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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5033

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 28 1996

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DECISION

This case involves petitioner's claim for refund of specific taxes paid on its purchases of diesel and regular gasoline from PETRON for the period covering October 1991 to June 1992, in the sum of P1,380,492.60, pursuant to Section 17(1) of Presidential Decree No. 66, otherwise known as the EPZA Law.

Petitioner is a domestic corporation duly registered with the Export Processing Zone Authority (EPZA). It is engaged in business as a manufacturer and producer of fertilizers for domestic and international distribution.

From October 1991 to June 1992, petitioner purchased from PETRON diesel and regular gasoline used in its operation of machineries necessary for the production of fertilizers for export. The specific taxes on these fuels totalling P1,380,492.60 have been billed and passed on by PETRON to petitioner as part of the cost. (Exhs. B, B-1 to B-4, inclusive, pp. 84-88, CTA record).

On September 22, 1992, petitioner filed a claim for refund (Exh. A, pp. 82-83, CTA record) corresponding to the specific taxes paid on the fuels purchased from PETRON for said period, amounting to P1,380,492.60. Petitioner invoked that the fuels brought into the Zone are exempt from internal revenue taxes. Fuels are classified as supplies or materials under Section 17(1) of Presidential Decree No. 66, which provides:

> "SEC. 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 local tax ordinances, the provisions of law to the contrary notwithstanding." (Emphasis by the petitioner.)

Petitioner waited for the decision of respondent until September 30, 1993. None was received by the petitioner. Hence, this petition was filed on September 30, 1993 seeking for the refund/credit by way of judicial action the amount of P1,380,492.60.

Respondent alleged that the exemption under Art. 77 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, has modified and partly repealed Section 17(1) of P.D. 66, which reads:

> "**ART. 77.** ***Tax Treatment of Merchandise in the Zone.*** - **(1)** Except as otherwise provided in this Code, 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 whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding."

The exemption from customs and internal revenue taxes covers only foreign or domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and ware of every description. It does not include **fuels** used in the running of machineries and equipment necessary for the production of fertilizers. If it were the intention of the lawmakers to include fuels then they could just have included the same in the enumeration just like **spare parts**. Fuel not being included is therefore excluded following the doctrine in statutory construction "*inclusio unius est exclusio alterius*" (the express mention of one thing in a law means the exclusion of others not expressly mentioned).

Respondent also contended that the articles above-mentioned brought into the zone should either be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity. The fuels are used in operating its machineries and equipment. It is not utilized in any of the manner provided for under Article 77 of E.O. 226.

After the presentation of evidence by petitioner, respondent merely submitted this case for decision on a purely legal issue sans a memorandum.

The issue presented for resolution is whether or not petitioner is exempt from the specific taxes paid to PETRON which formed part of the cost of its purchases of diesel and regular gasoline for the period October 1991 to June 1992, in the total amount of P1,380,492.60.

We agree with petitioner.

The term "supplies" in Section 17(1) of P.D. 66 should be interpreted to include fuel used in running the machineries and equipment essential for the production of fertilizers. The fuel are vital and necessary supply for the operation of its machineries. As earlier pointed out by Mr. Robbie Moreno, Risk and Tax Manager of petitioner, during the hearing of this case, and to elaborate further the need of such fuels, to wit:

> "Q: Now, could you tell us what use does petitioner corporation have for these products?
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> A: The diesel fuel is used to heat up the bed of the roaster inside the sulfuric acid plant before the pyrites are fed. The fuel oil or bunker fuel are used to fire the furnace inside the granulation plant, and the lubricants are used to lubricate the various machineries inside the plant.
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> Q: Now, would the petitioner corporation be able to operate without these goods?
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> A. No, we cannot." (TSN, pp. 8-9, April 7, 1994).

This Court has ruled in similar cases involving the same parties that Section 17(1) of P.D. 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, cleaned, 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 may be classified as domestic merchandise, raw materials or supplies as legally defined in the Supreme Court case of Commissioner of Customs vs. Caltex (Philippines), Inc. (G.R. No. L-13067, Dec. 29, 1959, 106 Phil. 829) which states that supplies or materials shall include gasoline and other petroleum products for purposes of exemption from customs duties under Article 103 of Republic Act 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 may be 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 activity'. Clearly these petroleum products can easily qualify for tax and duty free privileges under Section 17(1) of P.D. 66.

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This interpretation is strengthened by the enactment of E.O. 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 VI governing incentives of EPZA registered enterprise and was incorporated as one of the incentives of a BOI registered enterprise under Book I which an EPZA registered enterprise may also enjoy as an additional incentive under Art. 78.

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Finally under paragraph (2) of E.O. 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 E.O. 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 article 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) & (f) of the Amended Rules and Regulations to Implement P.D. 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 enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises'. (Article 79 E.O. 226.)" **[Philippine Phosphate Fertilizer Corporation v. The Hon. Commissioner of Customs, C.T.A. Case No. 4661, May 31, 1993; Philippine Phosphate Fertilizer Corporation v. The Hon. Commissioner of Customs, CTA Case No. 4957, October 5, 1995].**

Finding the petitioner to be entitled to the privilege under Section 17(1) of P.D. 66, as amended by Article 77(1) of E.O. No. 226, otherwise known as the Omnibus Investment Code, the only thing left is to determine whether it is entitled to the amount claimed for refund. There appears to be no dispute with respect to the amount claimed. Petitioner submitted in evidence a Certification issued by PETRON, dated August 17, 1992, stating that the latter billed and passed on the amount of P1,380,492.60 (specific taxes paid to the BIR) to the petitioner (Exhs. B, B-1 to B-4, inclusive). As proof that PETRON paid the BIR the specific taxes on these fuels, petitioner presented to this Court the Central Bank Confirmation Receipts and the BIR Payment Orders (Exhs. C, C-1 to C-305, inclusive) corresponding to the fuels delivered to petitioner for the periods October 1991 to June 1992.

WHEREFORE, the Court finds the petition to be meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to issue in favor of petitioner a Tax Credit

Certificate in the amount of P1,380,492.60, representing erroneously paid specific taxes paid on its purchases of diesel and regular gasoline for the periods covering the months of October to December 1991 and January to June 1992. No costs of suit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
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