REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUAL CONSTRUCTION CORPORATION (Formerly Sual Slipform Construction Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 6247

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 1 3 2004

x - x

D E C I S I O N

This is a claim for refund of petitioner's alleged excess creditable withholding taxes as of December 31, 1999 in the total amount of P53,035,575.00 pursuant to the Completed Contract Method of Income Recognition arising from petitioner's construction contract with Southern Energy Pangasinan, Inc. (formerly Pangasinan Electric Corporation).

Petitioner, formerly Sual Slipform Construction Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office located at Bo. Pangascasan, Sual, Pangasinan. It is primarily engaged to conduct and carry-on a general construction business including, but not limited to, designing, installing, erecting, assembling, commissioning and managing projects related to power-generating stations, industrial plants and related facilities *(Joint Stipulation of Facts and Issues, par 1.2).*

Petitioner is registered with the Bureau of Internal Revenue (BIR) and has a Taxpayer Identification Number (TIN) of 004-707-396-000 *(Exhibit C).*

Sometime in 1995, petitioner entered into a contract for the installation, erection and commissioning of the 2 x 609 megawatt coal fired thermal power plant at Sual, Pangasinan with Southern Energy Pangasinan, Inc. (Southern) *(Exhibits D, E, F, G).* Petitioner received various income payments from Southern in the sum of P5,676,633,654.00 *(Exhibit K).* Southern withheld from said income payments the 1% creditable withholding taxes on payments to contractors allegedly in the aggregate amount of P53,035,575.00 *(Exhibits N-1 to N-15).*

Petitioner adopted and used the Completed Contract Method of Income Recognition from long term contracts from the inception of the construction project until its completion in 1999 *(Exhibits H, I, J, K).*

Petitioner filed with the BIR its 1996, 1997 and 1998 (amended) Corporate Annual Income Tax Returns *(Exhibits H, I, J, respectively)* reporting no income or loss for the said calendar years.

On April 17, 2000, petitioner filed with the BIR its Corporate Annual Income Tax Return *(Exhibit K)* for calendar year ended December 31, 1999, showing the following entries:

Line 14C: Sales/Revenues/Fees (Sch 1)	5,676,633,654.00
Line 15C: Less: Cost of Sales/Services (Sch2/3)	6,655,251,525.00
Line 16C: Gross Income from Operation	(978,617,871.00)
Line 18C: Total Gross Income	(978,617,871.00)
Line 20B: Taxable Income	(978,617,871.00)
Line 21B: Tax rate	33%
Line 22B: Income Tax	**NIL**
Line 26A: Prior Year's Excess Credits	51,711,358.00
Line 26C: Creditable Tax Withheld for The First Three Quarters	1,324,217.00
Line 31: Refundable Income Tax	(53,035,575.00)

Petitioner indicated its intention to claim as refund its unutilized creditable withholding tax for the taxable period covering January 1996 up to December 31, 1999 in the total amount of P53,035,575.00 *(Joint Stipulation of Facts and Issues, par. 1.7)*. In its Annual Income Tax Return (AITR) for the calendar year ended December 31, 2000, petitioner left blank line 26 A – Prior Year's Excess Credits *(Exhibit L-3)*.

On December 27, 2000, petitioner filed an administrative claim for refund *(Exhibit O)* with the BIR in a letter dated December 22, 2000. And on March 09, 2001, petitioner filed the instant petition.

In his Answer filed on April 25, 2001, respondent denied most of the allegations of the petitioner in its petition.

To sustain its claim for refund, petitioner presented documentary and testimonial evidence. Respondent, for his part, submitted the case for decision based on the pleadings *(CTA Records, page 161)*.

The following issues were submitted on July 20, 2001, by the parties for resolution by this court:

> 2.1 Whether the petitioner filed its administrative claim for refund with the BIR within the two-year prescriptive period pursuant to Sections 204 and 229 of the National Internal Revenue Code of 1997 (NIRC).
>
> 2.2 Whether petitioner's creditable withholding taxes for the taxable period beginning January 1996 and ending December 31, 1999 amounting to P53,035,575.00 are duly supported by Certificates of Creditable Tax Withheld at Source.
>
> 2.3 Whether petitioner's income from which the creditable taxes were withheld was declared as part of its income in its Corporate Annual Income Tax Return for the taxable year ended December 31, 1999.
>
> 2.4 Whether the petitioner carried-over said unutilized creditable withholding tax to the succeeding taxable year.

Before we delve on the above issues, it must be pointed out that petitioner's claim is based on Completed Contract Method of Income Recognition. This accounting method is applicable to contractors in the construction of building, installation of equipment and other fixed assets, or other construction work covering a period in excess of one year. However, under Republic Act No. 8424, which took effect on January 1, 1998, contractors are no longer allowed to adopt this method of reporting their income derived in whole or in part from long-term contracts *(Revenue Audit Memorandum Order No. 1-00)*. As prescribed by Section 48 of R.A. No. 8424, the percentage of completion method is now the only method of accounting recognized for long-term contracts. Nevertheless, a taxpayer, like petitioner, who has entered into a contract prior to 1998, reported and recorded the transaction under the completed contract method of income recognition, is still allowed to use said method in 1998, provided that:

1) the same is strictly applied only for construction contracts entered into and started prior to January 1, 1998;

2) the project was previously reported under the completed contract method;

3) the project was not completed in 1998;

4) the allowable deductions already incurred in relation to the project were not yet claimed and recognized in 1998 or for the duration of the project (BIR Ruling DA-199-99).

Based on our earlier discussion of facts, it appears that petitioner met the aforementioned requirements.

Proceeding now to the first issue, time and again as held by this court, the resolution of a claim for refund of excess or unutilized creditable taxes withheld at source hinges on three important considerations: First, is the timeliness of the filing of the claim for refund in accordance with Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997). Second, is the fact of withholding of tax from the amounts paid to the petitioner as established by a copy of a statement duly issued by the withholding agent. And third, the income upon which the taxes were withheld was included in the return of the recipient **(Revenue Regulations No. 6-85, as amended; Citibank, N.A. vs. Court of Appeals and CIR 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957).**

Section 229 of the Tax Code, as amended, provides:

> "**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 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 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."

The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return *(ACCRA Investments Corp. vs. Court of Appeals, supra.).* Due to the peculiar circumstances involved in this case, the two-year prescriptive period shall be counted from the filing of the final adjustment return on April 17, 2000 by petitioner. Because it was only at this time that petitioner was able to ascertain whether it made profits or incurred losses in its business operations. Thus, the two-year period prescribed under Section 204(C) in relation to Section 229 of the NIRC of 1997 lapsed on April 17, 2002. Indubitably, petitioner's administrative claim for refund filed on December 27, 2000 *(Exhibit O)* and the instant petition filed on March 9, 2001 fall squarely within the two-year prescriptive period.

Regarding the fact of withholding of the reported unutilized tax credits of P53,035,575.00, petitioner offered in evidence various Certificates of Creditable Tax Withheld at Source issued by Pangasinan Electric Corporation [now Southern Energy Pangasinan, Inc.] *(Exhibits N-1 to N-15)* and summarized in Exhibit V. However, as correctly indicated in the summary, the total creditable withholding taxes reflected in the certificates amounted to a higher amount of P53,070,587.00.

Pertaining to the issue of whether or not petitioner declared in its 1999 income tax return the income upon which the creditable taxes of P53,070,587.00 were withheld, the answer is in the affirmative.

The certificates show that the creditable taxes of P53,070,587.00 were withheld by Pangasinan Electric Corporation from contractor's fees paid by the latter to the petitioner from 1996 to 1999 in the total amount of P5,307,058,743.00. In its 1999 income tax return, petitioner's reported revenues from sale of services amounted to P5,676,633,654.00. Petitioner explained that the discrepancy between the gross receipts as declared in 1999 income tax return and the amount of income payments as supported by the Certificates of Creditable Withholding Tax can be attributed to cases of timing difference in the recognition of Value-Added Taxes *(Exhibit W)*, difference in foreign exchange rates and income accrued by petitioner but not yet received from Southern and foreign exchange adjustments made by the independent auditor *(Exhibits W-4, X, Y, TSN, September 5, 2002, pages 9-18)*. Considering that the gross income declared by petitioner in its 1999 income tax return is higher than the income reflected in the certificates, it may be concluded that petitioner declared all of the income from which the creditable taxes of P53,070,587.00 were withheld.

Finally, as to the issue of whether or not petitioner carried-over the unutilized creditable withholding taxes of P53,070,587.00 to the succeeding taxable year, this court rules in the negative. Petitioner proved that no amount of prior year's excess credits was indicated in its income tax return for the taxable year 2000 *(Exhibit L-3)*.

In sum, while petitioner has sufficiently complied with all the requirements for the refund of its unutilized creditable withholding taxes as of December 31, 1999 in the amount of P53,070,587.00, this court, however, will only grant the refund of the amount of P53,035,575.00 inasmuch as this is the only amount subject of the instant petition for review.

WHEREFORE, petitioner's claim is hereby **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** to the petitioner the amount of P53,035,575.00 representing excess or unutilized creditable withholding taxes as of December 31, 1999.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice