REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

PMFTC, INC.,
Respondent.

CTA EB No. 1385
(CTA Case No. 8691)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:
JUL 11 2016 3:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

This is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) on December 1, 2015 under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals. The Petition for Review seeks the nullification of the Decision dated July 27, 2015,[2] as well as the Amended Decision dated October 21, 2015[3] of the Third Division (Court in Division)[4] of this Court in CTA Case No. 8691, entitled *PMFTC, Inc. v. Commissioner of Internal Revenue.*

[1] Court *En Banc's* Docket, pp. 6-32.
[2] *Ibid.*, pp. 35-75.
[3] *Id.*, pp. 76-80.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

THE PARTIES

Petitioner is the duly-appointed Commissioner of Internal Revenue with office address at BIR National Office Building, Diliman, Quezon City.[5]

Respondent PMFTC, Inc. (PMFTC) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with offices at Lot 3, Phase 1B, First Philippine Industrial Park, Tanauan City, Batangas; and 27th Floor, Tower One, The Enterprise Center, 6766 Ayala Avenue corner Paseo De Roxas, Makati City.[6]

THE FACTS

On December 13, 2010, PMFTC entered into a Trademark License Agreement (TLA) with Philip Morris Global Brands, Inc. (PMGB), whereby PMFTC was granted the exclusive right to use various trademarks and other intellectual property rights of PMGB within the Philippines.[7] The TLA was duly registered and approved by the Intellectual Property Office (IPO).[8]

Pursuant to the provisions of the TLA, PMFTC paid royalties to PMGB from July 2011 to October 2012 in the total gross amount of ₱2,795,486,568.18.[9]

From August 15, 2011 to November 14, 2012, PMFTC withheld and remitted to CIR income tax in the aggregate amount of ₱838,645,970.45 representing the 30% withholding tax due on royalty payments under the TLA for the period [of] July 2011 to October 2012.[10]

On July 31, 2013, as withholding agent of PMGB, PMFTC filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Service an administrative claim for refund or issuance of a tax credit certificate (TCC) in the total amount of ₱559,097,313.63, corresponding to the excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012.[11]

PMFTC's claim for tax refund is based on Article 13(2)(b)(iii) of the RP-US Tax Treaty, in relation to Article 12(2)(b) of the RP-China and the

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[5] Court *En Banc's* Docket, p. 36.
[6] *Ibid.*
[7] *Id.*, pp. 36-37.
[8] *Id.*
[9] *Id.*, p. 37.
[10] *Id.*
[11] *Id.*

RP-UAE Tax Treaties, which effectively provides a preferential rate of 10% on royalties remitted by a Philippine corporation to residents of the US.[12]

Due to the inaction of CIR on PMFTC's claim, the latter filed a Petition for Review before the Court in Division on August 12, 2013.[13]

The CIR filed her Answer to the Petition for Review on October 11, 2013, interposing the following Special and Affirmative Defenses:[14]

1. The subject matter [of the Petition for Review] is not within the jurisdiction of the Honorable Court;

2. Assuming *ex gratia argumenti* that the Honorable Court has jurisdiction, still the petition must fail for petitioner [PMFTC] has no legal personality to claim for a refund;

3. Moreover, assuming *arguendo* that the Honorable Court acquired jurisdiction, and further assuming that petitioner [PMFTC] has legal personality to pursue this cause of action[,] still the petition must fail for the petitioner [PMFTC] and PMGB slept on its (sic) rights;

4. BIR Rulings have the force and effect of law; and

5. It is incumbent upon petitioner [PMFTC] to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.

PMFTC then filed its Reply to CIR's Answer on October 29, 2013.[15]

On December 4, 2013, the parties filed their Joint Stipulation of Facts and Issues (JSFI), which was adopted by the Court in Division in its Pre-trial Order dated December 16, 2013.[16]

On March 31, 2014, PMFTC filed its Formal Offer of Evidence by registered mail.[17] CIR then filed her Comment (Re: Petitioner's Formal Offer of Evidence) on April 21, 2014 to inform the Court in Division that she has no objection to the admission of PMFTC's exhibits.[18] ge

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[12] *Id.*
[13] *Id.*
[14] *Id.*, pp. 38-61.
[15] *Id.*, p. 61.
[16] *Id.*, p. 62.
[17] *Id.*
[18] *Id.*

In a Resolution dated April 29, 2014, the Court in Division admitted all the exhibits offered by PMFTC.[19]

On June 11, 2014, PMFTC's Memorandum was filed while the CIR's Memorandum was filed on July 7, 2014 *via* registered mail.[20]

In a Resolution dated July 31, 2014, the case was submitted for decision.[21]

On July 27, 2015, the Court in Division promulgated a Decision partially granting PMFTC's Petition. The Court in Division ordered CIR to refund or to issue a TCC in favor of PMFTC in the reduced amount of ₱490,422,017.77, representing excess final withholding taxes on royalty payments to PMGB from July 2011 to October 2012.

On August 13, 2015, PMFTC filed its Motion for Partial Reconsideration (of the Decision dated 27 July 2015) with Prayer to Re-open the Case for the Reception of Additional Evidence.[22] On even date, the CIR likewise filed her Motion for Partial Reconsideration (Re: Decision promulgated on 27 July 2015).[23]

On October 21, 2015, the Court in Division promulgated an Amended Decision granting PMFTC's Motion for Partial Reconsideration while denying CIR's Motion for Partial Reconsideration for lack of merit. The Court in Division ordered the CIR to refund or to issue a TCC in favor of PMFTC in the amount of ₱559,097,313.62, representing excess final withholding taxes on royalty payments to PMGB from July 2011 to October 2012.

On December 1, 2015, the CIR filed the instant Petition for Review before the Court *En Banc*.

Hence, this Decision.

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[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*, p. 76.
[23] *Id.*

THE ISSUE

In the present Petition, the CIR raised the issue of whether the Court in Division erred in granting PMFTC's claim for refund in the amount of ₱559,097,313.62 representing excess final withholding taxes on royalty payments made by the latter to PMGB for the period of July 2011 to October 2012.

THE COURT *EN BANC*'S RULING

The administrative and judicial claims for refund must be filed within the two-year prescriptive period, regardless of any supervening cause.

In her Petition for Review, the CIR argues that, while PMFTC filed its administrative and judicial claims for refund within two (2) years from date of payment, the CIR, however, was not afforded the opportunity to evaluate and review the claim for refund because the judicial claim was filed exactly twelve (12) days after the filing of the administrative claim.[24] The CIR posits that it is highly improbable for it to grant or deny the claim for refund in a matter of 12 days.[25]

On the other hand, PMFTC asserts that the Court in Division correctly held that both the administrative and judicial claims for refund were filed within the two-year prescriptive period.[26] PMFTC added that the filing of the Petition for Review before the Court of Tax Appeals does not preclude the CIR from making a separate and independent determination of the merits of PMFTC's administrative claim.[27] Further, it would be iniquitous to require PMFTC to let the two-year prescriptive period lapse while waiting for the CIR to resolve its administrative claim for refund, which will later on be used by the CIR in arguing that PMFTC slept on its rights.[28]

The CIR's argument deserves scant consideration.

Section 204(C) of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) lays down the period within which an administrative claim for refund must be filed, thus:

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[24] *Id.*, p. 26.
[25] *Id.*
[26] *Id.*, pp. 88-89.
[27] *Id.*
[28] *Id.*

> "**SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> 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 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. x x x" *(Emphasis supplied)*

On the other hand, Section 229 of the 1997 NIRC provides the requirements for filing a judicial claim for refund:

> "**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, of any sum alleged to have been excessively or in any manner wrongfully 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

It may be gleaned from the foregoing provisions that both the administrative and judicial claims for refund must be filed within two (2) years counted from the date of payment of the tax. Moreover, it is expressly provided that the judicial claim must be instituted within such given period regardless of any supervening cause that may arise after payment of the tax.

In *Gibbs v. Collector of Internal Revenue and Court of Tax Appeals*,[29] the Supreme Court held as follows:

> "x x x If, however, the Collector (now Commissioner of Internal Revenue) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. **This is so because of the positive requirement of Section 306 (now Section 229) and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.**"[30] *(Emphasis supplied)*

Nowhere in the law is it stated that a claim for refund should be filed at the earliest instance to give the CIR time to rule on the claim. What the law emphatically requires is that both the administrative and judicial claims for refund must be filed within two (2) years from the time of payment of the tax and that the judicial claim must be filed within such period **regardless of any supervening cause that may arise after payment**. The taxpayer cannot be faulted for taking advantage of the full two-year period prescribed by law in filing his claim for refund for as long as both his administrative and judicial claims are filed within the said period. On the other hand, had PMFTC awaited the action of the CIR on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.[31] Considering that the Court in Division has already found that PMFTC's administrative and judicial claims for refund were filed on time, there is no need for the Court *En Banc* to belabor this issue.

Failure to file a tax treaty relief application (TTRA) within the period prescribed by an administrative issuance

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[29] G.R. No. L-13453, February 29, 1960.

[30] See also *Commissioner of Internal Revenue v. Victorias Milling Co., Inc. and the Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.

[31] *CBK Power Company Limited. v. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015.

does not *ipso facto* warrant the outright denial of benefits under a tax treaty.

The CIR also posits that PMFTC, as income payor, failed to file any tax treaty relief application (TRRA) including the documentary requirements provided under Revenue Memorandum Order No. 72-10 before the occurrence of the first taxable event. Accordingly, the preferential tax rate granted under the provisions of Article 13(2)(b)(iii) of the RP-US Tax Treaty, in relation to Article 12(2)(b) of the RP-China and RP-UAE Tax Treaties, upon which the present claim for refund was based, cannot be applied.

The CIR's position lacks legal basis.

In *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[32] the Supreme Court already ruled that failure of taxpayer to strictly comply with an administrative issuance requiring prior application for tax treaty relief should not operate to divest entitlement to tax treaty benefits as it would constitute a violation of the duty required by good faith in complying with the tax treaty and that it would impair the value of the tax treaty. The Supreme Court held:

> "**A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.** Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. **The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements.** More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.
>
> Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's **outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted**

[32] G.R. No. 188550, August 28, 2013.

under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. **Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors.** While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**" *(Emphasis supplied)*

The Supreme Court also declared that the underlying principle of prior application for tax treaty relief with the BIR becomes moot in refund cases, such as the present Petition, where the very basis of the claim is erroneous or excessive payment arising from non-availment of a tax treaty relief at the first instance, to wit:

"**The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance.** In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. **It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application**

> **requirement becomes illogical.** Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000.
>
> Corollary thereto, Section 229 of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. **The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.**"[33] *(Emphasis supplied)*

In light of the foregoing, the fact that PMFTC failed to file an application for tax treaty relief does not *ipso facto* preclude it from enjoying the preferential tax rate of 10% under Article 13(2)(b)(iii) of the RP-US Tax Treaty in relation to Article 12(2)(b) of the RP-China and RP-UAE Tax Treaties.

WHEREFORE, premises considered, the CIR's Petition for Review filed on December 1, 2015 is **DENIED** for lack of merit. Accordingly, the Decision and Amended Decision dated July 27, 2015 and October 21, 2015, respectively, promulgated by the Court in Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

with concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

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[33] *Supra*, Note 32.

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1385** (CTA CASE NO. 8691)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
PMFTC, INC., *Respondent.*	
	Promulgated: JUL 11 2016 3:25 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) impugning the Decision promulgated on July 27, 2015 and the Amended Decision promulgated on October 21, 2015 of the CTA Third Division, which granted the claim for refund of respondent in the total amount of P559,097,313.62.

I would like to address the argument raised by the CIR in her Answer in the Division level which is quoted in her Petition for Review that respondent has no legal personality to claim for a refund. She argues that the proper person to claim a refund is the statutory taxpayer, Philip Morris Global Brands, Inc. (PMGB), and not the respondent who is merely a withholding agent citing *Silkair (Singapore) PTE. LTD vs. Commissioner of Internal Revenue*

(Silkair),[1] which reiterated the doctrine in two earlier *Silkair* cases which were decided on November 14, 2008[2] and February 6, 2008.[3]

In *Commissioner of Internal Revenue vs. Smart Communication, Inc.* (Smart),[4] the Supreme Court categorically ruled that a withholding agent may file a claim for refund on behalf of the taxpayer, *viz*:

> "xxx[T]he person entitled to claim a tax refund is the taxpayer. However, **in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.**
>
> In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation,* **a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company.** Pertinent portions of the Decision read:
>
>> The term taxpayer is defined in our NIRC as referring to any person subject to tax imposed by the Title [on Tax on Income]. It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is required to deduct and withhold any tax is made personally liable for such tax and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.**
>>
>> A person liable for tax has been held to be a person subject to tax and properly considered a taxpayer. The terms liable for tax and subject to tax both connote legal obligation or duty to pay a tax. **It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made liable for tax as not subject to tax. By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.**
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>> In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that **a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government** agent:

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[1] G.R. No. 166482, January 25, 2012.
[2] G.R. Nos. 171383 & 172379.
[3] G.R. No. 173594.
[4] G.R. Nos. 179045-46, August 25, 2010.

> The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government[']s agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.

If, as pointed out in *Philippine Guaranty*, **the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.** This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.

x x x x

We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a taxpayer within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Emphasis supplied.)

Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, *i.e.*, where the withholding agent is a wholly owned subsidiary of the taxpayer.

We do not agree.

Although such relation between the taxpayer and the withholding agent is a factor that increases the latter[']s legal interest to file a claim for refund, there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. Rather, what is clear in the decision is that a withholding agent

> has a legal right to file a claim for refund for two reasons. ***First*, he is considered a taxpayer under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.**" (*Boldfacing supplied and citations omitted*)

In the case at bar, as correctly pointed out by petitioner, respondent is the withholding agent of PMGB; thus, it may file a claim for refund on behalf of PMGB.

With regard to *Silkair* relied upon by petitioner, the same is inapplicable as the doctrine laid down therein involves excise tax and not withholding tax. On this point, the Supreme Court in *Smart*, *supra*, explained *viz:*

> xxx xxx xxx
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> As to *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue* cited by the petitioner, we find the same inapplicable as it **involves excise taxes, not withholding taxes**. In that case, it was ruled that the proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another." (*Boldfacing supplied*)

Similarly, respondent's claim for refund involves excess withholding taxes on royalty payments to PMGB, not excise taxes.

Interestingly, the Supreme Court in *Smart, supra*, emphasized that the withholding agent has the corollary obligation to remit the taxes recovered to the principal taxpayer lest he would be unjustly enriching himself at the expense of the principal taxpayer. **The dispositive portion of the decision is likewise categorical in directing the issuance of a TCC in favor of the principal taxpayer and not in favor of the withholding agent, *viz*:**

> "In this connection, it is however significant to add that **while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer.** As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be **unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.**

xxx xxx xxx

> **WHEREFORE**, the petition is **DENIED.** The assailed Decision dated June 28, 2007 and the Resolution dated July 31, 2007 of the Court of Tax Appeals *En Banc* are hereby **AFFIRMED.** The Bureau of Internal Revenue is hereby **ORDERED** to **ISSUE** a TAX CREDIT CERTIFICATE to Prism Transactive (M) Sdn. Bhd. in the amount of ₱3,989,456.43 representing the overpaid final withholding taxes for the month of August 2001.
>
> **SO ORDERED.**" (*Boldfacing supplied*)

In fine, respondent, as PMGB's agent, has the obligation to remit the taxes recovered from this case to PMGB.

All told, I **VOTE** to **DENY** the Petition for Review for lack of merit; **UPHOLD** the Decision and the Amended Decision dated July 27, 2015 and October 21, 2015; and **ORDER** the BIR to **ISSUE a TAX CREDIT CERTIFICATE** to PMGB in the amount of **P559,097,313.62**.

ROMAN G. DEL ROSARIO
Presiding Justice