REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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STAR PERFORMANCE, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6911

Members:

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

Promulgated:
MAR 07 2008; 9:00 am

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DECISION

BAUTISTA, *J.*:

The instant **"Petition for Review"** seeks the refund or issuance of tax credit certificate in the aggregate amount of **TWO MILLION SEVENTY-TWO THOUSAND ONE HUNDRED TWELVE PESOS (P2,072,112.00)**, representing petitioner's alleged excess and unutilized creditable withholding taxes for the calendar year 2001.

The facts as culled from the records of the case are as follows:

Star Performance, Inc. (petitioner) is a corporation duly organized and existing under and by virtue of the Philippine laws, with principal office address at J.Y. & Sons Industrial Compound, Phividec Industrial Complex, Taguig, Metro Manila. Petitioner is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 001-798-590-00. It is primarily engaged in manufacturing services from which it derives its revenues.

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Respondent is the duly appointed Commissioner of Internal Revenue, who is empowered to perform the duties of his office, including, among others, the duty to decide, approve and grant claims for refund and tax credit as provided by law. Respondent's office address is at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return (ITR) with the BIR on April 12, 2002[1] for calendar year ended December 31, 2001. The ITR shows that petitioner had a total gross income of P32,851,943.00 and a total deduction of P39,632,072.00, resulting in a loss of P6,780,129.00.[2] Hence, applying the Minimum Corporate Income Tax (MCIT), petitioner had an income tax due in the amount of P657,039.00[3] for calendar year 2001.

The ITR likewise indicates that petitioner had an aggregate withholding tax credits for the four quarters of the calendar year 2001 in the amount of P2,729,151.00, the details of which are as follows:

Creditable Tax Withheld for first three quarters	P2,207,368.00
Creditable Tax Withheld for the fourth quarter	521,783.00
Total Creditable Taxes Withheld for 2001	P2,729,151.00

The amount of P2,729,151.00 was applied against the MCIT of P657,039.00, resulting in an excess withholding tax credit in the sum of P2,072,112.00, computed as follows:

Minimum Corporate Income Tax Due	P 657,039.00
Less: Total Creditable Taxes Withheld for 2001	2,729,151.00
Unutilized Creditable Taxes Withheld for 2001	(P2,072,112.00)

Petitioner indicated in the same 2001 ITR its option to refund the amount of P2,072,112.00.

[1] Joint Stipulation of Facts and Issues for Trial, Docket, p. 50
[2] Exhibit "A"
[3] 2% of petitioner's gross income

On February 20, 2003[4] and March 31, 2003[5], petitioner filed with the BIR a claim for refund or issuance of tax credit certificate and a supplemental claim for refund/tax credit, respectively, of its total excess and unutilized creditable withholding taxes for the calendar year 2001 in the amount of P2,072,112.00.[6]

There being no action on the part of respondent and before petitioner could be barred by prescription, petitioner then filed this instant Petition for Review on March 31, 2004.

On May 27, 2004, respondent filed through registered mail his Answer, raising the following Special and Affirmative Defenses:

> "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
>
> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
>
> 7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.
>
> 8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

After trial on the merits, the case was submitted for decision on December 18, 2007, sans respondent's Memorandum.

The issues[7] as stipulated by the parties are as follows:

> "1. whether or not petitioner's claim for refund or issuance of a tax credit was filed within the two-year prescriptive period provided under Section 204

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[4] Annex "B" and "B-1", Petition for Review
[5] Annex "C" and "C-3", Petition for Review
[6] Joint Stipulation of Facts and Issues for Trial, Docket, p. 50
[7] Joint Stipulation of Facts and Issues for Trial, Docket, p. 51

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(C) in relation to Section 229 of the 1997 National Internal Revenue Code, as amended ('Tax Code');

2. whether or not petitioner had excess creditable income taxes withheld for taxable year 2001;

3. whether or not the income upon which the creditable income taxes withheld were included and reported as part of petitioner's gross income in its Return for the taxable year 2001;

4. whether or not the amount representing petitioner's unutilised withholding tax credits for taxable year 2001 was utilised or applied against petitioner's income tax liability in the subsequent taxable years;

5. whether or not petitioner is entitled to a refund in the amount of P2,072,112.00 representing excess creditable income taxes withheld for taxable year 2001."

The above issues boil down to one essential issue, *viz.*, "Whether or not petitioner is entitled to a refund in the amount of P2,072,112.00 representing excess creditable income taxes withheld for the calendar year 2001".

Petitioner's claim for refund is anchored on Sections 76 and 204(C) of the National Internal Revenue Code (NIRC) of 1997, which are quoted below for ready reference, to wit:

> "**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 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 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 tax due for the 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."

"**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -**

xxx xxx xxx

(C) 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 (2) years after the payment of the tax or penalty**. Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied*)

Settled is the rule that a corporation must signify in its Annual ITR its intention whether to request refund of the overpaid income tax or claim the automatic tax credit to be applied against its income tax liabilities for the quarters of the succeeding taxable year by filling the appropriate box on the same ITR[8]. In the present case, petitioner signified its intention that the excess creditable tax withheld for the calendar year 2001 be refunded.

A perusal of petitioner's Annual ITR[9] and the judicial affidavits of petitioner's witness, Ms. Mary Jane Magat, shows that petitioner opted to be refunded by ticking the box in Item 31[10] of the ITR and did not carry-over, utilize or apply the amount of P2,072,112.00 to its tax liabilities for the subsequent taxable year as reflected in petitioner's Annual ITR for 2002[11] and for 2003[12].

However, petitioner's entitlement to refund is still subject to the satisfaction of the requirements laid down by the NIRC of 1997, as amended, namely:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

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[8] *Commissioner on Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005
[9] Exhibit "A"
[10] Exhibit "A-10"
[11] Exhibits "N and "N-3"
[12] Exhibits "O" and "O-3"

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2. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount withheld therefrom; and

3. That the income upon which the taxes were withheld is included as part of the gross income declared in the income tax return of the recipient.[13]

As regards the first requirement, Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended, provides:

"**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -**

xxx xxx xxx

(C) 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 (2) years after the payment of the tax or penalty**. Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied*)

"**Section 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 written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*)

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[13] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 155682, March 27, 2007; *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1995.

Here, petitioner filed with the BIR a claim for refund on February 20, 2003[14] and a supplemental claim on March 31, 2003[15]. The instant petition was filed on March 31, 2004. Clearly, the claims for refund were timely filed.

Anent the second requirement, the Supreme Court enunciated in the case of **Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue**[16] that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee through the Certificates of Creditable Taxes Withheld at Source. In the present case, petitioner submitted to this Court as part of its documentary evidence the required Certificates of Creditable Taxes Withheld at Source, which provide the following details:

Exhibit	Payor	Nature of Income Payments	Period	Income Payments	Tax Withheld
E	Avon Cosmetics, Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	1-1-2001 to 3-31-2001	P18,738,400.00	P 187,384.00
F	Avon Cosmetics, Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	4-1-2001 to 6-30-2001	17,011,162.00	170,111.62
G	Avon Cosmetics, Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	7-1-2001 to 9-30-2001	23,780,326.00	237,803.26
H	Avon Cosmetics, Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	10-1-2001 to 12-31-2001	10,825,870.00	108,258.70
I	Triumph International (Phils.), Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	1-1-2001 to 3-31-2001	55,049,008.11	550,490.09
J	Triumph International (Phils.), Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	4-1-2001 to 6-30-2001	50,257,913.63	502,579.15

[14] Annex "B" – "B-1", Petition for Review
[15] Annex "C" – "C-3", Petition for Review
[16] G.R. No. 155682, March 27, 2007

K	Triumph International (Phils.), Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	7-1-2001 to 9-30-2001	55,899,961.00	558,999.61
L	Triumph International (Phils.), Inc.	Income payments made by top 5000 corporations to their local suppliers of goods	10-1-2001 to 12-31-2001	41,352,394.41	413,523.94
TOTAL				**P272,915,035.15**	**P2,729,150.37**

These substantiate the claim that there is a creditable withholding tax in the name of petitioner for the calendar year 2001. The aggregate amount of P2,729,150.37[17] constitutes the creditable taxes withheld from eight Certificates of Creditable Taxes Withheld presented by petitioner.

Regarding the third requisite, petitioner made the following declarations in its Annual Income Tax Return for the calendar year 2001[18]:

Sales		P272,526,262
Less: Cost of Sales		240,058,661
Gross Income from Operation		32,467,601
Add: Non-Operating & Other Income		384,342
Gross Income		32,851,943
Less: Deductions		39,632,072
Taxable Income		(6,780,129)
Minimum Corporate Income Tax		657,039
Less: Tax Credits		-
	Creditable Tax Withheld for the First Three Quarters	2,207,368
	Creditable Tax Withheld for the Fourth Quarter	521,783
	Total Tax Credits	2,729,151
Overpayment		(2,072,112)

From the foregoing, the aggregate amount of P2,729,151.00 was duly withheld from petitioner which was applied against its MCIT amounting to P657,039.00[19], resulting in an excess withholding tax credits in the amount of P2,072,112.00 for the calendar year 2001.

[17] As verified by the Court, instead of P2,729,151.00 declared and reflected by petitioner in its Annual ITR
[18] Exhibit "A"
[19] Exhibits "A" and "A-5"

The abovementioned declarations are further supported by the Report of the Commissioned Independent Certified Public Accountant (ICPA)[20], which reflected the sales made by petitioner to Avon Cosmetics, Inc. and Triumph International (Phils), Inc; and the testimony of Ms. Mary Jane A. Magat[21], showing the reconciliation done with regard to the difference between the total revenues in petitioner's Annual Income Tax Return and the amount of income payments reflected in the Certificates of Creditable Taxes Withheld issued by petitioner's withholding agents for the calendar year 2001.

The Court notes that the variance of P388,733.11 in the abovementioned pieces of documentary evidence, found in Exhibit "JJ-18", does not pertain to undeclared income but to various reconciling items found in Exhibit "JJ" such as sales returns, erroneous encoding of invoices, security guard services provided by petitioner during Triumph's Bargain Sale, which was included in the latter's Withholding Tax Summary for April-June 2001; and sales without Expanded Withholding Tax (EWT) deductions. Hence, the third requirement is satisfied.

To recapitulate, since petitioner has substantially complied with the requirements for tax refund claim provided in Section 204 of the NIRC of 1997, as amended, and applicable jurisprudence; thus, petitioner is entitled to the refund of its unutilized creditable withholding taxes in the amount of P2,072,111.37. A detailed breakdown of the said amount is as follows:

Total Withholding Tax[22]	P 2,729,150.37
Less: Income Tax Due[23]	657,039.00
Tax Overpayment	**P2,072,111.37**

WHEREFORE, the instant **"Petition for Review"** is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the modified amount of **TWO MILLION SEVENTY-**

[20] Docket, pp. 232-244
[21] Exhibits "KK" and "QQ"
[22] Exhibits "E", "F", "G", "H", "I", "J", "K", and "L"
[23] Exhibits "A" and "A-5"

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TWO THOUSAND ONE HUNDRED ELEVEN PESOS AND 37/100 (P2,072,111.37), representing petitioner's excess and unutilized creditable withholding taxes for the calendar year 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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