REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SYSTRA PHILIPPINES, INCORPORATED,
Petitioner,

C.T.A. CASE NO. 6655

Members:

\- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 03 2005

x -x

DECISION

CASANOVA, C., J.:

Before Us is a Petition for Review under Section 11 of Republic Act No. 9282 seeking a refund or an issuance of a Tax Credit Certificate ("TCC") in the amount of Five Million Three Hundred Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00) due to allegedly excess or unutilized creditable withholding taxes for taxable years 2000 and 2001.[1]

Systra Philippines, Incorporated ("petitioner") is a corporation duly organized and existing under and by virtue the laws of the Republic of the Philippines with office address at Unit 2205-B, 22/F West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City. It is primarily engaged in consultancy and management services for firms and entities engaged in the field of railways, urban and mass transit systems and other areas in transportation and communications and provides planning, development services, systems/project studies, construction, supervision and project engagement, modernization and rehabilitation of networks, training of technical staff and other related services. It is registered with the Bureau of Internal Revenue ("BIR") under Taxpayer Identification No. 004-665-254-000.[2]

On April 16, 2001, petitioner filed with the BIR its Annual Income Tax Return ("ITR") for the taxable year ended December 31, 2000[3] declaring revenues in the amount of Eighteen Million Two Hundred Fifty Two Thousand Seven Hundred Nineteen Pesos (P18,252,719.00) the bulk of which consists of income from management consultancy services rendered to Philippine Branch of Group Systra SA, France. Subjecting said income from consultancy services of petitioner to 5% creditable withholding tax, a total amount of Four Million Seven Hundred Three Thousand Nineteen Pesos (P4,703,019.00) was declared by petitioner as creditable taxes withheld for the taxable year 2000.

For the same period, petitioner reflected a total gross income of Three Million Seven Hundred Fifty Two Thousand One Hundred Twenty Nine Pesos (P3,752,129.00) and a net loss of Seventeen Thousand Nine Hundred Thirty Pesos (P17,930.00) and a minimum corporate income tax ("MCIT") of Seventy Five Thousand Forty Three Pesos (P75,043.00). Said MCIT of P75,043.00 was offset against its total tax credits for the year 2000 amounting to Four Million Seven Hundred Three Thousand Nineteen Pesos (P4,703,019.00) thereby leaving a total unutilized tax credits of Four Million Six

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[1] Rollo, pp. 8-9 & 291
[2] Rollo, p. 90, Joint Stipulation of Facts and Issues
[3] Exhibit H

Hundred Twenty Seven Thousand Nine Hundred Seventy Six Pesos (P4,627,976.00), computed as follows:

Gross Income		P3,752,129.00
Less: Deductions		3,770,059.00
Net loss		P 17,930.00
Minimum Corporate Income Tax Due		P 75,043.00
Less: Tax Credits		
Prior year's excess credits	P -	
Creditable taxes withheld during the year	4,703,019.00	4,703,019.00
Tax Overpayment		P 4,627,976.00

Petitioner opted to carry over the said excess tax credit to the succeeding taxable year 2001. [4]

For the taxable year ended December 31, 2001, petitioner filed with the BIR its Annual ITR on April 12, 2002,[5] reflecting a total gross income of Four Million Seven Hundred Seventy One Thousand Four Hundred Nineteen Pesos (P4,771,419.00) and a total creditable taxes withheld of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00) for consultancy services. It likewise declared a taxable income of One Million Nine Hundred Thirty Six Thousand Eight Hundred Fifty One Pesos (P1,936,851.00) with corresponding normal income tax due in the amount of Six Hundred Nineteen Thousand Seven Hundred Ninety Two Pesos (P619,792.00). After deducting the unexpired excess of the previous years' MCIT [1999 and 2000][6] in the amount of Two Hundred Twenty Two Thousand Four Hundred Seventy Five Pesos (P222,475.00) from the normal income tax due for the period, petitioner's net tax due of Three Hundred Ninety Seven Thousand Three Hundred Seventeen Pesos (P397,317.00) was applied against the accumulated tax credits of Five Million Seven Hundred Thirty Nine Thousand Five Hundred Sixty Three Pesos

[4] Exhibit H-6
[5] Exhibit I

(P5,739,563.00). Said reported tax credits comprised of prior year's excess tax credits in the amount of Four Million Six Hundred Twenty Seven Thousand Nine Hundred Seventy Six Pesos (P4,627,976.00) and creditable taxes withheld during taxable year 2001 in the sum of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00). These excess tax credits were utilized to pay off the income tax still due of Three Hundred Ninety Seven Thousand Three Hundred Seventeen Pesos (P397,317.00) resulting to an overpayment of Five Million Three Hundred Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00), computed as follows:

Gross Income		P 4,771,419.00
Less: Deductions		2,834,568.00
Taxable Income		P 1,936,851.00
Income Tax Due at the Normal Rate of 32%		P 619,792.00
Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate		222,475.00
Income Tax Still Due		P 397,317.00
Less: Tax Credits		
Prior year's excess credits	P 4,627,976.00	
Creditable taxes withheld during the year	1,111,587.00	5,739,563.00
Tax Overpayment		P 5,342,246.00

Petitioner indicated in the 2001 ITR the option "To be issued a Tax Credit Certificate"[7] relative to its tax overpayments.

On August 9, 2002, petitioner instituted a claim for refund or issuance of a tax credit certificate with the BIR for its unutilized creditable withholding taxes in the amount of Five Million Three Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00) as of December 31, 2001.[8]

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[6] Line 23, Part II of Exhibits G & H
[7] Exhibit I-6
[8] Rollo, p. 92 – Joint Stipulation of Facts and Issues

The inaction of the BIR on its claim for refund prompted the petitioner to institute the present Petition for Review before this Court on April 14, 2003.[9]

In the Answer filed on May 6, 2003, the Commissioner of Internal Revenue ("respondent") alleged, *inter-alia,* that the claim for refund is still pending investigation by the BIR; the taxes sought to be refunded were paid in accordance with the law; the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate; and a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority.[10]

On April 11, 2005, the case was submitted for decision sans the memorandum of the respondent.

The parties jointly interposed the following issues for the consideration of the Court:

> *1. Whether or not petitioner's withholding tax credits as of December 31, 2000 in the amount of P4,703,019.00, and as of December 31, 2001 in the amount of P1,111,587.00 are duly substantiated by the necessary statements issued by the withholding agent, showing the amount of tax withheld from petitioner.*
>
> *2. Whether or not the income upon which creditable taxes were withheld by the income payor was included and reported as part of petitioner's revenues in its annual income tax returns for taxable years 1996 to 2001.*
>
> *3. Whether or not the amount of P5,342,246.00 representing unutilized withholding tax credits of petitioner as of December 31, 2001 was unutilized or applied against its income tax liability for the subsequent taxable year.*
>
> *4. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P5,342,246.00 representing unutilized/excess creditable withholding taxes as of December 31,2001.*[11]

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[9] Rollo, p. 1
[10] Rollo, p. 63
[11] Rollo, pp. 92-93, Joint Stipulation of Facts and Issues

The focal point of the controversy hinges on petitioner's entitlement to a refund of unutilized/excess creditable withholding taxes in the amount of Five Million Three Hundred Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00). The issues being intertwined, the same shall be jointly discussed.

Petitioner anchored its claim for refund on Section 76 of the 1997 National Internal Revenue Code (NIRC) which reads:

> *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 the 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. <u>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 a tax credit certificate shall be allowed therefor. (Underscoring Ours for emphasis).</u>*

The law decrees that the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or claimed as a tax credit or carried over and applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. These remedies are to be availed of in the alternative and not cumulatively.

Applying the foregoing in the case at bar, petitioner's total claim for refund in the amount of Five Million Three Hundred Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00) constitutes excess creditable withholding taxes for the year 2000 in the amount of Four Million Two Hundred Thirty Thousand Six Hundred Fifty Nine Pesos (P4,230,659.00) and for the year 2001 in the amount of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00). Based on the evidence on record, petitioner indicated on the face of the 2000 income tax return its option to carry over as tax credit to succeeding taxable quarter/year its excess tax credits.[12] In fact, it actually exercised said option to carry-over and apply the excess credits of taxable year 2000 against the 2001 tax liabilities.[13] Petitioner, through its Deputy Manager, Cristin Collin Carbajal, attested to the company's decision of carrying-over to and applying the excess credits for taxable year 2000 against the tax due for taxable year 2001, to wit:

> *"ATTY. TERRADO:*
> *Your Honors, we would like to manifest that this "x" mark under line 31 to be carried over as tax credit next year has been sub-marked as Exhibit "H-6", for the petitioner.*
> *Q. Ms. Witness, would you recall if the amount was carried over in (sic) the subsequent year 2001?*
>
> *MS. CARBAJAL:*
> *A: Yes, it was carried over.*
>
> *ATTY. TERRADO:*
> *Q: And what document if any can you show that the Creditable Taxes for the year 2000 was carried over to the subsequent taxable year 2001?*
>
> *MS. CARBAJAL:*
> *A: The Corporate Annual Income Tax Return for the year 2001.*
>
> *ATTY. TERRADO:*
> *Q: If I were to show you a copy of such document will you be able to identify it?*

[12] Exhibit H-6
[13] Exhibit I

MS. CARBAJAL
A: Yes."[14]

Section 76 earlier cited is unequivocal. Once the option to carry-over has been made, the same becomes irrevocable and no application for cash refund or issuance of a tax credit shall be allowed for that taxable period.[15] This Court in a resolution dated March 11, 2003, defined the meaning of "taxable period" in the case of United International Pictures AB vs. Commissioner of Internal Revenue:[16]

> *"xxx the phrase 'taxable period should refer to the year 1998 when petitioner incurred the excess income tax payment and at the same time elected the option "[T]o be carried as tax credit next year." To apply the phrase 'taxable period' to the year 1999 when the option was exercised would contradict the provisions of Section 76 of the 1997 Tax Code, supra, because the application of excess credit is clearly 'against income tax due for the taxable quarters of the succeeding taxable years.' Thus, the use of the phrase "succeeding taxable years" implies that once the option to carry over is made, the law already allows a perpetual carry-over since a change from carry-over to refund is no longer permitted. The rational interpretation, therefore, is to apply the phrase 'taxable period' to the year when the 'option to carry-over' was made."*

Thus, petitioner is precluded from claiming for a refund or an issuance of a tax credit certificate on its unutilized tax credits for the taxable year 2000 in the sum of Four Million Two Hundred Thirty Thousand Six Hundred Fifty Nine Pesos (P4,230,659.00). It must be pointed out however that the irrevocability of the option to carry-over will not prejudice the taxpayer since Section 76 of the 1997 NIRC permits the application of the excess tax credit against the estimated income tax liabilities of the

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[14] TSN dated October 6, 2003, pp. 17 -18

[15] Paseo Realty and Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue , 440 SCRA 235 (2004); Comsys Philippines, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6651, April 28, 2005; Permanent Homes, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6441, September 7, 2004; Family Medicare Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6453, June 7, 2004; Australasia Cylinder Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6269, June 16, 2003 and Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003

[16] CTA Case No. 6240, March 11, 2003

succeeding taxable years until the said excess income tax payment is fully utilized.[17]

The claim for refund of petitioner's 2000 excess/unutilized tax credits amounting to P4,230,659.00 having been denied, what is left for determination is the propriety of petitioner's claim of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00) representing excess/unutilized creditable withheld taxes for the year 2001.

A scrutiny of the records reveals that petitioner elected the option "To be issued a Tax Credit Certificate" of its total excess creditable tax withheld in 2001.[18] And petitioner no longer carried over to the succeeding taxable year 2002 said excess tax credits.[19]

We now proceed to the issue on whether or not petitioner complied the substantiation rule with regard to the excess/unutilized tax credits in the amount of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00).

Petitioner's right to claim for a refund is conditioned upon its compliance with the three (3) requirements[20], to wit:

> *(1) That the claim for refund was filed within the two years period under Section 230 of the NIRC;*[21]
> *(2) 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;*[22] *and*
> *(3) That the income upon which the taxes were withheld were included in the return of the recipient.*

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[17] Comsys Philippines, Inc. vs. The Commissioner of Internal Revenue, *supra*; United International Pictures AB vs. Commissioner of Internal Revenue, CTA Case No. 6240, Sept.12, 2002
[18] Exhibit I-6
[19] Exhibit J
[20] Citibank N.A. vs. Court of Appeals & Commissioner of Internal Revenue, 280 SCRA 459
[21] Now Section 229 of the 1997 NIRC
[22] *Section 10 of Revenue Regulations No. 6-85*

Petitioner satisfied the first requirement of filing the administrative and judicial claims for refund within the two (2)-year period.

Sections 204 (C) and 229 of the 1997 NIRC prescribe the period in claiming for a tax refund, *viz*:

> *SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – xxx*
>
> *xxx xxx xxx*
>
> *(C) x x x 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: x x x*
>
> *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 fact of the return upon which payment was made, such payment appears clearly to have been erroneously paid.*

It bears stressing that the two-year period for filing a refund involving corporations commences from the date of the filing of the final adjustment return.[23] The rationale being that it is only at this period when it can be finally ascertained if the

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[23] Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957; ASB Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6445, February 9, 2005

taxpayer has still to pay additional income tax or it is entitled to a refund of overpaid income tax.[24]

In the instant case, petitioner duly filed its administrative claim for refund and Petition for Review on August 9, 2002 and April 14, 2003 before the BIR and this Court, respectively. Counting from April 12, 2002, the date when the final adjustment return for taxable year 2001 was filed, petitioner's claim was instituted within the two-year period allowed by law.

Petitioner complied with the second requirement. This Court, in the case of AB Capital and Investment Corporation vs. Commissioner of Internal Revenue,[25] ruled that the certificates of creditable taxes withheld at source are sufficient proofs of the actual withholding of the income tax provided under Revenue Regulations No. 6-85, as amended. The fact of withholding by Systra Philippine Branch was duly corroborated by various Certificates of Creditable Tax Withheld at source[26] on income payments derived from professional or talent services in the amount of Seventeen Million Nine Hundred Ninety Four Thousand Seven Hundred Seventy Nine Pesos and 10/100 (P17,994,779.10), detailed as follows:

Exhibit	Period Covered	Income Payment	Tax Withheld
O	1/1/01 to 3/31/01	P 4,287,740.20	P 214,387.01
P	4/1/01 to 6/30/01	4,150,887.80	207,544.39
Q	7/1/01 to 9/30/01	5,319,186.80	265,959.34
R	10/1/01 to12/31/01	4,236,964.30	423,696.43
		P17,994,779.10	P 1,111,587.17

Anent the third requirement, petitioner included in its 2001 return the taxable income[27] of Seventeen Million Nine Hundred Ninety Four Thousand Seven Hundred

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[24] ACCRA Investments Corporation vs. Court of Appeals, *supra*; Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003
[25] CTA Case No. 5798, July 5, 2000
[26] Exhibits O, P, Q & R
[27] Exhibit I

Seventy Nine Pesos and 10/100 (P17,994,779.10) with the corresponding taxes withheld for the year in the sum of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00). The amount of Seventeen Million Nine Hundred Ninety Four Thousand Seven Hundred Seventy Nine Pesos (P17,994,779.00) covered by Certificates of Creditable Taxes Withheld at Source for year 2001[28] is the same figure reflected in the tax return specifically indicated in Line 14 thereof denominated as "sales/revenues/receipts/fees".[29]

Evidently, petitioner complied with the substantiation requirements with respect to its claim of excess/unutilized tax credits for the year 2001 in the total amount of P1,111,587.00. However, petitioner's chosen option therefor as indicated in its 2001 income tax return is "To be issued a Tax Credit Certificate". In addition, its claim with the BIR filed on August 9, 2002, was to be issued a tax credit certificate for its excess creditable withholding taxes.[30] Considering so, We grant only petitioner's claim for an issuance of a tax credit certificate.

WHEREFORE, premises considered, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00) representing excess/unutilized creditable withholding taxes for taxable year 2001.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[28] Exhibits O, P, Q and R
[29] Exhibit I
[30] Annex E, Petition for Review

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice