

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

PANAY POWER CORPORATION,
Petitioner,

CTA CASE NO. 7755

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

AUG 26 2010

4:00 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review filed on April 10, 2008 by petitioner under Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, to review by appeal the inaction of respondent over petitioner's administrative claim for tax refund or issuance of tax credit certificate in the amount of P2,593,801.89, allegedly representing petitioner's erroneous double payment of its expanded withholding tax for April 2006.

Panay Power Corporation (Petitioner) is a corporation duly organized and existing under Philippine laws, with principal office address at 10th Floor, *JP*

GT Tower International, 6813 Ayala Avenue corner Dela Costa Street, Makati City.¹

Petitioner is principally engaged in the business of generating power for lighting and power purposes and the wholesale of electric power to the National Power Corporation, private electric utilities and electric cooperatives, and the carrying on of all businesses incident thereto, including but not limited to the sale of the by-products of power generation. It is registered with and authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. Petitioner is likewise duly registered with the Bureau of Internal Revenue (BIR), with Tax Identification No. 004-964-861-000.²

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, who is empowered to perform the duties of said office, including among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On May 10, 2006, petitioner filed its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E for the taxable period of April 2006, which reflected a total expanded withholding tax (EWT) due of P2,593,801.89.³

On May 12, 2006, petitioner tried to remit its expanded withholding tax for April 2006, amounting to P2,593,801.89, through the BIR's Electronic 

¹ Annexes "A" and "C", Petition for Review, docket, pp. 10-30 and 35; par. 2, Joint Stipulation of Facts and Issues, docket, p. 76

² Annexes "A", "B", and "C", Petition for Review, docket, pp. 23 and 31-34; pars. 3, 4, and 5, Joint Stipulation of Facts and Issues, docket, pp. 76-77

³ Exhibit "A"; par. 6, Joint Stipulation of Facts and Issues, docket, p. 77

Filing and Payment System (EFPS), but allegedly, due to system error, petitioner was not able to complete the payment process for that transaction. Petitioner failed to verify the status of the said payment because there was no available online confirmation at that time. On May 15, 2006, petitioner repeated the payment process through EFPS and was able to remit P2,593,801.89, representing EWT payable for the month of April 2006.⁴

Upon learning that it inadvertently paid twice its EWT for the month of April 2006, petitioner filed an administrative claim for refund of the amount of P2,593,801.89, representing the erroneously paid EWT for the month of April 2006, with the BIR Revenue District Office No. 50 on May 11, 2007.⁵

Due to respondent's inaction on the said administrative claim for refund, petitioner filed the instant Petition for Review on April 10, 2008.

Respondent filed his Answer⁶ on May 19, 2008, alleging the following Special and Affirmative Defenses:

- "4. Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
5. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
6. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
7. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 204(C) in relation to Section 229 of the 1997 Tax Code, as amended; *gr*

⁴ Exhibit "I"

⁵ Exhibits "I" and "J"; Annex "I", Petition for Review, docket, pp. 43-45; par. 7, Joint Stipulation of Facts and Issues, docket, p. 77

⁶ Docket, pp. 51-53

8. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);
9. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

During trial, petitioner presented as witnesses Cherry Liez Rafal, who prepared petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) and who filed the same on May 10, 2006 through the BIR's Electronic Filing Payment System; Marienette R. Marcelino, who electronically paid, through the BIR's EFPS, petitioner's expanded withholding tax due in the amount of P2,593,801.89 on May 12 and 15, 2006; and Reymonda Aida B. Obrero, its Senior Accounting Manager.⁷ Thereafter, petitioner formally offered its evidence; while respondent manifested that he is submitting the case for decision based on the pleadings.⁸

On September 17, 2009, this case was submitted for decision, considering petitioner's Memorandum filed on September 10, 2009 and the report of this Court's Judicial Records Division that respondent failed to file his Memorandum.⁹ 

⁷ Transcript of Stenographic Notes of the hearings on September 17, 2008, October 13, 2008, January 19, 2009, and March 18, 2009

⁸ Docket, p. 275

⁹ Docket, p. 292

The following are the parties' jointly stipulated issues¹⁰ submitted for this Court's consideration:

"A.

WHETHER OR NOT PETITIONER HAS ERRONEOUSLY PAID EXPANDED WITHHOLDING TAX FOR THE TAXABLE MONTH ENDING 30 APRIL 2006.

B.

WHETHER OR NOT PETITIONER HAS UTILIZED OR CREDITED TO ITS OTHER WITHHOLDING TAX LIABILITIES ITS ALLEGED ERRONEOUSLY PAID EXPANDED WITHHOLDING TAX FOR THE TAXABLE MONTH ENDING 30 APRIL 2006 IN THE AMOUNT OF PHP2,593,801.89.

C.

WHETHER OR NOT PETITIONER'S RIGHT TO CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF ITS ALLEGED ERRONEOUSLY PAID EXPANDED WITHHOLDING TAX FOR THE TAXABLE MONTH ENDING 30 APRIL 2006 IS DULY SUBSTANTIATED.

D.

WHETHER OR NOT PETITIONER'S RIGHT TO CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF ITS ALLEGED ERRONEOUSLY PAID EXPANDED WITHHOLDING TAX FOR THE TAXABLE MONTH ENDING 30 APRIL 2006 HAS PRESCRIBED.

E.

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AGGREGATE AMOUNT OF PHP 2,593,801.89 REPRESENTING ALLEGED ERRONEOUSLY PAID EXPANDED WITHHOLDING TAX FOR THE TAXABLE MONTH ENDING ON 30 APRIL 2006."

The issues boil down to whether or not petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of P2,593,801.89, *je*

¹⁰ Docket, pp. 77 and 78

arising from the alleged double payment of its expanded withholding tax for April 2006.

Sections 229 and 204(C) of the National Internal Revenue Code (NIRC) of 1997 lay down the requisites for refund of tax erroneously collected, to wit:

"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 proceedings 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

"SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. - The Commissioner may -

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(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 stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (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.** *(Emphasis supplied)* 

Based on the foregoing provisions, petitioner has two (2) years from the date of payment of tax within which to file its claim for tax refund or issuance of tax credit certificate. Here, petitioner made the alleged overpayment on May 15, 2006; filed its administrative claim with respondent on May 11, 2007; and filed its judicial claim on April 10, 2008. Therefore, counting from May 15, 2006, when petitioner made its overpayment, both the administrative and the judicial claims, fell within the two-year prescriptive period.

Petitioner submitted the following documents to prove that it made a double payment of its EWT for April 2006:

1. BIR EFPS Payment Detail Inquiry¹¹ for Payment Transaction No. 1083148, representing payment made on May 12, 2006 and Payment Transaction No. 1085977, representing payment made on May 15, 2006;
2. BIR EFPS Payment Transaction Acknowledgement Receipt¹² and BIR EFPS Payment Confirmation¹³ for Payment Transaction No. 1085977, which further confirmed that petitioner successfully paid its expanded withholding tax payable for the month ended April 30, 2006 in the amount of P2,593,801.89 on May 15, 2006;
3. Inquire Payment Status and Certification from Metropolitan Bank and Trust Co., showing that petitioner's account was debited by an amount of P2,593,801.89 on May 12, 2006 and another P2,593,801.89 on May 15, 2006;¹⁴
4. Certification from BIR Revenue Accounting Division, showing that petitioner remitted twice its payment for expanded withholding tax on May 12 and 15, 2006;¹⁵ and
5. Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E, starting from 

¹¹ Exhibit "B"

¹² Exhibit "C"

¹³ Exhibit "D"

¹⁴ Exhibits "E" and "F"

¹⁵ Exhibit "G"

taxable month May 2006 up to taxable month January 2007, showing that petitioner remitted to respondent its EWT for the succeeding taxable periods.¹⁶

A careful evaluation of these documents reveals that petitioner indeed filed its return and erroneously paid twice on May 12 and 15, 2006, through the BIR EFPS, the amount of P2,593,801.89 as its expanded withholding tax for April 2006.

Moreover, the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E for the succeeding months (May 2006 to January 2007) clearly show that petitioner did not apply the overpaid withholding tax to the succeeding months.

Considering the above premises, petitioner made a double payment of its expanded withholding tax for the month of April 2006 in the amount of P2,593,801.89. Thus, petitioner is entitled to the refund or the issuance of tax credit certificate as claimed in its Petition for Review.

In a number of cases, this Court had occasions to grant tax refund or to issue tax credit certificate in connection with erroneous double payment, such as in the case of *Maersk Filipinas, Inc. vs. Commissioner of Internal Revenue*¹⁷ and in the case of *Hewlett-Packard Philippines Corporation vs. Commissioner of Internal Revenue*¹⁸.

In *Maersk Filipinas, Inc. vs. Commissioner of Internal Revenue*¹⁹, this Court held that:

“(T)hus, pursuant to Section 229 of the NIRC of 1997, in relation to Section 204 (C) of the same Code and Article 2154 of 

¹⁶ Exhibits “K” to “Y”, inclusive of submarkings

¹⁷ CTA Case No. 7073, April 4, 2007

¹⁸ CTA Case No. 7756, August 6, 2009

¹⁹ *Supra*, note no. 17

the New Civil Code which provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises, respondent has the bounden duty to return the erroneously paid withholding taxes made by petitioner.”

In the case of *Hewlett-Packard Philippines Corporation vs. Commissioner of Internal Revenue*²⁰, this Court likewise ruled that:

“Basic is the principle that when money is paid to another under the influence of a mistake of fact, it may be recovered. The Government is not exempt from the scope of *solutio indebiti* principle. There being no doubt that petitioner paid its EWT for March 2006 twice, there arises an obligation on the part of respondent to return what was mistakenly paid by petitioner.”

Consequently, this Court finds petitioner entitled to a refund or issuance of tax credit certificate in the amount of P2,593,801.89, representing overpaid expanded withholding tax for April 2006.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWO MILLION FIVE HUNDRED NINETY-THREE THOUSAND EIGHT HUNDRED ONE PESOS and 89/100 (P2,593,801.89)**, representing overpaid expanded withholding tax for April 2006.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

²⁰ *Supra*, note no. 18

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

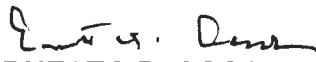
ATTESTATION

I attest 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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.


ERNESTO D. ACOSTA
Presiding Justice