REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF THE BUREAU OF CUSTOMS and the ONE-STOP SHOP INTER AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER,
Respondent,

CTA EB No. 582
(CTA Case No. 6373)

Present:

Acosta, *P.J.*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAR 2 8 2011 ArApolinario 1:30 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* is the decision[1] of the First Division of the Court of Tax Appeals dated August 4, 2006 and resolution[2] dated December 16, 2009 dismissing petitioner's claim for duty drawback in the amount of

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[1] *Rollo*, pp. 6-23.
[2] *Rollo*, pp. 25-28.

Php185,301,776.00 corresponding to the special additional levy imposed under Executive Order No. 115[3].

THE FACTS

The facts, as found by the CTA First Division, are as follows:

> "Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with address at the Shell House, 156 Valero Street, Salcedo Village, Makati City.
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> Respondent *Commissioner of Customs* ("Respondent Commissioner") is the head of the Bureau of Customs ("BOC"), the government agency tasked with the function of assessing and collecting duties, fees and other charges under the Tariff and Customs Code of the Philippines ("TCCP") and the enforcement of provisions of the TCCP and related laws, rules and regulations governing, among others, the grant of refund of duties, or duty drawbacks.
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> Respondent *One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center* ("the Center") is a government unit created pursuant to Administrative Order No. 266 ("AO 266") tasked to process applications or claims for tax credits and duty drawbacks for and in behalf of respondent *Commissioner* with respect to duties, fees and charges under the TCCP.
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> Petitioner is engaged in the business of marketing petroleum products, which it refines from imported crude oil. Such importations are subject to the payment of duties, fees and other charges under the TCCP.
>
> Pursuant to Section 106(c) of the TCCP, petitioner is entitled to a refund or tax credit corresponding to duties paid on imported crude oil which is refined and thereafter exported (said refund or tax credit is referred to as "duty drawback"). As such, petitioner has been claiming, and granted, duty drawbacks on its export sales of petroleum products, as well as sales thereof to international carriers ("international sales"), which are considered exports.
>
> Petitioner paid the special duty imposed by Executive Order No. 478 ("Estanislao Levy") on its importations of crude oil and oil products.
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> Petitioner included the Estanislao Levy and later a similar special duty imposed by Executive Order No. 115 ("Leung Levy") in its claims for duty drawback on its export sales and international sales.

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[3] *Increasing the Special Duties of Crude Oil and Oil Products Under Section 104 of the Tariff and Customs Code of the Philippines, As Amended.*

> The *Center* approved and paid all the duty drawback claims of petitioner on the Estanislao Levy, but for a time deferred action on similar claims on the Leung Levy and, later, denied the same.
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> During the period January 3, 1994 to June 17, 1994, petitioner filed with the *Center* claims for duty drawback totalling P270,136,430.00 on its export and international sales for the period October 28, 1993 to March 31, 1994. Of this total claim, the amount of P152,593,159.00 was approved and paid by the *Center* corresponding to the regular duty and the Estanislao Levy while the balance of P117,543,274.00 in claims was disallowed, which corresponded to petitioner's claims on the special duty imposed by E.O. No. 115 or the Leung Levy. x x x
>
> In addition to its business of marketing petroleum products, petitioner used to sell feedstock (a residual product after crude oil undergoes the refining process) to its former subsidiary, the Philippine Petroleum Corporation (subsequently named as Shell Philippine Petroleum Corporation). The latter company was entitled to duty drawbacks with respect to the duty component of the feedstock it used to produce into base oil and other products for its export sales.
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> On February 10, 1994 to May 20, 1994, Philippine Petroleum Corporation ("PPC") filed with the *Center* claims for duty drawback totalling P154,581,621.00 with respect to its export sales during the period November 1993 to March 1994. Only a total of P86,823,116.00, corresponding to regular duty and special duty imposed under E.O. No. 478 or the Estanislao Levy, was approved and paid by the *Center*, while the balance of P67,758,505.00, corresponding to the special duty imposed under E.O. No. 115 or the Leung Levy was disallowed. x x x
>
> On July 1, 1994, PPC merged with petitioner. The latter was the surviving entity and, thus, acquired the property rights of the dissolved PPC. The *Center* was duly notified of such merger.
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> The claims for duty drawbacks of petitioner were the subject of continuing discussions between petitioner and the *Center* for several years and the claims were formally denied by the *Center* in a letter dated November 27, 2001, which was received by petitioner on December 7, 2001."[4]

Petitioner filed its petition for review with the Court of Tax Appeals Division on January 7, 2002. After trial on the merits, the CTA First Division dismissed the petition for review.

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[4] *Rollo*, pp. 7-10.

On August 25, 2006, petitioner timely filed its motion for reconsideration of the assailed decision. Petitioner was likewise allowed to present additional evidence. However, the CTA First Division denied petitioner's motion for reconsideration for lack of factual or legal basis. The resolution discussed as follows:

> "It must also be pointed out that the additional evidence submitted by petitioner in support of its *Motion for Reconsideration* again failed to persuade the Court to reverse its earlier finding that the reimbursements that petitioner received from the Department of Energy did not include the Leung Levy being claimed in the subject petition."[5]

Petitioner received the resolution on January 5, 2010 giving the petitioner until January 20, 2010 to file its Petition for Review with the CTA *En Banc*. On January 19, 2010, petitioner filed a motion for extension of time to file Petition for Review, requesting therein additional fifteen days or until February 4, 2010. The motion was granted by the Court *En Banc*. Hence, the instant petition was filed on time.[6]

ISSUES

Petitioner raised the following issues:

I. Whether or not petitioner is entitled to duty drawback on the Leung Levy paid on imported crude oil subsequently exported or sold to international carriers.

II. Whether or not petitioner was reimbursed for the Leung Levy it paid on petroleum products subsequently exported or sold to international carriers.

RULING OF THE COURT

The petitioner is praying for the review of the CTA First Division's decision involving its claim for duty drawback corresponding to the Leung Levy. Petitioner objects to the denial of its claim for duty drawback on the ground that the CTA

[5] *Rollo*, p. 28.
[6] *Rollo*, p. 38.

Division failed to properly consider that the OPSF reimbursement applies only to domestic sales and that the duty drawback being claimed refers to the Leung Levy component applicable to petitioner's export sales.

The petition has no merit.

Leung Levy was collected on all importations made on September to December 1993

On July 24, 1993, then President Fidel V. Ramos issued Executive Order No. 115 (the "Leung Levy") imposing a special additional duty of P0.95 per liter on imported crude oil and P1.00 per liter on oil products made from September 1993 to December 1993.[7] The special duties are paid upon importation of the crude oil, however, the Leung Levy was paid on a deferred scheme in order to lessen the working capital burden on the oil companies. Thus, payments were made upon withdrawal of the imported goods and on the 15th day of the second month following the month of arrival, which corresponds to the date when the industry receives its reimbursement from the OPSF. Within five days after that date, the oil companies shall remit payment for the additional P1 levy to the Bureau of Customs.[8]

We will rely on the findings of the independent CPA (ICPA) that the Leung Levy has been collected and paid on petitioner's importations during the period when the Leung Levy was in effect.[9]

However, an evaluation of the manner of payment of the Leung Levy described above lends itself to the interpretation that the actual payment of the Leung Levy depends on petitioner's receipt of its OPSF reimbursement. This is especially

[7] *Rollo*, p. 11.
[8] *Rollo*, pp. 60-61.
[9] *Annex H*, Report of the Independent CPA.

true since there is no indication of how the Leung Levy will be paid in the event that petitioner is not entitled to a reimbursement from the OPSF.

Thus, the Court finds that there is sufficient basis to follow the discussion as provided in the *Belicena Memorandum*, to wit:

> "First. The Leung Levy was shouldered by the Oil Price Stabilization Fund (OPSF). Although it appeared on the Bureau of Customs (BOC) Official Receipts that the actual payments of the Leung Levy were made by the oil industry, it can be shown that the OPSF actually shouldered the burden of paying the Leung Levy, nay, it may even be demonstrated that the funds used to pay the Leung Levy actually came straight from the OPSF.
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> As may be seen from the scheme outlined by then Acting Secretary Leung, there was a provision for a 2-1/2 month lag period within which the oil industry may pay the Leung Levy, and that 2-1/2 month period corresponds to the date when the industry receives its reimbursements from the OPSF. It is only after that date (within five days from receipt of the reimbursements, according to the letter of Secretary Leung) that the Bureau of Customs may require the oil companies to pay the Leung Levy. This (*sic*) facts concerning the payment of the Leung Levy appear to be undisputed."[10]

OPSF reimbursements apply only to domestic sales

The OPSF was established by PD 1956 to serve as a buffer for fluctuations in the price of petroleum products sold in the Philippines. The OPSF was an integral part of petroleum price regulation, as provided in Executive Order No. 172 and other related laws, which created the then Energy Regulatory Board (ERB) to take the place of the Board of Energy.[11] The OPSF was particularly designed to stabilize the prices of oil and petroleum products in the domestic market and protect local consumers from the adverse consequences of frequent adjustments in oil prices. Consistent with these objectives, reimbursements from OPSF were allowed only for domestic sales of petroleum products. Ministry of Finance Circular Nos. 2-86 and 4-86 emphasize that

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[10] *Rollo*, p. 17.
[11] *Rollo*, pp. 56-57.

reimbursements from the OPSF are allowed only for local sales of petroleum products.[12]

Petitioner asserts that OPSF reimbursements are available only for domestic sales of petroleum products. We do not dispute the fact that OPSF reimbursements are available only for domestic sales, however, there is still doubt as to the extent of the OPSF reimbursements received by petitioner.

Duty drawback may be claimed on importations subject to proof of claimant's entitlement to the drawback

Section 106(c) of the Tariff and Customs Code of the Philippines (TCCP) provides the basis for duty drawbacks, to wit:

> "Sec. 106. Drawbacks. –
>
> (c) On Articles made from Imported Materials. – Upon exportation of articles manufactured or produced in the Philippines, including the packing, covering, putting up, marking or labeling thereof, either in whole or in part of imported materials for which duties have been paid, refund or tax credit shall be allowed for the duties paid on the imported materials so used including the packing, covering, putting up, marking or labeling thereof, xxx"

Petitioner alleges that the Leung Levy, being a duty imposed on an imported article, may be the subject of drawback if the article on which the levy is paid is used in the manufacture or production of products subsequently exported. In this case, the Leung Levy on imported crude may appropriately be the subject of drawback if the imported crude on which the levy is paid is used to manufacture or produce petroleum products that are subsequently exported or sold in the international market.[13] Petitioner further asserts that for duty drawback to be proper, it only needs to prove two things:

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[12] *Rollo*, pp. 57-58.
[13] *Rollo*, p. 48.

(1) That petitioner paid Leung Levy on all imported crude oil; and

(2) That crude oil was used to manufacture exported petroleum products.[14]

We partially disagree with petitioner.

Petitioner itself quotes the CTA Division's discussion of the nature of a drawback and the proof required for claiming the drawback. Thus:

> "A 'drawback', as held in *Uy Ciaco Son vs. Collector of Customs*, is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign markets upon the same terms and conditions as if it had not been taxed at all. And, under the above-quoted section, petitioner is entitled to a duty drawback provided that it is able to establish that the imported materials are actually used in the production or manufacture of the exported article."[15]

Granted, petitioner was able to show that the Leung Levy was paid on its importations during the period when the imposition was in effect, however, this Court finds that petitioner failed to provide such evidence as to fully support its entitlement to the duty drawback being claimed. As noted by the CTA Division:

> "Petitioner must show that it did not receive reimbursements from the OPSF on the subject importations or that its claim for duty drawbacks covers an entirely different importation/s of crude oil and oil products."[16]

Furthermore, petitioner failed to present any evidence that the imported crude which were supported by the submitted importation documents were actually used in the manufacture of petroleum products which were subsequently exported or sold in the international market. This fact becomes even more relevant since petitioner submitted the same importation documents to support its claim for OPSF reimbursement and again for its claim for duty drawbacks. Based on what has been

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[14] *Ibid.*
[15] *Ibid.*, quoting the CTA First Division's Decision dated August 4, 2006, p. 12.
[16] *Rollo*, p. 16.

presented, there is no assurance that the amounts being claimed for duty drawback were not already reimbursed through the OPSF.

Clearly, each importation contains only a finite number of liters of crude which are then processed into other petroleum products. Petitioner failed to show that its domestic sales, export sales and international sales subject of the OPSF reimbursement claim and the duty drawback claim are all sourced from the imported crude on which the Leung Levy has been paid. At the very least, petitioner should have shown the proportion of domestic sales and export sales which were produced from each importation. As it stands, it is entirely possible that there is a double claim for OPSF reimbursement and duty drawback since the same importation documents were submitted for both the claim for OPSF reimbursement and claim for duty drawback.

Furthermore, petitioner was not able to demonstrate that the export sales upon which the duty drawback is being claimed where actually sourced from the importations which were subject to the Leung Levy. Instead, petitioner explains:

> "The turn over rate of petitioner's crude inventory is around thirty (30) days, meaning that if, for example, a crude importation arrives on September 1, the entire shipment would have been refined or processed into finished products by October 1, which then become available for sale to the domestic market or for export.
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> xxx
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> Thus, in making its duty drawback claims, petitioner includes the volumes of products exported beginning the thirtieth day after the arrival of the importation."[17]

Petitioner's explanation as quoted above is not sufficient evidence to support the contention that petitioner's exportations relate to the importations subjected to the Leung Levy and that the same have not yet been reimbursed through the OPSF.

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[17] Docket, *C.T.A. Case No. 6373*, pp. 463-464.

Thus, we agree with the CTA Division's ruling, quoted below:

> "The Court agrees with the above findings. Petitioner cannot claim reimbursements from the OPSF and subsequently claim for duty drawbacks on the same imported products. Otherwise put, petitioner can no longer be allowed to claim for duty drawback on the special levy for which it was reimbursed by the OPSF. It can be seen from the above that it was the DOF that provided for a scheme wherein the oil companies shall receive 'reimbursements' from the OPSF and the oil companies shall use the reimbursements to remit payments of the 'Leung Levy'. To allow petitioner to claim for duty drawback under Section 106(c) of the TCCP shall unduly prejudice the government.
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> x x x
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> The petitioner, in the instant case, failed to adduce such superior evidence necessary for this Court to grant its prayer for duty drawbacks. Respondents made a categorical statement that the Leung Levy was already reimbursed through the OPSF. Petitioner however did not present rebuttal evidence showing that the reimbursements it received from the Department of Energy did not include the Leung Levy being claimed in the instant petition. Petitioner should have presented a reconciliation statement pertaining to the amounts it received as reimbursements from the OPSF and such other supporting documents wherein this Court can verify that indeed the reimbursements were only for the price adjustments and the levy on importations, which were subsequently sold in the local market.
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> A claim for refund is in the nature of exemption and, hence, construed in *strictissimi juris* against the taxpayer. In the absence of a clear and convincing evidence showing that petitioner is entitled for claim for refund of duty drawback, the same should be denied."[18]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[18] *Rollo*, pp. 21-22.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice