REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPHATE
FERTILIZER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5128

THE HONORABLE COMMISSIONER
OF INTERNAL REVENUE,
Respondent.

Promulgated: AUG 18 1998

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DECISION

This case involves the judicial claim for refund in the amount of P1,960,049.55 representing ad valorem and specific taxes allegedly paid by petitioner during the period July 1992 to August, 1993.

Petitioner is a domestic corporation registered with the Export processing Zone Authority (EPZA) per Certificate of Registration No. 82-13 (Exhibit B, p. 146 CTA records; TSN: October 11, 1995, pp. 7-8); and also a BOI-registered entity per its Certificate of Registration No. 81-054 issued by the Board of Investments (Exhibit C, CTA records p. 147; TSN: October 11, 1995 p. 9). It is engaged in the business of manufacturing fertilizer for domestic and international distribution. As manufacturer, it procures its fuel oil and other petroleum products locally.

As petroleum products are indispensable in its operations, petitioner secured fuel and oil products from

Petron Philippines Corporation (Petron). As importer of the petroleum products and fuel supplies, Petron pays the taxes and duties imposed upon the same. When the petroleum products are later sold by Petron to petitioner, the latter is billed the corresponding taxes and customs duties imposed on the petroleum products. Petron is then allegedly reimbursed by petitioner for the taxes and customs duties which the former had previously paid to the Bureau of Internal Revenue and the Bureau of Customs. Since then, Petron has been allegedly charging petitioner for excise taxes on its purchases.

In a letter, dated April 26, 1994, petitioner, believing that it enjoys tax and non-tax incentives by virtue of its registration with EPZA, as provided for under Section 17 (1) of Presidential Decree No. 66, sought from the BIR the refund of the amount of P1,960,049.55 as ad valorem taxes paid for purchases covering the period July 1992 to August 1993.

On July 14, 1994, as respondent had not granted nor acted upon petitioner's request for tax refund, petitioner was prompted to elevate its case before this Court by way of Petition for Review.

Petitioner justified its claim for refund by citing Section 17 (1) of PD No. 66 as amended, which provides as follows:

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> Section 17. ***Tax Treatment of Merchandise in the Zone.*** - 1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description except those prohibited by law, brought into the zone, to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity shall not be subject to customs and internal revenue laws and regulations nor to the local tax ordinances, the provisions of the law to the contrary notwithstanding." (Underlining supplied)

Respondent, on the other hand, admitted and denied certain facts and by way of special and affirmative defenses, alleges *inter alia*, that:

> 1.) In an investigation conducted by respondent's Bureau, it was ascertained that Petron was the only one liable to the ad valorem and specific taxes on petroleum products imported by it and that said taxes were collected in accordance with law and existing BIR implementing regulations;
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> 2.) What petitioner actually paid in this case were for additional cost of the petroleum products, fuel, oil and lubricants billed to it by Petron for which it is under obligation to pay to obtain the goods from Petron;
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> 3.) Section 17 (1) of Presidential Decree No. 66 which is the basis of petitioner's claim merely states that the petroleum products in question shall not be subject to Customs and internal revenue laws and regulations. It does not categorically state much less imply that the petroleum products sold and delivered to

EPZA registered enterprise are exempt from taxes;

4.) It was further ascertained that the ad valorem and specific taxes sought to be refunded in this case were paid on petroleum products, fuel, oil and lubricants which do not form part of the export products manufactured by petitioner. Being so, petitioner is not entitled to the tax credit sought in this case as tax refund/credit given to a registered zone enterprise only cover the sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products of its export products and forming part thereof pursuant to paragraph 1 of Section 18, of PD 1449.

5.) Petitioner, who has the burden of proving that it is entitled to tax refund has failed to establish any clear interest in or right over the alleged ad valorem taxes in the total amount of P1,960,049.55.

The issue in this case is whether or not petitioner is entitled to the refund of the amount of P1,960,049.55 allegedly representing excise taxes paid during the period July 1992 to August 1993.

We find in favor of petitioner.

The term "supplies" in Section 17(1) of PD 66 should be interpreted to include fuel used in running the machineries and equipment essential for the production of fertilizers. This fuel is vital and necessary for the operation of its machineries. These petroleum products are indispensable to the operations of petitioner. Without the petroleum products supplied by Petron, petitioner would be unable to continue its operations.

In the cases of **Philippine Phosphate Fertilizer Corporation vs. Hon. Commissioner of Customs, CTA Case No. 4661, May 31, 1993; and Philippine Phosphate Fertilizer Corporation vs. Hon. Commissioner of Customs, CTA Case No. 4957, October 5, 1995**, this Court has ruled that Section 17(1) of PD No. 66 is the controlling statute, to wit:

> Section 17(1) covers domestic merchandise, raw materials, supplies, articles and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleared, graded, or otherwise processed, manipulated, manufactured, mixed or used directly or indirectly in such activity shall not be subject to customs and internal revenue laws and regulations. Oil products produced by local oil companies maybe classified as domestic merchandise, raw materials or supplies as legally defined in the Supreme Court case of Commissioner of Customs vs. Caltex (Philippines), Inc., GR No. L-13067, December 29, 1959. 106 Phil. 829 which states that supplies or materials shall include gasoline from custom duties under Article 103 of RA No. 387. For what purpose, among others, these products may be brought into the zone for processing, manipulation, manufacture, mixed with foreign and domestic merchandise or used directly or indirectly in such activity. In our particular case, the petroleum products delivered to petitioner is used in the processing of fertilizer for export. While respondent maybe correct that these products did not form part of the fertilizer exported, nevertheless, the law does not provide for such requirement but only requires the use of such materials directly or indirectly in such activity. The use of petroleum products, like bunker oil as fuel will easily fall under the phrase ' used directly or indirectly in such

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activity'. Clearly, these petroleum products can easily qualify for tax and duty free privilege under Section 17(1) of PD No. 66.

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This interpretation is strengthened by the enactment of EO 226 (The Omnibus Investments Code). The tax treatment of merchandise inside the zone was re-enacted under Article 77 of Book IV of the Code but not Section 18(i). Said Section 18(i) was deleted from Book IV governing incentives of BOI registered enterprise under Book I which an EPZA registered enterprise may also enjoy as an additional incentive under Article 78.

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Finally, under paragraph 2 of EO 226 aforequoted, the purchase of merchandise by a registered zone enterprise was likewise considered as export sale and the exporter shall be entitled to the benefits allowed by law for such transaction. This will entitle the exporter to duty drawback under Section 106 of the Tariff and Customs Code and tax credit under Section 127(d) of the National Internal Revenue code. Considering that pursuant to the aforequoted provision of the LOI and EO 226, the mere act of selling and delivering products to the export processing zone enterprise can be considered already as export sale without awaiting for actual exportation, the allegation of the respondent that the articles sold to an EPZA registered enterprise should form part of the finished product actually exported will hold no water at all.

all the above incentives spring from the concept that an export processing zone is carved out of the Philippine territory for purposes of enforcement of customs and tax laws. So that the area or areas fixed or delimited by presidential proclamation or by board resolution of the Export Processing Zone Authority as export processing zone shall be referred to as the zone and the national territory outside of the zone shall be called customs territory (Section 2(e) and (f) of the

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> Amended Rules and Regulations to implement PD 66). The basic policy in establishing a zone is to attract enterprises especially foreign investors who will be manufacturing products primarily for export and be able to do so without their supplies and raw materials entering, and the export products leaving the Philippine territory within the context of customs and revenue regulations. Export is the backbone of our economy and is being encouraged by providing enterprises with all the incentives including those which we have discussed above. For which reason the law further states that "all doubts concerning the benefits and incentives granted to enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises."

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Based on the above-quoted authority, petitioner, as an EPZA registered enterprise, is exempted from the payment of excise taxes, and if said taxes were passed on by the supplier to EPZA-registered enterprise like the petitioner, tax credit shall be granted to the latter. The fact that it was not the petitioner but Petron which paid the Bureau of Internal Revenue will not have an adverse effect on the claim for refund. The law granting the exemption makes no distinction as to the circumstances when the law shall apply. Since the law makes no distinction, neither should we. Under PD No. 66, as amended, an EPZA registered enterprise is not only exempt from taxes and duties but also unaffected by all customs and internal revenue laws and regulations with regard to merchandise brought in the Export Processing

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Zone. The exemption is so broad as to cover the present situation. Since an Export Processing Zone is not considered to be covered by Philippine customs and internal revenue laws, the taxes paid by the petitioner on the petroleum products should be refunded or credited in its favor. However, petitioner must prove its entitlement for refund by substantial evidence.

To support its claim for refund, petitioner presented the following documents, to wit:

> 1) Certification of Rodrigo C. Santiago, a certified public accountant which attests to the fact that he examined pertinent documents from petitioner and Petron showing the amount of specific taxes paid by the latter corporation to the BIR (Exh. "A7-1");
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> 2) Certificate of Registration No. 82-13 issued by the Export Processing Zone Authority in favor of petitioner (Exh. "B");
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> 3) Certificate of Registration No. 81-1054 issued by the Board of Investments in favor of petitioner (Exh. "C");
>
> 4) Letter claim for refund for the period July 1992 to August 1993 (Exh. "D").

Petitioner also presented as witness, Mr. Rodrigo C. Santiago, the independent certified public accountant, who testified that he examined the pertinent records of petitioner which included the invoices and receipts and other documents related to the delivery of petroleum products by Petron to petitioner and in the course of his

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examination, he concluded that the claim for refund in the amount of P1,960,049.55 for the period covered is correct.

Although petitioner did not formally offer the aforementioned invoices and receipts pertinent to this case, it did present Mr. Rodrigo C. Santiago, the independent CPA, to attest to the veracity of the amount claimed (see TSN, dated July 19, 1995). Furthermore, petitioner formally offered in evidence the CPA certification attesting to the veracity of the amount claimed for refund.

We find the aforementioned evidence and corresponding testimony of Mr. Rodrigo C. Santiago, sufficient to establish petitioner's claim for refund.

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** in favor of the petitioner the amount of ₱1,960,049..55 representing ad valorem and specific taxes for the period July 1992 to August 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SABA
Associate Judge

CERTIFICATION

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

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