REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

COMSYS PHILIPPINES INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7196

Members:

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

Promulgated:
AUG 0 7 2007

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DECISION

UY, *J.*:

Before Us is a Petition for Review filed under Section 11 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, seeking refund or issuance of a Tax Credit Certificate (TCC) in the amount of P17,673,226.00 allegedly due to excess creditable withholding taxes for taxable years 2002 and 2003.

THE FACTS

Petitioner, Comsys Philippines Incorporated, is a corporation organized and existing under and by virtue of Philippine laws. Its principal office is located at the 5th Floor of the RFM Corporate Center, Pioneer corner Sheridan

Streets, Mandaluyong City. It is involved in subcontracting cableworks and civil works to main contractors.[1] On the other hand, respondent Commissioner of Internal Revenue, is the duly-appointed officer of the Bureau of Internal Revenue (BIR) who is empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 14, 2003 and April 13, 2004, petitioner filed its income tax returns (ITRs) for taxable years 2002[3] and 2003,[4] declaring income tax overpayments in the amounts of P13,727,661.00 and P15,210,509.00, respectively. In both ITRs, petitioner marked the box "To be refunded" for its overpayments. The overpayments were computed as follows:

	2002		2003	
Sales/Revenues/Receipts/Fees		738,335,092.00		29,734,470.00
Less: Cost of Sales/Services		642,490,793.00		82,673,293.00
Gross Income from Operation		95,844,299.00		(52,938,823.00)
Add: Non-operating & Other Income		3,088,415.00		817,275.00
Total Gross Income		98,932,714.00		(52,121,548.00)
Less: Deductions		264,966,490.00		220,074,036.00
Taxable Income		(166,033,776.00)		(272,195,584.00)
Income Tax Due (32%)		-		-
Minimum Corporate Income Tax (MCIT) Due		1,978,654.00		-
Less: Tax Credits/Payments				
Prior Years' Excess Credits		5,632,472.00		5,632,472.00
Creditable Tax Withheld for the First Three Quarters	2,818,226.00		9,430,888.00	
Creditable Tax Withheld for the Fourth Quarter	7,255,617.00	10,073,843.00	147,149.00	9,578,037.00
Total Tax Credits/Payments		15,706,315.00		15,210,509.00
Overpayment		**(13,727,661.00)**		**(15,210,509.00)**

[1] Paragraph 1, Statement of Facts Admitted, Joint Stipulation of Facts and Issues; Docket, p. 47.
[2] Paragraph 2, Statement of Facts Admitted, Joint Stipulation of Facts and Issues, Docket, p. 47.
[3] Exhibit "B".
[4] Exhibit "C".

Petitioner's total tax credits as of December 31, 2002 amounted to P15,706,315.00, which consisted of the prior year's excess credits of P5,632,472.00 and creditable taxes withheld during the year 2002 in the amount of P10,073,843.00. After having offset the 2002 Minimum Corporate Income Tax (MCIT) liability of P1,978,654.00 from the 2002 creditable withholding taxes of P10,073,843.00, there still remained an excess amount of P8,095,189.00 creditable withholding taxes from 2002. Thus, petitioner's income tax overpayment as of December 31, 2002 in the amount of P13,727,661.00 represents the sum of the unutilized prior year's excess credits of P5,632,472.00 and 2002 excess creditable withholding taxes of P8,095,189.00. On the other hand, petitioner's unutilized tax credits as of December 31, 2003 in the amount of P15,210,509.00 is composed of the prior year's excess credits of P5,632,472.00 and creditable taxes withheld during the year 2003 of P9,578,037.00. The amount sought to be refunded were computed as follows:

	2002	**2003**	**Total**
Overpayment	13,727,661.00	15,210,509.00	
Less: Prior Year's Excess Credits	5,632,472.00	5,632,472.00	
Excess Creditable Tax Withheld	8,095,189.00	9,578,037.00	**17,673,226.00**

On February 14, 2005, petitioner, through its tax counsel, SGV & Co., filed a letter with the BIR requesting refund or issuance of a TCC corresponding to its reported excess creditable withholding taxes for taxable years 2002 and 2003 in their respective amounts of P8,095,189.00 and P9,578,037.00 or in the sum of P17,673,226.00.[5]

[5] Exhibit "E".

Since respondent had not acted with finality on its claim, petitioner filed this Petition for Review with this Court on April 12, 2005.

In the Answer,[6] respondent alleged the following as his Special and Affirmative Defenses:

> "4. The claim for refund is still under examination by the respondent's Bureau;
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> 5. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 6. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 7. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied. (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, Aug. 2, 1991)."

Upon termination of the Pre-Trial on September 12, 2005, petitioner presented its Division Manager for Finance and Administration, Emmanuel C. Fernandez, as its sole witness. For failure of respondent's counsel to attend the hearing for his initial presentation of evidence despite due notice, the Court declared respondent to have waived his right to present evidence.[7]

On March 5, 2007, the case was submitted for decision when petitioner filed its Memorandum within the period given by the Court. Respondent, however, failed to file his Memorandum within the prescribed period.[8]

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[6] Docket, p. 24.
[7] Minutes dated December 11, 2006; Docket, p. 545.
[8] Resolution dated March 5, 2006; Docket, p. 570.

ISSUES

In their Joint Stipulation of Facts and Issues,[9] petitioner and respondent interposed the following issues for the consideration of this Court:

> "1. Whether the creditable withholding taxes for the taxable years 2002 and 2003 are duly substantiated by the necessary statement issued by the withholding agents to Petitioner, showing the amount paid and the amount of tax withheld therefrom;
>
> 2. Whether the income upon which the creditable taxes were withheld were included and reported as income in the income tax returns of Petitioner for both years;
>
> 3. Whether the unutilized creditable withholding taxes as of the end of the taxable years 2002 and 2003 were carried over to the subsequent taxable years;
>
> 4. Whether Petitioner is entitled to the refund and/or credit of the amount P17,673,226.00 representing its excess/unutilized creditable income taxes as of December 31, 2003."

THE COURT'S RULING

The issues being intertwined, the Court shall discuss the same jointly. The focal point of the controversy hinges on petitioner's entitlement to the refund or issuance of TCC in the amount of P17,673,226.00.

In the case of ***Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue***,[10] the Supreme Court laid down the requirements to avail of the refund of excess creditable withholding taxes (likewise applicable to claims for issuance of TCC) as follows:

> 1. The claim for refund must be filed within the two-year prescriptive period provided under Section 204 (C)[11] in

[9] Docket, p. 49.
[10] G.R. No. 107434. October 10, 1997.
[11] **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund of Credit Taxes.*—The Commissioner may—
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relation to Section 229[12] of the NIRC of 1997, as amended;

2. The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld were included in the return of the recipient.

Claims filed within the two (2)-year period

Considering that petitioner and respondent had jointly admitted that both administrative and judicial claims were filed within the two-year prescriptive period, the first requisite had been satisfied.[13]

Creditable Tax Withheld of P19,642,321.08 was established by proper withholding tax certificates

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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.

[12] **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 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 the payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, 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.

[13] Paragraph 10, Statement of Facts Admitted, Joint Stipulation of Facts and Issues; Docket, p. 49.

Proceeding now to the second requisite, petitioner submitted various Certificates of Creditable Tax Withheld at Source[14] (Certificates) [BIR Form 2307] showing creditable withholding taxes for taxable years 2002 and 2003 in the respective amounts of P10,073,843.12 and P 9,578,037.03, broken down as follows:

For taxable year 2002

EXH.	WITHHOLDING AGENT/PAYOR	PERIOD COVERED			INCOME PAYMENTS	TAX WITHHELD
BB	Maynilad Water Services, Inc.	1/1/01	to	3/31/01	425,230.00	4,252.30
EE	Maynilad Water Services, Inc.	4/1/01	to	6/30/01	263,698.00	2,636.98
DD	Maynilad Water Services, Inc.	7/1/01	to	9/30/01	266,979.16	2,669.79
F	Mitsubishi Corporation	1/1/02	to	3/31/02	78,887,114.86	1,577,741.65
L	NEC Manila Project Office	1/1/02	to	3/31/02	2,462,783.50	49,255.76
O	Sumitomo Corporation	1/1/02	to	3/31/02	9,791,108.00	195,822.16
S	Sumitomo Corporation	1/1/02	to	3/31/02	95,416,260.50	1,908,325.21
Y	Sentech Inc.	1/1/02	to	3/31/02	2,500,638.00	50,012.76
AA	Isla Communications Co., Inc.	1/1/02	to	3/31/02	253,809.50	5,076.19
FF	Maynilad Water Services, Inc.	1/1/02	to	3/31/02	885,839.65	8,858.39
G	Mitsubishi Corporation	4/1/02	to	6/30/02	9,101,424.55	182,028.14
H	MWSI	4/1/02	to	6/30/02	115,147.40	2,302.94
I	Maynilad Water Services, Inc.	4/1/02	to	6/30/02	124,094.13	2,481.88
K	NEC Manila Project Office	4/1/02	to	6/30/02	1,843,142.00	36,862.84
N	Sumitomo Corporation	4/1/02	to	6/30/02	5,001,424.00	100,028.48
R	Sumitomo Corporation	4/1/02	to	6/30/02	136,589,155.50	2,731,783.11
V	Globe Telecom Inc.	4/1/02	to	6/30/02	272,727.27	13,636.36
					255,710.50	5,114.21
J	Maynilad Water Services, Inc.	7/1/02	to	9/30/02	112,431.64	2,248.62
M	Sumitomo Corporation	7/1/02	to	9/30/02	284,609.50	5,692.19
P	Mitsubishi Corporation	7/1/02	to	9/30/02	33,188,031.28	663,761.17
T	Sumitomo Corporation	7/1/02	to	9/30/02	65,307,593.00	1,306,151.86
X	Globe Telecom Inc.	7/1/02	to	9/30/02	430,928.21	8,618.56
Z	NEC Manila Project Office	7/1/02	to	9/30/02	41,632.50	832.65
CC	Maynilad Water Services, Inc.	7/1/02	to	9/30/02	4,022,345.50	80,446.91
GG	Digital Communication Phils., Inc.	7/1/02	to	9/30/02	737,572.57	14,751.45
Q	Mitsubishi Corporation	10/1/02	to	12/31/02	7,695,006.66	159,300.22
U	Sumitomo Corporation	10/1/02	to	12/31/02	47,578,501.00	951,570.02
W	Globe Telecom Inc.	10/1/02	to	12/31/02	79,016.32	1,580.32
	TOTALS				**503,933,954.70**	**10,073,843.12**

[14] Exhibits "F" to "ZZ".

For taxable year 2003

EXH.	WITHHOLDING AGENT/PAYOR	PERIOD COVERED			INCOME PAYMENTS	TAX WITHHELD
HH	Sumitomo Corporation	10/1/02	to	12/31/02	29,320,845.00	586,416.90
PP	Isla Communications Co., Inc.	7/1/02	to	9/30/02	267,608.50	5,352.17
II	Mitsubishi Corporation	1/1/03	to	3/31/03	138,211,333.90	2,764,227.09
JJ	NEC Manila Project Office	1/1/03	to	3/31/03	1,184,871.00	23,697.42
KK	Digital Communications Phils.,Inc.	1/1/03	to	3/31/03	310,095.74	6,201.91
MM	Isla Communications Co., Inc.	1/1/03	to	3/31/03	1,254,260.50	25,085.21
NN	Globe Telecom Inc.	1/1/03	to	3/31/03	2,298,896.00	45,977.92
XX	PLDT	1/1/03	to	3/31/03	478,130.65	9,562.61
LL	Mitsubishi Corporation	4/1//03	to	4/30/03	229,323,424.47	4,586,468.37
OO	Globe Telecom Inc.	4/1//03	to	4/30/03	448,867.50	8,977.35
RR	NEC Manila Project Office	4/1//03	to	4/30/03	29,934.55	418.69
SS	Sumitomo Corporation	4/1//03	to	4/30/03	9,559,895.00	191,197.90
UU	Smart Communications	4/1//03	to	4/30/03	64,618.50	1,292.37
QQ	Mitsubishi Corporation	7/1/03	to	9/30/03	37,084,897.55	741,697.95
TT	Sumitomo Corporation	7/1/03	to	9/30/03	22,193,849.50	443,876.99
WW	Maynilad Water Services	7/1/03	to	9/30/03	456,087.00	9,121.74
YY	Globe Telecom Inc.	7/1/03	to	9/30/03	402,776.00	8,055.62
VV	Mitsubishi Corporation	10/1/03	to	12/31/03	5,662,492.10	113,249.84
ZZ	Globe Telecom Inc.	10/1/03	to	12/31/03	357,949.00	7,158.98
	TOTALS				**478,910,832.46**	**9,578,037.03**

While it may be observed that there were certificates dated 2002 with the related creditable withholding taxes of P591,769.07[15] which were included in the total creditable withholding taxes of P9,578,037.03 for taxable year 2003, the same shall be considered as valid since the period of claim covers taxable years 2002 and 2003.

However, the Court found that creditable withholding taxes of P10,073,843.12 for taxable year 2002 included the amount of P9,559.07 which corresponds to certificates dated 2001; hence, the same shall be disallowed:

[15] Exhibits "HH" and "PP".

EXH	PAYOR	PERIOD COVERED	INCOME PAYMENT	TAX WITHHELD
BB	Maynilad Water Services, Inc.	1/1/01 to 3/31/01	P 425,230.00	P 4,252.30
EE	Maynilad Water Services, Inc.	4/1/01 to 6/30/01	263,698.00	2,636.98
DD	Maynilad Water Services, Inc.	7/1/01 to 9/30/01	266,979.16	2,669.79
	TOTAL		**P 955,907.16**	**P 9,559.07**

Therefore, petitioner was able to substantiate by proper withholding tax certificates only the creditable withholding taxes in the amounts of P10,064,284.05 and P9,578,037.03 for taxable years 2002 and 2003, respectively:

	2002		2003	
	INCOME PAYMENT	**INCOME TAX WITHHELD**	**INCOME PAYMENT**	**INCOME TAX WITHHELD**
Creditable Taxes Withheld	503,933,954.70	10,073,843.12	478,910,832.46	9,578,037.03
Less: Creditable Taxes Withheld with certificates dated outside the period of claim	955,907.16	9,559.07	-	-
Valid Creditable Taxes Withheld	**502,978,047.54**	**10,064,284.05**	**478,910,832.46**	**9,578,037.03**

<u>Income upon which the taxes were withheld were included in the return of the recipient</u>

This brings us to the third requisite of whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its ITRs for taxable years 2002 and 2003.

The certificates reveal that the creditable income taxes of P10,064,284.05 and P9,578,037.03 for taxable years 2002 and 2003 were withheld on gross income payments of P502,978,047.54 and P478,910,832.46, respectively. Meanwhile, petitioner's gross income, as reported in its ITRs for taxable years 2002 and 2003, amounted to P738,335,092.00 and P29,734,470.00, respectively. While there were discrepancies between the amounts of gross income as reflected in the certificates and as reported in the ITRs for both taxable years, the same were merely brought about by certain factors, namely:

a) the timing difference between the recognition of petitioner's sales and the withholding of the corresponding tax by its customers;

b) the difference between the foreign exchange rates used at the time of income recognition and at the time when income payments were received; and

c) the timing difference between the withholding of tax and the receipt of the corresponding certificates.

This was illustrated in petitioner's *Reconciliation of Withholding Tax Certificate Received versus Revenue Recognized* for the years 2002 and 2003[16] and explained in the Affidavit of Emmanuel C. Fernandez.[17]

Upon scrutiny of the preceding documents as well as the documents found in an earlier decided case docketed as CTA Case No. 6651[18] such as the *Reconciliation of Withholding Tax Certificate Received versus Revenue Recognition*, with attached Schedule of Contract Receivable, Summary of Cash Collections/Cash Receipts Register,[19] and Annual ITR with attached Audited Financial Statements[20] for the previous years of 2000 and 2001, the Court finds petitioner to have properly declared the income related to the creditable withholding taxes of P10,064,284.07 and P9,578,036.93 for taxable years 2002 and 2003, respectively.

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[16] Exhibits "CCC-2" and "CCC-3".
[17] Exhibit "CCC".
[18] Subject claim covers petitioner's excess creditable withholding taxes for taxable years 2000 and 2001.
[19] Exhibits "LLLL" and "MMMM" in CTA Case. No. 6651.
[20] Exhibits "A" and "B" in CTA Case No. 6651.

NB

Excess creditable withholding tax was not utilized in the succeeding years

Lastly, the taxpayer must prove that it has not utilized its excess creditable withholding tax for the succeeding years, in accordance with Section 76 of the NIRC of 1997, to wit:

> "**SEC. 76.** *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

In the case at bench, petitioner's ITRs for taxable years 2003 and 2004[21] show that only the amount of P5,632,472.00 was indicated as "Prior year's excess credits" pertaining to petitioner's excess tax credits for taxable year 1999 as found by this Court in CTA Case No. 6651. Thus, petitioner did not utilize its excess creditable withholding tax for taxable years 2002 and 2003.

[21] Exhibits "C" and "D".

In sum, the Court finds petitioner to have sufficiently proven its entitlement to refund or issuance of Tax Credit Certificate corresponding to its excess creditable withholding taxes for taxable years 2002 and 2003 in the respective amounts of P8,085,630.05 and P9,578,037.03 or a total of P17,663,667.08, computed as follows:

	2002	2003	Total
Creditable Taxes Withheld	P10,064,284.05	P9,578,037.03	
Less: Minimum Corporate Income Tax Due	1,978,654.00		
Refundable Excess Creditable Taxes Withheld	**P 8,085,630.05**	**P9,578,037.03**	**P17,663,667.08**

IN VIEW OF THE FOREGOING, the instant petition for review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND,** or in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of **P17,663,667.08** representing excess creditable withholding taxes for taxable years 2002 and 2003.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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