REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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P. J. KIENER COMPANY, LTD.,
INTERNATIONAL CONSTRUCTION
CORPORATION and GAVINO T.
UNCHUAN,
Petitioners,

- versus - C.T.A. CASE NO. 1169

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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June 10, 1965

DECISION

This is an appeal from the decision of the Commissioner of Internal Revenue denying petitioners' claim for tax credit in the respective amounts of ₱21,478.31 and ₱151.65, representing specific and sales taxes paid on petroleum products.

Petitioners entered their bid for the construction of the Mactan Airfield Project, at Mactan, Cebu, which was a joint undertaking of the Philippines and the United States. Having been awarded the contract therefor, they jointly undertook the construction.

In the course of the construction of the said project, or during the period from February 1, 1960 thru April 11, 1960, petitioners purchased from Caltex (Phil.) Inc. motor gasoline, kerosene, lubricating and/or motor oil, and diesel fuel for the operation of their machineries and equipment and on which the sum of ₱21,478.31 was paid as specific tax. During the period from February 2, 1960 thru

April 1, 1960, petitioners also purchased from Caltex (Phil.) Inc. lubricants and other petroleum products on which sales tax in the total amount of ₱151.65 was paid.

On December 29, 1960, petitioners requested the respondent Commissioner to refund to Caltex (Phil.) Inc. the amount of specific and sales taxes paid on the petroleum products in question.

In behalf of petitioners, Caltex (Phil.) Inc. presented with the respondent Commissioner on January 12, 1961, a claim for tax credit of ₱21,478.31, representing specific tax on the petroleum products.

Not receiving an answer to their request for tax credit, petitioners filed a petition for review before this Court on January 31, 1962, and, on January 2, 1963, respondent denied the claim for tax credit of the sum of ₱21,478.31. However, the sum of ₱151.65, representing sales tax, was credited to Caltex (Phil.) Inc. Hence, this appeal is limited only to the specific tax in the amount of ₱21,478.31.

The issues raised for our consideration are as follows:

(1) Whether or not the petroleum products in question are exempt from specific tax under the Mutual Defense Agreement between the United States of America and the Philippine Government; if in the affirmative

(2) Whether or not petitioners are entitled to claim credit for the amount paid as specific tax; and

(3) Whether or not petitioners are entitled to interest on their claim for credit.

Petitioners' contention that the petroleum products in question are exempt from the payment of specific tax is correct. The "Aide Memoire" of April 27, 1955 between the Philippine Republic and the United States of America, by authority of which the construction of the Mactan Airfield Project was undertaken, states that the "Philippine Government agrees that no internal taxes shall be levied on any material, equipment, supplies and/or services which may be purchased or otherwise acquired in connection with the terms of this Agreement on an approved project as referred to herein, which materials, equipment, supplies and/or services are required solely for such projects." (Vol. II, No. 4, Treaty Series, Department of Foreign Affairs, pp. 26-32; Vol. 261, United Nations Treaty Series, p. 351). And Section 3-19 of the General Conditions attached to the Specifications for Mactan Airfield, which was made an integral part of the contract between the government and petitioners for the construction of the Mactan Airfield Project, enjoins that "In accordance with the Mutual Defense Agreement between the United States of America and the Republic of the Philippines, no tax of any kind or description will be levied on any material, equipment or supplies which may be purchased or otherwise acquired in connection with the project under contract, which material, equipment or supplies are required solely for such project." Clearly, materials or supplies required solely for projects undertaken for the mutual defense of the two countries, which are purchased or otherwise acquired in connection with such projects, are exempt from any tax, specific or otherwise. That petroleum products come within the import of the words "material" or "supplies" is beyond question.

In an analogous case, it was held "that gasoline and oil furnished its drivers during the construction job come within the import of the words material or supplies, for it has been held that gasoline and oil used by drivers in a construction job fall under the category of supplies. (West v. Detroit Fidelity and Surety Co., 225 N.W. 673, 678, 118 Neb., 544 cited on p. 790 Vol. 40, Words and Phrases)." /The Comm. of Customs vs. Caltex (Phil.) Inc., et al., G.R. No. L-13067, Dec. 29, 1959./

However, the exemption from tax cannot extend to the petroleum products used by petitioners in the demolition of the Opon church as no evidence was presented that these products were required solely for the construction of the Mactan Airfield Project. It appearing that petitioners do not dispute the correctness of the amount of ₱908.40, as representing the specific tax due on the petróleum products used in the demolition of the Opon Church, we hold that this sum of ₱908.40 should be excluded from the amount of ₱21,478.31.

Anent the second issue, Severino Buncaras, Assistant Supervisor of the accounting department of Caltex (Phil.) Inc. testified that "specific taxes were included in our prices in the invoices as billed to P. J. Kiener" (p. 29, t.s.n.) and that the amounts of specific tax are those found in Exhs. A and B and aggregated ₱21,478.31 (p. 42, t.s.n.) This testimony has never been rebutted by respondent. As the tax has been shifted by Caltex (Phil.) Inc. to petitioners, they are therefore entitled to claim for credit of the specific tax which they paid on the petroleum products in question. (American Rubber Co. vs. Collector of Internal Revenue, CTA Cases Nos. 356, 440 & 632, Feb. 27, 1962.)

But, we agree with respondent that the right of petitioners to claim tax credit for the amount of ₱2,-297.74 has prescribed. This amount of ₱2,297.74 is allegedly the specific tax paid under O.R. Nos. 2479507 and 2484406 on January 15 and 25, 1960. Since petitioners did not dispute the correctness of this amount, we take it to be the correct amount of specific tax paid on January 15 and 25, 1960. In this connection, it may be stated that it is a rule that judicial claims for credit or refund of taxes illegally or erroneously paid should be filed within two years from the time of the payment of the tax. Since the appeal was taken to this Court only on January 31, 1962 and the payments of specific taxes in the amount of ₱2,297.74 were made on January 15 and 25, 1960, two years have already elapsed. Therefore, the right to claim for credit of this amount has prescribed. (Muller & Phipps vs. Col. of Int. Rev., G. R. No. L-10694, March 20, 1958; Panay Electric Co., Inc. vs. Col. of Int. Rev., G.R. No. L-10574, May 28, 1958.)

Finally, with respect to petitioners' claim for interest on the amount of tax they have paid, we believe and so hold that they are not entitled thereto. In order to hold the government liable for interest on taxes collected by the Commissioner of Internal Revenue, the collection must be attended with arbitrariness. It can not be said that the collection of the tax in this case was made arbitrarily, the same having been made voluntarily.

In sum, petitioners are entitled to tax credit in the amount of ₱18,272.21, computed as follows:

Specific taxes paid		₱21,478.31
Less: prescribed tax	₱2,297.70	
not exempted	908.40	3,206.10
Total Tax Credit		₱18,272.21

WHEREFORE, modifying the appealed decision in accordance with the foregoing opinion, respondent Commissioner of Internal Revenue is hereby ordered to give tax credit to petitioners in the amount of ₱18,272.21, without pronouncement as to costs.

SO ORDERED.

Quezon City, June 10, 1965.

ROMAN M. UMALI
Associate Judge

I CONCUR:

TEOFILO D. REYES, SR.
Presiding Judge