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**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

**SAN MIGUEL RENGO PACKAGING
CORPORATION,**

Petitioner,

- versus -

C.T.A. CASE NO. 5804

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

OCT 18 2001 *[Signature]*

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DECISION

This is a Petition for Review seeking for the refund or issuance of a tax credit certificate in the amount of Four Million Eight Hundred Fifty One Thousand Eight Hundred Eighteen Pesos (P4,851,818.00) allegedly representing unutilized excess creditable withholding tax on income payments for calendar year 1996.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of manufacturing corrugated carton boxes.

On April 14, 1997, Petitioner filed its 1996 Annual Income Tax Return (Exhibit A) declaring a net loss amounting to P24,379,130.00 and unutilized excess tax credits of P8,644,974.00, broken down as follows:

Tax Credits/Payments:	
Prior Year's Excess Credits	P3,793,156.00
Tax Credits/Withheld/Payments	
for the First Three Quarters	4,285,514.00
for the Fourth Quarter	<u>566,304.00</u>
T O T A L	<u>P8,644,974.00</u>
(Exhibit A)	

On April 14, 1999, an administrative claim for refund was filed by Petitioner with the Bureau of Internal Revenue corresponding to the alleged unutilized creditable taxes withheld amounting to P4,851,818.00 for the taxable year 1996. Subsequently, Petitioner filed its Petition for Review on April 15, 1999 to toll the running of the two-year prescriptive period.

In his Answer dated June 10, 1999, Respondent raised the following Special and Affirmative Defenses:

“3. Petitioner’s alleged claim for refund/tax credit is subject to administrative routinary investigation by the respondent’s Bureau;

4. It is incumbent upon petitioner to show that the total amount of P4,851,818.00 claimed as unutilized excess creditable withholding tax on income payments for calendar year 1996;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

6. In an action for tax refund, the taxpayer has the burden of establishing its right thereto, and failure to sustain the same renders the claim for refund fatal;

7. Petitioner must undoubtedly show that it has complied with the provisions of Section 230 (now Section 229) of the Tax Code; and

8. The rule is well-established that claims for refund/tax credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax.”

To support its claim for refund, Petitioner submitted the following documents in evidence, to wit:

1. 1996 Annual Income Tax Return (Exhibit A)
2. 1997 Annual Income Tax Return (Exhibit B)
3. Summary of Withholding Tax Certificates (Exhibit C)
4. Various Certificates of Creditable Tax Withheld at Source (Exhibits C-1 to C-84, D-1 to D-7)
5. Summary of Additional Withholding Tax Certificates for Refund (Exhibit E)

Both Petitioner and Respondent failed to submit their respective Memorandum within the period given by the Court, hence the instant Petition was considered submitted for decision as per the Court's Resolution dated June 28, 2001.

The sole issue brought before this Court is whether or not Petitioner is entitled to the refund of P4,851,818.00 representing alleged unutilized creditable withholding taxes for the year 1996.

The grant of the refund of excess creditable withholding taxes is dependent upon Petitioner's compliance with the following basic requirements provided under Revenue Regulations No. 12-94 and the prevailing jurisprudence on the matter.

- 1) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;
- 2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
- 3) That the income upon which the taxes were withheld were included in the return of the recipient [Revenue Regulations No. 12-94 (amending

Revenue Regulations No. 6-85); Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957].

Records disclose that Petitioner complied with the first requirement. The claim for refund of the excess unutilized creditable withholding taxes, both administrative and judicial, were filed within the two year prescriptive period.

In its 1996 Annual Income Tax Return, Petitioner reported a net loss of P24,379,130.00, hence, the creditable taxes withheld for the year 1996 in the amount of P4,851,818.00 were not utilized as of December 31, 1996. Since it is a well-settled rule that the Income Tax Return was prepared under penalties of perjury, the amounts appearing therein are presumed to be true and correct (**Paseo Realty and Development Corporation vs. CIR, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-G.R. SP No. 33589, ,October 14, 1994).**

To prove the fact of withholding, Petitioner presented in evidence various Certificates of Creditable Withholding Tax Withheld at Source. The said Certificates reported creditable taxes withheld amounting to P1,492,403.93 and P1,003,718.86 as summarized in Exhibits C and E, respectively.

A perusal of the records, however, revealed that the creditable taxes amounting to P2,214.36 withheld by Unilever Philippines (PRC), Inc. for the period April to June 1996 (Exhibit C-25), was erroneously reported twice in the Summary marked as Exhibit C. Therefore, the total creditable taxes withheld reported in the said summary should be P1,490,189.57 instead of P1,492,403.93. Consequently, the aggregate creditable

withholding taxes sufficiently supported by certificates of creditable tax withheld at source amounted to P2,493,908.43 broken down as follows:

As per Summary (Exhibit C)	P 1,490,189.57
As per Summary (Exhibit E)	<u>1,003,718.86</u>
	<u>P 2,493,908.43</u>

The foregoing discussion serves to point out the fact that Petitioner complied with the second requirement.

Petitioner has, likewise, complied with the third requirement as it has sufficiently proved that the income payments corresponding to the creditable taxes of P2,493,908.43 was declared as part of Petitioner's gross income for 1996 amounting to P352,413,214.00 and reported in its 1996 Income Tax Return (Exhibit A-7). It must be noted however that before a grant of the refund can be finally awarded to Petitioner, the excess tax credit in the amount of P3,278,956.00 reflected in its 1997 Annual Income Tax Return must be sufficiently explained (see Exhibit "B", p. 148, CTA Records). During the hearing held on December 1, 1999, Petitioner's Financial Analyst, Mr. William Ladagan, testified that the amount of P3,278,956.00 pertains to 1995 excess tax credits which were erroneously carried over in the 1997 income tax return. This must be correct because the 1996 income tax return of the Petitioner shows a prior year's excess credit of P3,793,156.00 which is not included in the present claim for refund. Granting for the sake of argument that the amount of P3,278,956.00 actually refers to 1996 creditable withholding taxes, Petitioner could not have utilized the said amount to pay for its 1997 tax liabilities because it incurred a net loss in the latter year, hence eliminating the possibility of granting a double refund.

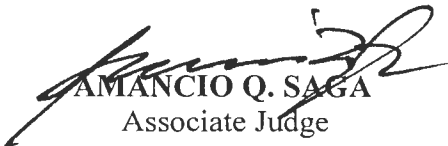
Petitioner has, thus, sufficiently substantiated its claim for refund of overpaid income tax for taxable year 1996 but only to the extent of P2,493,908.43.

WHEREFORE, in view of all the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of TWO MILLION FOUR HUNDRED NINETY THREE THOUSAND NINE HUNDRED EIGHT AND 43/100 PESOS (P2,493,908.43) representing unutilized creditable taxes withheld for the taxable year 1996.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Judge

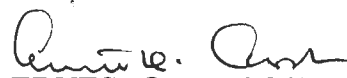
WE CONCUR:


AMANCIO Q. SAGA
Associate Judge


JUANITO C. CASTAÑEDA, JR.
Associate Judge

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 Judge