REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ELECTRICAL MANUFACTURING COMPANY,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4323

Promulgated:
OCT 24 1994

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DECISION

This is a claim for refund in the amount of P209,253.00 representing alleged erroneous payment of advance sales tax.

Petitioner, is a domestic corporation organized and existing under the laws of the Philippines, with principal office at 1873 P. Domingo St. Makati, Metro Manila, and is engaged in the manufacture and sale of lamps.

The records show that petitioner made three (3) separate importations of 500,000 pieces of filaments tungstenis 100 x 230 volts from General Electric Brazil under Import Entry Nos. 70494-3-1984, 180445-3-1984, and 230915-3-1984, respectively with a value of US$22,260.00.

On August 20, October 25 and December 26, 1984 petitioner claimed to have paid the advance sales tax due on the said three (3) importations under then Section 162 of the Tax Code, amounting to P204,236.35 computed as follows:

Official Receipt No.	Amount
492578 - August 20, 1984	P68,089.35
392955 - October 25, 1984	68,089.00
555694 - December 26, 1984	68,058.00

Petitioner allegedly discovered that the 922,273 pieces of the imported filaments, with a value of US$40,448.92 were defective.

On June 27, 1986, under Central Bank Export Declaration Without Foreign Exchange Proceeds No. 86/1073, petitioner exported back to Brazil the said defective filaments for replacement.

On November 23, 1986, the 922,500 pieces of replacement filaments arrived valued at US$40,959 under import entry no. 016508.

On January 28, 1987 petitioner paid the advance sales tax on the said importation of replacement filaments in the amount of P209,253.00 under Official Receipt No. 2018331.

On August 12, 1987 petitioner filed with the Chief of the Appellate Division of the Bureau of Internal

Revenue a claim for refund of P209,253.00 representing the erroneously paid advance sales tax.

Petitioner without waiting for respondent to act on its claim filed the instant petition for review to toll the running of the prescriptive period set forth in Section 243 of the Tax Code.

Petitioner maintained that the payment of the advance sales tax is erroneous pursuant to then Sec. 162(c) of NIRC, as amended by Executive Order No. 36 salient portion of which states:

> "advance sales tax is imposed and paid only once on articles imported. Petitioner said that "shipment of articles made to replace defective items are no longer subject to advance sales tax" (par. 9 petition for review) also petitioner relied on BIR Ruling No. 110-86 dated July, 1986 which reads as follows:
>
> > "This refers to your letter dated May 13, 1986, requesting for and in behalf of your client, Borroughs Ltd., exemption from the payment of advance sales tax on the shipment of an article which is allegedly a replacement of a tax-paid defective article.
> >
> > xxx xxx xxx
> >
> > "In reply, please be informed that advance sales tax imposed under Section 162(c) of the Tax Code, as amended, is levied and paid only once on the articles imported. Consequently, your client's second shipment of an article that would replace the defective item imported last December 31, 1985 the advance sales tax on which amounting to P80,577.00 has already been paid, is no longer subject to another advance sales tax."

Respondent in her Answer to the petition admits incontestable facts such as petitioner's existence, and the filing of the claim for refund but denies the rest of the allegations of petitioner for lack of knowledge and information sufficient to form a belief as to the truth of the matters alleged therein. And by way of special and affirmative defenses alleged the following:

1. The second shipment of 922,500 pieces of filaments is subject to advance sales tax;

2. BIR Ruling No. 110-86 dated July 11, 1986 was issued by respondent's predecessor. Respondent, who is the incumbent Commissioner of Internal Revenue, is vested with authority to revoke, repeal or abrogate the acts or rulings of his predecessor in office, because the erroneous or non-valid construction of a statute by those administering it is not binding on the Government if thereafter the latter becomes satisfied that a different construction is called for (**Hilado vs. Coll. of Int. Rev.,** 100 Phil. 294 [1956], citing **Association of Clerical Employees vs. Brotherhood of Railroad & Steamship Clerks,** 85 F(2d) 152, 109 A.L.R. 345);

3. Taxes are presumed to have been collected in accordance with law. Hence, the burden of proof lies on the taxpayer to prove that the taxes paid were illegally or erroneously collected. Failure to sustain said burden is fatal to the action for refund of taxes;

4. Claims for refund of taxes are construed strictly against the claimants, the same being in the nature of an exemption from taxation (**Manila Electric Co. vs. CIR,** 67 SCRA 351);

> 5. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 243 and 246 of the Tax Code of 1986.

It is important to state at this juncture that the issue involve in this case is purely factual.

During the trial of this case, this Court denied the admission of Exhibits "A", "A-1", "A-2", "B", "B-1", "B-2", "C", "C-1", "C-2", "G", "H", "K", "L", "M" for failure of petitioner to show proof of the due execution and authenticity of said exhibits pursuant to Section 21 of Rule 132 of the Rules of Court (now Section 20 of the Rules of Court) as stated in the Resolution of this Court dated May 9, 1990.

Since, the above cited exhibits constitute the very core of petitioners claim, its failure to produce the original copy of said exhibits is fatal to its claim. As held by this Court in the recent case of **Citibank N.A. Philippine Branch vs. The Commissioner of Internal Revenue,** CTA Case No. 4258, April 11, 1994, "The basic proof of facts required for the Court to be able to decide the case on the merits has not been met. It may not be amiss to point out at this stage that in an action for refund/credit, the taxpayer has the burden of showing that taxes paid were erroneously collected and that failure to meet such burden is fatal to its cause as such claims for refund are strictly construed against the claimant."

We agree with the argument raised by respondent that due to the non admission of certain documentary evidence of petitioner, particularly exhibits "A", "A-1", "A-2", "B", "B-1", "C", "C-1", "C-2", "G", "H", "I", "J" and M the following allegations of petitioner were not proven:

1. that Petitioner made three separate importations of 500,000 pieces of filaments from General Electric Brazil (par. 3).

2. that Petitioner discovered that 922,273 pieces of the imported filaments were defective (par. 5)

3. that Petitioner exported back to Brazil the defective filaments for replacement (par. 6).

For failure of petitioner to produce the original of the said documents as provided for in Section 2 of Rule 130 of the Rules of Court, it is clear that the claim of petitioner for the refund of P209,253.00 allegedly representing erroneously paid advance sales tax cannot merit our consideration. It is evident that the non-admission of petitioners documentary exhibits as evidence for petitioner has tremendously weaken his cause. It was as if no proof of evidence was submitted by petitioner.

Although there is evidence that petitioner imported 922,500 pieces of replacement filaments (Exh. "K", "L") that the advance sales tax due on the said importation was paid (Exh. "M") the same, however, is not sufficient to prove that said imported filaments are intended for replacements of the alleged previously imported filaments found to be defective. To reiterate, it may not be amiss to stress that in an action for tax refund/credit the taxpayer has the burden of showing that taxes paid are erroneously collected and that failure to meet such burden is fatal to its case as such claim for refund are strictly construed against the claimant (**Citibank N.A. Philippine Branch vs. Commissioner of Internal Revenue,** supra).

In the case of **A.F. Holding and Management Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 4259, March 16, 1993, this Court ruled in this wise:

> "we can not just make our own wild conjectures as to the amount arrived at wanting the necessary supporting documents, of course, the petitioner does not expect this Court to go beyond evaluating evidence which are only at hand. In short, the claim for refund taxes under the category of mere self serving stipulations advance by the petitioner. In a claim for refund, as pointed out by the respondent, it is incumbent upon petitioner to show that it is entitled thereto, otherwise, failure on its part to prove the same is fatal to its claim for refund.

It cannot be gainsaid that petitioner is aware of the requirement of the law, specifically Section 3 Rule 130 of the Rules of Court which states:

> **SEC. 3.** *Original document must be produced; exceptions.* - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except, in the following cases:
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> (a) When the original has been lost, destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> (c) When the original consist of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
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> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Failure to comply with the requirements, the above provision will only prove the absence of those documents.

For the reason above stated, it will be an exercise in futility to discuss the other matters raised in the pleadings.

WHEREFORE, in view of the foregoing the case is hereby **DISMISSED.** With costs against petitioner.

SO ORDERED.

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 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