REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY and PRIVATE EXPORT FUNDING CORPORATION,
Petitioners,

-versus - C.T.A. CASE NO. 4411

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

6/24/92

# D E C I S I O N

This is a judicial action involving petitioner's claim for refund or the issuance of the corresponding tax credit certificate in the amount of P6,731,638.63 representing erroneously withheld taxes on interest payments due Private Export Funding Corporation (PEFCO).

The undisputed facts are as follows:

On April 7, 1987 the petitioner, Philippine Long Distance Telephone Company (PLDT), entered into a credit agreement (Exh. "A") with the Private Export Funding Corporation (PEFCO), a corporation organized under the laws of the State of Delaware, United States of America, for the principal amount of US$41,014,860.00 payable in twenty (20) equal, successive semi-annual installments, to finance petitioner's share in the construction of the two fiber-optic submarine cable system connecting the USA, Guam and the Philippines and other related Philippine inland transmission system.

The aforesaid credit agreement is guaranteed by the Export Import Bank of the United States, (EXIMBANK for short), a wholly owned subsidiary of the United States government. The guarantee issued by EXIMBANK subsisted when the credit agreement was assigned by PEFCO to Irving Trust Company as per Notice of Assignment dated February 11, 1988, (Exh. "B-4"). The assignment was approved by the Central Bank of the Philippines in a letter dated April 8, 1988 (Exh. "B-5").

For the period December 7, 1987 to August 10, 1988, petitioner withheld and remitted to the respondent a 20% tax on interest payments to PEFCO and for the period February 18, 1989 to June 13, 1989, a 15% tax on interest payments to Irving Trust Company. The total amount of tax withheld and remitted is P6,731,638.63 broken down as follows (Exh. "B-6"):

| Date | OR NO. | Interest Paid (US $) | Tax Withheld (US $) | Phil. Peso |
|---|---|---|---|---|
| 12-10-87 | B-12955304 | $ 71,660.60 | $ 14,336.12 | P 297,116.09 |
| 8-10-88 | B-5834143 | 476,387.52 | 95,229.50 | 2,201,780.36 |
| 2-10-89 | B-14210350 | 668,413.42 | 100,262.01 | 2,208,980.98 |
| 6-13-89 | B-17039110 | 687,491.87 | 103,123.78 | 2,223,761.20 |
| | | $1,903,973.41 | $312,949.41 | P6,731,628.63 |

In a letter dated November 15, 1989 received by the respondent on November 20, 1989, the petitioner filed a claim for refund or tax credit of the amount of P6,731,638.63 (Exh. "B") representing the withholding taxes on the interest payments erroneously paid and remitted to the respondent during the period from December 1987 to June 1989.

However, respondent failed to act on said claim for refund or issuance of the tax credit certificate. Hence, to protect its right and to forestall the running of the two-year prescriptive period, petitioner instituted the instant petition for review.

The issues presented before the Court for resolution are as follows:

(1) Whether or not petitioner is entitled to the refund pursuant to the provisions of the RP-US Tax Treaty; and

(2) Whether or not PLDT has the personality to institute an action for a tax refund.

On the first issue, petitioner claims that inasmuch as the interest income paid by petitioner to PEFCO and to Irving Trust Company under the loan agreement were to residents of the other contracting state, the USA, and that such loan was guaranteed by the Export-Import Bank of the USA, it falls within the coverage of Section 4, Article 12 of the RP-US Tax Treaty. Thus, such interest income is exempt from any income tax, withholding or otherwise, imposed by the Republic of the Philippines.

On the other hand, respondent argues that neither PLDT nor PEFCO is among those institutions mutually agreed upon by the government of the Philippines and the United States of America which may avail of the tax benefits provided under Section 4, Article 12 of the RP-US Tax Treaty. EXIMBANK's role is only to guarantee the credit agreement between PLDT and PEFCO and is not the beneficiary of the interest paid by petitioner PLDT, citing the case of **Commissioner of Internal Revenue vs. Mitsubishi Metal Corp., 181 SCRA 214.** Accordingly, PEFCO cannot claim the tax privilege granted to EXIMBANK under the RP-US Tax Treaty because this is a purely personal privilege granted to the latter.

For a better understanding of the law involved, we quote hereunder the pertinent provisions of the RP-US Tax Treaty, specifically Section 4, Article 12 thereof:

> "(4) Notwithstanding paragraphs (1), (2), and (3) interest derived by -

> (a) One of the Contracting States, or an instrumentality thereof (including the Central Bank of the Philippines, the Federal Reserve Bank of the United States, the Export-Import Bank of the United States, the Overseas Private Investment Corporation of the United States, and such other institutions of either Contracting State as the competent authorities of both Contracting States may determine by mutual agreement), or
>
> (b) A resident of one of the Contracting States with respect to debt obligations guaranteed or insured by that Contracting State or an instrumentality thereof, shall be exempt from tax by the other Contracting State. xxx" (Underscoring supplied).

A critical analysis of the aforequoted provisions of the tax treaty will show that it exempts from taxation interest derived by one of the Contracting States in two cases, namely:

(1) When the interest is derived by the other contracting state itself or an instrumentality therof which includes among others in the enumeration, the Central Bank of the Philippines, the Federal Reserve Banks of the United States, the Export-Import Bank of the United States; and

(2) When the interest is derived by a resident of one of the contracting states with respect to debt obligations guaranteed or insured by that Contracting State or an instrumentality thereof.

This case involves a Credit Agreement entered into by and among the Philippine Long Distance Telephone Company, as "Borrower", and the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee), as "Guarantor", a resident and an instrumentality of the Philippine government, respectively, on the one hand and the Private Export Funding Corporation (PEFCO), as "Lender" and Export-Import Bank of the United States (EXIMBANK), as "Guarantor", a resident and an instrumentality of the United States government, respectively on the other hand (Exh. "A"). Under the terms of the Credit Agreement, EXIMBANK is prepared to guarantee the repayments of disbursements under the credit plus interest thereon in accordance with a certain Guarantee Agreement dated December 15, 1971 between EXIMBANK and PEFCO. Pursuant to the Utilization Procedures (Article VI) of this Credit Agreement, the borrower may either request from PEFCO a reimbursement or arrange for letters of credit to finance its projects. In both cases, EXIMBANK approves the disbursements of funds before they are actually released. In fact, under subletter D of Article VI, the borrower has to satisfy by evidence or prove to the satisfaction of EXIMBANK the reimbursement before the actual release is made. Even on the matter of suspension and cancellation (Article VII) of the utilization of this credit by the borrower, it is EXIMBANK which has the authority to make the suspenion or cancellation. These facts distinguish the credit agreement in this case from the credit agreement entered into by and between Atlas Consolidated Mining and Development Corporation (Atlas for short) and Mitsubishi Metal Corporation of Japan in the case of Commissioner of Internal Revenue vs. Mitsubishi Metal Corporation, et al., G.R. No. 54908, January 22, 1990, 181 SCRA 214, cited by respondent. In the latter case, a credit agreement was entered into by and between Atlas and Mitsubishi. Another contract of loan was entered into by and between Mitsubishi and EXIMBANK of Japan. As found by the Supreme Court the latter contract is entirely different from the first contract. It is complete in itself, does not appear to be suppletory or collateral to another contract and is, therefore, not to be distorted by other consideration aluinde. In the instant case, as discussed above, there is only one contract involved embodying the rights and obligations of all the parties, including EXIMBANK. The fact that there is another contract between

PEFCO and EXIMBANK does not matter as this guarantee contract is specifically referred to or made as a collateral contract to the credit agreement entered into by and among PLDT, Philguarantee, PEFCO and EXIMBANK which are all signatories to the credit agreement. The situation therefore falls specifically under subletter (b) of the aforequoted provision of the tax treaty which is, interest derived by a resident of the United States with respect to a debt obligation guaranteed or insured by an instrumentality of the United States, such as EXIMBANK.

Anent the second issue of whether or not PLDT has the personality to institute the instant action for refund, suffice it to say that in Commissioner of Internal Revenue vs. Proctor & Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, G.R. No. 66838, Dec. 2, 1991, the Supreme Court already ruled that the withholding agent, being the party liable for the tax, has sufficient legal interest to bring the suit or action for refund. The en banc resolution reversed the previous decision of the Second Division of the same Court on the same case to the effect that Proctor & Gamble (PMC), being a mere withholding agent, had no personality to claim for reimbursement of the alleged overpaid taxes. With the latest ruling of the Supreme Court, the withholding agent of the Bureau of Internal Revenue like the PLDT in this case is a real party in interest which has legal personality to institute a claim for refund considering that, as a withholding agent, it is equally liable for the withholding tax as the principal taxpayer under the National Internal Revenue Code and that pursuant to Article XI(E) of the said Credit Agreement, PLDT specifically agreed (together with Philguarantee) to shoulder any taxes that may be imposed by the Philippine government on PEFCO. In a similar case involving the same parties in CTA Case No. 4375 promulgated on January 7, 1992, we rendered the same opinion.

The fact that petitioner PLDT amended its petition for review in this case to include PEFCO as co-petitioner needs no further elaboration.

**WHEREFORE, judgment is rendered in favor of petitioners. Respondent is hereby ordered to refund or credit the petitioner PLDT the amount of P6,731,638.63 erroneously paid as withholding tax on its interest payments.**

SO ORDERED.

Quezon City, Metro Manila, June 24, 1991.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

## CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals