REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MITSUBISHI CORPORATION
TOKYU CONSTRUCTION CO., LTD.,
A.M. ORETA & CO., INC.
AND BF CORPORATION, OPERATING AS
MTOB CONSORTIUM,

Petitioner,

- versus -

C.T.A. CASE NO. 6037

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

NOV 1 1 2002

x - x

DECISION

This case involves a claim for refund in the amount of P104,741,392.58 allegedly representing unutilized creditable withholding value-added tax (VAT, for brevity) for the four quarters of taxable year 1998.

The facts of the case can be briefly stated as follows:

Petitioner MTOB Consortium is an unincorporated consortium composed of Mitsubishi Corporation (MC), Tokyu Construction Co., Ltd. (TCCL), A.M. Oreta & Co., Inc. (AMOC) and BF Corporation (BFC).[1] It was formed for the purpose of undertaking the NAIA Terminal 2 Development Project (*Paragraph 2, The Facts, Joint Stipulation of Facts and Issues, CTA records, page 55*), with principal office at the 14th Floor, Locsin

---

[1] MC and TCCL are resident foreign corporations organized and existing under the laws of Japan with license to do business in the Philippines issued by the Securities and Exchange Commission (*Exhibits "A" and "N"*) while AMOC and BFC are corporations organized and existing under the laws of the Philippines (*Exhibits "B", "C", and "D"*).

328

Building, Ayala Avenue, Makati City. It was duly registered with the Bureau of Internal Revenue (BIR) on December 14, 1995 as a value-added tax taxpayer with Certificate of Registration bearing RDO Control No. 95-047-004734 (*Exhibit F*).

On November 9, 1995, petitioner entered into a contract with the Manila International Airport Authority (MIAA), an agency of the Government of the Republic of the Philippines, for the construction of the NAIA Terminal 2 Development Project, which is funded by the Overseas Economic Cooperation Fund (OECF) (*Paragraph 3, The Facts, Joint Stipulation of Facts and Issues, CTA records, pages 55 and 56; Exhibit K*). Pursuant to Section 114(C) of the 1997 Tax Code, MIAA subjected to 8.5% creditable withholding VAT the payments made to petitioner. Section 114(C) of the 1997 Tax Code is hereby reproduced as follows:

> **SEC. 114**. *Return and Payment of Value-Added Tax.*
>
> (A). *In General*. – xxx.
> (B). *Where to File the Return and Pay the Tax*. – xxx.
> (C). *Withholding of Creditable Value-added Tax*. – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however*, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

329

For the year 1998, petitioner alleged that after applying its total quarterly accumulated input VAT of P236,668,008.00 against its total output VAT liability of P131,926,615.42, it still had an unutilized creditable withholding VAT in the gross amount of P104,741,392.58.

On March 30, 2000, petitioner filed a letter with Revenue District Office No. 47, Revenue Region No. 8 of the Bureau of Internal Revenue, claiming for the refund of the aforesaid unutilized tax based on Section 204 (C) of the 1997 Tax Code Revenue[2] (*Paragraph 8, The Facts, Joint Stipulation of Facts and Issues, CTA records, page 56; Exhibit E*). In its letter, petitioner alleged that since the National Internal Revenue Code does not provide for the indefinite carry-over of the unutilized VAT withheld, unlike the input VAT which can be carried over to the succeeding quarters, the consortium is entitled to a refund/tax credit of the overpaid creditable VAT from the 1st to the 4th quarters of 1998.

On the same day, petitioner instituted the instant petition for review.

This case was submitted for decision on May 20, 2002, sans the evidence and memorandum of the respondent.

The jointly stipulated issues to be resolved by the court are as follows:

> 1. Whether or not the petitioner had any value-added tax liability for the four quarters of taxable year 1998;
>
> 2. Whether or not the amount of P104,741,392.58 was withheld from income payments made to petitioner by the Manila International Airport Authority for services rendered relative to NAIA Terminal 2 Development Project;

---

[2] Petitioner MTOB was authorized to file a claim for refund by virtue of the "Power of Attorney" executed by the member corporations (*Exhibits AAA and BBB*).

330

> 3. Whether or not the petitioner's creditable withholding value-added tax for the four quarters of taxable year 1998, in the amount of P104,741,392.58 was applied against any output value-added tax liability of petitioner in the four quarters of taxable year 1998 and in the succeeding quarters of the succeeding taxable years;
>
> 4. Whether or not the petitioner is entitled to the refund of P104,741,392.58 unutilized creditable withholding VAT for the First, Second, Third and Fourth Quarters of 1998; and
>
> 5. Whether or not MC, TCCL, AMOC, and BFC, as a group and as individual entities are the proper parties to claim for the refund, if any, for the unincorporated consortium, MTOB.

The legal anchor of petitioner in claiming refund of excess withholding of creditable input VAT is Section 229 of the 1997 Tax Code which provides:

> **Section 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 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 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. (Underlining supplied).

To further bolster its entitlement to the refund sought, petitioner cited in its memorandum VAT Review Committee Ruling No. 024-00, dated July 27, 2000, wherein the BIR held that petitioner is not subject to the withholding of 8.5% creditable VAT and that inasmuch as MIAA subjected the payments made to petitioner to the 8.5% creditable

331

withholding VAT, the latter is entitled to refund the excess VAT credits pursuant to Revenue Memorandum Circular No. 42-99. Pertinent portions of said ruling read as follows:

> "It is represented that the MTOB Consortium consists of Tokyu Construction Co., Ltd. (Tokyu), Mitsubishi Corporation (Mitsubishi), BF Corporation (BF) and AM Oreta & Co., Inc. (AMO); that Tokyu and Mitsubishi are corporations duly organized and existing under the laws of Japan and duly licensed to do business in the Philippines, while BF and AMO are both domestic corporations engaged in construction business; that the Consortium won the bid for and was awarded the NAIA Terminal 2 Project which is funded by a Loan from the Overseas Economic Cooperation Fund of Japan (OECF) and which loan is covered by an Exchange of Notes executed by and between the Government of Japan and of the Government of the Republic of the Philippines; that on November 9, 1995, the Consortium and MIAA executed an agreement for the performance of the Project which is 75% funded by the OECF and with 25% counterpart fund in pesos by the Philippine Government.
>
> It is further represented that all payments made by MIAA to the Consortium were subjected to the 10% VAT; that initially, MIAA withheld the 8.5% creditable VAT on all its payments to the Consortium pursuant to Section 114(C) of the Tax Code of 1997 and paid the same to the BIR from the counterpart fund from the Philippine Government; that as a result of the 8.5% VAT withholding, the Consortium generated a substantial amount of unutilized creditable VAT since the 8.5% creditable VAT withholding and its input VAT credits far exceeded the Consortium's output VAT liability; that on June 2, 1999, RMC 42-99 was issued providing for the exemption of Japanese contractors undertaking OECF funded projects from the 8.5% creditable VAT imposed under Section 114(C) of the Tax Code, income tax, and from the 1% withholding tax imposed under Section 2.57.2(E) of Revenue Regulations No. 2-98 implementing Section 57(B) of the Tax Code.
>
> xxx xxx xxx
>
> The fact that the NAIA Terminal 2 Project is being undertaken by a consortium composed of both Japanese and Filipino corporations will not invalidate the tax-free treatment of the loan. Verily, the above-cited first clause of the Exchange of Notes is particularly directed towards the non-utilization of the loan amount in the payment of taxes and is not dependent upon the nationality of the project contractor concerned. Hence, this Office is of the opinion, and so holds, that, MIAA could properly recognize the non-

332

> imposition of the 8.5% VAT withholding from the invoice billing of the MTOB Consortium.
>
> xxx xxx xxx
>
> Finally, since the MIAA initially subjected the payments made to the MTOB Consortium to the 8.5% creditable VAT withholding, the latter is entitled to claim for refund of its excess VAT credits. As clarified under RMC 42-99, if the VAT returns of the Japanese contractors show that there are still excess VAT payments, after applying the 8.5% creditable VAT previously withheld from the VAT due, then such excess VAT payment constitutes taxes erroneously paid and received. Pursuant to Section 204(C) of the Tax Code of 1997, such excess tax payment shall be refunded or credited to the MTOB Consortium, either in cash or Tax Credit Certificate as the case may be, at the option of the claimant subject, however, to the filing of the corresponding claim with the Commissioner or with the Court of Tax Appeals within the two year prescriptive period mandated by law."

We find the above ruling applicable to the case at bar. Indeed, petitioner may validly claim for the refund of excess creditable input VAT withheld. In fact, in **CTA Case No. 5757,** *dated January 15, 2002, with Entry of Judgment dated February 12, 2002* and **CTA Case No. 5649**, *dated May 15, 2000, with Entry of Judgment dated August 1, 2000*, involving the same parties, issues and facts, save for the taxable periods involved, the court had already resolved the issue in favor of petitioner.

The legal issue having been settled, the court is now tasked to resolve the factual aspect of the case.

In order to prove that it has an excess creditable input VAT, petitioner presented, among others, the following relevant documents:

1. The amended quarterly VAT Returns for the years 1998, 1999 and 2000 (*Exhibits G, H, I, J, KK, LL, MM, NN, SS, TT, UU, VV, WW, XX, YY, and ZZ, inclusive of submarkings*);

333

2. The Agreement dated November 9, 1995 between MIAA and MTOB Consortium (*Exhibit K*);

3. Various Certificates of Creditable Tax Withheld at Source (*Exhibits O, Q, S, U, W, Y, AA, CC, EE, GG, and II*);

4. Report of the commissioned independent CPA with respect to the excess input VAT for the year 1998 together with the pre-marked supporting documents (*Exhibits OO to OO-37, OO-5-a, PP-1 to PP-80, and QQ-1 to QQ-12-1*); and

5. The BIR Certificate of Registration (*Exhibits F and F-1*).

In a resolution dated October 12, 2001, the court admitted all of petitioner's exhibits which were formally offered in evidence and after considering the absence of respondent's comment or objection to the said formal offer, implying his lack of objection thereto (*CTA records, pages 304 to 305*).

Reproduced in table form below are the data reflected in the second amended 1998 quarterly VAT returns, to wit:

			Input VAT			
1998	Exh.	Output VAT (A)	Carried over fr. Previous Qtr. (B)	This Quarter (C)	Creditable VAT Withheld (D)	Excess Input VAT [(B)+(C)+(D)]-(A)
1st Qtr.	KK	P 34,143,319.32	P5,166,011.54	P 31,270,653.06	P 30,640,288.00	P 32,933,633.28
2nd Qtr.	LL	121,397,484.13	2,293,345.28	40,378,294.29	105,395,336.00	26,669,491.44
3rd Qtr.	MM	77,034,736.02		28,148,445.63	60,649,131.00	11,762,840.61
4th Qtr.	NN	46,234,309.61		24,585,120.05	39,983,253.00	18,334,063.44
Total		P278,809,849.08	P7,459,356.82	P 124,382,513.03	P 236,668,008.00	P 89,700,028.77

Based on the above chart, petitioner had a total output VAT liability in the amount of P278,809,849.08 for the year 1998 which was offset against the accumulated input VAT for the same year supposedly resulting in excess input VAT credits in the sum of P89,700,028.77. However, according to the commissioned independent CPA in his

334

report dated February 1, 2001 (*Exhibits OO to OO-37 and OO-5-a*) the subsequent amended VAT returns reduced the claim for refund of petitioner to P87,406,683.49 (P89,700,028.77 less P2,293,345.28) only. Consequently, it was the latter amount which became the basis of his examination.

After performing the audit procedures enumerated in his report, the independent CPA noted that not all the input VAT credits on purchases of goods and services for the year 1998 in the amount of P124,382,513.03[3] were supported with valid VAT invoices or official receipts, to wit:

"Based on our review, we present below our findings:

1. The above claim for refund of unutilized creditable withholding VAT are supported by Certificates of Creditable Tax Withheld at Source;

2. The above Certificates of Creditable Tax Withheld at Source are duly issued in the name of the Company;

Findings		Amount of Disallowable Input Taxes
1	Purchase of goods supported by documents other than invoices	P 42,055.79
2	Purchase of services supported by documents other than official receipts (ORs)	644,693.95
3	Purchase of goods supported by invoices with TIN-NV or TIN-NON VAT	233,907.30
4	Purchase of services supported by ORs with TIN-NV or TIN NON VAT	2,040.40
5	Purchase of goods supported by invoices printed after July 31, 1991 With stamped TIN-V or TIN-VAT or VAT	772.72
6	Purchase of services supported by ORs printed after July 31, 1991 with Stamped TIN-V or TIN-VAT or VAT	400,081.58
7	Erroneous computation of Input	

[3]This amount tallies with the amount reflected in petitioner's Summary of Input VAT Claimed examined by the commissioned independent CPA (Exhibits PP-1 to PP-80).

335

	Tax credits	7,043.33
8	Purchase of goods supported by invoices not in the name of the Consortium	18,593.90
9	Purchase of services supported by ORs not in the name of the Consortium	13,090.86
10	Purchase of goods supported by photocopied invoices	590.91
11	Purchase of goods supported by invoices printed after January 31, 1996 With pre-printed TIN-V	11,595.60
12	Purchase of services supported by ORs printed before July 31, 1991 with stamped TIN Number	7,090.00
13	Purchase of goods supported by OR With pre-printed TAN-VAT	46,136.37
14	Purchase of goods without supporting Documents	150,470.46
15	Purchase of services without supporting Documents	1,954,289.05
16	Purchase of goods supported by invoices without BIR permit number and date of printing	6,654.54
17	Purchase of services supported by ORs without BIR permit number and date of printing	9,690.92
18	Purchase of services supported by OR without date of printing	1,289.00
19	Importation of goods supported by photocopied documents and not in the name of the Consortium	846,054.04
20	Importation of goods not supported by proper documents and not in the name of the Consortium	83,562.68
	Total	P **4,479,703.40**

Moreover, we noted that there were purchases of goods and services issued in the name of MTOB which had apparently been marked as to refer to the proper payee. The input tax claimed from these transactions amount to P2,853,879.47."

Upon verification of the above exceptions as against the submitted VAT invoices and official receipts (*Exhibits QQ-1 to QQ-12-1*), the court finds the same to be in order. In addition, it was noted by the court that the amount of P5,166,011.54 representing input

376

VAT carried from previous quarter appearing in the 1998 first quarterly VAT return was not documented and was not included in the examination of the independent CPA. Hence, the same should be disallowed.

With regard to the 8.5% creditable withholding VAT declared in the quarterly VAT returns in the sum of P236,668,008.00, the same were all supported by certificates of withholding, thus:

Name of Withholding Agent	Exhibit	Creditable Input VAT Withholding
MIAA-PMO NAIA Terminal 2 Dev. Project	O	P 14,823,919.00
MIAA-PMO NAIA Terminal 2 Dev. Project	Q	15,816,369.00
MIAA-PMO NAIA Terminal 2 Dev. Project	S	30,519,090.00
MIAA-PMO NAIA Terminal 2 Dev. Project	U	12,547,571.00
MIAA-PMO NAIA Terminal 2 Dev. Project	W	34,459,903.00
MIAA-PMO NAIA Terminal 2 Dev. Project	Y	27,868,772.00
MIAA-PMO NAIA Terminal 2 Dev. Project	AA	25,012,628.00
MIAA-PMO NAIA Terminal 2 Dev. Project	CC	20,855,212.00
MIAA-PMO NAIA Terminal 2 Dev. Project	EE	14,781,291.00
MIAA-PMO NAIA Terminal 2 Dev. Project	GG	19,957,064.00
MIAA-PMO NAIA Terminal 2 Dev. Project	II	20,026,189.00
Total		P 236,668,008.00

It was also ascertained that the claim for refund with the BIR as well as the petition for review with this court were filed within the two-year prescriptive period provided under Section 229 of the 1997 Tax Code in relation with Section 204 of the same Code. The counting of the two-year prescriptive period commenced on April 25, 1998, the considered date of filing of the 1998 first quarterly VAT return. Thus, when petitioner simultaneously filed its claim for refund with the BIR and the petition for review with this court on March 30, 2000, the same were filed within the two-year period. Furthermore, petitioner was able to establish that the amount sought to be refunded was neither utilized in the year 1998 nor carried over to the succeeding taxable years 1999 and 2000 as evidenced by the amended quarterly VAT returns for the same

377

years (*Exhibits G, H, I, J, KK, LL, MM, NN, SS, TT, UU, VV, WW, XX, YY, and ZZ, inclusive of submarkings*).

Finally, records show that petitioner is the real party-in-interest to institute the present claim for refund. The capacity to act of petitioner MTOB Consortium was recognized by both the Manila International Airport Authority and the Bureau of Internal Revenue: the MIAA through its Agreement with MTOB Consortium dated November 9, 1995 for the construction of the NAIA Terminal 2 Development Project (*Exhibits K and RR*) and the BIR, through its issuance of BIR Registration Certificate recognizing MTOB Consortium as the taxpayer and withholding agent (*Exhibit F*) and the VAT Review Committee Ruling No. 024-00, earlier cited (*Exhibit CCC*). Petitioner acquired juridical capacity from the time the member corporations, through the execution of the Special Power of Attorney, established the Joint Venture Agreement (*Exhibit BBB*) for the purpose of carrying out the project awarded by MIAA.

In sum, petitioner is entitled to the claim for refund but in the reduced amount of P74,907,089.08, computed as follows:

Reduced amount of claim for refund based on the second amended VAT returns as noted in the CPA report		P87,406,683.49
Less: Disallowed input VAT		
a. Exceptions noted by commissioned independent CPA		
1. Due to invoicing requirement	P 4,479,703.40	
2. Marked as to refer to the proper payee	2,853,879.47	
b. Further exception by the court (previously carried over from 1st Qtr. 1998)	5,166,011.54	12,499,594.41
Net Amount Refundable		P74,907,089.08

378

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED** to **REFUND** to petitioner the sum of P74,907,089.08 representing unutilized creditable input VAT withholding for the year 1998.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above 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

339