjected to CWT were recorded therein. Petitioner should have provided the detailed composition of its revenues as reflected in the certificates on a per customer basis and should have shown in what particular part of the sales books the said revenues were recorded. Thus, petitioner's failure to satisfy the third requisite is fatal to its claimed CWT for FY 2010 of ₱3,750,742.30.

Notwithstanding the report of the ICPA, the Court is not bound by his findings. The report submitted by the ICPA is but a tool or guide to aid the Court in the decision of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[48]

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[49] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund[50].

In view of the foregoing, the Court finds that the claim for refund/issuance of TCC for the alleged excess/unutilized creditable withholding tax should be denied.

WHEREFORE, premises considered, the subject Petition for Review filed on August 17, 2012 by NEC Logistics Philippines, Inc. is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[48] *First Lepanto Taisho Insurance Corporation vs. CIR*, CTA EB Case No. 563, March 1, 2011.
[49] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434. October 10, 1997.
[50] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice