REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHEMO-TECHNISCHE MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4231

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 23 1995

x - x

DECISION

On hand for decision is the claim for refund of CHEMO-TECHNISCHE MANUFACTURING, INC., in the amount of P935,829.00 as alleged erroneously paid manufacturer's taxes for the years 1985, 1986 and 1987.

The facts of the case are as follows:

> "Petitioner is engaged in the manufacture of consumer products.
>
> As of December 31, 1984, petitioner has accumulated a total of P817,480 as unapplied advance sales tax credit.
>
> Instead of dividing P817,480.00 by four and applying the amount of P204,370 against each of the four quarters of 1985 purşuant to Revenue Regulations No. 19-84, petitioner merely accumulated the unapplied sales tax credits when it filed its quarterly sales tax returns for 1985 except for the third quarter wherein it failed to file its return until October 20, 1986.
>
> Accordingly, petitioner filed an amended sales tax return for the taxable year 1985 on October 20, 1986 to reflect the four installments application of the accumulated tax

> credit of P817,480. Likewise, petitioner amended its 1986 and up to the third quarter of 1987 sales tax returns to reflect the application in four equal installments of the accumulated tax credits.
>
> However, considering that petitioner has in fact already paid the amount of P935,829 from first quarter of 1985 to third quarter of 1987, this amount is considered an overpayment and is now the subject of this claim for refund which was filed with the respondent as per letter dated January 14, 1988 of SGV & Co. duly stamped "Received" on January 15, 1988."
>
> xxx xxx xxx
>
> (Pars. 3-7, Petition for Review)

The lone issue to be resolved in this case is whether or not petitioner is entitled to the refund of the total amount of P935,829.00.

Respondent states in her Answer, paragraph 4 thereof, p. 22, CTA records, that "the petition states no cause of action as it does not allege the date when the tax sought to be tax credited was paid." This defense does not hold water. Annex "A" to the petition (p. 4, CTA records), which was marked and offered as Exhibit "A-1" for petitioner, clearly stated the dates of payment of the taxes being claimed as refundable. Pertinent portion of this exhibit is quoted hereunder, thus:

> "xxx Considering the amount of manufacturers sales tax payment made by our client and the aforementioned unapplied tax credits, our client made the following overpayments:

Quarter/Year	Date of Payment	Amount
1st Quarter 1985	4-22-85	P 79,063.00
2nd Quarter 1985	7-19-85	68,766.00
1st Quarter 1986	4-21-86	368,627.00
2nd Quarter 1986	7-21-86	30,042.00
2nd Quarter 1987	7-20-87	253,371.00
3rd Quarter 1987	10-19-87	135,960.00
		P935,829.00

This matter has already been settled by this Court in the following decision which ruled that:

> "In the case at bar, the corporate quarterly and annual income tax return for the fiscal year ending October 31, 1989 as well as the confirmation receipts and payment orders showing the amount of taxes paid, <u>were all attached to the petition.</u> If examined closely, <u>the annexes of the petition clearly shows the date when said taxes in question were paid. The petition therefore, states a cause of action."</u> (<u>CTA Decision</u>, CTA Case No. 4592, "Armco-Marsteel Alloy Corp. vs. CIR," July 1, 1993, p. 7; Underscoring supplied)

Under paragraph 5 of her Answer, respondent alleges that "since the manufacturer's sales tax payments were made in 1985 and the instant petition for review and refund was filed only on February 24, 1988, it is obvious that the 2 year period prescribed for filing the action in court has lapsed, hence, the right to claim the refund is barred by prescription." Respondent's contention is accepted qualifiedly by the Court. Not all of the claims of petitioner are barred by prescription. As far as the payments made in 1986 and 1987 are concerned, prescription has not set in. Therefore, in resolving the issue involved in this case, the Court will limit the amount only to payments made in 1986 and 1987.

Defenses of respondent alleged under paragraph 6 and 7 of her Answer may be tackled simultaneously. The amounts being claimed by petitioner as refundable/tax-creditable, are adjudged by this Court as <u>excessive</u> payments and not "erroneous" payments, neither were they "illegally collected." Petitioner has amply proven in court, through oral testimonies of witnesses and documentary evidences, that it had excessive payments to the BIR of its manufacturer's sales tax caused by its failure to apply its advance sales tax credit in 1985 as required by Executive Order No. 990. Documentary evidence presented and offered in court consists among others of the different sales tax returns, original and amended ones, filed for the quarters involved, as well as the confirmation receipts of the sales taxes paid for the different quarters. Witnesses Dominador Ogang and Jose Protacio identified the contents and signatures of aforesaid documents. During the hearing held in October 19, 1992, Mr Ogang even explained in court how the "excessive" payments came about. Thus:

(Petitioner's counsel, Atty. Dario handled the direct examination of witness, Mr. Ogang.)

"xxx xxx

Q. Mr. Witness, the petitioner in this petition is claiming their refund of overpaid sales tax amounting to P935,829.00. Are you aware of that?

A. Yes, sir.

Q. Do you know why the petitioner claimed such a refund?

A. The petitioner made an overpayment of an over due account.

Q. You said you have an over due account. Would you clarify to the Honorable Court, what particular account is this?

A. That pertains to quarterly sales tax return.

Q. Do you know why the petitioner made an over payment of sales tax return?

A. Yes, sir.

Q. Why?

A. Because in 1985 the petitioner did not apply the excess sales credit in 1984 and four quarters of 1985 returns up to 2nd quarter of 1986.

Q. Do you have an evidence to show that the petitioner accumulated an excess tax credit in 1984?

A. Yes, sir.

Q. I am showing you this documents which was previously marked by the Honorable Court as Exhibit "A". Would you kindly take a look at this document and tell us whether or not this is the document you are referring to as your evidence?

A. This is the inventory I have filed as of December 31, 1985.

xxx xxx"

(T.S.N. of Hearing on October 19, 1992, pp. 86-87, CTA records; Underscoring supplied)

As borne by the CTA records of the case, specifically the minutes of the hearings, counsel for respondent failed to manifest any reasonable effort to rebut or controvert the oral and documentary evidence presented by petitioner's counsel. In open court, respondent's counsel waived his right to cross-examine not only Mr. Ogang (Minutes of Hearing on June 24, 1993, p. 126, CTA records) but also Mr. Protacio (Minutes of Hearing on September 9, 1993, p. 129, Ibid.) After petitioner's counsel rested his case, respondent's counsel, despite proper notice, failed to appear during the hearing on August 18, 1994. Petitioner's counsel moved that respondent's presentation of evidence be declared waived which the Court readily granted (Minutes of Hearing on August 18, 1994, p. 336, Supra; CTA Resolution promulgated on September 5, 1994, p. 338, Supra.) Consequently, respondent's counsel merely filed his Memorandum (pp. 364-370, CTA records) on December 27, 1994.

At this juncture, the Court wants to comment on the remaining special and affirmative defenses of respondent stating that:

"8. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 243 and 246 of the 1986 Tax Code;

9. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxes;

10. Petitioner's claim for tax credit of the amount of P935,829.00 is not <u>supported by evidence;</u>

11. Petitioner's claim is pending investigation."

(Respondent's Answer, p. 23, CTA records)

Pertinent provisions of Sections 243 and 246 of the 1986 Tax Code are quoted as follows:

"**Section 243.** - *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 collected, xxx until a claim for refund or credit has been duly filed with the Commissioner; xxx.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty xxx."

"**Section 246.** *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* - The Commissioner may -

1. xxx

2. xxx

3. Credit or refund taxes erroneously or illegally received, xxx. 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 years after the payment of the tax or penalty. (309) (as amended by P.D. 1773)

As hereinbefore mentioned, if we apply the foregoing provisions to the case at bar, the amounts of P79,063.00 and P68,766.00 paid on April 22, 1985 and July 19, 1985, respectively, cannot be refunded or tax credited as more than two years have already lapsed when the administrative and judicial claims were filed on January 14, 1988 and February 24, 1988, respectively. As for the rest of the claims in the total amount of P788,000.00, petitioner had fully complied with the requirements of the above mentioned legal provisions of the Tax Code. Hence, said amount did not prescribe and must be refunded or tax credited by the BIR.

The Court frowns upon respondent's averment that petitioner's claim is not supported by evidence. The records of the case bear witness to the fact that it was petitioner who presented two witnesses and numerous documents material to its claim. On the contrary, it was respondent's counsel who manifested clear lack of interest to prosecute by waiving on two occasions his right to cross examine petitioner's witnesses, and by not appearing on the scheduled dates of hearing which ultimately prompted this Court upon motion by counsel for petitioner to declare respondent's counsel as to have waived his right to present evidence. Consequently, no evidence whatsoever has been presented in court by respondent's counsel. If at all, only a Memorandum has been filed to support his case. The Court does not consider this as evidence. Thus, in one of our decisions, this Court ruled that:

> "Admittedly, respondent submitted a memorandum to expound its thesis. But a memorandum is not evidence. It is merely a guide to assist the Court to clarify matters already presented before it. It cannot substitute for something that is not there." [CTA Decision, CTA Case No 4496 "**Chartered Bank** (now named as **Standard Chartered Bank**) vs. CIR", December 23, 1994, pp. 16-17; Underscoring supplied]

WHEREFORE, finding the petition meritorious and in accordance with law, the *same is hereby **GRANTED** deducting therefrom the prescribed amounts of P79,063.00 and P68,766.00. Respondent is ordered to refund or issue a Tax Credit Certificate in favor of petitioner the amount of P788,000.00 representing overpaid sales tax.

No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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