

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

TeaM (PHILIPPINES) ENERGY
CORPORATION [formerly,
MIRANT (PHILIPPINES) ENERGY
CORPORATION],

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 7603

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 28 2010

4:30 p.m.

x-----x

DECISION

CASTAÑEDA, JR., J.:

This case involves a claim for refund or issuance of tax credit certificate in the amount of P25,571,495.99, representing overpaid income taxes or excess creditable withholding taxes for taxable years 2004 and 2005.

Petitioner TeaM (Philippines) Energy Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Suite 501, CTC Building, 2232 Roxas Boulevard, Pasay City. Originally, petitioner's corporate name was Southern *JK*

Energy Mobile, Inc. It was later changed to Mirant (Philippines) Mobile Corporation. On August 16, 2001, petitioner again changed its name to Mirant (Philippines) Energy Corporation.¹ Finally, on July 30, 2007, petitioner's name was changed from Mirant (Philippines) Energy Corporation to its present corporate name of TeaM (Philippines) Energy Corporation.²

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to act as such, including *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

As stated in petitioner's Amended Articles of Incorporation dated October 22, 2001, its primary purpose is to develop, design, construct, erect, assemble, commission, own, operate, maintain, rehabilitate and manage facilities used in the generation of electricity, including but not limited to gas turbine and other power generating plants and related facilities under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy, or otherwise; to engage in the supply and delivery of electricity and develop, design, construct, erect, assemble, commission, own, operate, maintain, rehabilitate and manage facilities used in connection therewith, and/or provide facilities or services necessary or appropriate in *gc*

¹ Pars. 1, 3, and 4, Jointly Stipulated Facts, Joint Stipulations of Facts and Issues (JSFI), docket, pp. 365-366

² Docket, pp. 514-526

connection with the supply or delivery of electricity to such extent and in such manner as may be permitted by applicable law.³

Pursuant to its primary purpose, petitioner entered into power generation/supply agreements with Solid Development Corporation (SDC), Republic Cement Corporation (RCC), BPC Gas Corporation (BPC) through its parent company, Consolidated Industrial Gases Incorporated, and Angeles Electric Corporation (AEC).⁴ For services rendered to SDC, RCC, BPC, and AEC, petitioner received income payments which were allegedly subjected to creditable withholding tax.

In its Annual Income Tax Return⁵ for taxable year 2004, filed with the BIR on April 15, 2005⁶, petitioner's declared creditable taxes withheld for the first three quarters and the last quarter of 2004 amounted to P10,340,402.00 and P3,522,686.00, respectively, totaling P13,863,088.00. Since petitioner reflected no amount of income tax liability either at the regular rate of thirty-two percent (32%) or the Minimum Corporate Income Tax (MCIT) rate of two percent (2%), it was unable to apply or utilize the creditable withholding taxes of P13,863,088.00, as shown below:

Sales/Revenues/Receipts/Fees	P 1,281,903,374.00
Less: Cost of Sales/Services	1,463,667,291.00
Gross Income from Operation	P (181,763,917.00)
Add: Non-Operating and Other Income	8,080,822.00
Total Gross Income	P (173,683,095.00)
Less: Deductions	104,064,048.00
Taxable Income	P (277,747,143.00)
Tax Due	P -
Less: Tax Credits	

jc

³ Par. 2, Jointly Stipulated Facts, JSFI docket, p. 365

⁴ Exhibits "B" and "D"; Exhibit "G", page 2, A8

⁵ Exhibit "E"

⁶ Exhibit "E-1"

Creditable Tax Withheld for the First Three Quarters	P 10,340,402.00
Creditable Tax Withheld for the Fourth Quarter	3,522,686.00
Total	P 13,863,088.00
Tax Overpayment	P (13,863,088.00)

Petitioner, as indicated in the return, opted to be refunded for the unutilized creditable withholding taxes of P13,863,088.00⁷.

On April 7, 2006⁸, petitioner filed its Annual Income Tax Return⁹ for taxable year 2005, showing creditable taxes withheld during the first three quarters and the last quarter of 2005 in the respective amounts of P9,915,508.50 and P3,063,721.31, totaling P12,979,229.81. The said amounts were applied against the MCIT liability of P1,270,821.82, leaving an excess tax credit of P11,708,407.99; which petitioner marked as "To be refunded"¹⁰. Below is the computation of the amount of P11,708,407.99:

Sales/Revenues/Receipts/Fees	P 1,452,113,748.00
Less: Cost of Sales/Services	1,493,857,472.00
Gross Income from Operation	P (41,743,724.00)
Add: Non-Operating and Other Income	105,284,815.00
Total Gross Income	P 3,541,091.00
Less: Deductions	109,954,763.00
Taxable Income	P 46,413,672.00)
Minimum Corporate Income Tax Due	P 1,270,821.82
Less: Tax Credits	
Creditable Tax Withheld for the First Three Quarters	P 9,915,508.50
Creditable Tax Withheld for the Fourth Quarter	3,063,721.31
Total	P 12,979,229.81
Tax Overpayment	P (11,708,407.99)

On February 2, 2007, petitioner filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of P25,571,495.99, representing overpaid income tax or excess creditable *JK*

⁷ Exhibit "E-9"

⁸ Exhibit "F-1"

⁹ Exhibit "F"

¹⁰ Exhibit "F-9"

withholding tax of petitioner for taxable years 2004 and 2005, pursuant to Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997.¹¹

Due to respondent's inaction on its claim, petitioner filed a Petition for Review before this Court on April 12, 2007.

Respondent, in his Answer filed on May 25, 2007, raised the following Special and Affirmative Defenses¹²:

- "5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent.
7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.
8. The excess tax credits or overpaid income tax of a given taxable year of a corporation may be refunded *or* may be carried-over and credited against its estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.
9. The two options under Section 76 of the same Code are alternative in nature (*San Carlos Milling Co., v. Commissioner of Internal Revenue*, 228 SCRA 135, 142). The choice of one precludes the other (*Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005).
10. Petitioner must also show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code, as well as related jurisprudence, on the prescriptive period for claiming tax refund/credit. *je*

¹¹ Par. 7, Jointly Stipulated Facts, JSF1, docket, p. 366

¹² Docket, pp. 335-336

11. The amount of P25,571,495.99 being claimed by petitioner as alleged overpaid income taxes or excess creditable withholding taxes for the calendar years ended December 31, 2004 and December 31, 2005 must pass the substantiation requirements of the law.
12. In an action for refund, the 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.
13. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.
14. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate."

During the trial on the merits, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, did not submit any controverting evidence.¹³

On February 24, 2009, petitioner filed a Motion to Change Caption¹⁴, seeking the revision of the caption of this case pursuant to the change of its corporate name from "Mirant (Philippines) Energy Corporation" to "TeaM (Philippines) Energy Corporation". The Court granted petitioner's motion and ordered the amendment of the caption of this case via Resolution¹⁵ dated February 26, 2009.

After the filing of the respective Memorandum of the parties, this case was submitted for decision on May 15, 2009.

The parties submitted the following issues¹⁶ for this Court's resolution:

- "1. Whether or not petitioner has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the 

¹³ Docket, p. 529

¹⁴ Docket, pp. 512-513

¹⁵ Docket, p. 527

¹⁶ Docket, pp. 366-367

prescriptive period for filing administrative and judicial claims for refund and/or issuance of a tax credit certificate.

2. Whether or not petitioner has established the fact of withholding with copies of withholding tax statements duly issued by various payors to the petitioner showing the date, the amount paid, the amount of tax withheld therefrom, and the fact of its remittance to the BIR.
3. Whether or not the income payments from which the creditable taxes were withheld were included in petitioner's gross income for calendar years ending December 31, 2004 and December 31, 2005.
4. Whether or not the amount of excess/unutilized creditable income taxes as of the end of calendar years December 31, 2004 and December 31, 2005 in the total amount of P25,571,495.99 was utilized or carried over to succeeding taxable year.
5. Whether or not the petitioner is entitled to the refund or issuance of tax credit certificate in the total amount of P25,571,495.99 representing unutilized withholding tax credits for the calendar years ending December 31, 2004 and December 31, 2005."

Section 76 of the NIRC of 1997, as amended, provides as follows:

"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 said 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 of tax 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 quarters of the succeeding 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.” (*Emphasis supplied*)

A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options, namely: (1) to carry-over the excess credit to the succeeding taxable quarter/year; or (2) to apply for the issuance of tax credit certificate or to claim a cash refund.¹⁷ However, once the carry-over option is taken, actually or constructively, it becomes irrevocable for that taxable period.¹⁸ The phrase “for that taxable period” merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.¹⁹

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry-over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.²⁰

The present claim covers excess tax credits for taxable years 2004 and 2005, in the respective amounts of P13,863,088.00 and P11,708,407.99 or in the sum of P25,571,495.99; which petitioner opted to be refunded by marking the appropriate box²¹ in the Annual Income Tax Returns it filed for the said years. As petitioner did not declare any “Prior Year's Excess Credits” in its 

¹⁷ Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007

¹⁸ Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005

¹⁹ Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009

²⁰ Philippine Bank of Communications vs. Commissioner of Internal Revenue, *et al.*, G.R. No. 112024, January 28, 1999

²¹ Exhibits “E-9” and “F-9”

Annual Income Tax Returns for 2005 and 2006, the excess tax credits of P25,571,495.99 may be a proper subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

Nonetheless, as stressed by this Court in a number of similar cases, petitioner's entitlement to a refund of excess creditable withholding taxes is dependent on its compliance with the following requirements:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;
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 (*Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957*).

Anent the first requisite, Sections 204(C) and 229 of the NIRC of 1997 provide as follows:

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

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*)

“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 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 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.” (*Emphasis supplied*)

Based on the foregoing provisions, the written claim to the Commissioner of Internal Revenue (administrative claim) and the suit (judicial claim) must be filed within two (2) years from the date of payment of the tax. In a claim for refund of excess creditable withholding tax, the two-year period shall be reckoned from the date of filing of the Annual Income Tax Return.²²

In the present case, petitioner filed its Annual Income Tax Returns for taxable years 2004 and 2005 on April 15, 2005²³ and April 7, 2006²⁴, respectively. Counting from these dates, both the administrative claim for refund filed with the BIR on February 2, 2007²⁵ and the judicial appeal filed *Je*

²² Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184; ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957

²³ Exhibit “E”

²⁴ Exhibit “F”

²⁵ Par. 7, Jointly Stipulated Facts, JSFI, docket, p. 366

before this Court on April 12, 2007 fall within the two-year prescriptive period.

Clearly, the first requirement has been satisfied.

As regards the second requisite, petitioner was able to prove the fact of withholding of the claimed amount of P25,571,495.49²⁶, by presenting in evidence various Certificates of Creditable Tax Withheld at Source, detailed as follows:

Exh.	Period Covered	Payor/Withholding Agent	Income Payment	Income Tax Withheld
For the year 2004				
X-1	Jan-Dec., 2004	BPC Gas Corporation	P 921,146.50	P 18,422.93
X-2	Jan- Mar., 2004	Angeles Electric Corp	12,594,355.20	251,887.10
X-3	April-June, 2004	Angeles Electric Corp	17,536,780.80	350,735.62
X-4	July-Sept., 2004	Angeles Electric Corp	12,353,644.80	247,072.90
X-5	Jan-Mar., 2004	Republic Cement Corp	69,622,829.62	1,392,456.56
X-5	Jan-Mar., 2004	Republic Cement Corp	32,900,736.50	658,014.73
X-6	April-June, 2004	Republic Cement Corp	106,482,186.50	2,129,643.73
X-7	July-Sept., 2004	Republic Cement Corp	108,852,971.18	2,177,059.42
X-8	Oct-Sept., 2004	Republic Cement Corp	110,036,708.10	2,200,734.16
X-9	Jan-Mar., 2004	Solid Development Corp	47,180,602.47	943,612.05
X-10	April-June, 2004	Solid Development Corp	50,647,069.16	1,012,941.38
X-11	July-Sept., 2004	Solid Development Corp	58,543,180.67	1,170,863.60
X-12	Oct-Dec., 2004	Solid Development Corp	65,482,166.51	1,309,643.32
		Total for 2004	P693,154,378.01	P 13,863,087.50
For the year 2005				
Y-1	Jan-Dec., 2005	BPC Gas Corporation	P 4,499,652.50	P 89,993.05
Y-2	Jan-Mar., 2005	Republic Cement Corp	130,979,321.54	2,619,586.42
Y-3	April-June, 2005	Republic Cement Corp	120,911,215.79	2,418,224.32
Y-4	July-Sept., 2005	Republic Cement Corp	125,466,011.19	2,509,320.22
Y-5	Oct-Dec., 2005	Republic Cement Corp	110,417,523.38	2,208,350.47
Y-6	Jan-Mar., 2005	Solid Development Corp	56,167,865.62	1,123,357.30
Y-7	April-June, 2005	Solid Development Corp	48,762,613.24	975,252.27
Y-8	July-Sept., 2005	Solid Development Corp	10,175,615.03	203,512.30
Y-9	Oct-Dec., 2005	Solid Development Corp	41,581,673.65	831,633.46
		Total for 2005	P 648,961,491.94	P 12,979,229.81
		Less: MCIT DUE		1,270,821.82
		Net Total for 2005		P 11,708,407.99
		GRAND TOTAL – 2004 and 2005		P 25,571,495.49

With reference to the third requisite, the withholding tax certificates revealed that the creditable income taxes of P13,863,087.50 and 

²⁶Substantiated claim of P25,571,495.49 is lower by P.50 when compared to the amount of P25,571,495.99 stated in the Petition for Review

P12,979,229.81 for taxable years 2004 and 2005 were withheld from gross income payments of P693,154,378.01 and P648,961,491.94, respectively. On the other hand, petitioner's Annual Income Tax Returns for 2004 and 2005 disclosed higher gross income amounts of P1,281,903,374.00²⁷ and P1,452,113,748.00²⁸, respectively. Since the gross revenues reported in petitioner's Annual Income Tax Returns for taxable years 2004 and 2005 are greater than the gross income payments reflected in the certificates, this Court concludes that petitioner declared all of the income from which the claimed creditable income taxes of P25,571,495.49 were withheld.

In sum, considering that the three requirements for claiming a refund of excess creditable withholding taxes were all present and complied with by petitioner, it is therefore entitled to the refund of its excess creditable withholding taxes.

WHEREFORE, premises considered, 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 amount of **TWENTY-FIVE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FOUR HUNDRED NINETY-FIVE AND 49/100 PESOS (P25,571,495.49)**, representing excess creditable taxes withheld for taxable years 2004 and 2005.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

²⁷ Exhibit "E", Part II, line 14C

²⁸ Exhibit "F", Part II, line 14C

WE CONCUR:

(On Leave)
ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice