REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DEL MONTE PHILIPPINES, INC.
Petitioner,

-- versus --

C.T.A. Case No. 4622

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

11/26/93

DECISION

This is a claim for refund in the amount of P992,361.00 representing allegedly erroneous payment of value added tax on the importation of 10,976 kgs. of Tilt 250 EC (Fungicide).

Petitioner, is a domestic corporation organized and existing under the laws of the Republic of the Philippines, and registered with the Bureau of Internal Revenue as a value added tax (VAT) taxpayer pursuant to Section 107 of National Internal Revenue Code as amended by Executive Order No. 273 with Registration No. 75-0-000108 (Annex A). It imported 10,976 kgs. of Tilt 250 EC (Fungicide) under Entry No. 282-89 (Exh. B) and subsequently paid the value added tax on said importation in the amount of P992,361.00 on June 28, 1989 under Customs Official Receipt No. 1119151 (Exh. C-1).

On June 4, 1990, Petitioner obtained from the Fertilizer and Pesticide Authority a certification stating that the product Tilt 250 EC is a fungicide (a form of pesticide under the definition of "Pesticide" in Section 3(a) of P.D. 1144 used to control fungal diseases in crops (see Exh. D, D-1). Such being the case, petitioner contends that the product Tilt 250 EC (Fungicide) should be exempt from payment of VAT pursuant to Section 9(b)(3) of Revenue Regulations No. 5-87 which states in part, to wit:

> (b) Exempt transactions. - x x x
>
> (3) Fertilizers, pesticides, and herbicides, chemicals for the formulation of pesticides; x x x are exempt on importation and sale in all stages of distribution, x x x. (Emphasis supplied)

Thus, Petitioner filed its application for tax refund/credit of erroneously paid VAT in the amount of P992,361.00 with the VAT division on February 5, 1990.

On March 20, 1990, in order to remove the VAT paid on subject importation from available input taxes, and to reflect the same as tax refund/tax credit applied for. Petitioner filed an amended VAT return for the quarter September to November 1989 pursuant to Section 11 of

Revenue Regulations No. 5-87 which states:

> SEC. 11. ***Determination of input tax deductible during a taxable quarter.*** - All input taxes paid by or available to a VAT-registered person during a taxable quarter plus any input tax carried over from the preceding quarter shall be reduced by the applications for refund or applications for the issuance of tax credit certificate and other adjustments such as those for purchase returns or allowances in order to arrive at the input tax that can be deducted from output tax." x x x

There being no action on the request for refund on the part of the Respondent, Petitioner filed this instant action on June 26, 1991, well within the two-year prescriptive period.

The issues for resolution are the following:

> (1) Whether or not petitioner is entitled to the refund claimed.
>
> (2) Whether or not petitioner already credited the amount claimed against its output tax.

Affirmatively, We resolve the issues.

The product, Tilt 250 EC (Fungicide) of which petitioner erroneously paid the value added tax on its importation has been certified by the Fertilizer and Pesticide Authority as <u>pesticide</u> finished product pursuant to Section (3)(a) of P.D. 1144 which defines, as follows:

> a) ***"Pesticide"*** - any substance or product, or mixture thereof, including active ingredients, adjuvants, and pesticide formulations, intended to control, prevent, destroy, repel or mitigate directly or indirectly, any pest. The term shall be understood to include insecticide, <u>fungicide</u>,

> bactericide, nematocide, herbicide, molluscicide, avicide, rodenticide, plant regulator, defoliant, desiccant and the like. (Emphasis supplied).

Hence, it falls under transactions exempt from Value Added Tax under Section 9(b)(3) of Revenue Regulations No. 5-87, which provides:

> (b) Exempt transactions. - x x x
>
> (3) Fertilizers, pesticides, and herbicides, chemicals for the formulation of pesticides; x x x are exempt on importation and sale in all stages of distribution, x x x. (Emphasis supplied)

Relevant to the determination of the second issue, are the VAT returns, subsidiary purchase journal and ledger of Petitioner, portions of which are reproduced below:

	(p. 38, BIR Records)	Exh. "M" for Pet.	Exh. "F" for Pet. (Amended)	Exh. "L" for Pet.
PERIOD COVERED	June-Aug. '89	Sept-Nov. '89	Sept-Nov. '89	Dec.-Jan. '90
Output tax on sales of goods	23,005,262.73	17,216,727.38	17,216,727.38	25,548,844.60
Output tax on sales of services	125,225.11	206,785.57	206,785.57	148,089.60
Total output tax	23,130,487.84	17,423,512.95	17,423,512.95	25,696,934.20
Input tax carried over from previous month	9,133,114.70	12,329,247.90	12,329,247.90	23,077,756.45
Input tax on domestic purchases	13,049,386.75	10,977,064.75	10,977,064.75	13,064,088.00
Input tax on importation	14,604,019.85	16,265,374.93	17,257,735.93	12,631,107.00
Input tax on purchase of taxable services	1,081,912.42	1,127,775.70	1,095,996.34	1,181,200.00
Deemed paid (BOI Reg. Pioneer Ent.)	838,640.08	277,160.65	277,160.65	
Total input tax	38,707,073.80	40,976,623.93	41,937,205.57	49,954,151.45
Less: Refunds applied for	665,537.84		992,361.00	
VAT on exempt sales		440,484.23	443,575.17	406,769.25
Net creditable input tax	38,041,535.96	40,536,139.70	40,501,269.40	49,547,382.20
Less: Amount applied this quarter	23,130,487.84	17,423,512.95	17,423,512.95	25,696,934.20
Balance carried over to succeeding quarter	14,911,848.12	23,112,626.75	23,077,756.45	23,850,448.00

It can be noticed that petitioner deducted the amount of P992,361.00 as a refund on the amended VAT return for the quarter September to November, 1989 (Exh. "F"). As a consequence the amount carried over to the succeeding period December to February 1990 was reduced accordingly (Exh. "L"). Simultaneous to this, petitioner made the necessary adjustments on its book, particularly on the general ledger (Exhs. "J" and "J-1") and subsidiary purchase journal (Exhs. "K" and "K-1"), to correct the account balance of its available input tax and to reflect a receivable arising therefrom.

The opinion of the revenue examiner that what should have been amended was the quarterly VAT return for June to August 1989 because the erroneous payment occurred in June 1989 is without basis. Revenue Regulations No. 5-87 does not provide any regulation to that effect. Moreso, the applicable law on said refund was not even under Sec. 16 of same regulation but under Sec. 230 of the Tax Code.

Furthermore, respondent admitted the VAT return for the quarter December to January 1990 (Exhs. "L" and "L-1") without qualification. It follows, therefore, that he also admitted that the amount carried over was reduced by the amount of P992,361.00.

It will be unfair therefore if the taxpayer seeking remedy will be deprived of the refund after it deducted the portion (P992,361.00) it should have been used as a tax credit against future output tax. Although the revenue examiner reported that the said amount was already used against the output tax for the period June to August 1989, he, however, failed to examine subsequent entries on petitioner's book. In fact, the total input taxes for that period (June-August 1989) is more than enough to cover the output tax of petitioner (see p. 38, BIR records). His basis of investigation was limited only to the subsidiary purchase journal for the quarter June to August 1989 which was not even presented to the Court for proper evaluation.

To this date said amount is still unutilized as per record of the case.

WHEREFORE, We hereby **RESOLVE TO GRANT** Petitioner's claim for refund in the amount of P992,361.00 representing refund of erroneously paid value added tax (VAT) on the importation of the product Tilt 250 EC (Fungicide)

SO ORDERED.

Quezon City, Metro Manila, November 26, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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 VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals