REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE DAVIES INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4168

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

4/10/92

D E C I S I O N

In the instant case, petitioner prays for the Court to render judgment ordering respondent to refund to it the amount of P18,091.49 in allegedly overpaid tax on subsequent sales for the period January to May, 1986.

The facts of the case are simple.

Petitioner, a duly organized and existing Philippine corporation, timely filed with respondent's Makati-West Revenue District Office (RDO 32-A) its monthly returns of sales tax on subsequent sales for the months of January to May, 1986, inclusive. The amounts declared in such returns as sales subject to tax and the tax due thereon, are hereunder summarized as follows (Exhs.

"A", "K", "M", "O" and "Q"; CTA Records, pp. 7, 9, 11, 13, and 15):

Month	Sales Subject To Tax	Tax Due Thereon
January	P15,415,121.12	P 231,226.82
February	16,730,851.24	250,962.76
March	18,067,332.90	271,009.99
April	20,318,641.85	304,779.63
May	20,162,114.05	302,431.71
	P90,694,061.16	P1,360,410.91

The amounts listed above as tax due for the months January to May, 1986 were duly paid by petitioner, as shown by the confirmation receipts and payment orders, photocopies of which were admitted by the Court in evidence (Exhs. "A-1", "A-2", "K-1", "K-2", "M-1", "M-2", "O-1", "O-2", "Q-1", and "Q-2"; CTA Records, pp. 8, 10, 12, 14, and 16).

On June 30, 1986, petitioner filed with respondent's Makati-West Revenue District Office, its "Amended Monthly Return Of Sales Tax On Subsequent Sales" covering the period from January to May, 1986, inclusive, therein declaring as its taxable second sales, the amount of P89,478,961.32. In the same return, petitioner declared a refundable tax in the amount of P18,091.49.

On July 23, 1986, petitioner filed with the chief of the Appellate Division of the BIR a letter dated July 18, 1986, requesting for the refund of the amount of P18,091.49, representing allegedly overpaid tax on subsequent sales for the period January to May, 1986 (Annex "C", Petition for Review; CTA Records, pp. 19 to 21). Petitioner's grounds for the request are stated in the July 18, 1986 letter, thus:

> "xxx (T)he amount declared as sales subject to tax (for the month of January, 1986) erroneously included the following:
>
> 1. The sale of 'Fosferno', a manufactured article, subject to tax on original sale, totalling P296,221.77;
>
> 2. The sales of our Cebu, Bacolod and Davao branches totalling P616,153.70;
>
> 3. The sales for December 1985 totalling P253,601.47;
>
> 4. Sales returns and allowances totalling P134,564.64.
>
> xxx xxx xxx
>
> xxx (T)he amount declared as sales subject to tax (for the month of April, 1986) erroneously included the sales of the firm's Cebu, Bacolod and Davao Branches totalling P507,133.92. Consequently, the firm made an overpayment for the month of April, 1986.
>
> xxx xxx xxx

xxx (T)he said amount declared as sales (for the month of May, 1986) erroneously included the sales of the firm's Cebu, Bacolod and Davao branches totalling P328,917.64 Hence, the firm made an overpayment for the month of May 1986.

xxx xxx xxx" (Letter dated July 18, 198 , paragraphs 3, 5, and 7; CTA Records, pp. 19 and 20).

On June 26, 1987, as respondent had not yet acted on petitioner's request for refund and in order to toll the running of the prescription period, the instant case was instituted by petitioner by filing a petition for review with the Court.

The issue brought before the Court for adjudication is whether or not petitioner's claim for refund in the amount of P18,091.49 is correct.

Petitioner sets forth four separate grounds for its claim for refund, each one of which covers distinct portions of the total amount being claimed, and are namely:

1. the inclusion of the sale of "Fosferno", which is allegedly a manufactured article subject to tax on original sales (for the month of January, 1986);
2. the inclusion of the sales made by petitioner's separate branches or places

of business in the cities of Cebu, Bacolod and Davao (for the months of January, April and May, 1986);

3. the inclusion of sales allegedly already included in petitioner's December, 1985 monthly tax on subsequent sales return (for the month of January, 1986); and

4. the inclusion of sales returns and allowances among the taxable sales (for the month of January, 1986).

These grounds shall be discussed by the Court separately, with emphasis put on the facts of the case, as there are no legal controversies herein involved.

I.

Raised by petitioner as ground for part of its claim for refund is the alleged erroneous inclusion of the sales of the product Methyl Fosferno, in the amount of P296,221.77, as part of petitioner's January, 1986 taxable subsequent sales. Petitioner alleges that said product is manufactured by it, and is therefore subject to tax on original sales, instead of on subsequent sales. As stated by petitioner in its memorandum which was filed with the Court on November 25, 1991:

> "We respectfully submit that the inclusion by petitioner of its P296,221.77 sales of 'Fosferno' as part of its January, 1986 subsequent sales tax gross sales of P15,415,121.12 is erroneous. This is due to the fact that Methyl Fosferno was a manufactured product of petitioner, and as such it is subject to tax on original sales under the then Section 163 of the Tax Code. In this connection, it should be noted that under Section 164 of the then Tax Code in relation to Section 1(b) of Revenue Regulations No. 1-86, the tax on subsequent sales is applicable only to a 'domestically acquired article where such **article has not undergone any further processiong or transformation'**" (Memorandum For Petitioner, p.6; CTA Records, p. 133).

There is no question that, if Methyl Fosferno is, indeed, a product manufactured by petitioner, then it is subject, not to the tax on subsequent sales under Section 165(B) of the 1977 Tax Code, but to that on original sales, as provided by Section 165(A) of said code. For, according to Section 1(b) of Rev. Regs. No. 1-86 (Sales Tax Regulations on Subsequent Sales), the term "subsequent sale", except in certain sales enumerated in section 3 of the same regulations, refers to "sale, barter, exchange, transfer or similar transaction for nominal or valuable consideration intended to transfer ownership of or title to any domestically acquired article where such article has not undergone any further processing or transformation" (Underscoring supplied).

The question which the Court must settle, therefore, is whether or not Methyl Fosferno is a product the sale of which is subject to the tax imposed by Section 165(B) of the 1977 Tax Code.

In its memorandum, petitioner contends that "(t)he fact that Methyl Fosferno is a manufactured product of petitioner was clearly established. Mr. Julito C. Jose, the Financial Controller of petitioner's Trading and Light Industry Group testified on this matter" (Memorandum For Petitioner, p. 6; CTA Records, p. 133).

The Court does not agree with petitioner's evaluation of the facts.

In the instant case, petitioner sought to establish the fact that Methyl Fosferno is a manufactured product solely by pointing to pages 5 to 7, and 32 to 33 of the T.S.N. (dated October 6, 1989) of the testimony of its witness, Mr. Julito C. Jose. The Court has gone through the October 6, 1989 T.S.N., particularly the pages specified by petitioner, and We hereinbelow quote the only portions thereof which We find relevant to the issue at hand:

"Q. And, to your knowledge, Mr. Witness, why do you say that the sale of Methyl Fosferno was erroneously included in your subsequent sales tax?

A. Well, Methyl Fosferno is a manufactured product and I understand that under the law, manufactured products are subject to manufacturer's sales tax.

Q. <u>And how do you know, Mr. Witness, that Methyl Forferno is a manufactured product?</u>

A. <u>As the financial controller of the company, it is my duty to know the nature of our products. Actually, Methyl Fosferno is being formulated as technical materials are imported and these are blended with locally source materials."</u>

(T.S.N., October 6, 1989, pp. 6 to 7) (Underscoring Ours)

The Court finds the testimony of Mr. Julito C. Jose on the matter of Methyl Fosferno insufficient to prove that such is not subject to the tax on subsequent sales. In the first place, while Mr. Jose, who is the financial controller of petitioner's Trading and Light Industry Group, may be competent to testify on matters concerning the Group's and petitioner's finances, he is certainly not competent to testify on whether or not Methyl Fosferno is, technically speaking, a manufactured product. This, notwithstanding his statement that "as the financial controller of (petitioner), it is (his) duty to know the nature of (petitioner's) products."

In the second place, Mr. Jose's testimony, when he was asked by petitioner's counsel how he (Mr. Jose) knows that Methyl Fosferno is a manufactured product, that:

> "xxx Actually, Methyl Fosferno is being formulated as technical materials are imported and these are blended with locally source materials." (T.S.N., Octobr 6, 1989, p. 7)

is, at best, equivocal; and at worst, may be read to mean that Methyl Fosferno is a raw material which is mixed with imported technical and local material in order to produce a manufactured product. Thus, it is not amiss to say that, even if Mr. Jose were a technically qualified and competent witness (which he is not), the Court would still not be convinced that Methyl Fosferno is a manufactured product which is not subject to tax on subsequent sales.

Therefore, petitioner's claim for refund, insofar as its sales of Methyl Fosferno are concerned, must fail.

II.

Also raised by petitioner as the basis for part of its claim for refund is the alleged inclusion of the sales made by petitioner's separate branches or places of business in the monthly second sales tax return for petitioner's principal office in Makati for the months of January, April and May, 1986. The total amount of P1,452,205.26 is alleged by petitioner to have been so erroneously declared, the said amount broken down by months as follows (Memorandum For Petitioner, p. 4; CTA Records, p. 131):

Month	Amount of Subsequent Sales Allegedly Misdeclared For Makati
January, 1986	P 616,153.70
April, 1986	507,133.92
May, 1986	328,917.64
	P1,452,205.26

The Court does not find sufficient basis in petitioner's documentary and testimonial evidence to grant the refund of the said amount of money. Petitioner failed to prove to the Court that the said P1,452,205.26 was included by it in its Makati returns for January, April and May, 1986.

For the month of January, 1986, petitioner's evidence proves three things: that it had filed said month's second sales tax returns for its Bacolod and Cebu branches (Exhs. "T" and "W"; CTA Records, pp. 89 and 95, respectively), which returns show net taxable second sales in the amount of P553,998.19 and P203,026.40, respectively; that its Makati return for the same period shows net taxable subsequent sales in the amount of P15,415,121.12 (Exh. "A"; CTA Records, p. 7); and that its records (Exh. "AA"; CTA Records, p. 109) reflect the following breakdown of subsequent sales for the month of January, 1986:

PRODUCT	Location	Net Sales
Oil & Greases	Makati	P2,019,812.27
	Cebu	135,663.96
	Bacolod	347,997.09
	Davao	132,492.65
		P2,635,965.97
Cement	Makati	9,363,853.25
	TOTAL	P11,999,819.22

This Court finds, after careful analysis, that these figures cannot be reconciled so as to entitle petitioner to the refund of P616,153.70, although this amount is the total of the subsequent sales recorded by petitioner in its Exhibit "AA", as summarized above. The figures recorded in said Exhibit "AA" do not tally with the amounts declared by petitioner as taxable second sales for its Makati, Bacolod and Cebu branches. (As far as petitioner's claim for refund of its Davao branch sales is concerned, We note that the petitioner failed to submit evidence that it filed any second sales tax return covering the same.) Thus, the Court does not have any basis to decide whether the amount claimed for refund was included in both petitioner's January Makati return and in its respective branch returns. As claims for refund are like tax exemptions and must be construed strictly against the claimant (petitioner in this case), the Court must find against the petitioner, which has failed to prove its entitlement to the amount claimed for.

The same holds true for petitioner's claim for refund under this second ground for the months of April and May, 1986. With respect to its claim for the month of April, 1986, We note that petitioner failed even to submit any documentary evidence showing the breakdown of its sales for that month among its different branches. With regard to its May, 1986 claim, on the other hand, the evidence submitted by petitioner in support of the same, like those submitted in support of the January, 1986 claim is, at best, inconclusive. Thus, the claim for refund for said months must also fail.

III.

The third ground raised by petitioner is the alleged erroneous inclusion in its January, 1986 monthly subsequent sales tax return of sales allegedly already included in petitioner's December, 1985 monthly return.

Petitioner, in order to prove its allegation, submitted to the Court in evidence certain documents and papers, and emphasized the testimony of its sole witness, Mr. Julito C. Jose, on this matter. Using these documentary and testimonial evidence, petitioner sought to show the following: that in December, 1985, it made, among others, certain sales amounting to P253,601.47; that such sales were booked by it as sales in the month of December, 1985 and were allegedly declared by it in the subsequent sales tax return for that month; that the products sold under such sales remained undelivered as of December 31, 1985; that on that date, it made a reversing entry in its books, thereby debiting the sales and crediting accounts receivables both in the amount of P253,601.47; that the products subject of such sales were finally delivered in January, 1986; that due to such delivery, it booked the P253,601.47 sales in its books for the month of January, 1986; and that it included the said amount among the taxable sales which it declared in its monthly second sales return for the month of January, 1986.

Based on the foregoing, petitioner contends in its memorandum that:

> "During the hearings of the case, petitioner presented as evidence its records that establishes (sic) the fact that its December, 1985 sales were recognized in its books of accounts and reported for subsequent sales tax purposes in December, 1985 and January, 1986. xxx. This point was extensively testified on by petitioner's witness. xxx." (Memorandum For Petitioner, p. 9; CTA Records, p. 136)

The Court, once again, cannot agree with petitioner's conclusion. The evidence submitted by petitioner (and, it must be pointed out at this juncture that its Exhibit "J" is not its monthly subsequent sales return for the month of December,1985, but its return for the month of November, 1985) only shows that there were, indeed, sales amounting to P253,601.47 which were recorded in petitioner's books for the month of December, 1985, and that the same were again booked by petitioner in the month of January, 1986. However, the evidence does not, by any means, prove that such sales were included by petitioner in its subsequent sales tax return for the month of December, 1985. If at all, it shows the complete opposite of that which petitioner wishes to prove.

Petitioner's Exhibit "E", which is its Journal Voucher No. 134 dated December 31, 1985 shows that, on that date, petitioner reversed its entry crediting the amount of P253,601.47 as sales for the month of December, 1985. In other words, as of December, 1985, the said amount was no longer recognized as sales in the books of petitioner; and it is, therefore, inconceivable, as petitioner contends, that the same would be included in its December, 1985 return as sales subject to the tax on subsequent sales. That petitioner had, prior to December 31, 1985 booked the said P253,601.47 as sales is of no moment, as it could not have made its second sales tax return for the month of December, 1985 prior to the end of the month.

Thus, petitioner's claim on this third ground must likewise fail.

IV.

Finally, petitioner puts forth as basis for its claim for refund, the alleged erroneous inclusion of sales returns and allowances in the amount of P134,564.64 in its monthly second sales tax return for the month of January, 1986.

The Court agrees with petitioner that under Section 4 of Rev. Regs. No. 1-86, petitioner is allowed to deduct from its gross sales for any given month any and all sales returns and allowances made during the same month. However, the Court believes that petitioner has not sufficiently proven its right to claim for the alleged sales returns in the amount of P134,564.64 for the month of January, 1986.

To prove its claim for refund, petitioner merely submitted in evidence two Invoices -- one numbered 0015 and dated January 14, 1986 (which has marked across its face the word "CANCELLED"), and the other number 0056 and dated January 22, 1986 (which contains the note "This cancels & supersedes Inv. No. 0015 1/14/86") -- and Mr. Julito C. Jose's testimony on the matter.

As far as the Court is concerned, the only thing which petitioner managed to prove with its documentary and testimonial evidence is that the later invoice (No. 0056) cancelled and superseded the earlier one (Invoice No. 0015). Petitioner, however, failed to prove that, in the first place, the amount covered by the cancelled invoice was included among the sales declared in its January, 1986 second sales tax return. Absent such showing, the Court cannot allow petitioner to claim the amount of P134,564.47 as deduction from its gross taxable sales subject to tax on subsequent sales for the month of January, 1986. (It must be noted that the amount invoiced in Inv. No. 0015, is P134,510.70, and not P134,564.47, which is the amount claimed by petitioner as return based on the cancellation of said invoice.)

Therefore, the claim of petitioner under this fourth ground, too, must fail for lack of sufficient evidence.

As a final note, the Court points out the fact that while petitioner's claim for refund is only for the amount of P18,091.49, the amount of sales which it alleged in its pleadings to have erroneously included in its monthly returns for the months of January, April and May, 1986 total P2,136,593.14, which amount corresponds to a 1.5%

tax of P32,048.90. This discrepancy further bolsters the Court's conclusion that the instant claim for refund is not correct.

In view of the foregoing, the Court finds and so holds that petitioner is not entitled to a refund from tax on subsequent sales for the months of January to May, 1986 in the amount of P18,091.49.

WHEREFORE, finding the instant petition for review without merit, the same is hereby **DISMISSED,** and petitioner's claim for refund is hereby **DENIED.**

With costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 10, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICTATION

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
ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals