REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ASIAN TRANSMISSION CORPORATION,
Petitioner,

C.T.A. CASE No. 6648

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 04 2006

x - x

AMENDED DECISION

CASANOVA, C., J.:

On March 20, 2006, this Court promulgated a decision in the above captioned case, the dispositive portion of which reads as follows:

> "**WHEREFORE,** the instant petition for review is hereby *PARTIALLY GRANTED.* Respondent is ordered to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P24,325,856.58 representing the unutilized creditable withholding taxes for taxable year 2001.
>
> **SO ORDERED.**"

On April 10, 2006, respondent filed a Motion for Reconsideration disagreeing with the ruling of this Court that the burden of proof as to whether petitioner incurred net losses from its operations rests upon him. He further argues that in an action for refund, the

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burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

We consider the respondent's motion devoid of merit. It is a time-honored principle that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and ought to be construed strictly against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to substantiate by clear and convincing proof his entitlement to the refund sought. On the other hand, respondent needs to justify his implied allegation of irregularity in the declared operational losses of petitioner. To reiterate, the income tax returns subject of the petition were prepared under penalty of perjury. Hence, respondent's bare allegation without categorical showing of irregularity as to the losses claimed by petitioner shall not merit any consideration and the declarations of petitioner in the returns shall be deemed regular and accurate.

Petitioner, for its part, filed a Motion for Partial Reconsideration on April 17, 2006, averring that this Court erred in: a) crediting only the amount of Three Hundred Thirty One Thousand Eight Hundred Twenty Four Pesos (P331,824.00) instead of the amount of Three Million Three Hundred Thirty One Thousand Eight Hundred Twenty Four Pesos (P3,331,824.00) representing the actual amount withheld by MMC Stippol Co. Ltd., from petitioner; and b) in ordering the issuance of a Tax Credit Certificate in the amount of P24,325,856.58 since it prayed in the alternative for the refund of its excess/unutilized creditable income taxes.

After a careful review of the records in this case, this Court resolves to grant petitioner's motion. This Court inadvertently awarded to petitioner the amount of Three Hundred Thirty One Thousand Eight Hundred Twenty Four Pesos (P331,824.00) short of the amount of Three Million Pesos (P3,000,000.00) rightfully owing to it. Therefore, this Court finds petitioner entitled to the refund or issuance of a tax credit certificate corresponding to

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its unutilized creditable withholding taxes for taxable year 2001 in the amount of P27,325,856.58, detailed as follows:

Income Payment	Tax Withheld	Withholding Agent	Exh.
P 300,603,978.00	P 3,006,039.78	Mitsubishi Motors Phils. Corp.	S
195,263.12	1,952.63	Nidec-Shimpo Philippines Corp.	T
363,266,839.00	3,632,668.39	Mitsubishi Motors Phils. Corp.	U
137,659.10	1,376.59	Nidec-Shimpo Philippines Corp.	V
576,146,311.00	5,761,463.11	Mitsubishi Motors Phils. Corp.	W
137,659.10	1,376.59	Nidec-Shimpo Philippines Corp.	X
488,449,635.00	4,884,496.35	Mitsubishi Motors Phils. Corp.	Y
103,611.44	2,072.23	Nidec-Shimpo Philippines Corp.	Z
44,683,912.73	6,702,586.91	MMC Sittipol Co. Ltd.	AA
22,212,158.06	3,331,824.00	MMC Sittipol Co. Ltd.	BB
P1,795,937,026.55	**P27,325,856.58**		

WHEREFORE, petitioner's Motion is hereby **GRANTED** while respondent's Motion is hereby **DENIED** for lack of merit. Accordingly, respondent is **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **TWENTY SEVEN MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX & 58/100 PESOS (P27,325,856.58)** representing unutilized creditable withholding taxes for taxable year 2001.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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