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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASSOCIATED SUGAR INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2944

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

5/6/94

DECISION

This is a simple claim for refund of alleged erroneously paid broker's tax for the years 1976 and 1977.

Petitioner Associated Sugar Inc. is a domestic corporation engaged in business as a sugar broker for which it pays a percentage tax (Broker's Tax).

By virtue of Sugar Quota Administration Circular no. 24, Series 1973-1974, dated February 16, 1974, as amended by Letters of Instructions Nos. 113 and 114, the government took over the trading operations of the sugar industry, requiring all sugar producers and millers to exclusively sell their produce to a single government agency. Since then,, the business of sugar brokerage has in effect, been suspended.

However, despite the said law, the petitioner continued paying the 6% broker's tax until the quarter ending June 1977 of the calendar year ending December 31, 1977.

On March 20, 1978, the petitioner filed with the respondent a claim for the refund of the amount of P99,148.54 representing alleged erroneously paid broker's tax for the years 1976 and 1977. In the absence of any response from the respondent and in order to prevent prescription from setting in, it filed the instant petition on April 11, 1978.

The fundamental basis of the petitioner for its claim for refund is that it has ceased to operate as a sugar broker upon the passage of Sugar Quota Administration Circular no. 24, as amended. Consequently, its payment of broker's tax until 1977 was allegedly made erroneously.

On the other hand, it is the contention of the respondent that the claim for refund should be denied inasmuch as the petitioner continuously engaged in business as a sugar broker despite the effectivity of the said law.

Therefore, the only issue to be resolved in this case is whether or not the petitioner continued to engage in business as a sugar broker even after the effectivity of Sugar Quota Administration Circular no. 24, as amended.

It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (**Insular Lumber Co. vs. Court of tax Appeals,** 104 SCRA 710; **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation,** 207 SCRA 549). It therefore devolves upon the petitioner to prove by satisfactory and convincing evidence that the broker's tax it seeks to refund was indeed erroneously paid.

However, the record is devoid of any evidence, documentary or testimonial, which tends to establish that its payment of broker's tax until 1977 was merely based on an honest or excusable mistake. It utterly failed to establish that it ceased to operate its ordinary and usual business operation as a sugar broker or that it is authorized and has shifted to another line of business other than that of being a broker. Inasmuch as it cannot be denied that it had been deriving income from 1974 to

1977 from which it based the payment of the percentage (broker's) tax, the only conclusion that can be made therefrom is that it was gained by being such a broker, and the mere allegation of the fact that Sugar Quota Administration No. 24 and its implementing laws became effective does not *ipso facto* prove otherwise.

In fact, the records of the case at bar reveals that it was only in 1978 that the petitioner first came to know that the trading phase of the sugar industry has been taken over by the government since 1974. Thus:

"xxx xxx xxx

Q. Since when have you been paying this broker's tax?

A. As far as I could remember, <u>since we were selling sugar we have been paying broker's tax up to the time our counsel told us not to pay anymore</u>.

Q. Why
What is the nature of business of Associated Sugar?

A. Associated Sugar was acting as <u>broker</u> for selling sugar of Bacolod, Talisay.

Q. You said you stopped paying broker's tax upon recommendation of your counsel.
When was this?

A. If I remember correctly, <u>about 1978</u>.

Q. Why, if you know?
What is the reason?

> A. <u>When he pointed to us Sugar Quota Ad. Circular No. 24</u> Series 1973-1974 pursuant to LOT 13 and 14 the Government authorized only one agency was the Philippine Exchange. Since the circular was promulgated, all the producers had to sell the sugar to that single agency and to no one else." (Underscoring supplied)

The reasonable inference that can therefore be deduced is that at the time it was informed by its counsel of the existence of Sugar Quota Administration Circular no. 24, it was still engaging in business as a sugar broker.

Consequently, for having engaged in such business and for having derived income from such activity, it now cannot claim that its payment of broker's tax for the years 1976 and 1977 were erroneously made.

WHEREFORE, judgment is hereby rendered denying the petitioner's claim for refund of alleged erroneously paid broker's tax for the years 1976 and 1977.

SO ORDERED.

Quezon City, Metro Manila, May 6, 1994.

ERNESTO D. ACOSTA
Presiding Judge

DECISION
C.T.A. CASE NO. 2944

WE CONCUR:

MANUEL K. GRUBA
Associate 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