REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TMX PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4297

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/29/93

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D E C I S I O N

The present action is a claim for tax credit in the amount of P298,724.90 which is equivalent to 20% sales taxes paid on supplies and raw materials to which Petitioner, a registered zone export enterprise, is allegedly entitled under Presidential Decree No. 66, the Law Creating The Export Processing Zone Authority And Revising Republic Act No. 5490.

Petitioner is a duly organized Philippine Corporation engaged in the manufacture of watches exclusively exported to and sold in foreign markets with offices at the Export Processing Zone Authority (EPZA), Mactan Airport Road, Lapu-Lapu City.

On various dates within the period from January 1, 1986 to December 31, 1986, Petitioner purchased packaging materials for its watches consisting of corrugated cartons from local suppliers and paid a twenty percent (20%) sales tax on such purchases, separately billed by the suppliers in the aggregate amount of P298,724.90.

Respondent has not acted upon Petitioner's application for tax credit filed on June 18, 1987 pursuant to P.D. 66, as amended, creating the Export Processing Zone Authority.

Hence, this Petition for Review filed on September 13, 1988.

In its claim for tax credit, Petitioner relied on Sec. 18(i) of Presidential Decree No. 66, as amended.

Counsel for Petitioner is admonished for taking the orders of this Court lightly by filing her memorandum beyond the reglementary period without even the courtesy of filing a motion to extend the time therefore. Such a memorandum filed beyond the reglementary period is nothing more than a mere scrap of paper. Respondent, on the other hand, did not file his own memorandum.

There are two issues to be resolved in the case at bar, namely:

1. Whether Petitioner is entitled to tax credit of sales taxes paid on packaging materials; and

2. Whether the claim of Petitioner for tax credit has prescribed.

Section 18(i) of the P.D. No. 66 as amended by P.D. No. 1449, speaks of a registered zone enterprise being entitled to a tax credit equivalent to sales taxes paid on supplies, raw materials and semi-manufactured products used in the production of export products and forming part thereof, thus:

> "(i) Tax Credit. - Every registered zone enterprise shall enjoy a tax credit equivalent to the sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof; Provided, That the tax credit shall accrue to the registered zone enterprise only after the final product has in fact been exported. The tax credit shall be used by the Secretary of Finance, upon presentation of the export documents, and shall be in lieu of refunds. It may be used to pay taxes, duties, charges and fees due to the national government in connection with its operations. A tax credit shall be non-transferable, except when such transfer is by hereditary succession or occurs by operation of law; it may be used by the person or entity to whom it is issued only for as long as it enjoys the benefits and incentives provided for in this Decree; and may not be used so as to result in a refund."

There is no question that packaging materials constitute supplies which form part of the export product under the Rules and Regulations issued to implement Executive Order No. 226, otherwise known as Omnibus Investments Code, pertinent portion of which reads:

> "For purposes of article 39(k) of the Code, packaging materials and supplies necessary to put the product into exportable form shall constitute part of such export product." [Sec. 1(j), Rule 1]

Since the Petitioner manufactures watches for export, such watches must necessarily be packed in carton boxes to place them in exportable form. The only legal requirement for Petitioner to be entitled to such tax credit is the actual use of such corrugated cartons as packaging materials for its products exported abroad which was clearly established by Petitioner under Exhibits "J" to "V-1". Hence, the Petitioner being a registered zone export enterprise (Exh. "N") should be entitled to the tax credit such right to the tax credit is further buttressed by Sec. 17 of the same P.D. 66 which provides that :

> "SEC. 17. Tax Treatment of Merchandise in the Zone. - (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, <u>shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.</u>" (Underscoring supplied)

Petitioner's right however, to claim for refund of taxes paid for the period prior to September 13, 1986 has already prescribed inasmuch as the same was filed after the lapse of the reglementary period of two (2) years from the date of payment of the tax. Petitioner's allegation that the two-year prescriptive period under Sec. 230 of the Tax Code does not apply to claims for tax credit or indirect taxes passed on to purchasers of goods arising under special laws simply does not hold water. Not only once did the High Court rule issues of similar nature in this wise:

> "Sections 306 (now Sec. 230) and 309 of the NIRC were intended to govern all kinds of refunds of internal revenue taxes - those taxes imposed and collected pursuant to the NIRC. Thus this Court stated that 'this provision' referring to Sec. 306 (now 230) 'which is mandatory is not subject to qualification and hence it applies regardless of the conditions under which payment has been made'". (Underscoring supplied; Comm. of Internal Revenue v. Insular Lumber Co., 21 SCRA 1240 citing Guagua Electric Light Plant Co., v. Coll. of Internal Revenue and Court of tax Appeals 59 O.G. 4207, 4210 citied in Gonzales v. CTA and CIR May 26, 1965)

To hold otherwise is to thwart the aforesaid intention and spirit underlying said provisions.

To submit that the applicable prescriptive period as alleged by Petitioner, is ten (10) years as provided for in paragraph (2) of Article 1144 of the Civil Code is <u>contrary to public policy</u>. The High Court in the same Insular Lumber case reasoned in this wise:

> "Moreover, public policy demands that tax adjustments be made as early and expeditiously as possible. The reason is that it is on taxes that the government depends for its operation and that any uncertainty or controversy on those matters will somehow impair the smooth functioning of the governmental machinery. Lengthening, therefore, of the period of limitations on refund from two to ten years would be adverse to public policy. Finally, when our legislators codified our internal revenue laws in 1939 they intended to concentrate national tax matters in the Tax Code. For Us to look elsewhere for provisions governing taxes would be to veer away from such legislative intent."

Just so and aptly enough the ruling lends settling eloquence to the second issue raised in the instant case.

Accordingly, only those sales taxes paid through Republic Corrugated Cartons <u>after September 13, 1986</u> and which have been formally offered would be credited to the Petitioner, namely:

Exhibit No.	Invoice No.	Invoice Date	Amount of Tax (20%)
H-35	18540	10-17-86	P 120.33
H-36	18361	09-18-86	211.67
H-37	18542	10-17-86	211.67
H-38	18541	10-17-86	105.00
H-39	18794	12-03-86	211.67
H-40	18697	11-18-86	211.67
(see Exhibits)			P1,072.01

The sales taxes paid through Treasure Island Industrial Corp., on the other hand, simply cannot be considered credited since the evidences particularly the sales invoices were not formally offered by the counsel of the Petitioner for sheer neglect. Such evidences, therefore, although identified during the trial are of no value and cannot be considered by the Court. Section 35, Rule 132 of the Rules of Court is categorically clear on this matter thus:

> "Sec. 35. Offer of evidence - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified." (Emphasis supplied)

"Where the evidence consisting of documents were not formally offered at the hearing, even if they are material to the case, the court must exclude the same from the record; it has no authority to consider them". (Emphasis supplied; Ayala de Roxas v. Valencia, 5 Phil. 182)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit to petitioner TMX Philippines, Inc. but only for the amount of P1,072.01 representing the sales taxes it paid on the purchases of packaging materials to which Petitioner is entitled being a registered zone export enterprise pursuant to Presidential Decree No. 66 as amended by Presidential Decree No. 1449.

SO ORDERED.

Quezon City, Metro Manila, March 29, 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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals