REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALLS
QUEZON CITY

FILIPINAS SYNTHETIC FIBER CORP.,
Petitioner,

- versus - C.T.A. CASE NO. 3420

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/7/92

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D E C I S I O N

This case involves petitioner's claim for tax credit of alleged erroneously paid and collected advance sales tax for the first quarter of 1981.

Petitioner is a domestic corporation duly registered, as a preferred pioneer enterprise, with the Board of Investment (BOI), under Certificate of Registration No. 74-314 (Exh. "A"). By virtue of the provision of Section 8(a) of Republic Act No. 5186 (otherwise known as the Investment Incentives Act), as amended by Article 46(a) of Presidential Decree No. 1789 (also known as the Omnibus Investment Code), petitioner relies on the tax exemption privileges granted to it as a preferred pioneer enterprise.

Petitioner anchors its claim on the letters of the BOI dated October 10, 1980 and March 30, 1981 extending the tax exemption privileges granted to it, except the income tax, for a period of five (5) years beginning January 1, 1980. These letters are hereto forth reproduced in full, as follows:

October 10, 1980

Filipinas Synthetic Fiber Corporation
BA-Lepanto Building
Paseo de Roxas
Makati, Metro Manila

Attention: Mr. Cesar R. Concio, Jr.
Executive Vice-President

Gentlemen:

In connection with your request for extension of the period within which to avail yourself of incentives under R.A. 5186, please be advised that in its meeting of September 18, 1980, our Board gave you an extension of five (5) years from January 1, 1980 within which to enjoy the following incentives, with two (2) years being firm, and the third to the fifth years being subject to review as to their compliance with the Guidelines on the Liberalization of Incentives under P.D. 1584:

1. Full exemption from all taxes under the National Internal Revenue Code except income tax (Sec. 8-a);

2. Tax and duty-free importation of capital equipment (Sec. 7-d); and

3. Tax credit on locally purchased equipment (Sec. 7-e).

We wish to emphasize that the above extension is subject to the folllowing conditions:

a. That you will acquire full ownership of Lakeview Industrial Corporation, under conditions satisfactory to the BOI;

b. That you commit to expand to a world-sized unit, as may be mutually agreed with the BOI; and

c. That you agree to offer equity in your expanded company to the textile millers, under terms and conditions to be mutually agreed with the BOI.

We wish to emphasis that the extension of incentives granted by the Board does not take effect unless and until the above-mentioned conditions have been met.

Please be guided accordingly.

Very truly yours,

(SGD) ROBERTO V. ONGPIN
Chairman

30 March 1981

Filipinas Synthetic Fiber Corp.
BA-Lepanto Building
Paseo de Roxas, Makati
Metro Manila

Gentlemen:

Please be advised that the Board has favorably considered your compliance with the conditions for extension of incentives stated in our letter to you dated October 10, 1980.

You may therefore avail yourself of the incentives administered by the Board and covered by your request, for five (5) years beginning January 1, 1980 with the third to the fifth years being subject to an annual review as to the need for the continued availment of the extension per the criteria set forth in Art. 7(14) of P.D. 1789.

Please be guided accordingly.

Very truly yours,

(SGD.) H. ZAYCO
Governor

Sec. 8(a)(1) of R.A. 5186, as amended, likewise provides for a one hundred per cent (100%) exemption from all taxes under the National Internal Revenue Code, except income tax, for the first five (5) years of the grant.

Petitioner paid advance sales taxes of P7,543,861.00 from January 1 to March 31, 1981 and P3,933,408.00 from April 1 to June 30, 1981 or a total of P11,477,269.00.

On May 5, 1981, petitioner filed with the Bureau of Internal Revenue (herein referred to as the Bureau) an application for tax credit amounting to P3,561,954.00, representing that portion of the P7,543,861.00 advance sales taxes paid for the first quarter of 1981. (Exh. "B".) One month later or on June 5, 1981, petitioner filed, in addition to the previous request for tax credit, a claim for the refund of P3,981,907.00, representing the other portion of P7,543,861.00. (Exh. "D".)

On August 18, 1981, another claim for refund was filed in the amount of P3,933,408.00 as advance sales tax erroneously paid for the second quarter of 1981. (Exh. "E".) Without waiting for respondent's decision petitioner filed a petition for review on January 28, 1982.

Respondent filed his answer arguing that if at all petitioner would be entitled to a tax credit (not a refund as prayed for in the petition) the reckoning period should start on March 30, 1981, the date when the BOI confirmed petitioner's compliance with the conditions set in its letter of October 10, 1980, and not on January 1, 1980 as requested.

During the trial, petitioner manifested that the Bureau had already granted a tax credit on the advance sales taxes paid by petitioner covering the periods 1980, 1981 and 1982. A Tax Credit Certificate No. 00194 was granted, pursuant to Ministry Order No. 19-79 dated May 18, 1979, in favor of petitioner, totalling P37,570,101.00. (See Exh. "F".)

An amended petition for review was filed on May 12, 1988 to conform with the evidence. Petitioner maintains that the amount of P3,561,954.00 was not covered by the Tax Credit Certificate. Only the amounts of P3,981,907.00, representing that portion of P7,543,861.00, for the first quarter of 1981 and P3,933,408.00 for the second quarter of 1981 were included in the tax credit issued by the Bureau.

The only remaining issue is whether or not petitioner is entitled to a tax credit of P3,561,954.00.

Respondent posits, in his amended answer, that the claim for refund [actually a tax credit as prescribed under Section 3(j) of R.A. 5186 and as previously applied by petitioner in its letter dated April 30, 1981 (See Exh. "B")] on the remaining P3,561,954.00 has already prescribed since the amended petition was filed only on May 12, 1988, beyond the two-year prescriptive period to file a suit for the recovery of an erroneously collected tax counted from the date of payment or from the first quarter of 1981. Respondent waived his right to present any evidence. Instead, he submits his case based on the pleadings and the Bureau's records.

We find for the petitioner.

The letters of the BOI dated October 10, 1980 and March 30, 1981, without any doubt, should be interpreted in favor of petitioner. Clearly, petitioner has been granted an extension of its tax exemption privileges under R.A. 5186 for a period of five (5) years beginning January 1, 1980. We emphasize, as stated with affirmation by the BOI, that petitioner had favorably complied with the conditions of the grant. There can be no other interpretation when the BOI, in its letter dated March 30, 1981, particularly mentioned that "you (referring to petitioner) may therefore avail yourself of the incentives administered by the Board and covered by your request, for five (5) years beginning January 1, 1980 x x x." The tenor of said letter is plain and simple. Therefore, it should be interpreted in its ordinary and commonly accepted meaning. Thus, the tax exemption privileges of petitioner, not including the income tax, should start from January 1, 1980 and not March 30, 1981 as viewed by respondent.

With regard to the contention that the amount of P3,561,954.00 has already prescribed since the amended petition was filed only on May 12, 1982, this Court is of the opinion that petitioner's cause of action did not change by reason of the amendment but rather the amended petition was filed in order to conform to the evidence. A supervening event, that is the issuance of the Bureau of a Tax Credit Certificate granting a partial tax credit to petitioner, has transpired making it necessary to amend the original petition. Thus, the Supreme Court held in the case of **Pangasinan Transportation Co. v. Phil. Farming Co., Ltd.**, 81 Phil. 273, "(w)here the original declaration states a cause of action, but does it imperfectly, and afterward an amended declaration is filed, correcting the defect, the plea of the statute of limitations will relate to the time of filing the original declaration." (37 C.J., p. 1072.) We, therefore, uphold the timeliness of the petition counted from the date the original petition for review was filed or on January 28, 1982.

A thorough examination of the evidence presented by petitioner shows that indeed it is entitled to the remaining portion of the first quarter advance sales tax payments which was not covered by the tax credit already issued. The following official receipts will support petitioner's additional claim for tax credit amounting to P3,561,954.00.

FILIPINAS SYNTHETIC FIBER CORPORATION
SCHEDULE OF ADVANCE SALES TAXES PAID
AND TAX CREDIT STILL DUE
For the First Quarter of 1981
January 1 to March 31, 1981

Exhs.	Particular - Raw Material Imported	O.R. No.	Date	Advance Sales Tax Paid	Tax Credit Cert. 00194 100% Exemption	Amount Still Returnable
	Dimethyl Terephthalate					
C-2		357045	01/05/81	P 446,917	P 224,415	P 222,502
C-3		977507	02/12/81	257,011	141,995	115,016
C-4		977229	02/02/81	257,011	141,995	115,016
C-5		1037913	02/13/81	266,105)		
		430386	03/20/81	13,232)	147,020	132,317
C-6		1043758	02/20/81	642,838	355,159	287,679
C-7		405953	02/25/81	213,321	117,857	95,464
C-8		1046112	03/06/81	53,408	29,507	23,901
C-9		1043880	02/27/81	642,836	355,158	287,678
C-10	Entry No. 60763	430226	03/19/81	4,394	-	3,995
	60764			2,362	-	2,148
	58104			4,449	-	4,045
	62928			2,369	-	2,154
	62880			2,186	-	1,988
C-11		1054653	03/25/81	375,577)		
C-12		438812	03/30/81	14,525)	207,501	182,601
C-13		1076252	03/26/81	357,715)		
C-14		438595	03/26/81	13,834)	197,632	173,917
C-15		1076578	04/08/81	356,565)		
		439877	04/09/81	13,790)	196,997	173,358
C-16		439113	04/01/81	347,862	192,182	155,680
					P2,307,418	P1,979,459
	Monoethylene Glycol					
		296511	02/06/81	P 22,825)		
C-17		296419	01/23/81	408,058)	P 226,780	P 204,103
C-18		296669	03/18/81	281,627	148,225	133,402
C-19		296670	03/18/81	293,637	154,546	139,091
C-20		296605	02/27/81	458,392	241,259	217,133
C-21		296753	04/03/81	223,148	117,446	105,702
C-22		296672	03/18/81	240,613	-	120,529
C-23		296285	12/18/80	17,053)	-	
C-24		133415	10/01/80	10,067)	-	21,558
					P 888,256	P 941,518

	Catalysts & Lubricating Oil					
C-25		370322	01/20/81	P103,920	P 46,079	P 37,325
C-26		392846	02/10/81	29,347	16,214	13,133
C-27		393236	02/12/81	22,804	12,599	10,205
C-28		407003	03/05/81	98,290	54,304	43,986
C-29		439114	04/01/81	82,997)		
		440212	04/13/81	4,127)	45,855	41,269
	Pure Terephthalic					
C-30	Acid	1070215	03/20/81	369,899	204,364	165,535
C-31		429590	03/13/81	365,078	201,700	163,378
C-32		429155	04/08/81	371,264	205,118	166,146
					P 786,233	P 640,977
	TOTAL TAX CREDIT STILL DUE					P3,561,954

WHEREFORE, in view of the foregoing, the amended petition is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to issue the corresponding Tax Credit Certificate in favor of petitioner, Filipinas Synthetic Fiber Corporation, in the amount of P3,561,954.00, representing erroneously paid advance sales taxes for the first quarter of 1981.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 7, 1992.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals