REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PETROLEUM CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2882

THE COMMISSIONER OF CUSTOMS,
Respondent.

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8/31/88

D E C I S I O N

An action to recover drawback duties on exported base stock for lubricating oil on the basis of a 2.2:1 ratio during the period November, 1975 to December, 1975, and a 1.85 ratio during the period February, 1976 to October, 1976.

It appears that petitioner is a domestic corporation duly registered with the Board of Investments as a pioneer industry engaged in the manufacture and production of base stock for lubricating oil, a part of which is sold locally and another part is specifically produced for export. It uses crude oil residium from imported crude oil as a raw material for the manufacture and production of base stock for lubricating oil, and on which importations, customs duties are paid.

It alleges that for every barrel of base stock for lubricating oil it exported abroad for the period November to December, 1975, approximately 6.75 barrels imported crude oil were required. Of the approximately 5.7 other barrels, 1.20 barrels were utilized in the process of manufacturing and production, and 4.55 other remaining barrels, which are residues, were sold as fuel oil. For the period February up to October, 1976, approximately 5.24 barrels of imported crude oil was required to extract a barrel of base stock. Of the approximately 4.24 other barrels, 0.85 barrel was utilized in the process of manufacturing and production, and the 3.39 other remaining barrels, which are residues, were sold as fuel oil.

Petitioner applied for a duty drawback with the respondent on 2.2:1 basis for certain export shipments during the November to December, 1975 period, and on 1.85:1 basis for certain export shipments for the February to October, 1976 period, to cover the actual base stock for lubricating oil exported, plus the actual crude oil utilized in the process of manufacturing and production of the exported bases stock but excluding the residue sold as fuel oil. Said ratio representing the formula of manufacture applicable during the aforesaid periods were duly approved by the National Institute of Science and Technology (NIST), pursuant to Section IV 9(a) of Customs Administrative Order No. 14-72 "Prescribing rules and regulations governing drawback under Section 106(b) of the Tariff and Customs Code of the Philippines".

On June 28, 1977 respondent issued to petitioner Tax Credit No. 0004916-A dated April 14, 1977, in the total amount of P3,183,136.00 (out of the claimed P6,234,526.56) representing the allowed duty drawback on the basis of only 1:1 ratio instead of a 2.2:1 ratio applicable for the period

November 1975 up to December, 1975, and a 1.85:1 ratio for the period February, 1976 to October, 1976.

A request for reconsideration was denied by the respondent in a letter dated May 23, 1977 for lack of legal basis.' Hence, this petition for review.

The issue presented is whether the allowable duty drawback is 1:1 ratio as decided by the respondent Commissioner or the 2.2:1 and 1.85 ratios as applied for by the petitioner.

Petitioner presents the propositions as reasons for the appeal that under Section 106 of the Tariff and Customs Code, a duty drawback is allowed upon the exportation of article manufactured or produced in the Philippines, for the duties paid on the imported materials actually used in the production or manufacture of said articles. Taking the cue from the U.S. Tariff Act where the provision was copied almost verbatim and without any substantial change, it invokes the rulings that under the said Act, a duty drawback is allowed even on articles used for the manufacture or production of the exported articles even if at the time of the exportation the articles on which the duty drawback is being applied for is no longer perceptible to the senses, like for example imported salt for curing exported fish or meat. What is essential is only a proof that the imported salt was used in the curing of the exported meat.

Likewise, where linseed is imported and used to manufacture oil and oil cake and the oil cake is exported, the drawback should be computed in proportion to the value, not weight, which the exported oil cake bears to the imported linseed (National Lead Co. v. U.S. 252 US 140, 64 L.ed. 496; 40 SCRA 237, 56 OTC 1514; U.S. v. Dean Linseed-Oil Co. (CCA 2) 87 Fed. 453). In the instant case, the base stock is the sole product sought to be manufactured or produced. This also distinguishes the situation of petitioner from other oil refineries in the Philippines. The drawback therefore should be in proportion to the total raw materials imported minus the residue sold as fuel oil.

Further object of the drawback provisions is not only to build up an export trade, but to encourage export-oriented and dollar producing manufacturers in the country, by granting a rebate of duties on the raw or other materials, imported for use in the manufacture and production of exports, thus enabling the manufacturers to compete in foreign market with the same articles manufactured in other countries (Tide Water Oil Co. v. United States, 171 U.S. 210, 43 L. ed. 139).

The NIST has certified that petitioner consumed 1.85 barrels for each barrel of lubricating oil base stocks produced. Likewise the Board of Investments has accepted the 1.85:1 formula for the manufacture of export lubricating oil base stock by petitioner.

Respondent does not dispute the quantity of crude oil needed to produce one barrel of lubricating oil but posits an unvarying assertion that the question lies on the amount of duty drawback allowable. The 1:1 ratio, the accepted and prevailing formula applied to all oil refineries, is premised on the fact that to produce one barrel of finished product, at least one barrel of crude oil will have to be used in the process, no less, crude oil being an inorganic substance and therefore does not have the capacity to grow or multiply. Moreover, petitioner did not process imported crude oil, but a semi-finished product purchased from Caltex (Phils.) Inc. as the processing done by petitioner did not involve the use of imported oil directly, thus it cannot be treated independently from the processing done by Caltex in so far as the crude oil is concerned. The certification of the Board of Investments allegedly recognizing a 1.85:1 basis is not in accordance with the drawback provision of the tariff and Customs Code, as amended by P.D. No. 34. It presumed that the processing done by petitioner involved the use of imported crude oil directly, like that of Caltex. In order, however, to insure uniformity in the application of the 1:1 ratio in terms of pesos and centavos, the following formula has been adopted in computing the amount of creditable duty drawback:

$$\frac{DP \times E \times .99}{BI} = R$$

BI - represents the number of barrels/units of raw crude imported
DP - total pesos of duty paid on said importations
E - number of barrels/units of finished products exported
.99 - the 99% contemplated as portion of duties refundable
R - actual amount of duty creditable

Under the aforementioned formula the amount of duty drawback, therefore, is based on the quantity of exported product, with the duty paid per unit of imported product, linking the duty drawback on the percentage yield from crude oil of the export product.

In this case, a refinery can process any one barrel of Kuwait crude oil to produce the following:

PRODUCT	NO. OF BARRELS	PERCENTAGE
LPG	.04	4.0
Gasoline	.195	19.5
Avtur	.065	6.5
Diesel	.14	14.0
Residue	.50	50.0
Refinery fuel & loss	.06	6.0
	1.000 BBL	100.00 %

If a duty of P1.00 is paid one barrel of processed crude oil, say, .50 BBL, of Residue is exported, the drawback would be $\frac{(P100 \times .50 \text{ BBL} \times .99)}{x \text{ BBLS}}$ or P.495 linking duty drawback on the percentage yield from crude oil of the export product.

> Any ratio other than the "one to one" (1:1) ratio is not in consonance with the drawback provision of the Tariff and Customs Code as amended by P.D. 34. Hence, the duty drawback claim approved by the respondent in the amount of P3,183,136.00 out of the P6,234,526.56 claim of petitioner is in accordance with law.

Again, as previously stated, the petitioner did not process imported crude oil, but semi-finished product purchased from Caltex (Phil.) Inc., as the processing done by petitioner did not involve the use of imported crude oil directly. Thus, it cannot be treated independently from the processing done by Caltex insofar as crude oil is concerned. Illustrated:

<u>CALTEX AND PHILIPPINE PETROLEUM COMPANY PROCESSING</u>

<u>CALTEX</u>

<u>Imported material</u>	<u>Yield Product</u>	
1 BBL Crude Oil	LPG	.04 Bbl.
	Diesel	.14
	Avtur	.065
	Gasoline	.195
Processed	Refinery loss	.06
	<u>Residue</u>	.50

Philippine Petroleum Company

CALTEX

Duty Paid/Bbl.		Equivalent Duty Paid
P1.00	LPG	P.04
	Diesel	.14
	Avtur	.065
	Gasoline	.195
	Residue	.50
	Refinery loss	.06
Purchased Residue	Lobe Oil	P.32
	Residue	.18

Note:

a. Caltex imported crude oil processed the same which yielded different products in various properties

b. Philippine Petroleum Company purchased Residue, a semi-finished product of Caltex and further processed it by extracting Lobe oil (Lubricating) which it subsequently exported. The remaining residue was sold to Meralco.

Therefore, in the process only one half or 50% of Caltex crude oil importation was used by petitioner in processing its lubricating oil for export. Therefore, if, for instance, out of two barrels of crude oil imported by Caltex, only one barrel is available for petitioner to be used in the process of extracting Lobe oil, excluding CALTEX's light products, the 1:1 ratio as basis becomes evident. Hence, for every one barrel of Lobe oil exported, petitioner will have a refund of the amount of one barrel crude oil Residium purchased from Caltex.

All told the material facts are relatively simple so is the issue under resolve but the parties seem trying to get the better of each other over by a quibble as to what ratio applies in determining the creditable duty drawback on the subject exportations.

The provision of Section 106 (b) of the Tariff and Customs Code as amended by P.D. No. 34, insofar as pertinent, provides:

> On Articles Made from Imported Materials. - Upon exportation of articles manufactured or produced in the Philippines, including packing, covering, putting up, marking or labelling thereof either in whole or in part of imported materials for which duties have been paid refund or tax credit shall be allowed for duties paid on the 9imported material so used including the packing, covering, putting up, marking or labelling thereof, subject to the following conditions:
>
> 1 The actual use of the imported materials in the production or manufacture of the article exported with their quantity, value and amount of duties paid thereon, having been established;

> 2. The duties refunded or credited shall not exceed ninety-nine (99) per cent of the duties paid on the imported materials used;
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> xxx xxx xxx

Understood to mean what is plainly expressed insofar as the scope and limit of the said provision bear upon the circumstances obtaining respondent has struck the right chord in his proffered formula which furnishes the best means of its own exposition. Such illustration solely drawn for the light that may be shed in determining the allowable duty drawback, respondent points to the direction in which the intended imperative of Section 106, *supra*, should be applied. And far be it from a theoretical gobbledygook it firmly establishes the appropriate legal moorings and lends settling eloquence to the precise issue raised in the case at bar.

And, as to the subsidiary argument of the "economics" of the undertaking We need not and do not deem it necessary to discuss the kind of "sweetener" further except to say that it is too much of a stretch to hold respondent's action as would foreclose the development of petitioner's export business and frustrate its competitive stance in the foreign market. It takes more than a generous rebate to attain a meaningful progress in the said industry. It is enough that the decision is in accordance with law.

Upon the records both the circumstances obtaining and relevant legal standards compel the conclusion that the petitioner failed to prove entitlement to a favorable determination of the desired relief.

WHEREFORE, petition is dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals