REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MCKINSEY & CO. (PHILS.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9332

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:
MAY 2 8 2019 10:10 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is respondent's **Motion for Reconsideration**, filed through registered mail on February 4, 2019, and received by the Court on February 7, 2019, with petitioner's **Comment to Respondent's Motion for Reconsideration (dated 1 February 2019)**, filed on March 4, 2019.

The Decision dated January 17, 2019 (assailed Decision) grants petitioner's Petition for Review after determining that it has sufficiently proven its entitlement to a refund or issuance of tax credit certificates (TCC) for its excess and unutilized creditable withholding taxes (CWTs) for calendar years 2013 and 2014 in the respective amounts of ₱36,610,118.00 and ₱37,547,131.00, or in the total amount of ₱74,157,249.00. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the

respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱74,157,249.00** in favor of petitioner, representing its excess and unutilized creditable withholding taxes for calendar years 2013 and 2014.

SO ORDERED."

In the instant motion, respondent asserts that petitioner failed to comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended. It alleges that the law requires the issuance of VAT official receipts for every lease of goods, properties, and for every sale, barter or exchange of services; and that petitioner only submitted billing invoices. Respondent also contends that petitioner failed to prove the actual remittance to the Bureau of Internal Revenue (BIR) of the taxes withheld. Respondent claims the best evidence or proof of remittance of the taxes so withheld is the certification from the BIR's Revenue Accounting Division (RAD). Moreover, petitioner failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made. Lastly, respondent emphasized that tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and are to be construed *strictissimi juris* against the person or entity claiming the exemption.

Petitioner, on the other hand, maintains that it has sufficiently complied with the invoicing requirements. Also, petitioner cites the case of the *Commissioner of Internal Revenue vs. Asian Transmission Corporation,*[1] wherein the Supreme Court held that proof of actual remittance is not needed to prove withholding and remittance of taxes.

The Court finds respondent's motion bereft of merit.

The Supreme Court, in the case of *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[2], citing the case of *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation*[3], laid down the requirements which a taxpayer must comply in seeking refund of excess and unutilized CWTs, to wit: *gr*

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[1] G.R. No. 179617, January 19, 2011.
[2] G.R. No. 206526, January 28, 2015.
[3] G.R. No. 171742, June 15, 2011.

1. File the claim with the CIR within the two-year period from the date of payment of the tax;

2. Show on the return that the income received was declared as part of the gross income; and

3. Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

Consequently, respondent's assertion that petitioner should have submitted VAT official receipts to substantiate its claim for refund is misplaced. Such requirement is specifically for claims for refund of excess or unutilized input taxes under Section 113 of the NIRC of 1997, as amended, and not for claims for refund of excess and unutilized CWTs. Neither the NIRC of 1997, as amended, nor Revenue Regulations (RR) No. 2-98 require the submission of official receipts to substantiate claims for refund of CWTs.

As regards respondent's allegation that petitioner failed to submit proof of remittances, the Supreme Court, in the cases of *Commissioner of Internal Revenue vs. Philippine National Bank*[4] and *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[5], held that proof of actual remittance is not needed in order to prove withholding and remittance of taxes. Proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant, *viz*:

> "xxx It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the

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[4] G.R. No. 180290, September 29, 2014.
[5] G.R. No. 179617, January 19, 2011.

> payor and not the payee. Therefore, respondent, xxx has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source is issued by the withholding agents of the government are prima facie proof of actual payment herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR."[6]

Lastly, the Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[7] Consequently, once the requirements laid down under the NIRC of 1997, as amended, and other pertinent tax laws and regulations have been met, a claimant should be considered successful in discharging the burden of proving its right to refund.

In this case, the Court found that petitioner has established its claim for refund or issuance of TCC in the amount of ₱74,157,249.00, representing its excess and unutilized CWTs for calendar years 2013 and 2014.

Clearly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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[6] G.R. No. 179617, January 19, 2011.

[7] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice