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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESSO STANDARD FERTILIZER & AGRI-
CULTURAL CHEMICAL CO., INC.
(PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 1862

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

ESSO STANDARD FERTILIZER & AGRI-
CULTURAL CHEMICAL CO., INC.
(PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 1879

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

5/30/80

ESSO STANDARD FERTILIZER & AGRI-
CULTURAL CHEMICAL CO., INC.
(PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 1888

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

ESSO STANDARD FERTILIZER & AGRI-
CULTURAL CHEMICAL CO., INC.
(PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 1893

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

ESSO STANDARD FERTILIZER & AGRI-
CULTURAL CHEMICAL CO., INC.
(PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 1896

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

D E C I S I O N

Esso Standard Fertilizer & Agricultural Chemical Company, Inc. (Philippines), petitioner in these five (5) cases, poses the question of whether it is exempt from payment of the compensating tax on various machine parts allegedly imported by it for the construction of its fertilizer plant or factory. Petitioner, of course, answers the query in the affirmative, while respondent Commissioner of Internal Revenue, in asking that the claims for refund involved in these appeals in the total amount of ₱39,293.00, as follows:

C.T.A. Case No. 1862	-	₱10,954.00
C.T.A. Case No. 1879	-	17,017.00
C.T.A. Case No. 1888	-	4,329.00
C.T.A. Case No. 1893	-	5,437.00
C.T.A. Case No. 1896	-	1,556.00
T O T A L	-	₱39,293.00

paid as compensating tax allegedly on petitioner's importations of machine parts covering the period from February 17, 1965 to November 26, 1965 be denied, asserts the contrary.

After the issues were joined with the filing of respondent's answers to the petitions for review, the above-entitled cases were jointly set for hearing for the reception of evidence. For no less than ten times, however, the hearings were always cancelled or postponed on the ground that the parties were then supposedly trying to enter into a compromise agreement for possible amicable or administrative settlement of their controversy. During the hearing on October 4, 1979, after the Court had warned the litigants that it would not anymore allow further postponement of the trial, counsel for petitioner, without presenting proof as to the truth of its own allegations in its petitions for review, submitted these cases for decision on the basis of the pleadings and the records of the Bureau of Internal Revenue bearing on these proceedings despite, or inspite of, the <u>specific denial</u> by respondent in his answers of all the averments of facts in the petitions for review, to wit:

> 1. Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at Leviste Building, 215 Buendia Avenue, Makati, Rizal;
> x x x x x x x x x
>
> 2. Petitioner is engaged in the manufacture of fertilizer and was a grantee of tax exemption privileges under Republic Act No. 3050, as evidenced by the letter of the

Secretary of Finance dated December 13, 1963. Under this grant of exemption, petitioner was exempted from the payment of the special import tax, margin fee on foreign exchange, sales and compensating taxes and customs duties directly payable by the petitioner on its importations of capital goods, equipment, spare parts, raw materials, supplies, containers and fuel, until December 31, 1965.

3. Pursuant to the aforesaid grant of tax exemption under Republic Act No. 3050, petitioner imported various machine parts which were necessary for the construction of its fertilizer plant or factory.

4. On the said importation of machine parts, the Collector of Customs, for and in behalf of the respondent Commissioner of Internal Revenue, demanded from the petitioner the payment of the compensating tax allegedly due thereon, and in order to facilitate the release of the imporation of the machine parts and not delay the completion of the construction of the fertilizer plant, the petitioner was compelled to pay the said compensating tax.

5. The payments of the compensating tax for the said importations were made by the petitioner covering the period from February 17, 1965 through July 30, 1965, in the aggregate amount of ₱10,954.00.* These payments were made under informal entries as follows:

CTA Case No. 1862

Informal Entry No.	Date	Compensating Tax Paid
1233673	Feb. 17, 1965	₱ 169.00
1280317	June 14, 1965	156.00

*CTA Case No. 1862-Feb. 17, 1965 to Jul. 30, 1965, in the total amount of ₱10,954.00.
CTA Case No. 1879-Aug. 1, 1965 to Sept. 30, 1965, in the total amount of ₱17,017.00.
CTA Case No. 1888-Oct. 1, 1965 to Oct. 29, 1965, in the total amount of ₱4,239.00.
CTA Case No. 1893-Nov. 2, 1965 to Nov. 26, 1965, in the total amount of ₱5,437.00.
CTA Case No. 1896-Dec. 1, 1965 to Dec. 10, 1965, in the total amount of ₱1,556.00.

1280318	June 14, 1965	237.00
1281461	June 22, 1965	492.00
1281459	June 22, 1965	206.00
1281477	June 23, 1965	248.00
1281471	June 23, 1965	164.00
1281883	June 28, 1965	182.00
1281873	June 28, 1965	416.00
1281884	June 28, 1965	502.00
1281893	June 29, 1965	194.00
1280889	July 2, 1965	435.00
1287735	July 8, 1965	190.00
1287736	July 8, 1965	854.00
1291147	July 13, 1965	364.00
1292076	July 15, 1965	232.00
1292073	July 15, 1965	113.00
1292089	July 16, 1965	148.00
1292092	July 16, 1965	794.00
1292091	July 16, 1965	644.00
1292327	July 21, 1965	262.00
1292329	July 21, 1965	1,139.00
1290207	July 23, 1965	477.00
1289312	July 28, 1965	587.00
1289314	July 28, 1965	1,238.00
1289336	July 30, 1965	511.00
	T o t a l	₱10,954.00

CTA Case No. 1879

Informal Entry No.	Date	Compensating Tax Paid
1289927	August 1, 1965	₱ 500.00
1298775	August 6, 1965	785.00
4356935	August 9, 1965	2,880.00
1299180	August 11, 1965	493.00
1299196	August 12, 1965	356.00
1299708	August 13, 1965	196.00
1299805	August 16, 1965	936.00
1301621	August 27, 1965	230.00
1301620	August 27, 1965	298.00
1301618	August 27, 1965	685.00
1301619	August 27, 1965	354.00
1301633	August 30, 1965	277.00
1308551	September 6, 1965	149.00
1308552	September 6, 1965	139.00
1308598	September 8, 1965	358.00
1309583	September 13, 1965	230.00
1309584	September 13, 1965	608.00
1309582	September 13, 1965	174.00

1309581	September 13, 1965	3,986.00
1310140	September 16, 1965	261.00
1311255	September 21, 1965	536.00
1311254	September 21, 1965	958.00
1309585	September 23, 1965	1,083.00
1311487	September 24, 1965	177.00
1312459	September 29, 1965	368.00
	T o t a l	₱17,017.00

CTA Case No. 1888

Informal Entry No.	Date	Compensating Tax Paid
1312337	Oct. 1, 1965	₱ 130.00
1312797	Oct. 4, 1965	247.00
1325459	Oct. 5, 1965	173.00
1326288	Oct. 7, 1965	366.00
1326256	Oct. 7, 1965	377.00
1327410	Oct. 15, 1965	207.00
1327082	Oct. 15, 1965	194.00
1327097	Oct. 18, 1965	149.00
1327439	Oct. 18, 1965	448.00
1327098	Oct. 18, 1965	416.00
1329576	Oct. 27, 1965	356.00
1329588	Oct. 28, 1965	594.00
1181897	Oct. 29, 1965	375.00
1181894	Oct. 29, 1965	207.00
	T o t a l	₱ 4,239.00

CTA Case No. 1893

Informal Entry No.	Date	Compensating Tax Paid
1330090	Nov. 2, 1965	₱ 230.00
1337180	Nov. 4, 1965	772.00
1337193	Nov. 5, 1965	77.00
1338261	Nov. 10, 1965	284.00
1338262	Nov. 10, 1965	235.00
1338265	Nov. 10, 1965	330.00
1338354	Nov. 10, 1965	153.00
1338371	Nov. 11, 1965	294.00
1338297	Nov. 12, 1965	272.00
1330103	Nov. 15, 1965	802.00
1338938	Nov. 16, 1965	81.00
1339207	Nov. 17, 1965	264.00
1339247	Nov. 22, 1965	426.00

1339711	Nov. 22, 1965	474.00
1339725	Nov. 22, 1965	640.00
1339744	Nov. 26, 1965	103.00
	T o t a l	₱5,437.00

CTA Case No. 1896

Informal Entry No.	Date	Compensating Tax Paid
1341589	Dec. 1, 1965	₱ 130.00
1341598	Dec. 2, 1965	288.00
1347196	Dec. 3, 1965	98.00
1348819	Dec. 10, 1965	951.00
1349161	Dec. 10, 1965	89.00
	T o t a l	₱1,556.00

6. On various dates, as hereinafter indicated, the Department of Finance authorized the release of the said imported machine parts from the Customs' custody without prepayment of the customs duties, compensating tax and special import tax:

CTA Case No. 1862

Informal Entry No.	Authority to Release Imported Goods No.	Date
1233673	1016	December 27, 1965
1280317	1103	January 11, 1965
1280318	1097	January 4, 1966
1281461	1088	January 4, 1966
1281459	1104	January 11, 1966
1281477	1076	January 10, 1966
1281471	1069	January 11, 1966
1281883	1010	December 29, 1965
1281873	1021	December 27, 1965
1281884	1012	December 28, 1965
1281893	1068	January 10, 1966
1280889	1098	January 4, 1966
1287735	1100	January 4, 1966
1287736	1035	December 28, 1965
1291147	1067	January 4, 1966
1292076	1090	January 7, 1966
1292073	1025	December 28, 1965
1292089	1102	January 11, 1966
1292092	1079	January 11, 1966

1292091	1093	January 4, 1966
1292327	1006	December 29, 1965
1292329	1005	December 29, 1965
1290207	1101	January 11, 1966
1289312	1026	December 27, 1965
1289314	000908	December 16, 1965
1289336	000930	December 17, 1965

CTA Case No. 1879

Informal Entry No.	Authority to Release Imported Goods No.	Date
1289927	000905	December 20, 1965
1298775	000901	December 16, 1965
OR4356935	1070	January 11, 1966
1299180	001031	December 28, 1965
1299196	937	December 23, 1965
1299708	000950	December 20, 1965
1299805	000902	December 20, 1965
1301621	000939	December 23, 1965
1301620	000926	December 17, 1965
1301618	000916	December 21, 1965
1301619	000900	December 16, 1965
1301633	000949	December 20, 1965
1308551	943	December 23, 1965
1308552	942	December 23, 1965
1308598	000948	December 20, 1965
1309583	000911	December 29, 1965
1309584	000931	December 21, 1965
1309582	000912	December 20, 1965
1309581	000938	December 23, 1965
1310140	1089	January 4, 1966
1311255	1071	January 4, 1966
1311254	1065	January 4, 1966
1309585	000933	December 21, 1965
1311487	000906	December 20, 1965
1312459	000899	January 13, 1966

CTA Case No. 1888

Informal Entry No.	Authority to Release Imported Goods No.	Date
1312337	000947	Dec. 17, 1965
1312797	000898	Dec. 16, 1965
1325459	000940	Dec. 23, 1965
1326288	000927	Dec. 17, 1965
1326256	000945	Dec. 17, 1965
1327410	000928	Dec. 17, 1965
1327082	000929	Dec. 17, 1965

1327097	000904	Dec. 20, 1965
1327439	000910	Dec. 29, 1965
1327098	1023	Dec. 28, 1965
1329576	1084	Jan. 4, 1966
1329588	1086	Jan. 4, 1966
1181897	1033	Dec. 28, 1965
1181894	1032	Dec. 28, 1965

CTA Case No. 1893

Informal Entry No.	Authority to Release Imported Goods No.	Date
1330090	000924	Dec. 17, 1965
1337180	000925	Dec. 17, 1965
1337193	000914	Dec. 21, 1965
1338261	000915	Dec. 21, 1965
1338262	000909	Dec. 21, 1965
1338265	000907	Dec. 20, 1965
1338354	000936	Dec. 21, 1965
1338371	1064	Jan. 4, 1966
1338297	1060	Jan. 3, 1966
1340103	1091	Jan. 5, 1966
1338938	1072	Jan. 4, 1966
1339207	1059	Jan. 11, 1966
1339247	1062	Jan. 3, 1966
1339711	1061	Jan. 3, 1966
1339725	1105	Jan. 11, 1966
1339744	1107	Jan. 11, 1966

CTA Case No. 1896

Informal Entry No.	Authority to Release Imported Goods No.	Date
1341589	1111	Jan. 7, 1966
1341598	1073	Jan. 4, 1966
1347196	1110	Jan. 7, 1966
1348819	1074	Jan. 10, 1966
1349161	1066	Jan. 4, 1966

7. On April 27, 1966, petitioner filed with the Collector of Customs, South Harbor, Manila, twenty-six (26)* separate letters, all dated

* CTA Case No. 1862 - twenty-six (26) separate letters.
CTA Case No. 1879 - twenty-five (25) separate letters.
CTA Case No. 1888 - fourteen (14) separate letters.
CTA Case No. 1893 - sixteen (16) separate letters.
CTA Case No. 1896 - five (5) separate letters.

April 19, 1966, covering each one of the above-mentioned importations, for the refund of the taxes paid thereon on the ground that it is exempted from the payment of the said taxes pursuant to the provisions of Republic Act No. 3050.

8. Respondent has not yet acted upon the said claims for refund.

It seems already well-settled that in an action for recovery of taxes alleged to have been erroneously or illegally assessed or collected, the taxpayer or petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed because taxes are presumed to have been assessed or collected in accordance with law. As a matter of fact, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue or the Commissioner of Customs is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; See also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to appear and present evidence or proof in support of his allegations in his petition for review, conformably to the doctrine of the presumption in favor of the correctness of tax assessment (Inter-provincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol

Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer. And more so in these cases when petitioner has already paid the alleged compensating tax assessed against it, and these proceedings are suits for refund of such compensating tax based on petitioner's claim that it is exempt therefrom under a supposed letter of Secretary of Finance Rodrigo Perez, Jr., dated December 13, 1963. (pp. 37-38, BIR records of CTA Case No. 1879). (Ormoc Electric Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2185, October 15, 1979; Bataan Refining Corporation vs. Commissioner of Customs, CTA Case No. 1962, November 19, 1979.)

It bears emphasis that he who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when 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 & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

This Court could not, therefore, look with approval on petitioner's claim for exemption from compensating tax allegedly paid on its importations of machine parts for the construction of its fertilizer plant covering the period from February 17, 1965 to November 26, 1965, and related actions for refund, when it did not even present evidence or proof in support of its allegations of facts in its petitions for review upon which it based its alleged exemption, which have all been specifically denied by respondent in his answers; and justified its exemption by words too plain to be mistaken and too categorical to be misinterpreted. (Reagan vs. Commissioner of Internal Revenue, L-26379, December 27, 1969, 30 SCRA 968; Commissioner of Internal Revenue vs. P.J. Kiener Company, Ltd., L-24754, July 18, 1975, 65 SCRA 142; Ormoc Electric Company, Inc. vs. Commissioner of Internal Revenue, *supra*; Bataan Refining Corporation vs. Commissioner of Customs, *supra*.) And as aptly averred by respondent in his answers as special and affirmative defenses:

> 4. That petitioner has no cause of action inasmuch as it has not filed a claim for refund of the taxes in question with the Bureau of Internal Revenue;
>
> 5. That granting, without admitting, that the petitioner imported machine parts and that compensating taxes were paid thereon, the collection of the said taxes is in accordance with law and, therefore, the taxes in question are not refundable;
>
> 6. That the petitioner's right, if any, to recover compensating taxes paid prior to

> October 2, 1965*, has already prescribed pursuant to Section 306 of the Tax Code (P.J. Kiener Co. Ltd. vs. David, G.R. No. L-5163, April 22, 1953; College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-10446, January 28, 1958).

Since petitioner prayed for judgment on the pleadings without offering proof as to the truth of its own allegations, and without giving respondent an opportunity to introduce evidence, petitioner must be understood to have admitted the truth of all the material and relevant allegations of respondent, and to have rested its motion for judgment on these allegations taken together with such of its own which are all specifically denied by respondent. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115.)

Nonetheless, on the assumption that petitioner was qualified to enjoy the privilege of tax exemption granted by Republic Act No. 3050, the letter of Secretary of Finance Rodrigo Perez, Jr. dated December 13, 1963, upon which petitioner anchors its alleged exemption, assuming that it does exist as such and in all respects genuine and true because it was not even presented and identified, explicitly states that "x x x x x your application is hereby approved in respect to the manufacture of the following fertilizers:

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*CTA Case No. 1862-Two (2) prior to June 20, 1967.
CTA Case No. 1879-Two (2) prior to August 9, 1967.
CTA Case No. 1888-prior to Oct. 2, 1965.
CTA Cases Nos. 1893 & 1896-no similar allegation with respect to prescription.

"Complete fertilizers - 12-24-12
" " 14-14-14
" " 10-25-25
" " 18-46-0
"Complex fertilizers - 16-20-0
" " 5-10-16
" " 15-15-6-4 MgO and
6-10-4
"Urea and Ammonia fertilizers"

"x x x x x you are entitled to exemption from the payment of the x x x x x compensating taxes x x x x x directly payable by you on your importations of capital goods, equipment, spare parts, raw materials, supplies, containers and fuel, which this Office may authorize upon proper application, until December 31, 1965, unless sooner terminated for failure to comply with the requirements of the law and existing regulations.

"x x x x x. Attention, in this connection, is invited to the provisions of Republic Act No. 3050, particularly Sections 2, 3, 4 and 5 thereof, and to Department Orders Nos. 105 and 105-A of this Department, copies enclosed, providing the rules and regulations to implement the provisions of the said Act and which establish the requisites for the continued enjoyment of the tax exemption privileges herein granted.

"x x x x x x x x x x x"

Considering that no evidence or proof whatsoever was presented regarding the nature of the fertilizers manufactured by petitioner to show if they were of the kind or classification specified above; whether the importations of the various machine parts the compensating tax of which has been allegedly paid had all been authorized by the Department of Finance; and whether there was compliance with the provisions of Republic Act No. 3050 and Department Orders Nos. 105 and 105-A, which was a prerequisite to the enjoyment of the alleged tax exemption granted therein, this Court cannot presumed that all of these conditions and requirements have been duly complied with by petitioner.

As stressed by the Supreme Court in Acting Commissioner of Customs vs. Manila Electric Company and Court of Tax Appeals, L-23632, June 30, 1977, 77 SCRA 469, the said Court is committed to the principle that an exemption from taxation must be justified by words too clear to be misread. As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, September 22, 1967, 21 SCRA 180: "From 1906, in Catholic Church v. Hastings to 1966, in Esso Standard Eastern, Inc. v. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris." (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488. The opinion also cited Government vs. Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Phil. Tel. and Tel. Co. vs. Collector, 58 Phil. 639; Greenfield vs. Meer, 77 Phil. 394; Collector of Internal Revenue vs. Manila Jockey Club, 98 Phil. 670; Phil. Guaranty Co., Inc. vs. Commissioner, L-22074, September 6, 1965, 15 SCRA 1; Abad vs. Court of Tax Appeals, L-20834, October 19, 1966, 18 SCRA 374.) In the instant cases, petitioner has not even shown, as alleged in paragraph 3 in all its petitions for review but denied by respondent in his answers, that the impoted various machine parts were necessary for the construction of its fertilizer plant or factory.

Even more, the fact of payment of the compensating tax being asserted by petitioner as refundable to it has not been duly established. As proof that the compensating tax was paid by it on its alleged importations of machine parts and, hence, the basis of its related actions for refund, petitioner merely made mention in its memorandum of various carbon copies, most of the entries therein being undecipherable, of

"Statement and Receipts of Duties Collected on Informal Entry" issued by the Bureau of Customs, which are found in some, but not all, of the records of the Bureau of Internal Revenue bearing on each of these cases. Aside from the fact that these statements and receipts of duties were not duly presented and properly identified, specially the illegible initials and signatures, the entries therein relative to the supposed amounts of duties and taxes, including the compensating tax allegedly due on the shipments, have not been supported and substantiated by any available documentary evidence or official receipts. But more importantly, the importer mentioned and named in these statements and receipts of duties collected on informal entries, except in very few instances, is not petitioner Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines), but Braun Transworld. And much more, the aforesaid statements and receipts could not be used to establish the precise amount of compensating tax being claimed by petitioner as refundable to it in these cases because they are incomplete and in disarray, checking the amounts of compensating tax stated therein as purportedly paid and matching them with the total amount of compensating tax being sought to be refunded being an impossibility. It is thus self-evident that petitioner is not the importer of most, if not all, of the machine parts involved in these proceedings and the compensating tax shown in the statements and receipts was not paid by it but by Braun Transworld.

Of considerable importance in this connection is C.T.A. Case No. 2661, entitled "C.F. Braun & Co., and Braun Transworld Corporation", decided by this Court on April 30, 1979. Braun Transworld Corporation, one of the petitioners in C.T.A. Case No. 2661, is a corporation organized and existing under the laws of the Republic of Liberia but licensed by our Securities & Exchange Commission on December 24, 1963 to engage in business in the Philippines. On September 20, 1963, Braun Transworld entered into a contract with Esso Standard Fertilizer & Chemical Co., Inc.(Philippines), whereby for a consideration of ₱9,381,400.00 it undertook to perform the construction and erection of the fertilizer plant of Esso Standard Fertilizer & Chemical Co., Inc. at Bataan, Philippines. Under Article I of the contract, Braun Transworld, who was deemed an independent contractor, furnished not only competent supervision and labor but also construction equipment, tools, Philippine supplies and materials, including their transportation and attendant temporary structures and facilities. (p. 5, Decision, CTA Case No. 2661.)

Under this scenario, it would not therefore be surprising to state, as shown by the aforesaid statements and receipts of duties collected on informal entry, that Braun Transworld was the importer of the various machine parts involved in all these five cases which were necessary for the construction and erection of the fertilizer plant or factory of petitioner as contracted by it, and of course, as such importer, the one who paid the compensating tax due thereon. While it is true that in very rare instances petitioner sometimes appears in certain statements and receipts of duties collected on informal entry to be the importer, it could hardly be said that the articles covered therein, which were not identified, were imported by it for the construction of its fertilizer plant because Braun Transworld, under the terms of the contract, furnished the equipment, tools, supplies and materials necessary thereto. Consequently, there can be no basis in the assertion that petitioner is entitled, as importer who paid the compensating tax in question, to the refund thereof, assuming arguendo that it is exempt from payment of compensating tax on imported machine parts which were necessary for the construction of its fertilizer plant, in accordance with an alleged letter of Secretary of Finance Rodrigo Perez,Jr. dated December 13, 1963.

Petitioner Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines), having failed to establish and justify in plain and unambiguous terms its claim for exemption of compensating tax on various machine parts allegedly imported by it for the construction of its fertilizer plant or factory, and on the assumption that its tax exemption does exist as such, it is entitled to the refund thereof for being the importer who paid the compensating tax on such imported machine parts, its claims for refund of alleged compensating tax in the total amount of ₱39,293.00, involved in these cases must, accordingly, be denied.

WHEREFORE, finding no merit in the Petitions for Review filed in the above-entitled five (5) cases, the same are hereby dismissed, with costs against petitioner in all instances.

SO ORDERED.

Quezon City, Metro Manila, May 30, 1980.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge