Dit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE REFINING COMPANY INC.,
Petitioner,

- versus -

C.T.A. CASES NOS. 3148 & 3499

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

6/13/89

D E C I S I O N

These are two (2) claims for tax credit instituted by petitioner for alleged excess payment of advance sales tax on raw materials used in the manufacture of coconut oil over the sales tax due on said finished product during the four (4) quarters of 1979, and during the first and second quarters of 1980.

The facts in Case No. 3148 are as follows:

> a) That the petitioner, in the year involved (1979), was engaged in the manufacture and sale of various goods, including refined or edible coconut oil which it produced from the copra that it purchased from copra suppliers, and sold under the "Camia" brand in 1979;
>
> b) That the petitioner paid, and/or assumed and shouldered the sales and percentage taxes on imported as well as on locally purchased raw materials which were used in the manufacture and formed part of the various finished goods that it sold in 1979;

c) That the petitioner, with the approval of the respondent, paid the various sales and percentage taxes on the sales of the finished goods by applying the sales and percentage taxes paid on the raw materials used;

d) That the total sales and percentage taxes on the raw materials used, exceeded the sales and percentage taxes payable on the sales of the finished goods; hence the petitioner applied to the respondent for the tax credit of said excess;

e) That the total sales and percentage taxes paid on the raw materials used in the manufacture and formed part of the finished goods during the four (4) quarters of 1979, amounted to P58,440,290; while the petitioner claimed on the other hand that the sales and percentage taxes due and payable on the finished goods sold, in the said year (1979) amounted to P44,693,230; and the petitioner filed quarterly claims for tax credit of the excess of the sales and percentage taxes allegedly due and payable on the sales of the finished goods; and the excess so claimed amounted to P13,747,060;

f) After processing the claims for tax credit, the respondent granted and approved in favor of the petitioner a tax credit for P9,837,982.00 and issued Tax Credit Certificate No. 00008, dated June 6, 1980 for the said amount of P9,837,982.71, leaving an uncredited amount of P3,909,077;

g) The petitioner filed with the respondent a request for reconsideration and for the granting of tax credit for the said balance of P3,909,007; and while the respondent was considering and studying the said request, the petitioner- obviously to avoid prescription - filed this Petition for

> Review with the Honorable Court of Tax Appeals, praying for the grant and approval of tax credit for the said balance of P3,909,077;
>
> While the case was pending in the Court of Tax Appeals, the respondent issued and granted in favor of the petitioner another tax credit in the sum of P2,669,687 and issued tax Credit Certificate No. 00102, dated March 15, 1983, for the amount of P2,669,687, <u>thus leaving an ultimate uncredited balance of P1,237,390 which becomes the remaining subject of the present Petition for Review</u> (Underlining ours.)
>
> There is no dispute as to the correct amount of sales and percentage taxes paid and/or assumed and shouldered by the petitioner, on the imported as well as on locally purchased raw materials which were used in the manufacture and formed part of the finished goods sold by the petitioner in 1979. But there is a disagreement between the petitioner and the BIR Auditing Examiner on the amount of sales and percentage taxes payable on the finished goods sold. The disagreement relates only and particularly to the correct percentage tax payable on the sales of the finished "refined or edible coconut oil" sold by the petitioner in 1979.

In CTA Case No. 3499, during the first and second quarters of 1980, petitioner paid sales and percentage taxes on imported and locally purchased raw materials in the sum of P15,242,405.00, for the first quarter, and P13,503,562.00, for the second quarter, or a total of P28,503,562.00 sales and percentage taxes payable by it for the said quarters on the sales of its finished manufactured products for which the said raw materials were used and formed part thereof; that during the same period, the sales and percentage taxes payable to respondent Commissioner of Internal Revenue by petitioner on the sales of finished manufactured products for which it is used the aforementioned imported and locally purchased raw materials which formed part of said finished products amounted to P11,336,006 for the first quarter and P9,951,352.00 for the second quarter, or a total of P21,287,358.00; thus for the same period the advance sales and percentage taxes on the aforementioned raw materials paid by petitioner exceeded the sales and percentage taxes payable on the products it manufactured and sold during the same period, for which said raw materials were used and formed part hereof in the total excess sum of P7,216,204.00; the petitioner filed written applications for the tax credit of the excess payment of P3,906,399.00 on June 11, 1980, corresponding to the first quarter, and for the tax credit of the excess payment of P3,309,805.00 on September 20, 1980, for which respondent Commissioner gave petitioner a tax credit of

P6,901,699.00 as shown in Tax Credit Certificate No. 00014, dated October 16, 1980. copy of which is attached in the Petition for Review as Annex C, thus leaving an uncredited balance in the sum of P314,534.00; that on December 2, 1980, petitioner asked respondent for reconsideration of the disallowance of the balance of P314,534.00 in a letter dated December 2, 1980, marked as Annex D of the Petition for Review.

Without waiting for the decision of its claim for tax credit of the sum of P314,534.00 petitioner filed its Petition for Review (CTA Case No. 3499) on July 16,1982.

The only issue presented to us for determination in these two (2) cases are as follows: what is the correct rate of percentage tax imposable on petitioner's sales of refined or edible oil which it produced from copra purchased from the local suppliers in 1979 and 1980; stated otherwise, if the 2% rate of percentage tax were imposed on sales of coconut oil by petitioner in 1979, the amount of P1,237,390.00 and P314,534.00 in 1980 would be fully creditable in favor of petitioner; but if 10% rate were to be applied on the sales of coconut oil, then there would be an uncreditable amount of P1,237,390.00 and P314,534.00.

It is contended by petitioner Philippine Refining Co. Inc., that the said refined or edible coconut oil produced from copra which were purchased from the copra suppliers or dealers is subject to 2% percentage tax imposed under the Section 203 of the 1977 Tax Code.

Respondent Commissioner of Internal Revenue contends otherwise saying that the rate applicable is not 2% but 10% under Section 199 (a) of the said Code.

Petitioner has stated that "From July 1, 1939, when the Tax Code took effect up to June 13, 1948, the rate of percentage tax on sales of coconut oil by the manufacturer remained at 1-1/2%. <u>The rate was raised to 2% on June 14, 1948 when Republic Act No. 261, amending Section 189, took effect</u>. From June 14, 1948 the tax rate remained at 2% until December 31, 1985. On January 1, 1986 the rate was raised to 3% when Presidential Decree No. 1994 took effect.

But while there had been such changes in the rate of the tax, there has been no change in the basic or substantive provision of the law imposing tax on coconut oil. The basic or substantive provision of Section 189 had always been phrased as follows:

> "Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and dessicated coconut factories. - Proprietor's or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and dessicated coconut factories shall pay a tax equivalent to x x x *per centum* of the gross value in money of all rope, sugar, rice, coconut oil, x x x" manufactured or milled by them, x x x such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse": x x x".

It is an elementary rule in sales taxation that, unless otherwise expressly provided, the law in force at the time the taxable sale takes place, including what rate of tax to apply, is the law that governs the imposition of the sales tax. Particularly, the law in force in 1979, when the sales of coconut oil involved in this case were made by the petitioner, was Section 203 (formerly Section 189) of the Tax Code, as amended by Presidential Decree No. 1358, which took effect on April 21,1978. Said Section, as amended by PD 1358, continues to impose 2% percentage tax on sales of manufactured coconut oil (whether crude or refined or edible oil) and the pertinent portion reads as follows:

> Sec. 203. Percentage Tax Upon Proprietors or Operators of Rope Factories, Sugar Central and Mills, Coconut Oil Mills, Cassava Mills, and Dessicated Coconut Factories. Proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava and dessicated coconut factories shall pay a tax equivalent to two (2%) *per centum* of the value in money of all the rope, sugar, coconut oil, cassava flour or starch, dessicated coconut, manufactured, processed or milled by them, x x x x such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse; x x x. *(As amended by PD 1358 effective April 21, 1978).*

The rulings of the BIR

As a contemporaneous interpretation of the above-quoted provisions of the Tax Code, the Commissioner of Internal Revenue ruled as follows:

> "Coconut oil manufacturer. - A manufacturer of coconut oil is subject to the 2% tax imposed under Section 189 of the Tax Code, based and computed on the actual selling price or market value of the manufactured oil, including the by-products thereof, at the time said articles leave the factory or mill warehouse. *(Ruling, BIR May 16, 1956; cited on page 383, of Vol. 2, Second Edition, 1963, of Annotations and Jurisprudence on the National Internal Revenue Code, by Aranas).*

And for the purpose of the 2% tax on coconut oil, the Commissioner of Internal Revenue ruled that the law does not distinguish between crude and refined or manufactured edible coconut oil. The ruling reads as follows:

> "For the purposes of the 2% tax due on the gross selling price or market value of the coconut oil, the law, Section 189 of the Tax Code, does not distinguish between crude or refined oil. It is enough that what is produced or manufactured is coconut oil. Accordingly, sales of produced or manufactured edible (pure) coconut oil are subjected to the 2% tax, based on the gross selling price or market value thereof, pursuant to said Section 189. The same rule holds in the case of coconut oil (whether crude or refined) removed from the factory or mill warehouse which the manufacturer thereof uses in the manufacture soap, butter, lard and other articles." *(Ruling, BIR, 105.02, Oct. 12, 1956; Int. Rev. Bull. Vol. 1, No. 10). Cited on page 383 of Vol 2, 2nd Edition, 1963, Annotations and Jurisprudence on the National Internal Revenue Code, by Aranas).*

There was a time when the BIR considered for a while - in the case of Lu Do & Lu Ym Corporation, which is similarly engaged in the manufacture and sale of coconut oil - that coconut oil is subject to 10% sales tax. That was when Section 199 (a) of the Tax Code imposing sales tax on other manufactured goods was amended to increase from 7% to 10% the sales tax on other manufactured merchandise. But the Commissioner, upon further study, concluded and promptly ruled that crude as well as refined or manufactured edible oil are subject only to 2% percentage tax (3% under PD 1994, effective January 1, 1986) as expressly provided under Section 189 (later Section 203 and still later as Section 169) of the Tax Code; and they are not subject to the 10% sales tax imposed under Section 199(a) of the said Code. The Commissioner of Internal Revenue pointedly and categorically ruled that refined or manufactured edible coconut oil is subject only to 2% sales tax. He ruled as follows:

June 8, 1983

203 000-00 098-83

"Messrs. Sycip, Gorres & Velayo & Co.
6760 Ayala Avenue., Makati, Metro Manila

"Gentlemen:

"This refers to the pending internal revenue tax case of your client, Lu Do & Lu Ym Corporation, Tupaz Street, Cebu City, involving the amount of P4,404,641.33 as deficiency manufacturer's sales tax for the year 1978, which is now the subject matter of CTA Case No. 3596 of the Court of Tax Appeals.

"It appears that the above assessment is based on the ruling of this office that edible cooking oil is a manufactured product subject to the 10% sales tax imposed under Section 199 (a) of the Tax Code.

"In connection therewith, I have the honor to inform you that this Office, after a re-study of its position on the matter, has finally concluded that edible cooking oil is not subject to the 10% sales tax under Section 199 (a) of the Tax Code but to the 2% miller's tax imposed under Section 203 of the same Code for the following reasons:

> "1) Edible cooking oil is a product derived through the process of refining by removing from the crude coconut oil certain impurities and is actual pure oil with copra as basic raw materials.
>
> "2) That previous rulings issued by this Office has held that refined coconut oil or edible oil is subject to the 2% miller's Tax under Section 203 of the Tax Code because said provision clearly impose said tax on all coconut oil manufactured, processed or milled by proprietors or operators of coconut oil mills; and that the law does not distinguish between crude or refined oil and it is enough that what is produced is coconut oil.
>
> "3) That the above rulings should be respected as a contemporaneous and practical interpretation of that part of Section 203 of the Tax Code relative to coconut oil; they are not to be disturbed except for cogent reasons unless contrary to the statute or exceeding departmental authority and they are binding upon the Commissioner and the taxpayer alike. (Sutherland, Statutory Construction, Vol. 11, page 522).

"4) That although it is true that Section 203 includes manufacturers as defined under Section 187 (x) of the Tax Code, since refined coconut oil, <u>although a manufactured product, falls squarely under Section 203, it cannot be taxed under Section 199</u>.

"In the light of the foregoing, your client is not liable for the payment of the above tax liability.

"In view thereof, the above assessment is hereby withdrawn and cancelled. This revokes our previous rulings/decisions holding that edible cooking oil is subject to 10% (formerly 7%) manufacturer's sales tax .

Very truly yours,

(Sgd) RUBEN A. ANCHETA
Acting Commissioner

The above-quoted ruling is published as Ruling No. 098 on pp. 98-100, of "Complete 1983 Numbered B.I.R. Ruling" published by the Career Development Center, Inc., and a copy thereof forms part of the records of CTA Case No. 3596 as Annex "A" of the Motion to Withdraw the Petition for Review filed in said case by Lu Do & Lu Ym, which was granted by this Honorable Court. (<u>All underscoring supplied for emphasis</u>).

Respondent's examiner asserted that petitioner is still liable for P1,237,390.00 after subjecting the sales from 1979 at 10% sales tax computed as follows:

Sales by petitioner of refined or pure edible coconut oil (Camia Brand) in 1979.

Quarter	Sales	
1st	P3,349,375.00	(Annex "A-3");
2nd	P4,975,533.00	(Annex "B-3");
3rd	P 987,946.00	(Annex "C-3");
4th	P2,547,063.00	(Annex "D-3");

Total sales	P10,959,917.00 x .10		(rate applied by the Examiner)
10% sales tax	P 1,095,992		
Less the 2% percentage tax declared and paid by petitioner on the coconut oil	219,199		
Alleged deficiency tax at 10% rate	876,793		
Less 2% tax paid on acid oil disallowed	7,006		
Alleged deficiency sales tax	P869,787		
Plus 25% surcharge and 14% interest for alleged late payment		367,276.29	
Total alleged deficiency sales tax plus surcharge and interest on the sales of refined oil (alleged uncreditable)		P1,237,063	

Respondent contends in its memorandum that "The finished products in question, x x x", refined or edible coconut oil which petitioner produced from copra purchased is definitely a manufactured product within the ambit of the definition of "manufacturer" as set forth in Section 187 (x) of the National Internal Revenue Code. The goods not covered by Sections 194, 195, 196, 197, 198 and 201, are subject to a 10% sales tax. Respondent concluded that since "refined or edible coconut oil" subject matter of the petitions for review is not included among the articles or goods enumerated under Sections 194, 195, 196, 197, 198 and 201, perforce, such product is subject to the 10% sales tax imposed on "other articles" by virtue of Section 199 (a) which provides as follows:

> "SEC. 199. Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable consideration intended to transfer ownership, or title to, the articles not covered by Sections 194,195, 196, 197, 198 and 201, a tax equivalent to ten (10%) *per centum* of the gross selling price or gross value in money of the articles sold, bartered, exchanged or transferred, such tax to be paid by the manufacturers or producer. x x x".

Indeed, respondent's assertion will be

correct, as adverted to by the petitioner, if there is no Section 202 and Section 203, which also form part of Title V of the Tax Code when the provisions of said Title were amended by Presidential Decree 1358, effective April 21, 1978. Section 202 contains a blanket exemption of certain enumerated goods from the percentage taxes imposed under Sections 194, 195, 196, 197, 198, 199 and 201. Section 202 provides that -

> "SEC. 202. Articles not subject to percentage tax on sales. - The following shall be exempt from the percentage taxes imposed in Sections 194, 195, 196, 197, 198, 199, and 201;
>
> (a) xxx xxx xxx;
>
> (b) xxx xxx xxx;
>
> (c) Articles subject to tax under Section 203 of this Code;
>
> (d) xxx xxx xxx;
>
> (e) xxx xxx xxx;

Under the foregoing provision of Section 202, the articles or goods subject to tax under Section 203 are expressly exempted from the percentage taxes imposed under Sections 194, 195, 196, 197, 198, 199 and 201. Refined or edible coconut oil is taxed under Section 203, which provides as follows:

> "SEC. 203. Percentage tax upon proprietors or operators of rope,

> factories, sugar central and mills, coconut oil mills, cassava mills, and dessicated coconut factories. Proprietors or operators of rope factories, sugar centrals and mills coconut oil mills, cassava mills and dessicated coconut factories shall pay a tax equivalent to two (2%) *per centum* of the gross value in money of all the rope, sugar, coconut oil, cassava flour or starch, dessicated coconut, manufactured, processed or milled by them, including the by-product of the raw materials from which said articles are produced, processed, or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse".

So, being taxable under Section 203, coconut oil is not subject to any of the sales taxes imposed under Sections 194, 195, 196, 197, 198, 199 and 201.

And it should again be mentioned at this juncture that under the contemporaneous rulings of the Commissioner of Internal Revenue, coconut oil, whether crude or refined, is subject only to the percentage tax (1-1/2% and later raised to 2%) imposed under Section 189 (which later became Section 203) of the Tax Code. *(See BIR Ruling 105.02, Oct. 12, 1956, Int. Rev. Rul. Vol. 1, No. 10, cited o.p. 383 of Vol. 2, 2nd Edition, 1963, Annotations and Jurisprudence on the NIRC by Aranas; and BIR Ruling dated June 8, 1983, to Lu Do*

& Lu Ym Corporation, published on pp. 98-100, of "Complete 1983 Numbered BIR Rulings").

And in the ruling laid down by the respondent Commissioner in the case of Lu Do & Lu Ym, coconut oil was expressly and very emphatically declared not subject to the 10% sales tax imposed under Section 199 of the Tax Code, but subject only to the percentage tax imposed under Section 203, which was 2% in 1979.

Again, and by way of refresher, we would like to quote the ruling in the case of Lu Do & Lu Ym which reads as follows:

June 8, 1983

203 000-00 098-83

"Messrs. Sycip, Gorres & Velayo & Co.
6760 Ayala Avenue., Makati, Metro Manila

"Gentlemen:

"This refers to the pending internal revenue tax case of your client, Lu Do & Lu Ym Corporation, Tupaz Street, Cebu City, involving the amount of P4,404,641.33 as deficiency manufacturer's sales tax for the year 1978, which is now the subject matter of CTA Case No. 3596 of the Court of Tax Appeals.

"It appears that the above assessment is based on the ruling of this office that edible cooking oil is a manufactured product subject to the 10% sales tax imposed under Section 199 (a) of the Tax Code.

"In connection therewith, I have the honor to inform you that this Office, after a re-study of its position on the matter, has finally concluded that edible cooking oil is not subject to the 10% sales tax under Section 199 (a) of the Tax Code but to the 2% miller's tax imposed under Section 203 of the same Code for the following reasons:

"1) Edible cooking oil is a product derived through the process of refining by removing from the crude coconut oil certain impurities and is actual pure oil with copra as basic raw materials.

"2) That previous rulings issued by this Office has held that refined coconut oil or edible oil is subject to the 2% miller's Tax under Section 203 of the Tax Code because said provision clearly impose said tax on all coconut oil manufactured, processed or milled by proprietors or operators of coconut oil mills; and that the law does not distinguish between crude or refined oil and it is enough that what is produced is coconut oil.

"3) That the above rulings should be respected as a contemporaneous and practical interpretation of that part of Section 203 of the Tax Code relative to coconut oil; they are not to be disturbed except for cogent reasons unless contrary to the statute or exceeding departmental authority and they are binding up[on the Commissioner and the taxpayer alike. (Sutherland, Statutory Construction, Vol. 11, page 522).

> "4) That although it is true that Section 203 includes manufacturers as defined under Section 187 (x) of the Tax Code, since refined coconut oil, <u>although a manufactured product, falls squarely under Section 203, it cannot be taxed under Section 199</u>.

"In the light of the foregoing, your client is not liable for the payment of the above tax liability.

"In view thereof, the above assessment is hereby withdrawn and cancelled. This revokes our previous rulings/decisions holding that edible cooking oil is subject to 10% (formerly 7%) manufacturer's sales tax .

Very truly yours,

(Sgd) RUBEN A. ANCHETA
Acting Commissioner

WHEREFORE, the coconut oil, whether crude or refined, is subject only to 2% percentage tax imposed under Section 203 of the Tax Code in 1979, and that Section 202 expressly provides that commodities subject to tax under Section 203 are <u>expressly exempted</u> from the sales tax imposed under Sections 194, 195, 196, 197, 198, 199, and 201, the sum of P1,237.390.00 (CTA No. 3148) and P314,534.00 (CTA No. 3499) is creditable in favor of petitioner Philippine Refining Co. Inc..

Petitioner is therefore, hereby granted a tax credit in the amount of P1,237,390.00 and P314,534.00 percentage tax it already paid.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 13, 1989.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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