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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

USS ENGINEERS AND CONSULTANTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3726

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

12/15/88

# D E C I S I O N

This is about a claim for the refund of the sum of P792,750.00 representing alleged erroneously withheld income tax for the taxable year 1981.

The record shows that petitioner USS Engineers and Consultants, Inc., a non-resident foreign corporation undertook a feasibility study of an Integrated Steel Mill Project for the National Steel Corporation, a wholly owned Philippine Government entity.

And for such services, petitioner received fees amounting to $1,606,653.70, inclusive of a $300,000 grant from the United States Government *which was subjected to a 35% withholding tax aggregating $562,328.80 (or P12,130,235.54) as reflected in the National Steel Corporation's Quarterly Return of Final Income Tax ending December 31, 1981, and duly receipted by Bureau of Internal Regvenue on January 25, 1982. The tax corresponding to the $300,000 as deduced from the total payment is computed this wise:*

| | | |
|---|---|---|
| *Service Fee* | : | *$300,000* |
| *Tax Rate* | : | *x .35* |
| | | *$105,000* |
| *US$-Peso Rate* | : | *x 7.55* |
| *Tax Withheld* | | *P792,750* |

*It appears that the grant of $300,000 is embodied in an August 21, 1981 Agreement entered into by and between the National Steel Corporation and the U.S. Trade and Development Program acting in behalf of their respective governments, the Philippines and United States of America, which provides insofar as relevant that -*

> *H. This agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the Philippines. To the extent that any contractor, including any consulting firm, or any personnel of such contractor financed under the Grant are not exempt for identifiable taxes, tariffs, duties, or other levies imposed under laws in effect in the Philippines, the Government*

> *of the Philippines will pay or reimburse the same with funds other than those provided under this Grant and will not claim reimbursement for such taxes, tariffs, etc., under this Grant.*

*On the basis thereof, petitioner claimed on November 9, 1983 the refund of P792,750.00 correspondingly withheld on the $300,000.00 drawn from the Grant, but for the apparent inaction of the respondent Commissioner, filed the present petition for review on January 23, 1984.*

*Thus, the question of whether or not petitioner has established a valid claim to a refund with the respondent Commissioner of Internal Revenue.*

*The material facts are relatively simple so is the issue under resolve. And, the sprouting impression precipitately broached by the petitioner that the tax on the fees financed out of the grant has been erroneously imposed can hardly be a reassuring prospect that can readily be reconciled with the affiliating statutory limitations. The Grant can by no means be deemed the authority for a non-tax exempt entity to an enjoyment of the privilege. Neither could it be naively viewed as* *of such broad scope and spectrum with open ended features as to validly infuse cognizance to a claim in disregard of the proscriptions of the revenue laws.*

*It need not be stressed that exemption from the common burden cannot be permitted to exist out of inference or vague implications. Since a refund undoubtedly partakes the nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language. (**Resins, Inc. v. Auditor General**, 25 SCRA 754). And the circumstances obtaining in the case at bar, show that petitioner, neither privy to the Agreement nor a tax exempt entity* per se *has failed to "justify its exemption by words too plain to be mistaken and too categorical to be misinterpreted." (**Reagan v. Commissioner of Internal Revenue**, 30 SCRA 969).*

*Be that as it may, the National Steel Corporation, signatory agency, has yet to comply with the prestation in the Agreement. Thus enjoined, "To the extent that any contractor x x x financed under the Grant are not exempt from identifiable taxes x x x imposed under laws in effect in the Philippines, the government of the*

*Philippines will pay or reimburse the same with funds other than those provided under this Grant."* *The chips otherwise falling on the petitioner but by the terms and conditions in the Agreement, apparently lie with the National Steel Corporation upon which the recourse for the refund may be addressed. The respondent Commissioner of Internal Revenue cannot serve as a convenient "wailing wall" as would relieve petitioner's predicament. The tax sought to be refunded is legally due and therefore rightly imposed and collected on petitioner's realized income on its undertaking. Obviously, the subject claim sounds sort of barking at the wrong tree expecting the unexpected, so to speak.*

***WHEREFORE,*** ***petition is dismissed at petitioner's costs.***

***SO ORDERED***

*Quezon City, Metro Manila, December 15, 1988.*

***ALEX Z. REYES***
*Associate Judge*

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

## C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals