REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION CARBIDE PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2876

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

UNION CARBIDE PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2891

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

8/15/83.

UNION CARBIDE PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2892

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

D E C I S I O N

These cases involve claims for refund or tax credit of advance sales tax paid by petitioner Union Carbide Philippines, Inc. on imported raw materials used by it in the manufacture of insecticides exported abroad, pursuant to the provisions of Section 183(b), now Section 193(b), of the National Internal Revenue Code, consolidated as follows:

CTA CASE NO.	QUANTITY IMPORTED	AMOUNT PAID AST	O.R. NO.	DATE	QUANTITY USED	ADVANCE SALES TAX CREDIT CLAIMED
2876	104,727 kgs.	₱ 77,330.00	418703	5-30-75	104,727 kgs.	₱ 77,330.00
2891	122,182 kgs.	112,239.00	445524	8-12-75	90,573 kgs.	83,057.00
2892	"	"	445524	8-12-75	31,609 kgs.	29,182.00
2892	104,727 kgs.	86,045.00	448111	8-25-75	104,727 kgs.	86,045.00
2892	139,636 kgs.	106,326.00	448255	8-28-75	139,636 kgs.	106,326.00
2892	34,909 kgs.	28,308.00	448254	8-28-75	34,909 kgs.	28,308.00
	506,181 kgs.	₱410,248.00			506,181 kgs.	₱410,248.00

Inasmuch as these three cases raise the same issue, and involve the same parties, they are consolidated in this Decision.

The undisputed facts are narrated in the Memorandum for the Respondent:

C.T.A. Case No. 2876

> Petitioner is a domestic corporation organized and existing under Philippine laws, engaged in the manufacture of insecticides, with principal place of business at 11-12th Floor, PAL Bldg., Ayala Avenue, Makati, Metro Manila.
>
> As a manufacturer of insecticides, petitioner imported from Hooker Chemical Corporation, Connecticut, U.S.A., 1,152 drums of BHC Technical Agricultural

Insecticides, (236,160 lbs.), for which petitioner paid on May 30, 1975, the amount of ₱77,330.00 as advance sales tax. The gross weight of each drum of said imported BHC was fixed at 200 lbs. after the tare is deducted therefrom. Converted into metric terms the net content of the 1,152 drums is equivalent to 104,727 kgs. of BHC computed as follows:

$$1{,}152 \text{ drums} \times 200 \text{ lbs./drum} \times \frac{1 \text{ kg.}}{2.2 \text{ lbs.}} = 104{,}727 \text{ kgs.}$$

Petitioner alleges that it used the abovementioned chemical in the manufacture of insecticides which were exported to Pakistan on April 10, 1977.

Consequently, in a letter dated May 26, 1977, (pp. 46-47, BIR rec.), petitioner claimed a tax credit for the full amount of ₱77,330.00 which it previously paid as advance sales tax, pursuant to the provisions of Section 193(b) of the Tax Code.

Taxpayer's formula shows that for every metric ton of exported insecticides, 62% consists of BHC chemical. (p. 36, BIR rec.) Five per cent (5%) is added to the 62% as wastage allowance. The sum is then multiplied by 1000 kgs. and the product thereof constitutes the BHC used per metric ton of insecticides that was exported, thus -

BHC usage per metric ton of export:
(62% + 5%) (1000 kgs.) = 651 kgs./mt.

Since 300 metric tons of insecticides were exported, 195,300 kgs. of BHC were used, computed as follows:

300 m.t. x 651 kgs.= 195,300 kgs.

Of this 195,300 kgs. of BHC used, the imported 104,727 kgs. of BHC are claimed to have been fully used in the manufacture of the total 300 metric tons of insecticides exported while the balance of 90,573 kgs. of BHC that were likewise used in the production of 300 metric tons of exported insecticides were taken from another set of imported BHC. (195,300 kgs.- 104,727 = 90,573 kgs.)

In a letter decision dated January 27, 1978 (p. 67, BIR rec.), the Acting Commissioner of Internal Revenue denied petitioner's claim for tax credit.

Subsequently, in a letter dated March 20, 1978, petitioner, through counsel, requested withdrawal of the denial.

The request was again denied by respondent, through the Assistant Commissioner of Internal Revenue, in a letter dated November 10, 1978. (Exh. 2, p. 78, BIR rec.), on the ground that the raw materials (BHC Technical Agricultural Insecticides) which were purportedly used by petitioner in the manufacture of the exported 300 metric tons of insecticides were not the raw materials imported by it and for which the sum of ₱77,330.00 as advance sales tax was paid. Thus, after using 195,300 kgs. out of the stock on hand, (beginning inventory of 352,989 kgs.), there remains a balance of 157,689 kgs.

<u>C.T.A. Case No. 2891</u>

Petitioner imported from the U.S.A. seven (7) containers or 1,344 drums of BHC Technical Agricultural Insecticides, equivalent to 122,182 kilograms, on account of which importation it paid as advance sales tax the amount of ₱112,239.00 on August 12, 1975.

In a letter dated June 21, 1977 (pp. 6-7, BIR rec.), petitioner claimed tax credit in the amount of ₱83,057.00 out of the amount of ₱112,239.00 it had paid as advance sales tax.

According to petitioner, it utilized 90,573 kilograms of BHC, out of its importations of 122,128 kilograms, in the manufacture of insecticides which were exported to Pakistan; hence, it claims tax credit in the amount of ₱83,057.00.

In a letter/decision dated January 28, 1978 (Exh. 2, p. 70, BIR rec.), respondent, through the Acting Commissioner of Internal Revenue, denied petitioner's claim for tax credit.

<u>C.T.A. Case No. 2892</u>

Petitioner is engaged in the manufacture of insecticides. In a letter dated August 5, 1977, peti-tioner, through its accountant, claimed a tax credit of the amount of ₱249,861.00 which taxpayer paid on the imported Benzene Hexachloride (BHC) Technical Agricultural Insect-icides purportedly used as raw materials in the manufacture of insecticides which were exported abroad.

Pursuant to an investigation conducted, respondent, in a letter dated July 2, 1979, denied taxpayer's claim for tax credit (Exh. 2, pp. 36-37, BIR rec.).

The sole issue to be resolved is whether the BHC chemicals (benzene hexachloride) on the import-ations of which petitioner paid advance sales tax under Section 183(b) of the then in force National

Internal Revenue Code, subject of the claims for refund or tax credit, are the very same stocks used in the manufacture of the insecticides that were exported.

Under the provisions of Section 183(b) of the Tax Code, the percentage tax (advance sales tax) paid on imported raw materials used in the manufacture of finished products exported shall be allowed to be credited against other tax liabilities of the manufacturer-exporter. Quoted hereunder are the relevant portions of Section 183(b) of the Code:

> "(b) Sales tax on imported articles.- When the articles are imported, the percentage taxes established in Sections 184, 184-A, 185, 185-A, 185-B, 186 and 186-B of this Code shall be paid in advance by the importer, x x x and prior to the release of such articles from customs custody, based on the import invoice value thereof, certified to as correct under penalties of perjury by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty and all similar charges, plus 100 per centum of such total value in the case of articles enumerated in Sections 184, 184-A; 50 per centum of such total value in the case of articles enumerated in Sections 185, 185-A and 185-B; and 25 per centum in the case of articles enumerated in Sections 186 and 186-B.

* * *

> Any percentage tax paid under Sections 184, 184-A, 185, 185-A, 185-B, 186 and 186-B, on domestically manufactured or on imported raw materials used in the manufacture of finished products exported shall be allowed to be credited against other tax liabilities of the manufacturer-exporter: Provided, however, That said percentage taxes paid are indicated as a separate item in the invoices." (Underscoring supplied)

Respondent's examiner recommended the denial of petitioner's claims for tax credit on the following grounds:

C.T.A. Case No. 2876 - Applying the "first-in first-out" method as practised by taxpayer, the imported BHC Technical Agricultural Insecticide under Formal Entry No. 59780-74 "was not the same raw material component used in the exported 300 MT of insecticide in April, 1977 because as of May, 1974 the taxpayer's beginning inventory of the same BHC was 352,989 kgs.", which was well in excess of the 195,300 kgs. used in the exported insecticide. (Exh. "1", p. 72, BIR records, CTA Case No. 2876.)

C.T.A. Case No. 2891 - The inventory list of taxpayer (Annex "I") clearly shows 481,448 kgs. of the same BHC raw materials in its beginning inventory in August, 1975, thus "the total imported raw materials of 122,182 kgs. for which is claimed a tax credit of ₱83,057.00 could not have been the same component of the processed insecticide that was exported," following the "first-in first-out" theory used by taxpayer in determining which of the sets of raw materials was first used. (Exh. "1", p. 68, BIR records, CTA Case No. 2891.)

<u>C.T.A. Case No. 2892</u> - "Since by the taxpayer's own computation only 310,881 kgs. were used in the exported insecticide, the stocks at hand even before the arrival of the imported raw materials were exceedingly more than what was required in the processing of the said exported insecticide", taking into account the "first-in first-out" method practised by the taxpayer in the disposition of its raw materials. (Exh. "1", p. 32, BIR records, CTA Case No. 2892.)

To support his allegations, respondent's examiner presented the monthly inventory lists of raw materials from April 25, 1974 to January 25, 1977 submitted by petitioner, marked as Annexes

"G" and "I"., (pp. 23-35, BIR records, CTA Case No. 2876, and pp. 25-57, BIR records, CTA Case No. 2891), showing beginning inventories of 352,989 kgs. of BHC (Hooker) in the Granular Plant as of May, 1974 and 481,448 kgs. in the Bonded Warehouse in August, 1975 before the arrival of the new importations.

Petitioner did not dispute the existence of the beginning inventories as of these dates but contended that although as a general guideline the company practices the "first-in first-out" method, this is not strictly followed "because of specific need and requirement as dictated by the quality requirement involved". And as the old stock of benzene hexachloride was not the same quality and same potency as required under the agreement with Pakistan, the new lots imported were the ones used for the exportation to Pakistan. (Testimony of Inventory Control Traffic Manager, t.s.n., July 3, 1981, pp. 4-8.)

In his testimony before the Court (t.s.n., July 25, 1979, pp. 9-13), petitioner's witness, the Inventory Control and Foreign Traffic Manager, indicated in the "Plant Location Layout" (Exh."L") the two areas where the BHC stocks were stored, namely, the Drum Storage Area (Exh. "G") where the 352 metric tons of old stock of BHC were kept and the Customs Bonded Warehouse (Exh. "F") where the new importations, subject of the tax credit claims were delivered. (See Petitioner's Written Offer of Exhibits.)

Along the same line, petitioner's other witness, the Plant Manager, testified that the BHC raw materials used in the manufacture of insecticides exported to Pakistan in 1977, were taken from Exhibit "F", the Customs Bonded Warehouse, where the new importations were stored, as the BHC found in Exhibit "G", the Drum Storage Area, did not meet the specifications required. (t.s.n., April 24, 1980, pp. 44-45; t.s.n., August 18, 1980, p. 57.)

Evidently, the two storage areas referred to in both testimonies as the "Drum Storage Area" and the "Customs Bonded Warehouse" are actually the "Granular Plant" where the 352,989 kgs. of old stocks of BHC are listed and the "Bonded Warehouse", appearing in petitioner's monthly inventory lists.

If as testified to above, deliveries of the new importations of BHC were made to the Bonded

Warehouse and the BHC raw materials used in the 1977 exportations were withdrawn from that location, why were there no receipts or records of withdrawals of BHC chemicals correspondingly reflected during those dates in petitioner's inventory lists for the Bonded Warehouse?

Annexes "G" and "I", petitioner's monthly inventory lists, submitted to respondent's examiner show the receipts and withdrawals of raw materials from the Granular Plant for the period April 1, 1974 to January 25, 1977 and from the Bonded Warehouse from December 1, 1974 to September 25, 1975. To clearly reflect the receipts and withdrawals of the BHC chemicals alone, a summary prepared from Annexes "G" and "I" is attached hereto as Annex "A-Decision" and made an integral part hereof.

An analysis of Annex "A" will show that in the Granular Plant, there were receipts of BHC in May, July and August, 1974 totalling 435,452 kgs. and in the Bonded Warehouse, there were receipts of 139,345 kgs. only in December, 1974. Since the first importation of 104,727 kgs. was delivered on May 24, 1974 (see Release Certificate No. 78531, p. 57, BIR records, CTA Case No. 2876), such importation could have been a part of those received in the Granular Plant in May, 1974 or a part of the beginning inventory of 202,758 kgs. in the Bonded Warehouse in December, 1974. Hence, the first importation could be accounted for. However, the rest of the importations amounting to 401,454 kgs., which arrived on various dates in August, 1975 remain unaccounted for. As for the years 1975 and 1976, there are no receipts recorded in the Granular Plant, while in the Bonded Warehouse, the only receipts listed for 1975 are as of February, 1975 in the amount of 139,345 kgs.

No withdrawals of BHC chemicals are recorded in the 1974 and 1975 monthly inventory lists for the Bonded Warehouse up to September 1975, although considerable withdrawals aggregating 405,815 kgs. were made from the Granular Plant in 1974. Since there are no listings for stocks at the Bonded Warehouse after September, 1975, it appears that its ending balance of 481,448 kgs. on September 25, 1975 was combined with the 353,573 kgs. in the Granular Plant at the end of the year 1975. This would explain the increase in the ending inventory in the Granular Plant from 353,573 kgs. on December 25, 1975 to 835,707 kgs., its beginning inventory on January, 1976, which is approximately the total of the combined inventories. From these combined inventories, only 24,045 kgs. were withdrawn in 1976 and 13,091 kgs. in January, 1977 which was the last monthly inventory list furnished respondent's examiner by petitioner.

If withdrawals of the newly imported BHC for the manufacture of the insecticides exported to Pakistan from April to June, 1977 were made after January, 1977, petitioner should have produced the succeeding inventory lists. As the Inventory Control Department keeps track of a .. materials to ensure their availability (t.s.n., July 25, 1979, p. 11), undoubtedly, it must have records for that purpose. By presenting these records, petitioner could have easily traced the movement of the stocks of the new importations of BHC chemicals to prove that these were the very same stocks utilized in the manufacture of the insecticides exported to Pakistan in 1977, instead of the old stock.

Having failed to controvert or dispute respondent's evidence, petitioner can not now insist on its right to the tax credits claimed. It is to be admitted that claims for refund, or tax credit, are construed strictly against claimants since a claim for refund, or tax credit, is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95.) A refund, or tax credit, partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor General, L-1788, Oct. 29, 1968, 25 SCRA 754.) Petitioner Union Carbide Philippines Inc. having failed to establish by sufficient and competent evidence that the BHC chemicals (benzene hexachloride), the advance sales tax paid on the importations of which is the subject of the present claims for tax credit in these cases, were the same raw materials used in the manufacture of insecticides exported abroad, the decisions of respondent Commissioner of Internal Revenue dated November 10, 1978 in CTA Case No. 2876, January 27, 1978 in CTA Case No. 2891 and July 2, 1979 in CTA Case No. 2892, denying petitioner's claims for tax credit must have to be affirmed.

WHEREFORE, finding no merit in the petitions for review filed in these cases, the same are hereby dismissed at petitioner's costs in all instances.

SO ORDERED.

Quezon City, Metro Manila, August 15, 1983.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes

ALEX Z. REYES
Associate Judge

Summary of the
Monthly Inventory Lists of Benzene Hexachloride from April 25, 1974 to January 25, 1977
as per Union Carbide's Inventory Lists of raw materials (Annexes "G" & "I")

				Granular Plant					Stocks stored at Bonded Warehouse				
1 9 7 4	Description	Unit	Beg. Inventory	Receipts	W/Drawals	Ending Bal.	CTA 2876	Annex "G"	Beg. Inventory	Receipts	W/Drawals	Ending Bal.	CTA 2876 Annex "G"
4-25-74	BHC (hooker)	kilos				352,998	Exh. 3	p. 35 BIR rec.					
5-25-74	" "	"	352,989	174,181	25,855	501,315	Exh. 3-F	p. 29 " "					
6-25-74	" "	"	501,315	-	56,246	445,069	Exh. 3-G	p. 28 " "					
7-25-74	" "	"	445,069	104,508	56,000	493,577	Exh. 3-H	p. 27 " "					
8-25-74	" "	"	493,577	156,763	42,276	608,064	Exh. 3-I	p. 26 " "					
9-25-74	" "	"	608,064	-	19,051	589,013	Exh. 3-J	p. 25 " "					
10-25-74	" "	"	589,013	-	206,387	382,626	Exh. 3-K	p. 24 " "					
11-25-74	" "	"	382, 626	-	-	382,626	Exh. 3-L	p. 23 " "					
12-25-74	" "	"	382,626	-	-	382,626	Exh. 3-A	p. 34 " "	202,758	139,345	-	342,103	Exh. 3-B p. 33 BIR rec.
T o t a l				435,452	405,815					139,345			
1 9 7 5							CTA 2891	Annex "I"					CTA 2891 Annex "I"
1-25-75	BHC (hooker) (Dec. 382,626)	kilos	381,515	-	-	381,515		p. 37 BIR rec.	342,103	-	-	342,103	p. 38 BIR rec.
2-25-75	BHC (hooker)	"	381,515	-	-	381,515		p. 39 " "	342,103	139,345	-	481,448	p. 40 " "
3-25-75	" "	"	381,515	-	-	381,515		p. 41 " "	481,448	-	-	481,448	p. 42 " "
4-25-75	" "	"	381,515	-	-	381,515		p. 43 " "	481,448	-	-	481,448	p. 44 " "
5-25-75	" "	"	381,515	-	-	381,515		p. 45 " "	481,448	-	-	481,448	p. 46 " "
6-25-75	" "	"	381,515	-	9,072	372,443		p. 47 " "	481,448	-	-	481,448	p. 48 " "
7-25-75	" "	"	372, 443	-	14,969	357,474		p. 49 " "	481,448	-	-	481,448	p. 50 " "
8-25-75	" "	"	357,474	-	272	357,202		p. 56 " "	481,448	-	-	481,448	p. 57 " "
9-25-75	" "	"	357,202	-	-	357,202		p. 51 " "	481,448	-	-	481,448	p. 52 " "
10-25-75	" "	"	357,202	-	-	357,202		p. 53 " "					
11-25-75	" "	"	357,202	-	3,266	353,936		p. 54 " "					
12-25-75	" " (Annex C Exh. 3 p. 65 BIR rec.)	"	353,936	-	363	353,573		p. 55 " "					
T o t a l					27,942					139,345			
1 9 7 6													
1-25-76	BHC (hooker)	kilos	835,707	-	-	835,707		p. 25 " "					
2-25-76	" "	"	835,707	-	-	835,707		p. 26 " "					
3-25-76	" "	"	835,707	-	1,363	834,344		p. 27 " "					
4-25-76	" "	"	834,363	-	7,636	826,727		p. 28 " "					
5-25-76	" "	"	826,727	-	1,818	824,909		p. 29 " "					
6-25-76	" "	"	824,909	-	-	824,909		p. 30 " "					
7-25-76	" "	"	824,909	-	-	824,909		p. 31 " "					
8-25-76	" "	"	824,909	-	-	824,909		p. 32 " "					
9-25-76	" "	"	824,909	-	13,228	811,681		p. 33 " "					
10-25-76	" "	"	811,681	-	-	811,681		p. 34 " "					
11-25-76	" "	"	811,681	-	-	811,681		p. 35 " "					
12-27-76	" " (Annex C-1 Exh. 3-A BIR rec.)	"	811,681	-	-	811,681		p. 36 " "					
T o t a l					24,045								
1 9 7 7													
1-25-77	BHC (hooker) (Exh. 3-B Annex C-2 p. 63 BIR rec.)	kilos	811,681	-	13,091	798,590		p. 42 " "					

[illegible]