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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

August 24, 1966

ATLAS FERTILIZER CORPORATION,
Petitioner

versus

CTA CASE NO. 1410

COMMISSIONER OF INTERNAL
REVENUE,
Respondent

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

Aug. 24/66

D E C I S I O N

This is an action filed by petitioner against respondent for tax credit of ₱83,629.00 (later reduced to ₱83,612.00), plus interest, as compensating taxes alleged to have been arbitrarily, erroneously and illegally collected by respondent Commissioner of Internal Revenue from the exempt importations of petitioner from June 26, 1961 to October 24, 1962.

Petitioner Atlas Fertilizer Corporation was formerly a department of Atlas Mining & Development Corporation. The latter was granted by the Secretary of Finance a certificate of tax exemption under Republic Act No. 901 as a new and necessary industry for engaging in the manufacture of fertilizer, namely: sulphuric acid, phosphoric acid, superphosphate, triple superphosphate and gypsum. The tax exemption privileges of Atlas Consolidated Mining & Development Corporation were later transferred to the petitioner under the written authority of the Department of Finance dated November 27, 1957. During the period from June 26, 1961 to October 24, 1962, petitioner imported raw materials, equipment, spare parts, containers and other supplies on which it paid one-half or 50% of the compensating taxes due thereon (Exhs. 1 & G, pp. 98-100, BIR rec.).

While petitioner was still enjoying partial tax exemption of 50% as a new and necessary industry under Republic Act No. 901, Republic Act No. 3050, which took effect on June 17, 1961, granted tax exemption to any person, partnership, company or corporation engaged or which shall engage in the manufacture of fertilizer of whatever nature from the payment, among others, of compensating taxes on their importation of capital goods, equipment, spare parts, raw materials, supplies, containers and fuel. To implement said Republic Act No. 3050, the Department of Finance issued Department Order No. 105, dated September 15, 1961, which provides, among others, as follows:

> "Any x x x corporation x x x which shall engage in the manufacture of fertilizer and desiring to enjoy the privileges granted under the provisions of Republic Act No. 3050 may file its application therefore with the Secretary of Finance.
>
> "Fertilizer manufacturers x x x which are granted tax exemption under Republic Act No. 901 should likewise file applications for tax exemption under Republic Act No. 3050, indicating therein, among other things, that the applicant waives the benefits of tax exemption authorized under Republic Act No. 3127."

In compliance with the above regulation, petitioner filed on January 25, 1962 with the Department of Finance an application for tax exemption under the provisions of Republic Act No. 3050, which application was approved by the Secretary of Finance on February 19, 1962. The tax exemption granted by the said official to petitioner was made retroactive commencing on June 17, 1961, the date of the effectivity of Republic Act No. 3050 (pp. 93-94, BIR rec.).

On the basis of the tax exemption granted by the Secretary of Finance under Republic Act No. 3050, petitioner filed with respondent on June 21, 1963 a claim for tax credit of the compensating taxes amounting to ₱83,629.00 which petitioner allegedly paid to the Bureau of Customs on petitioner's importations of tax exempt goods, equipment, materials and supplies during the period from June 26, 1961 to October 24, 1962 (pp. 88-90, BIR rec.). On June 22, 1963, the day after petitioner had filed its claim for tax credit with respondent, petitioner filed a petition for review with this Court seeking an order to compel respondent to issue the corresponding letter of tax credit.

During the pendency of this case, petitioner's claim for tax credit of ₱83,629.00 filed with respondent was referred on June 26, 1963 to the Regional Director of Manila, BIR Regional District No. 3, for investigation, report and recommendation. On July 15, 1963, the case was assigned to Revenue Examiner Benjamin Fernandez. Shortly thereafter, the Manila Regional Office (District No. 3) was divided into two districts - North Manila and South Manila (District Nos. 5 and 6). As a consequence thereof and the confusion which ensued as a result of the sorting and transfer of revenue dockets and records, allocation and assignment of personnel, and the division and transfer of supplies, equipment and furniture, the papers bearing on the tax credit claim of petitioner were misplaced. It was only on January 25, 1965 when the investigating examiner submitted his report and recommended therein that petitioner be granted a tax credit of ₱76,935.00, instead of ₱83,629.00 as claimed, because the importations and payment of the compensating taxes under Item Nos. 1, 17, 35, 50, 58, 61, 62, 64, 65, 67 and 68 were not supported with import entry declarations and receipts of tax payment.

The investigating examiner also reported that his investigation and report on the case of petitioner were delayed because (1) the records of the case were misplaced as a result of the apportionment and assignment of cases when BIR Regional District No. 3 was divided into two regional districts; (2) the transfer of petitioner's place of business from Manila to Makati, Rizal, which is outside the jurisdiction of the Manila Regional Office; and (3) petitioner's failure to produce immediately all the required papers and documents needed to be attached to his report of investigation.

On the basis of the foregoing facts, the issues presented for our resolution are as follows:

(1) Whether or not petitioner is legally entitled to its claim for tax credit of ₱83,629.00, representing compensating taxes allegedly paid to the Bureau of Customs during the period from June 26, 1961 to October 24, 1962; and

(2) Whether or not respondent's delay in acting on petitioner's claim for tax credit entitles petitioner to recover from respondent the legal rate of interest on the amount of tax credit.

Petitioner claims that its importations under review are exempt from the compensating taxes and it is entitled to a tax credit of the said taxes allegedly paid by it under Republic Act No. 3050, the pertinent section of which provides as follows:

"Section 1. Notwithstanding any provisions of law to the contrary, subject to the conditions hereinafter provided, any person, partnership, company or corporation engaged or which shall engage in the manufacture of fertilizer of whatever nature shall be entitled to exemption until December thirty-one, nineteen hundred and sixty-five from the payment of the x x x compensating taxes x x x payable by such person, partnership, company or corporation, in respect to the importation of capital goods, equipment, spare parts, raw materials, supplies, containers and fuel by any of those engaged in the above industry: x x x"

On the other hand, respondent contends that petitioner is not legally entitled to tax credit because it has not shown that the goods imported by it were used in the manufacture of fertilizer; that no specific authority was granted by the Secretary of Finance to the petitioner to import the articles in question; and that petitioner cannot simultaneously enjoy tax exemptions under Republic Act Nos. 901 and 3050. He further contends, in the alternative, that if petitioner is held to be entitled to tax credit, the same is limited to ₱76,935.00 as recommended by Revenue Examiner Fernandez, instead of ₱83,629.00 as claimed by petitioner.

We find the claim of petitioner for tax credit to be meritorious because it was granted by the Secretary of Finance total exemption from the payment of compensating taxes on its importation as a manufacturer of fertilizer commencing on June 17, 1961, the date of the effectivity of Republic Act No. 3050. Moreover, there is no dispute that petitioner is a local manufacturer of fertilizer and that the goods imported by it from June 26, 1961 to October 24, 1962 were "capital goods, equipment, spare parts, raw materials, supplies, containers and fuel" needed by the fertilizer industry.

As the petitioner was enjoying partial tax exemption under Republic Act No. 901 and that it was the grantee of total tax exemption under Republic Act No. 3050 commencing on June 17, 1961, petitioner should not be required to prove that the goods, materials and supplies imported by it from June 26, 1961 to October 24, 1962 were used in the fertilizer industry. Such requirement in this case, if enforced and pursued by the respondent, is not only unreasonable and impractical but it would nullify and disregard the tax exemption granted by the Secretary of Finance to the petitioner. To follow respondent's theory that, as a prerequisite to tax exemption under the provisions of Republic Act No. 3050, petitioner must first prove that it was previously authorized by the Secretary of Finance to import the goods in question and that the same were used in the fertilizer industry would defeat the very purpose of the tax exemption grant. However, if respondent suspects or he has valid reason to believe that the imported goods were channeled by the petitioner into the blackmarket or they were not used by it in the fertilizer industry, the burden of proof that petitioner is not entitled to tax exemption under Republic Act No. 3050 is shifted to respondent.

The argument that petitioner cannot enjoy simultaneously the tax exemptions granted by Republic Act Nos. 901 and 3050 is more apparent than real. It is to be noted that Republic Act No. 901 merely grants partial tax exemption to petitioner while Republic Act No. 3050 grants total exemption from the payment, among others, of the compensating taxes. Consequently, when petitioner has availed of the total tax exemption privileges granted by Republic Act No. 3050, it has and in effect abandoned and given up its partial tax exemption privilege under Republic Act No. 901. This interpretation is supported by the amendatory law, Republic Act No. 3050, which reads as follows:

> "Sec. 6. All existing laws, executive orders and administrative rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby modified or repealed accordingly."

After disposing of the first issue, we find that petitioner is entitled to tax credit of ₱81,899.00 instead of its reduced claim for tax credit of ₱83,612.00. The erroneously and illegally collected compensating taxes of ₱81,899.00 was arrived at after deducting from the reduced claim of ₱83,612.00 the alleged payments of petitioner under Item Nos. 35, 50, 64, 65, 67 and 68 in the amounts of ₱708.00, ₱68.00, ₱19.00, ₱898.00, ₱4.00 and ₱16.00, respectively, or a total of ₱1,713.00, which were not substantiated with satisfactory and convincing evidence. In the case of Item No. 50, petitioner failed to adduce any official receipt evidencing payment of the compensating tax. The submission of the informal import entry declaration on the said importation, in lieu of the official receipt of payment, is not a valid evidence of payment. In the case of Item Nos. 64, 65, 67 abd 68, neither the informal import entry declarations nor the official receipts of payment were submitted by petitioner in evidence. Consequently, the compensating taxes allegedly paid on account of the said importations cannot be credited to petitioner notwithstanding the testimony of Mr. Modesto Apalis that the items in question were imported by petitioner and the compensating taxes due thereon were paid. An uncorroborated testimony, standing alone, cannot be substituted for official receipts of payment and informal entry declarations.

As to the second issue, petitioner contends that respondent has unjustly and unreasonably delayed action on petitioner's claim for tax credit, which delay entitles it to recover the legal rate of interest on the amount of tax credit. However, a careful consideration of the facts and circumstances obtaining in this case does not warrant an award of interest to the petitioner. In the first place, petitioner's claim for tax credit was filed quite late or almost two years from the first payment of the compensating tax and eight months from the last payment thereof. In the second place, the delay in processing petitioner's claim for tax credit was not premeditated and intentional but it was caused by circumstances beyond the control of respondent. Finally, interest is awarded only to the taxpayer and against the government where the collection of taxes was attended with arbitrariness (Collector of Internal Revenue vs. Binalbagan Estate, Inc., G.R. No. 12752, January 30, 1965). In the case at bar, we find that the collection of compensating taxes by the Bureau of Customs, on behalf of respondent, was not attended with arbitrariness because the payment thereof by the petitioner was made freely and voluntarily and conformably with the partial exemption granted by Republic Act No. 901 before it was repealed or modified by Republic Act No. 3050.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant petitioner a tax credit in the sum of ₱81,899.00, which may be applied by petitioner in payment of its outstanding and/or future liability for internal revenue taxes. Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 24, 1966.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge