

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

**STABLEWOOD PHILIPPINES,
INC. (Formerly: Rolls Royce
Philippines, Inc.),**

Petitioner,

- versus -

CTA CASE NO. 7706

Members:

**CASTAÑEDA, Chairperson,
CASANOVA, and
GRULLA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUL 23 2010

✓ 3:40 p.m.

X ----- X

DECISION

CASANOVA, J.:

The instant Petition for Review seeks the issuance of a tax credit certificate or refund in the amount of **Php4,125,251.76**, allegedly representing petitioner's excess creditable withholding tax for the year 2005.

Petitioner Stablewood Philippines, Inc. is a domestic corporation, duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commissioner ("SEC") Registration No. A1997-8343 and with business address at Suite 208, 2nd Floor, The Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City¹. *Q*

¹ Petition for Review (Petition), par. 1, Docket, p. 1

Respondent Commissioner of Internal Revenue is the officer vested by law with authority to refund overpaid as well as erroneously or illegally collected internal revenue taxes. Respondent is represented in this case by the legal officers of the BIR Revenue Region (RR) No. 8, Legal Division and may be served with summons, pleadings and other legal processes at the Legal Division, RR No. 8, 5th Floor, Atrium Building, Makati Avenue, Makati City.²

Section 204 (C) of the Tax Code in relation to Section 229 grants authority to the Commissioner of Internal Revenue to refund taxes erroneously received. Section 229 reads:

"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 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."³

² Ibid, par. 2

³ Ibid, par 15, p. 5

Petitioner's primary purpose is:

To operate, maintain, and rehabilitate power, steam, and gas generating plants, including their related facilities for the conversion of coal, distillate, steam, water and gases into other forms of energy and commodities, namely, electricity, steam, water, and gases. To render advice and consultancy service in connection with the construction, erection, assembly, commissioning, operation, maintenance, and rehabilitation of such plants; provided, in no event shall it engage in the general supply or distribution of electricity, in retail or in business of a public utility or furnish services or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially-owned by Filipino citizens.⁴

From January 1998 to July 2007, petitioner was registered with Revenue Region No. 8, Revenue District Office (RDO) No. 50 (South Makati) of the BIR and was issued Taxpayer Identification No. 005-375-888-000. However, due to petitioner's change of address from Suite 1402, BDO Plaza, 8737 Paseo de Roxas, Salcedo Village, Makati City, which is within the jurisdiction of RDO No. 50, to Suite 208, 2nd Floor, The Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City which is within the jurisdiction of RDO No. 47, the petitioner filed an application for change of home RDO. On 18 July 2007, petitioner's new official home RDO became RDO No. 47 with the issuance by RDO No. 47 of a Certificate of Registration No. OCN 9RC0000211339 (BIR Form No. 2303) to petitioner.⁵ 

⁴ Ibid, par. 3, p. 1-2

⁵ Joint Stipulation of Facts and Issues (JSFI), par. 6, Docket, pp. 104-105

On 6 April 2006, petitioner electronically filed its Annual ITR for taxable year 2005.⁶

The Annual ITR of petitioner for 2005 indicated that the excess CWT in 2005 is "To be refunded".⁷

An administrative claim for refund of the excess CWT of petitioner for the year 2005, in the amount of Php4,125,251.76, was filed by petitioner with RR No. 8 (Makati City) on 20 December 2006.⁸

To date, respondent has not favorably acted upon said administrative claim for refund. Thus, petitioner filed this instant Petition for Review on 15 November 2007.

In his Answer⁹ filed on 14 January 2008, respondent averred the following Special and Affirmative Defenses:

- "4) Assuming without admitting that Petitioner filed a claim for refund, the same is 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 have been made in accordance with the laws and regulations, hence, not refundable;
- 7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 (C) in relation to Section 229 of the Tax Code, as amended upon which its claimed (*sic*) for refund is premised;

⁶ Ibid, par. 7, p. 105

⁷ Ibid, par. 8

⁸ Ibid, par. 9

⁹ Docket, pp. 77-78

- 8) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge 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, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On 14 March 2008, petitioner filed a *Motion for Substitution of Petitioner and Amendment of Caption*¹⁰ where it prayed that the Court allow the substitution of Orca Plant Operations, Inc. with Rolls-Royce Philippines, Inc. as petitioner in the instant case and that the caption of the instant case be amended from "*Orca Plant Operations, Inc. vs. Commissioner of Internal Revenue*" to "*Rolls-Royce Philippines, Inc. (successor-in-interest of Orca Plant Operations, Inc.) vs. Commissioner of Internal Revenue*". On 4 April 2008, this Court approved petitioner's *Motion*, and thereafter, the caption of the case was changed to "*Rolls-Royce Philippines, Inc. (successor-in-interest of Orca Plant Operations, Inc.) vs. Commissioner of Internal Revenue*".¹¹

During trial, petitioner presented testimonial and documentary evidence to prove its case. Upon oral motion of petitioner's counsel and considering that respondent failed to present his evidence for two consecutive hearing dates, respondent is considered to have waived his right

¹⁰ Docket, pp. 117-120

¹¹ Docket, p. 196

to present his evidence. On 4 February 2009, the Court ordered the parties to file their respective Memorandum within thirty days from receipt of the said Resolution¹². In a Resolution dated 23 March 2009,¹³ the case was submitted for decision, taking into consideration petitioner's Memorandum filed on 09 March 2009¹⁴. However, on 26 May 2009, petitioner filed a *Motion to Amend Caption*¹⁵ praying that this Court allow the amendment of the caption of the instant case from "*Rolls-Royce Philippines, Inc. (successor-in-interest of Orca Plant Operations, Inc.) vs. Commissioner of Internal Revenue*" to "*Stablewood Philippines, Inc. (formerly Rolls-Royce Philippines, Inc. and successor-in-interest of Orca Plant Operations, Inc. vs. Commissioner of Internal Revenue*". On 8 July 2009, petitioner filed an *Urgent Motion to Present Additional Evidence*¹⁶, which this Court granted in a Resolution dated 29 July 2009¹⁷. In a Resolution dated 13 July 2009¹⁸, this Court granted petitioner's *Motion to Amend Caption* and the caption of this case is hereby amended as "*Stablewood Philippines, Inc. [Formerly Rolls-Royce Philippines, Inc.] vs. Commissioner of Internal Revenue*" and the Court's Resolution dated 23 March 2009 was lifted and set aside. In a Resolution dated 22 January 2010, the case was submitted for decision,

¹² Docket, p. 494

¹³ Docket, p. 545

¹⁴ Docket, pp. 499-543

¹⁵ Docket, pp. 546-548

¹⁶ Docket, pp. 565-571

¹⁷ Docket, p. 578

¹⁸ Docket, pp. 574-575

taking into consideration petitioner's Supplemental Memorandum filed on 8 January 2010¹⁹.

The parties submitted the following issues²⁰ for this Court's resolution:

"A.

WHETHER OR NOT INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN PETITIONER'S GROSS INCOME FOR THE YEAR 2005.

B.

WHETHER OR NOT PETITIONER HAS EXCESS CREDITABLE WITHHOLDING TAX IN THE YEAR 2005.

C.

WHETHER OR NOT PETITIONER CARRIED OVER TO THE SUCCEEDING TAXABLE YEARS THE ALLEGED EXCESS/UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE YEAR 2005.

D.

WHETHER OR NOT PETITIONER'S RIGHT TO CLAIM FOR REFUND OF THE ALLEGED EXCESS/CREDITABLE WITHHOLDING TAX IN THE YEAR 2005 WAS DULY SUBSTANTIATED.

E.

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE SUM OF PHP4,125,251.76 AS ALLEGED EXCESS/UNUTILIZED CREDITABLE WITHHOLDING TAX ON INCOME PAYMENT IN THE YEAR 2005.

F.

WHETHER OR NOT THE CLAIM FOR REFUND WAS FILED WITHIN THE TWO (2)-YEAR PRESCRIPTIVE PERIOD PRESCRIBED UNDER SECTION 204 (C), IN RELATION TO SECTION 229 OF THE TAX CODE."

¹⁹ Docket, p. 705

²⁰ JSFI, Docket, pp. 105-106

The above-enumerated issues can be summarized into a single issue,
to wit:

"Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of amount of Php4,125,251.76, allegedly representing excess/unutilized creditable withholding tax for taxable year 2005.

Petitioner anchors its claim on *Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended*, which states:

"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 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.**" (Emphasis supplied)

Section 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income 

tax due. These options are (1) filing for a tax refund (either in the form of cash or Tax Credit Certificate) or (2) carry over the excess credit.

The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.

The second option works by applying the refundable amount, as shown on the Final Adjustment Return (FAR) of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.²¹ The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.²²

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.²³

²¹ Philam Asset Management, Inc., vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004. December 14, 2005; Systra Philippines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 176290. September 21, 2007.

²² Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009.

²³ Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999

A perusal of petitioner's Annual Income Tax Return (AITR)²⁴ for taxable year 2005 filed through the BIR's Electronic Filing and Payment System (EFPS) on 6 April 2006²⁵ shows an income tax overpayment of P22,310,994.85 which consisted of the prior year's excess credits of P18,185,743.09 and creditable taxes withheld in 2005 in the amount of P4,125,251.76, as shown below:

Sales/Revenues/Receipts/Fees	P	27,501,678.00
Less: Cost of Sales/Services		40,330,714.00
Gross Income from Operation	P	(12,829,036.00)
Add: Non-Operating & Other Income		-
Total Gross Income	P	(12,829,036.00)
Less: Deductions		2,719,046.09
Taxable Income	P	(15,548,082.09)
Income Tax Due	P	-
Less: Tax Credits		
Prior Year's Excess Credits		18,185,743.09
Creditable Tax Withheld For the First Three Quarters		4,125,251.76
Overpayment	P	(22,310,994.85)

While petitioner signified its intention to be issued a Tax Credit Certificate for the total overpayment of P22,310,994.85 (inclusive of the subject claim of P4,125,251.76) by marking the box corresponding to such option in its AITR for 2005²⁶, however, in its Quarterly Income Tax Returns for the first three quarters of taxable year 2006, petitioner carried-over the excess tax credits of P22,310,994.85 as "Prior Year's Excess Credits". *Be*

²⁴ Exhibit "D"

²⁵ Exhibit "D-1"

²⁶ Exhibit "D-2"

Petitioner's original option to refund (in the form of TCC) the amount of P4,125,251.76 was actually negated by its very act of carrying over said excess amount to the succeeding taxable quarters of 2006.

In ***COMMISSIONER OF INTERNAL REVENUE vs. BANK OF THE PHILIPPINE ISLANDS***²⁷, the Supreme Court held that:

"Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, no application for tax refund or issuance of a tax credit certificate shall be allowed therefor". (Emphasis supplied)

Petitioner had actually exercised the option of carry-over insofar as the claimed 2005 excess tax credit of Php4,125,251.76 is concerned. Having exercised such option, the same is irrevocable pursuant to *Section 76 of the NIRC of 1997, as amended*. Even if the said excess amount was not utilized in the succeeding taxable quarters of 2006, petitioner cannot seek its refund, instead, it should just apply the same to the succeeding quarters/years until it is fully utilized.

In fine, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997, as amended, and is barred from claiming refund of its 

²⁷ G.R. No. 178490. July 7, 2009

unutilized creditable withholding taxes for taxable year 2005 in the amount of Php4,125,251.76.

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate for its alleged excess/unutilized creditable withholding tax in the amount of Php4,125,251.76 for taxable year 2005 is hereby **DENIED** for lack of merit.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

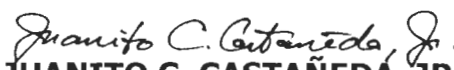
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CIELITO N. MINDARO-GRULLA
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, Second Division

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