Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 179260**
- versus -	Present: CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
TEAM [PHILIPPINES] OPERATIONS CORPORATION [formerly MIRANT (PHILS) OPERATIONS CORPORATION], Respondent.	Promulgated: APR 0 2 2014

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DECISION

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 19 June 2007 Decision[1] and the 13 August 2007 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 224 which affirmed *in toto* the Decision and Resolution dated 4 August 2006 and 8 November 2006, respectively, of the First Division of the CTA (CTA

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[1] *Rollo*, pp. 46-57; Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez concurring.

[2] Id. at 59-61.

in Division)[3] in C.T.A. Case No. 6623, granting Team (Philippines) Operations Corporation's (respondent) claim for refund in the amount of ₱69,562,412.00 representing unutilized tax credits for taxable period ending 31 December 2001.

The Facts

The factual antecedents of the case are undisputed:

Petitioner is the duly appointed Commissioner of Internal Revenue, charged with the duty of enforcing the provisions of the National Internal Revenue Code (NIRC), including the power to decide and approve administrative claims for refund.

Respondent, on the other hand, is a corporation duly organized and existing under and virtue of the laws of the Republic of the Philippines, with its principal office at Bo. Ibabang Pulo, Pagbilao Grande Island, Pagbilao, Quezon Province. It is primarily engaged in the business of designing, constructing, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate and other fuels provided by and 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 other entity engaged in the development, supply or distribution of energy.

On 30 April 2001, respondent secured from the Securities and Exchange Commission (SEC) its Certificate of Filing of Amended Articles of Incorporation, reflecting its change of name from Southern Energy Asia-Pacific Operations (Phils.), Inc. to Mirant (Philippines) Operations Corporation. Prior to its use of the name Southern Energy Asia-Pacific Operations (Phils.), Inc., respondent operated under the corporate names CEPA Operations (Philippines) Corporation, CEPA Tileman Project Management Corporation and Hopewell Tileman Project Management Corporation. The changes in respondent's corporate name from CEPA Operations (Philippines) Corp. to Southern Energy Asia-Pacific Operations (Phils.) Inc., from CEPA Tileman Project Management Corporation to CEPA Operations (Philippines) Corp. and from Hopewell Tileman Project Management Corporation to CEPA Tileman Project Management Corp.,

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[3] CTA in Division *rollo*, pp. 456-465 and 486-488, respectively; Chaired by Presiding Justice Ernesto D. Acosta with Associate Justices Lovell R. Bautista and Caesar A. Casanova as members.

were approved by the SEC on 24 November 2000, 21 November 1997 and 29 July 1994, respectively.

Under its original corporate name, Hopewell Tileman Project Management Corp., respondent was registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 003-057-796 as shown by its original BIR Certificate of Registration issued on 29 March 1994.

In line with its primary purpose, respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation (MPC) [formerly Southern Energy Quezon, Inc.] and Mirant Sual Corporation (MSC) [formerly Southern Energy Pangasinan, Inc.] to provide MPC and MSC with operation and maintenance services in connection with the operation, construction and commissioning of the coal-fired thermal power stations situated in Pagbilao, Quezon and Sual, Pangasinan, respectively. Payments received by respondent from MPC and MSC relative to the said agreements were allegedly subjected to creditable withholding taxes.

On 15 April 2002, respondent filed its 2001 income tax return with the BIR, reporting an income tax overpayment in the amount of ₱69,562,412.00 arising from unutilized creditable taxes withheld during the year, detailed as follows:[4]

Sales/Revenues	P922,569,303.00
Less: Cost of Sales/Services	938,543,252.00
Gross Income from Operation	(P15,973,949.00)
Add: Non-Operating & Other Income	74,995,982.00
Total Gross Income	P 59,022,033.00
Less: Deductions	59,022,033.00
Taxable Income	-
Tax Rate	32%
Income Tax	NIL
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	P 27,784,217.00
Creditable Tax Withheld for the Fourth Quarter	41,778,195.00
Total Tax Credits/Payments	P 69,652,412.00
Tax Payable/(Overpayment)	**(P69,562,412.00)**

4 *Rollo*, p. 48.

Respondent marked the appropriate box manifesting its intent to have the above overpayment refunded.

On 19 March 2003, pursuant to Section 76 in relation to Section 204 of the NIRC of 1997, as amended, respondent filed with the BIR, a letter requesting for the refund or issuance of a tax credit certificate corresponding to its reported unutilized creditable withholding taxes for taxable year 2001 in the amount of ₱69,562,412.00.

Thereafter, on 27 March 2003, respondent filed a Petition for Review before the CTA, in order to toll the running of the two-year prescriptive period provided under Section 229 of the NIRC of 1997, as amended, which was docketed as C.T.A. Case No. 6623.

The Ruling of the CTA in Division

In a Decision dated 4 August 2006,[5] the CTA in Division granted respondent's Petition and ordered petitioner to refund or issue a tax credit certificate in favor of the former the entire amount of ₱69,562,412.00, representing its unutilized tax credits for the taxable year ended 31 December 2001.

The CTA in Division based its ruling on the numerous documentary evidence presented by respondent during the proceedings, such as its Income Tax Returns (ITRs) for taxable years 2001 and 2002, various Certificates of Creditable Tax Withheld at Source for taxable year 2001 duly issued to it by its withholding agents, and Report of the Commissioned Independent Certified Public Accountant dated 15 March 2004, among others. The court *a quo* reasoned that respondent has indeed established its entitlement to a refund/tax credit of its excess creditable withholding taxes in compliance with the following basic requirements: (1) that the claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed 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 was included in the return of the recipient.[6]

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5 CTA in Division *rollo*, pp. 456-465.

6 Id. at 462.

Subsequently, on 8 November 2006, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit.[7]

Aggrieved, petitioner appealed to the CTA *En Banc* by filing a Petition for Review pursuant to Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282[8] on 6 December 2006, docketed as CTA EB No. 224.

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed *in toto* both the aforesaid Decision and Resolution rendered by the CTA in Division in CTA Case No. 6623, pronouncing that there was no cogent reason to disturb the findings and conclusion spelled out therein. It revealed that what the petition seeks to accomplish was for the CTA *En Banc* to view and appreciate the evidence in another perspective, which unfortunately had already been considered and passed upon correctly by the CTA in Division.

Upon denial of petitioner's Motion for Reconsideration of the 19 June 2007 Decision[9] of the CTA *En Banc*, it filed this Petition for Review on *Certiorari* before this Court seeking the reversal of the aforementioned Decision and the 13 August 2007 Resolution[10] rendered in CTA EB No. 224. Petitioner[11] relies on the sole ground that the CTA *En Banc* gravely erred on a question of law in affirming the CTA in Division's ruling which ordered a refund or issuance of tax credit certificate in favor of respondent despite the fact that it is not supported by the evidence on record.[12]

The Issue and Our Ruling

The core issue for the Court's resolution is whether or not respondent has established its entitlement for the refund or issuance of a tax credit

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7 Id. at 486-488.

8 RA No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended by RA No. 9282, also known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known As the Law Creating the Court of Tax Appeals, and for Other Purposes," which took effect on 23 April 2004.

9 *Rollo*, pp. 9-20.

10 Id. at 22-24.

11 Id. at 189-190. On 23 March 2009, this Court has resolved to note and grant respondent's motion to change caption of this case to reflect the new corporate name of respondent to "Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation". (Underscoring supplied)

12 Id. at 33.

certificate in its favor the entire amount of ₱69,562,412.00 representing its unutilized tax credits for taxable year ended 31 December 2001, pursuant to the applicable provisions of the NIRC of 1997, as amended.

This is not novel.

In order to be entitled to a refund claim or issuance of a tax credit certificate representing any excess or unutilized creditable withholding tax, it must be shown that the claimant has complied with the essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[13] this Court had previously articulated that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[14] (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;[15] and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, *viz*:

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

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13 548 Phil. 32, 36-37 (2007). See also *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, 15 March 2010, 615 SCRA 417, 424.

14 Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006) citing *Gibb v. Collector*, 107 Phil. 230 (1960).

15 *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, 497 Phil. 23, 32 (2005).

> **penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)
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> x x x x
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> 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.
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> 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)

The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98,[16] which states:

> *Sec. 2.58.3.Claim for Tax Credit or Refund*
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> x x x x
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> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. (Emphasis supplied)

In addition to the abovementioned requisites, the NIRC of 1997, as amended, likewise provides for the strict observance of the concept of the

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16 SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending The National Internal Revenue Code, as Amended"* Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

irrevocability rule,[17] the focal provision of which is Section 76 thereof, quoted hereunder for easy reference:

> 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:
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> (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.
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> 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**

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[17] Section 76 gives two options to a taxable corporation who is entitled to a tax credit or refund of the excess income taxes paid in a given taxable year, namely: (1) to carry-over the excess credit to the quarters of the succeeding taxable years; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. However, once the option to carry over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed. This is known as the *irrevocability rule.* (See *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, 514 Phil. 147, 162 [2005]).

It bears emphasis that the operation of the *irrevocability rule* not only removes from the taxpayer the option for cash refund or tax credit, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit does not matter. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." In other words, once the carry-over option is taken, actually or constructively, it becomes irrevocable. The aforesaid section mentioned no exception or qualification to the irrevocability rule. (See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, 231).

Furthermore, the last sentence of Section 76, which mentioned of 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. Hence, the evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, as amended, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. (See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, 231-232 and *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, 4 April 2011, 647 SCRA 72, 81).

Clearly, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR form) its intention, whether to request a refund or claim an automatic tax credit for the succeeding taxable year. To reiterate, these remedies are in the alternative, and the choice of one precludes the other (See *PBCom. v. Commissioner of Internal Revenue*, 361 Phil. 916, 932 [1999]).

> **application for cash refund or issuance of a tax credit certificate shall be allowed therefor**. (Emphasis supplied)

Applying the foregoing discussion to the present case, we find that respondent had indeed complied with the abovementioned requirements.

Here, it is undisputed that the claim for refund was filed within the two-year prescriptive period prescribed under Section 229[18] of the NIRC of 1997, as amended. Respondent filed[19] its income tax return for taxable year 2001 on 15 April 2002. Counting from said date, it indeed had until 14 April 2004[20] within which to file its claim for refund or issuance of tax credit certificate in its favor both administratively and judicially. Thus, petitioner's administrative claim and petition for review filed on 19 March 2003 and 27 March 2003, respectively, fell within the abovementioned prescriptive period.

Likewise, respondent was able to present various certificates of creditable tax withheld at source from its payors, MPC and MSC, for taxable year 2001, showing creditable withholding taxes in the aggregate amount of ₱70,805,771.42 (although the refund claim was only ₱69,562,412.00).[21] Moreover, as determined by the CTA in Division, respondent declared the income related to the claimed creditable withholding taxes of ₱69,562,412.00 on its return.[22]

Lastly, in compliance with Section 76 of the NIRC of 1997, as amended, respondent opted to be refunded of its unutilized tax credit (as evidenced by the "x" mark in the appropriate box of its 2001 income tax return), and the same was not carried over in its 2002 income tax return;

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18 See *ACCRA Investments Corporation v. Court of Appeals*, G.R. No. 96322, 20 December 1991, 204 SCRA 957, 963-964, where the Court ruled that the two-year prescriptive period commences to run on the date when the final adjustment return is filed, as that is the date when ACCRA could ascertain whether it made a profit or incurred losses in its business operation. The Court therein stated that, "there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue."

19 The reckoning of the two-year prescriptive period for the filing of the claim for refund/tax credit certificates of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return [See *ACCRA Investments Corporation v. Court of Appeals, et al.*, G.R. No. 96322, 20 December 1991, 204 SCRA 957; *Commissioner of Internal Revenue v.TMX Sales, Inc.*, G.R No. 83736, 15 January 1992, 205 SCRA 184, 192] because it is only from this time that the refund is ascertained [See *Com. of Internal Revenue v. Philamlife,* 314 Phil. 349, 366 (1995)].

20 Taxable year 2004 being a leap year.

21 CTA in Division *rollo*, p. 463.

22 Id. at 463-464.

therefore, the entire amount of ₱69,562,412.00 may be a proper subject of a claim for refund/tax credit certificate.[23]

It is apt to restate here the hornbook doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside. The CTA, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abusive or improvident exercise of authority.[24]

Consequently, its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Its findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[25]

The Court in this case agrees with the conclusion of the CTA in Division and subsequent affirmation of the CTA *En Banc* that respondent complied with all the requirements for the refund of its unutilized creditable withholding taxes for taxable period ending 31 December 2001. We adopt the factual and legal findings as follows:

> On the first ground, [petitioner] argues that [respondent] failed to present the various withholding agents/payors to testify on the validity of the contents of the Certificates of Creditable Tax Withheld at Source ("certificates"). Thus, the certificates presented by [respondent] are not valid. And even assuming that the certificates are valid, this Court cannot entertain the claim for refund/tax credit certificates because the certificates were not submitted to [petitioner].
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> [Petitioner's] arguments are untenable **since the certificates presented (*Exhibits "R", "S", "T", "U", "V", "W", and "X")* were duly signed and prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct. Thus, the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates**.

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23 Id. at 461-462.

24 *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, 9 March 2010, 614 SCRA 526, 561 citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

25 *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 529 Phil. 785, 795 (2006) citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corp*., G.R. No. 54908, 22 January 1990, 181 SCRA 214, 220.

> In addition, that [respondent] did not submit the certificates to the [petitioner] is of no moment. **The administrative and judicial claim for refund and/or tax credit certificates must be filed within the two-year prescriptive period starting from the date of payment of the tax (Section 229, NIRC). In the instant case, [respondent] filed its judicial claim (after filing its administrative claim) precisely to preserve its right to claim. Otherwise, [respondent's] right to the claim would have been barred. Considering that this [c]ourt had jurisdiction over the claim, [respondent] rightfully presented the certificates before this [c]ourt. Besides, any records that [petitioner] may have on the administrative claim would eventually be transmitted to this [c]ourt under Section 5(b), Rule 6 of the Revised Rules of the Court of (Tax) Appeals.**
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> As for the second ground, this [c]ourt finds [petitioner's] contention unmeritorious. The requirements for claiming a tax refund/tax credit certificates had been laid down in *Citibank N.A. vs. Court of Appeals, G.R. No. 107434, October 10, 1997.* **Nowhere in the case cited is proof of actual remittance of the withheld taxes to the [petitioner] required before the taxpayer may claim for a tax refund/tax credit certificates.**[26] (Emphasis supplied)

In the same vein, this Court finds no abusive or improvident exercise of authority on the part of the CTA in Division. Since there is no showing of gross error or abuse on the part of the CTA in Division, and its findings are supported by substantial evidence which were thoroughly considered during the trial, there is no cogent reason to disturb its findings and conclusions.

All told, respondent complied with all the legal requirements and it is entitled, as it opted, to a refund of its excess creditable withholding tax for the taxable year 2001 in the amount of ₱69,562,412.00.

WHEREFORE, the petition is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 19 June 2007 and Resolution dated 13 August 2007 of the CTA *En Banc* are hereby **AFFIRMED**. No costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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26 CTA in Division *rollo*, pp. 487-488.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice