REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WARNER-LAMBERT PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3925

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

4/21/92

D E C I S I O N

This suit involves a claim for refund or tax credit in the amounts of P277,800.67 and P171,856.57 or a total of P449,657.24 allegedly representing 5% manufacturer's sales tax erroneously paid by petitioner for the year 1983 and for the three quarters of 1984, inclusive.

Petitioner is a domestic corporation engaged in the manufacture and sale of certain pharmaceutical, health-care and confectionery products known and identified under different trademarks. Among the products sold by petitioner is a pharmaceutical soap under the "Neko" brand, manufactured for it by Manufacturing Services and Trade Corporation (MSTC for short), a domestic corporation with office address at 4176 Del Monte Avenue, Quezon City, pursuant to a processing and packaging contract (Exh. I, pp. 94-103, CTA rec.) it entered into with Park Davies and Company, Inc., whose operation was consolidated with petitioner.

For the year 1983 or all the quarters thereof and for the first three quarters of 1984, petitioner filed its quarterly returns and paid 5% manufacturer's sales tax on Neko soap and included the same in the total percentage tax payments for the period January 1, 1983 to August 30, 1984 (Exhs. A to G-2, pp. 77-92, CTA rec.).

It appears that on July 31, 1984, respondent issued BIR Ruling 135-84, addressed to MSTC, to wit:

> "Gentlemen:
>
> In reply to your letter dated June 28, 1984 requesting a ruling as to whether you should be classified as a manufacturer or contractor, please be informed that for operating and/or maintaining a complete line of equipment, manpower and facilities for toilet soap production for the purpose of manufacturing your own house brand of soap e.g. NEKO soap for your client Warner Lambert Philippines, Inc., wherein you provide the soap base comprising 97.6% of the soap and your client the soap additives comprising 2.4% thereof, you come within the purview of manufacturer as defined under Section 187(x) of the Tax Code. Accordingly, you are subject to the 10% sales tax on the NEKO soap as prescribed in Sections

> 192(1) and 199(a) respectively of the Tax Code."

(Exh. H, p. 93, CTA rec.).

In view of said ruling, petitioner in its letter dated April 18, 1985, requested respondent for a refund or tax credit of percentage taxes in the total amount of P449,651.00 corresponding to NEKO soap it allegedly paid erroneously for the periods in question and avers that inasmuch as the BIR ruling is beneficial to it, the same should be given retroactive effect to the end that it may enjoy a refund or tax credit of the manufacturer's sales taxes erroneously paid by it (Exh. K, pp. 106-108, CTA rec.).

No action having been taken on the claim for refund and to obviate the tolling of the statute of limitation, petitioner filed the instant petition for review.

Respondent in his answer and as special and affirmative defenses alleges among others, that:

1. Petitioner is admittedly a manufacturer and, therefore, subject to the manufacturer's sales tax provided under the Revenue Code;

2. Revenue Rulings are not given retroactive effect unless expressly so provided;

3. In an action for refund of taxes, the burden of proof is upon the taxpayer to show that

the taxes paid or remitted were erroneously collected. Failure to sustain this burden is fatal to the action for refund as taxes paid are presumed to have been collected in accordance with law; and

4. Claims for refund are construed strictly against the claimant, the same being in the nature of an exemption.

The main issue presented before this Court is whether or not petitioner is entitled to the refund of the amount of P449,657.24 for the year 1983 and the first three quarters of 1984.

The applicable provisions of the National Internal Revenue Code, as amended by P.D. No. 1358, in part pertinent reads as follows:

> Sec. 199. <u>Percentage Tax on Sales of Other Articles</u>. - There shall be levied, assessed, and collected <u>once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable consideration</u>, intended to transfer ownership of, or title to, the articles not covered in Sections 194, 195, 196, 197, 198 and 201, a tax equivalent to ten (10%) <u>per centum</u> of the gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: xxx. (Underscoring supplied.)

Petitioner contends that because it has inadvertently paid percentage tax on Neko soap which is supposed to be paid by MSTC, it is entitled to the refund thereof. On the other hand, respondent insists that petitioner being a manufacturer is subject thereto.

We find petitioner's contention well-taken.

Looking into petitioner's percentage tax payments for the periods under review, the record shows:

1983

RTR NO.	C.R. NO.	DATE	TOTAL SALES TAXES PAID (P)	AMOUNT CORRESPONDING TO NEKO (P)
(1ST QTR.) 0874426	0886230	4/20/83	1,092,705.00	41,843.93
(2ND QTR.) 1187002	2259306	7/20/83	1,363,643.00	69,762.53
(3RD QTR.) 1796728	2156664	10/20/83	1,595,897.00	76,300.23
(4TH QTR.) 1889182	9511894	1/20/84	1,178,386.00	89,893.98
			T O T A L	227,800.67

1984

RTR NO.	C.R. NO.	DATE	TOTAL SALES TAXES PAID (P)	AMOUNT CORRESPONDING TO NEKO (P)
(1ST QTR.) 2750783	3612561	3/21/84	3,475,610.00	52,893.90
(2ND QTR.) 275574	3613071	6/20/84	2,683,518.00	81,737.29
(3RD QTR.) 3802031	4602634	9/20/84	2,173,418.00	37,225.38
			T O T A L	171,856.57
T O T A L				449,657.24

(See Exh. K, supra.)

And, analyzing the above schedule, it can readily be seen that during the periods in question, petitioner's manufacturer's sales taxes corresponding to Neko soap were included in the total percentage tax payments for said periods. Of course the insistence of respondent that petitioner is liable for the percentage tax is understandable because petitioner is admittedly a manufacturer (Pls. see par. 3, Petition for Review, p. 1, CTA rec.). However, with respect to the Neko soap, We can safely say that petitioner is more of a distributor rather than a manufacturer.

This is substantiated by petitioner's witness, particularly Marina Cumagon, Accounting Supervisor of MSTC who testified to the effect that MSTC is engaged in manufacturing toilet soap, among which are Persona, Nova, Success and Neko soap; that as manufacturer of Neko soap, it provides 97% of raw materials, 100% of labor and 100% overhead; that it bills petitioner via sales invoice wherein the selling price and manufacturer's sales tax are separately indicated, and remit the same to the BIR; that for the calendar year ending 1983, MSTC filed a return and paid the manufacturer's sales tax, as evidenced by the corresponding returns (Exh. L), Confirmation Receipts and BIR Payment

Orders (Exhs. L-1 to L-4); that for the calendar year ending December 31, 1984, MSTC also filed its manufacturer's sales tax returns and paid the tax, as evidenced by the annual sales tax returns (Exh. M) and the corresponding Confirmation Receipts and BIR Payment Oders (Exhs. L to M-8. [See t.s.n., Hearing of March 12, 1987]). This testimony remained undisputed.

Under BIR Ruling 135-84, MSTC is considered the manufacturer of Neko soap and as such, it is subject to the 10% sales tax on its sales of the product.

From the foregoing finding of facts, it is abundantly clear that two sales taxes were paid, one by MSTC and the other by petitioner, on the same item.

It must be noted that under the provisions of Section 199 of the Tax Code, aforecited, the tax is levied, assessed and collected only once on every original sale, barter or exchange. The terms have been interpreted to mean the first sale, barter or exchange of the articles by the manufacturer or producer (Sec. 5, Com. Act No. 503; Op. Sec. of Justice, November 14, 1946; **People v. Pastor,** 77 Phil. 1000).

It will be stressed that after petitioner offered its evidence which were all admitted by this Court, counsel for respondent submitted his case on the basis of the records and pleadings, without offering proof as to the truth of his own allegations in his answer (See minutes of the session of the Court held on May 3, 1989, p. 151, CTA rec.). In short, respondent failed to present his evidence, oral or otherwise, in support of his case.

Well-settled is the rule that one who prays for judgment on the pleadings without offering proof as to the truth of his allegations must be understood to have admitted the truth of all the material and relevant allegations of the opposing party and to rest his motion for judgment on the allegations taken together with such of his own are admitted (**Bauerman v. Casa,** 10 Phil. 386; **Evangelista v. De la Rosa, et. al.,** 76 Phil. 115). Respondent may as well be deemed as not questioning seriously petitioner's entitlement to its claim for refund (**Commonwealth Management & Service Corp. v. Commissioner of Internal Revenue,** CTA Case No. 3232, June 26, 1985; **Ateneo de Manila University v. Commissioner of Internal Revenue,** CTA Case No. 3213, July 28, 1989; **Ateneo de Manila University v.**

Commissioner of Internal Revenue, CTA Case No. 4231, June 5, 1991; and **City Bank N.S. Phil. Banker v. The Acting Commissioner of Internal Revenue,** CTA Case No. 3378, August 30, 1991). The allegations of petitioner in its petition for review may therefore be considered beyond dispute.

Viewed in this light, We are of the opinion that petitioner is not the manufacturer of Neko soap. It necessarily follows that it has sustained the burden of proving that the sales tax thereon was paid and remitted to the BIR erroneously.

As to the argument of respondent that BIR Ruling 135-84 should not be given retroactive effect pursuant to Section 327 of the Tax Code, suffice it to state that rulings or circulars promulgated by the BIR have no retroactive application only in cases where the revocation, modification or reversal thereof will be prejudicial to the taxpayer (**ABS-CBN Broadcasting Corp. v. Court of Tax Appeals,** L-52306, 108 SCRA 148 [1981]). Consequently, if the ruling or circular proves beneficial to the taxpayer, the same must be given retroactive effect. Hence, this Court is inclined to grant petitioner's claim for refund or tax credit.

WHEREFORE, judgment is rendered in favor of petitioner. Respondent is hereby ordered to refund or credit to petitioner the amount of P449,657.24 erroneously paid as manufacturer's sales tax for the year 1983 and the first three quarters of 1984. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, April 21, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

C E R T I F I C A T I O N

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 VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals