

**TAXATION LAW****GLOBAL MEDICAL CENTER OF LAGUNA, INC. v. ROSS SYSTEMS INTERNATIONAL, INC.****GR No. 230112, 11 MAY 2021, *EN BANC*, (CAGUIOA, J.)****ROSS SYSTEMS INTERNATIONAL, INC v GLOBAL MEDICAL CENTER OF LAGUNA, INC.****GR No. 230112 & 230119, 11 MAY 2021, *EN BANC*, (CAGUIOA, J.)****DOCTRINE OF THE CASE**

*The Expanded Creditable Withholding Tax (CWT), as defined under Section 2.57(B) of Revenue Regulation (RR) No. 2-98 reads:*

*(B) Creditable Withholding Tax. - Under the CWT system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income.*

*Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature.*

*The income of the payee subject to the CWT is still reported in the income tax return upon the filing of the income tax return, for the computation of the income tax due on it. In the event that the income tax computed is more than the CWT paid earlier, the difference shall be paid by the payee in order for his income tax to be paid in full. Conversely, in case the income tax calculated is less than the CWT paid, the overpayment of CWT shall either be carried over to the next taxable period for the payee, or refunded in his favor. The CWT's design for tax creditability stands on the twin conditions of (1) the withholding agent's withholding the CWT and (2) the payee's crediting of the said amount in its income tax return.*

*The black letter of the law is demonstrably clear and, as applied to the present case, prescribing that GMCLI should have remitted the 2% CWT as soon as each Progress Billing*

*was paid and accordingly should have also issued the corresponding BIR Form 2307 to RSII in order for the latter to have had a tax credit claim on the same. GMCLI should therefore issue to RSII the pertinent BIR Form 2307 for all its belated withholding of CWT, so that RSII may exhaust the remedies available to it in the law.*

## **FACTS**

Global Medical Center of Laguna, Inc. (GMCLI) engaged the services of Ross Systems International, Inc. (RSII) for the construction of its hospital in Cabuyao, Laguna, in accordance with a Construction Contract (Contract) which value the entire construction project at ₱248,500,000.00, with 15% of the said contract price to be paid to RSII as down payment, and the remaining balance to be paid in monthly installments based on the percentage of work accomplished. Under Section 9 of the Contract, it stated that all taxes on the services rendered are for the account of RSII and that the parties may resort to arbitration in the event of a dispute.

RSII submitted to GMCLI its Progress Billing No. 15, indicating it had already accomplished 79.31% of the project, equivalent to ₱9,228,286.77, inclusive of VAT. After receipt and upon evaluation of GMCLI, however, it estimated that the accomplished percentage was only at 78.84% of the entire contract price or equivalent to ₱7,043,260.00 for Progress Billing No. 15.

After its internal audit, GMCLI learned that it was unable to withhold and remit 2% Credible Withholding Tax (CWT) not only from Progress Billing No. 15 or from the amount of ₱7,043,260.00 but from the cumulative amount of all Progress Billings Nos. 1-15 or from the amount of ₱197,088,497.00, equivalent to the submitted 79.31% accomplishment of RSII.

For RSII's Progress Billing No. 15 priced at ₱7,043,260.00, GMCLI only paid a total of ₱3,101,491.00, with computation as cited by the Construction Industry Arbitration Commission (CIAC).

RSII sent two demand letters to GMCLI, claiming that it still had a balance of ₱4,884,778.92 to collect from the latter. RSII alleged GMCLI's outstanding obligation under Progress Billing No. 15 should have been ₱8,131,474.83 and not ₱7,042,260.00 as well as GMCLI belatedly withholding the 2% CWT on Progress Billings Nos. 1 to 14, when it should only have withheld

the 2% CWT from Progress Billing No. 15. With its demand unheeded, RSII filed a complaint and request for arbitration before the CIAC.

After both parties submitted their respective affidavits and pieces of documentary evidence, and presented their respective witnesses, CIAC promulgated its decision in favor of GMCLI. Although the CIAC held that GMCLI lacked authority to withhold the 2% CWT on the cumulative bill, RSII was still not entitled to the release of P4,884,778.92, or the amount equivalent to the 2% CWT withheld on the cumulative billings.

Apart from observing that there was actually no dispute as to the computation as the same was not contested by GMCLI, the CIAC held that RSII was no longer entitled to the said amount because at the time the same was remitted to the Bureau of Internal Revenue (BIR), RSII had not yet paid income taxes on the payments from Progress Billings Nos. 1 to 15. Moreover, the CIAC held that the fact that RSII did declare the income taxes on those payments on March 22, 2016, or after GMCLI remitted the cumulated 2% CWT to BIR, was of no moment.

Applying the doctrine of Last Clear Chance analogously, the CIAC held that RSII, having knowledge of GMCLI's prior remittance, had the last clear opportunity to avoid the loss through a double payment of the 2% CWT. It held that RSII's failure to avert the effective double payment could only be held on its own account.

Aggrieved, RSII filed a petition for review under Rule 43 of the Rules before the Court of Appeals (CA) and assailed the CIAC arbitral award on CIAC's ruling that it was not entitled to the release of P4,884,778.92. The CA partially granted the petition, ruling that the amount of P3,815,996.50, equivalent to the 2% CWT on Progress Billings Nos. 1 to 14, was already remitted to the BIR, and it would be unjust to require GMCLI, as the withholding agent, to effectively shoulder the amount of tax which RSII had the legal duty to pay.

With respect to granting RSII's entitlement to P1,088,214.83, the CA reasoned that RSII is still entitled to collect the amount as GMCLI did not contest RSII's computation for the amount due for Progress Billing No. 15. Both parties filed for their respective Motions for Reconsideration, which were both denied by

the CA. Hence, the separated, now consolidated, petitions for Review on *Certiorari* filed by GMCLI and RSII before the Court.

### ISSUES

- (1) Is RSII entitled to the release of P3,815,996.50 or the equivalent of 2% CWT on Progress Billings Nos. 1 to 14, in addition to the award of P1,088,214.83?
- (2) May GMCLI be ordered to issue BIR Form 2307 to RSII?

### RULING

(1) **NO.** The Expanded CWT, as defined under Section 2.57(B) of Revenue Regulation (RR) No. 2-98178 reads:

(B) *Creditable Withholding Tax.* - Under the CWT system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income.

Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature.

The CWT is a withholding tax imposed on certain income payments and is creditable against the income tax due of the payee for the taxable quarter/year in which the particular income was earned. Essentially, the CWT is an advance income tax on the payee. Prior to the actual filing of income tax return, the taxpayer already pays a portion of its foreseeable income tax liability in the form of the creditable income tax, withheld and remitted for him on his behalf by the withholding agent.

The income of the payee subject to the CWT is still reported in the income tax return upon the filing of the income tax return, for the computation of the

income tax due on it. In the event that the income tax computed is more than the CWT paid earlier, the difference shall be paid by the payee in order for his income tax to be paid in full. Conversely, in case the income tax calculated is less than the CWT paid, the overpayment of CWT shall either be carried over to the next taxable period for the payee, or refunded in his favor. Section 2.57.3 of RR No. 2-98 further recites the persons required to be withholding agents, under which GMCLI falls:

Agents, employees or any person purchasing goods or services, paying for and in behalf of the aforesaid withholding agents shall likewise withhold in their behalf, provided that the official receipts of payments/sales invoice shall be issued in the name of the person whom the former represents and the corresponding certificates of taxes withheld (BIR Form No. 2307) shall immediately be issued upon withholding of the tax.

In relation, Section 2.57.4 of the same RR likewise appoints the time when the 2% CWT should be withheld, which is “at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The terms "payable" refers to the date the obligation becomes due, demandable or legally enforceable.”

The Court finds that the CIAC, as affirmed by the CA, correctly found GMCLI to be without the authority to belatedly withhold the 2% withholding tax. That despite the lack of authority of GMCLI to belatedly withhold and remit the 2% CWT, RSII is nevertheless still not entitled to the release of the amount equivalent to that withheld in the cumulative. The CWT's design for tax creditability stands on the twin conditions of (1) the withholding agent's withholding the CWT and (2) the payee's crediting of the said amount in its income tax return.

(2) **YES.** The black letter of the law is demonstrably clear and, prescribing that GMCLI should have remitted the 2% CWT as soon as each Progress Billing was paid and accordingly should have also issued the corresponding BIR Form 2307 to RSII in order for the latter to have had a tax credit claim on the same. GMCLI should therefore issue to RSII the pertinent BIR Form 2307 for all its

belated withholding of CWT, so that RSII may exhaust the remedies available to it in the law.