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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN TRANSMISSION CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4974

Promulgated:
MAY 07 1996

x - x

D E C I S I O N

Petitioner seeks to recover by way of this petition for review its claim for refund or tax credit with the respondent in the amount of P1,067,732.15, representing overpaid final withholding tax on royalties paid and remitted to Mitsubishi Motors Corporation (Japan) for taxable year 1991.

There is no dispute as to the material facts of the case, respondent having admitted the same in the answer. The facts as alleged in the petition are as follows:

> "1. Petitioner is a private corporation duly-organized and existing under and by virtue of the laws of the Philippines with office address at Canlubang, Calamba, Laguna; while

2. Respondent is the duly-appointed Commissioner of Internal Revenue mandated by law to implement and enforce the National Internal Revenue Code and other related statutes with office address at BIR National Office, Diliman, Quezon City, where he may be served with summons;

STATEMENT OF FACTS

3. Petitioner is engaged in the manufacture of transmission assembly, component parts and engine assembly under a 'Manufacturing, Patents, and Technical Assistance Agreement' with Mitsubishi Motors (Japan) Corporation;

3.A. The Board of Investments has determined petitioner's business as a preferred pioneer business; while petitioner's agreement with Mitsubishi Motors - Japan is registered with the Bureau of Patents, Trademarks and Technology Transfer of the Department of Trade and Industry;

x x x   x x x   x x x.

3.B. That under the manufacturing agreement (Annex 'A'), it is specifically provided that petitioner pays Mitsubishi Motors - Japan two (2) types of fees: (a) a fee (¥45,000/40,000 per personnel dispatched) for the dispatch of MMC's technical personnel to provide technical assistance to ATC on the basis of number of days stay in the Philippines (minimum of one week but not to exceed an aggregate of six months in one taxable year); and (b) a fee 'in consideration of the technical assistance and other benefits x x x granted or agreed to be granted by MMC to ATC on the basis of 5% FOB price of omission or 5% of net sales minus landed cost of imported component parts, whichever is lower.

4. In accordance with the aforementioned provision of the agreement, for services, technical assistance extended by Mitsubishi Motors - Japan to

petitioner, petitioner remitted to Mitsubishi Motors - Japan technical assistance fees, as follows:

A.	April 10, 1991	P1,881,537.13
	Tax Rate	x .30
	Withholding Tax Paid	P 564,461.14
B.	May 10, 1991	P3,428,180.47
	Tax Rate	x .30
	Withholding Tax Paid	P1,028,454.14
C.	July 10, 1991	P 28,943.16
	Tax Rate	x .30
	Withholding Tax Paid	P 8,682.95

after payment and remittance of the withholding tax due to the Bureau of Internal Revenue;

xxx xxx xxx."

Petitioner invokes the provisions of the RP-Japan Tax Treaty particularly paragraphs (3) and (4) of Article 12, which we quote:

"ARTICLE 13

(3) Notwithstanding the provisions of paragraph (2), the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan, who is the beneficial owner of the royalties, shall not exceed 10 per cent of the gross amount of the royalties.

(4) The term 'royalties' as used in this Article means payments of any kind received as a consideration for

> the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience."

Petitioner contended that the technical assistance fees paid to Mitsubishi Motors Corp. (Japan) is covered under the term "royalties" subject only to the 10% final withholding tax rate. Therefore, petitioner realizing that there was an overpayment of withholding tax on royalties at the rate of 20% or in the amount of P1,067,732.15 filed a claim for refund with the respondent on April 12, 1993. Since the last day for filing a judicial claim for refund will expire on the same date, petitioner simultaneously filed the instant petition with this Court pursuant to the provision of Section 230 of the National Internal Revenue Code.

Respondent generally admits the allegations in the petition. However, she takes exception to the averment that respondent has not approved nor denied the claim for refund and that the petition was filed in compliance with Section 230 of the Tax Code.

An examination of the BIR records would reveal that petitioner's letter claim for refund dated April 6, 1993 (Exhs. P and 1), filed on April 12, 1993 (Exhs. P-1 and 1-a), has been investigated upon by the Revenue District Office No. 56 of Calamba, Laguna. The First Indorsement Letter, dated July 18, 1994 (Exh. 2), recommended a favorable action in line with the 10% rate as prescribed under Article 12(3) and (4) of the RP-

Japan Tax Treaty. However, the refund amount was reduced, by reason of prescription, to P690,424.72, computed as follows:

Total amount of Claim	P1,601,598.23
Less: Remittances dated 4/10/91	564,461.14
Balance	P1,037,137.09
Less: Applicable withholding tax	346,712.37
Final Amount for Refund	P 690,424.72

The reason being that the claim for refund was filed only on April 12, 1993, while the payment or remittances was made on April 10, 1991, which is beyond the two-year prescriptive period from date of payment for filing a claim for refund. On Second Indorsement, dated July 19, 1994, the recommendation was forwarded to the Regional Director, Revenue Region No. 9, San Pablo City who in turn approved said recommendation on August 10, 1994 (Exh. 3).

The real issue has therefore been limited to whether or not petitioner is entitled to the refund or issuance of a Tax Credit Certificate to the whole amount of P1,067,732.15, representing allegedly overpaid withholding tax at source on royalties paid to Mitsubishi Motors Corporation (Japan) for the year 1991 or to the reduced amount of P690,424.72 as computed by respondent's officers. The corollary issue is whether or not the claim for refund for the tax paid on April 10, 1991 has prescribed.

We find for the respondent.

Sections 204(3) and 230 are the controlling provisions of the National Internal Revenue Code in determining whether or not a claim for refund has prescribed. They provide as follows:

"SEC. 204. **Authority of the Commissioner to compromise, abate and refund/credit taxes.** - The Commissioner may -

x x x x x x x x x.

(3) 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 years after the payment of the tax or penalty."

"SEC. 230. **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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; 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 begun after the expiration of two 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. (* Should read "tax".)

> *Forfeiture of refund.* - A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check was mailed or delivered shall be forfeited in favor of the government and the amount thereof shall revert to the General Fund. (*as added by Pres. Decree No. 1705*)"

It is the contention of respondent that the claim for refund was filed on April 12, 1993 or two days late. Petitioner has only two years to claim for the refund of said overpaid tax counted from April 10, 1991 (the date of payment).

Petitioner's counsel on the other hand argued that since April 10, 1993 falls on a Saturday, a non-working day, the next working day, April 12, 1993 (a Monday), should be deemed to be the last day for filing a claim for refund.

While it may be true that the BIR has no office on a Saturday, this Court nonetheless has office on Saturday as prescribed under Sections 2 and 3 of Rule 3 of the Rules of the Court of Tax Appeals, to wit:

"RULE 3

PLACE OF OFFICE AND BUSINESS HOURS

> **SEC. 1.** x x x x x x x x x.
>
> **SEC. 2.** The hearings before the Court of Tax Appeals shall be on such days and at such times as it may, by order and upon notice to the parties concerned, fix. However, the first hours of the morning session of the Court every Saturday of each week shall be devoted to hearing motions, unless, for special reasons and upon motion of a party, the

> Court shall fix another day for the hearing of any particular motion.
>
> **SEC. 3.** The office of the Clerk of Court of the Court of Tax Appeals shall be open for the purpose of receiving petitions, pleadings, motions, and the like during the hours of eight to twelve A.M. and one to four P.M. on Mondays to Fridays and from eight A.M. to one P.M. on Saturdays, except on such days as may be designated by law or executive proclamation as being official holidays."

Similarly, in the case of **Maersk-Tabacalera Shipping Agency (Filipinas), Inc. v. The Commissioner of Internal Revenue, CTA Case No. 5006, February 20, 1996,** this Court has ruled that in like manner, if the last day for issuing an assessment (within the three-year prescriptive period) falls due on a Saturday, the respondent should have mailed it on the last day even though the same falls due on a Saturday as ruled by the Supreme Court that Saturday is considered an ordinary day, to wit:

> " x x x. In the case of Bank of America NT and SA vs. Gerochi, Jr., 230 SCRA 9, the Supreme Court ruled, thus:
>
> > 'The prevailing rule even then was that if the last day to appeal fell on a Saturday, the act was still due on that day and not the next succeeding business day.'
>
> In Lucero vs. NLRC, 203 SCRA 218, it was similarly ruled, thus:
>
> > 'However we noted in these cases the fact that Saturday unless declared a holiday, is considered a business day

> and therefore, if the last day to appeal falls on a Saturday, the act is due on that day and not on the next succeeding business day.'

In Olacao vs. NLRC, 177 SCRA 38, the Supreme Court again declared, thus:

> 'It may be that private respondent's appeal was filed on the 12th day contrary to Article 223 of the Labor Code prescribing ten (10) calendar days as the reglamentary period of appeal. Private respondent's claim that this 10th day fell on a Saturday when the offices of the NLRC were allegedly closed so that their last day to appeal falls on a Saturday, the act is still due on that day."

It is therefore clear that petitioner has from 8:00 A.M. to 1:00 P.M. of the Saturday of April 10, 1993 to file the petition with this Court. In the administrative level, petitioner could have sent its claim for refund with the Bureau of Internal Revenue by registered mail on April 10, 1993 instead of waiting for Monday, April 12, 1993 in order to coincide with the timely filing of its judicial claim for refund. Taxpayers are warned that this Court is open every Saturday except on Regular or Special Holidays. Our rules is clear on this point. Thus, petitioner's claim for refund in the amount of P564,461.14 has already prescribed as correctly pointed by respondent.

Petitioner is only entitled to the refund of P691,424.72 and not P690,424.72 as computed by respondent's revenue officers. The amount of refund of P691,424.72 per the Court's computation was arrived at as follows:

Total amount of Claim			P1,601,598.23
Less: Remittances dated 4/10/91			564,461.14
Balance			P1,037,137.09
Less: Applicable withholding tax			
May 10, 1991			
P3,428,180.47 x 10% =		P342,818.05	
July 10, 1991			
P 28,943.16 x 10% =		2,894.32	345,712.37
Refundable Amount			P 691,424.72

WHEREFORE, respondent is hereby ordered to refund or issue a Tax Credit Certificate in favor of petitioner in the amount of P691,424.72, representing erroneously and overpaid withholding taxes at source on royalties paid and remitted to Mitsubishi Motors Corporation (Japan) for the taxable year 1991.

No pronouncement as to cost.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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