REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORO ENTERPRISES, INC.,
Petitioner,

- versus -

C.T.A. Case No. 3440

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

12/24

DECISION

Submitted once again for this Court's consideration relative to the instant claim for refund or issuance of tax credit certificate of alleged erroneously collected sales tax for the period January 1980 to December 1981 in the total amount of P939,195.22, is the question of whether the product bearing the trade name "CITROBELLE SKIN LOTION" is a medicinal preparation or a toilet preparation/cosmetic product within the purview of the Tax Code of 1977.

Section 194 of the Tax Code imposes a percentage tax of fifty percent (50%) of the gross value on sales of non-essential articles. Citrobelle products, according to respondent, are toilet articles or cosmetics and should be taxed under this provision.

On the other hand, petitioner claims that said products are medicinal preparations taxable under Section 138 and 145 of the Tax Code quoted hereunder:

> "Sec. 138. Tax on preparations containing distilled spirits as chief ingredient. - Medicinal preparations, flavoring extracts, and all other preparation, except toilet preparations, of which, excluding water, distilled spirits form the chief ingredient, shall be subject to the same tax as such chief ingredient."
>
> xxx xxx xxx
>
> "Sec. 145. Specific tax on distilled spirits.- On distilled spirits there shall be collected, subject to the provisions of Section 139 of this Code, except as hereinafter provided, specific taxes as follows:
>
> (a) If produced domestically from locally produced raw materials, per proof liter, P2.40: Provided, that if produced in a pot still or other similar primary distilling apparatus, by a distiller producing not more than one hundred liters a day, containing not more than fifty per centum of alcohol by volume, per proof liter, P1.56;
>
> (b) If imported or produced from imported raw materials, per proof liter, P35.00.
>
> xxx xxx xxx
>
> "Spirits or distilled spirits" is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions and mixtures thereof, from whatever source by whatever process produced and shall include whisky, brandy, rum gin and vodka, and other similar products or mixtures except compounded liquors taxed under Section 146 of this Code.
>
> xxx xxx xxx

The controversy has been soundly laid to rest in the decision of this Court on April 15, 1983 in C.T.A. Case

No. 3004 entitled "**Oro Enterprises, Inc. vs. Commissioner of Internal Revenue**". Said decision was affirmed <u>in toto</u> by the Court of Appeals on December 15, 1987. The Supreme Court in its resolution, dated October 26, 1988, denied the petition for the review on certiorari of the Court of Appeals' decision upholding the Court of Tax Appeals (Exhibit "H")). Quoted below is the affirmed C.T.A. decision penned by Judge Alex Z. Reyes for the Court:

> "We thus reach the conclusion that the controverted Citrobelle Skin Lotion being a medicinal preparation and containing distilled spirits as chief ingredient is subject to the same tax as such chief ingredient prescribed under Section 138 in relation to Section 145, both of the Tax Code, <u>supra</u>. Consequently, the importation of essential oils to be used as raw materials in the manufacture of the medicinal preparation is exempt from the payment of percentage tax and compensating tax as expressly provided on Section 193(b) and Section 204(a) both of the Tax Code of 1977.
>
> **WHEREFORE**, petitioner is entitled to the refund of the aggregate amount of P501,626.70 representing erroneously paid percentage taxes and advance sales tax for the period involved which respondent is directed to pay without pronouncement as to costs.
>
> **SO ORDERED.**"

Suffice it to state that the exhaustive discussions of the issue in the affirmed decisions of the Court of Tax Appeals and the Court of Appeals in C.T.A. Case No. 3004 and C.A. - G.R. SP No. 10833 respectively, have left no stone unturned, so to speak, and make superfluous any further delving into the question posed as these were similarly applicable to the case at bar. No quibbles should hereinafter be entertained regarding this matter.

The question that need to be addressed in this case is whether petitioner has proven entitlement to the refund or tax credit certificate claimed amounting to P939,195.22 representing the erroneously collected percentage tax on alleged sales of Citrobelle Skin Lotion from January 1980 to December 1981.

Sought to be refunded or issued tax credit certificate are the alleged sales tax on Citrobelle Skin Lotion which were paid under protest during the pendency of C.T.A. Case No. 3004, to wit:

Exhibit	Period Covered	Date Paid	O.R. No.	Amount Paid	Tax Credit	Refund Claimed
A, A-1	Jan.- Mar. 1980	04-21-80	A4668472	P 71,495.62	P 49.64	P 71,544.66
B, B-1	Apr. - Jun. 1980	07-21-80	2758172G	140,583.69	2.44	140,586.13
C, C-1	Jul. - Sep. 1980	10-20-80	2905114G	101,806.36	99.12	101,905.38
D, D-1	Oct. - Dec. 1980	01-20-81	2905380G	60,911.94	1.61	60,913.55
E, E-1	Jan. - Mar. 1981	04-20-81	3762723G	62,136.84	-	62,136.84
AA, AA-1	Apr. - Jun. 1981			149,845.39	(12.41)	149,832.98
F, F-1	Jul. - Sep. 1981	10-20-81	3766279G	169,967.49	(26.19)	169,941.30
G, G-1	Oct. - Dec. 1981	01-20-82	3810288G	182,341.51	(7.13)	182,334.38
					TOTAL	P939,195.22

Petitioner filed with the Bureau of Internal Revenue (BIR) its written claim for refund or tax credit of the above-mentioned amount on April 2, 1982 (Annex "B"). Until the filing of this petition for review on April 12, 1982 (pp. 1-4, C.T.A. Records), respondent has neither refunded nor issued tax credit certificate to petitioner for the amount of P939,195.22.

Respondent contends that petitioner failed to show proof of alleged overpayment of percentage tax and/or advance sales tax on Citrobelle products. The alleged sales tax paid pertains to gross sales of the entire business of petitioner and do not correspond to the payments of percentage tax and/or advance sales tax on the sale of Citrobelle Skin Lotion which are being sought to be refunded. The quarterly percentage tax returns submitted as evidence by petitioner reflects the gross selling price of all non-essential articles under Section 194 and all essential articles under Section 203 of the Tax Code of 1977. Not a single proof was allegedly presented to show the percentage tax paid on the sale of Citrobelle products. Accordingly, respondent moves for the denial of the refund/tax credits sought for lack of merit.

After the case was submitted for decision but before judgment was rendered, the Court, within its discretionary power and in the interest of justice, ordered the re-opening of the case, notwithstanding the opposition of respondent, for the purpose of determining petitioner's 1980 and 1981 quarterly sales of Citrobelle Skin Lotion and the corresponding sales tax paid thereon. ("Resolution", pp. 299-302, CTA Records). The Court took note of respondent's Comment to petitioner's Formal Offer of Evidence (pp. 222-223, CTA Records) and Memorandum (pp. 230-239, CTA Records) that the gross sales and tax payments reflected in the Quarterly Percentage Tax Returns filed do not correspond to the payments of the percentage taxes and/or advance sales tax on the Citrobelle Skin Lotion which are being sought to be refunded/issued tax credit certificate. This was belied by petitioner and, on the contrary, asserts that the amount being refunded pertains to sales of Citrobelle Skin Lotion and no other product. To further clarify its claim, petitioner is able and willing to present proof thereof. (Petitioner's "Opposition and/or Comment," pp. 279-284, C.T.A. Records).

On the scheduled hearing of this case on September 22, 1993, the Court denied petitioner's written motion to cancel and re-set hearing upon the objection of respondent's counsel who believes that petitioner's motion is for the purpose "merely to delay proceedings" (p. 307, CTA Records). The case is deemed submitted for decision as of said date.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissim juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law ... and cannot be permitted to exist upon vague implications. (**Asiatic Petroleum Co. vs. Llanes**, 49 Phil. 466; **Northern Phil. Tobacco Corp. vs. Mun. of Agoo, La Union**, 31 SCRA 304; **Rogan vs. Commissioner**, 30 SCRA 968; **Asturias Sugar Central, Inc. vs. Commissioner of Customs**, 29 SCRA 617; **Davao Light and Power Co., Inc. vs. Commissioner of Custom**, 44 SCRA 122). Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim. (**Farrington vs. Tennessee and Country Shelby**, 95 U.S. 679, 686; **Manila Electric Co. vs. Vera**, L-29987, Oct. 22, 1975; **Manila Electric Co. vs. Tabios**, L-23847, Oct. 22 1975, 67 SCRA 451).

The alleged overpayment of taxes, upon which the claim for refund is predicated, must be duly established by convincing evidence. The taxpayer has the burden to substantiate its unmistakable right to the tax refund sought. Failure by taxpayer to discharge this burden is the death knell of its right thereto.

In the case at bar, there are reasonable grounds to doubt petitioner's entitlement to the refund or tax credit claimed. Respondent validly raised the fact that *petitioner failed to establish clearly that the amount* sought to be refunded or issued tax credit certificate pertains to sales tax paid on sales of Citrobelle Skin Lotion for the period January 1980 to December 1981. Taken in the light of petitioner's own statement that it is "engaged in the manufacture and sale of various pharmaceutical and other allied products", there is a hollow ring to petitioner's claim that the amount being refunded pertains to sale of Citrobelle Skin Lotion and no other product since there is absence of indubitable proof to support the same.

WHEREFORE, the instant petition for review is hereby dismissed for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO A. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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 VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals