REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOL OIL, INC.
Petitioner,

- versus - **C.T.A. CASE NO. 4407**

THE COMMISSIONER OF CUSTOMS,
Respondent.

6/9/94

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D E C I S I O N

This is a petition for review praying, among others, that this Court order the respondent Commissioner of Customs to "reconsider his decision of October 16, 1989", to "recompute petitioner's export duty for its various coconut exports in 1985 at the rate of 5%" and to "refund the amount of ONE MILLION ONE HUNDRED THREE THOUSAND TWO HUNDRED FORTY SEVEN (PESOS)".

The undisputed facts are as follows:

Petitioner is a domestic corporation engaged in the manufacture of crude coconut oil and copra pellets for export. On various dates prior to October 7, 1985, petitioner entered into several contracts for the export sale of crude coconut oil to various buyers in the United States. These sales were evidenced by the correspondent Reports on Foreign Sales (RFS) duly approved by the Central Bank. Petitioner was issued six (6) Certificates of Export Duty Exemption (three of which were dated October 2, 1985 and the other three were dated November 19, 1985) by the Philippine Coconut Authority (PCA) pursuant to the provisions of Presidential Decree No. 1960 and PCA Administrative Order No. 01 and 01-A series of 1985.

For reasons known only to petitioner, the actual shipment of the contracted volumes under the abovementioned export sales contracts were effected only on October 7 and 28, 1985. The Collector of Customs of the Port of Tacloban assessed export duties on the shipments at the rate of 9% which was the prevailing rate at the time the contracts were entered into. Petitioner was then issued the corresponding Orders of Payment directing it to pay customs duties totalling ₱2,301,021.43.

Instead of paying the assessed duties, petitioner presented the Certificates of Export Duty Exemption previously issued to it by the PCA. As a result, no payment was actually made by petitioner.

Meanwhile, on October 7, 1985, Executive Order No. 1056 became effective, reducing the export duty on crude coconut oil from 9% to 5%. Subsequently, in 1986 petitioner made other shipments of crude coconut oil for which the corresponding duties were assessed at the rate of 5% as mandated under E.O. 1056.

On November 14, 1986, petitioner wrote respondent Commissioner requesting that the latter issue a Tax Credit Certificate or an "authority" directing the Collector of Customs of Tacloban City to recompute the export duties on the two shipments of crude coconut oil made by petitioner on October 7 and 28, 1985, and to apply the "excess" tax credit to the shipments made in 1986. Petitioner contended that the Collector of Customs of Tacloban City had erroneously assessed export duties on the 1985 shipments at the rate of 9% and not 5% as provided under Executive Order No. 1056. Petitioner based its letter on a "ruling" issued by Deputy Commissioner of Customs Vicenta A. Feria, Jr. on August 15, 1986, to the effect that the rate of export duty to be applied to exportations of coconut oil should be the rate prevailing at the time of shipment pursuant to Section 514 of the Tariff and Customs Code.

On October 16, 1989, respondent Commissioner denied petitioner's "request" for recomputation, on the ground that, under PCA Administrative Order Nos. 01 and 01-A, series of 1985 which were issued pursuant to the provisions of P.D. 1960, the computation of the correct export duty should be based on the rate prevailing on the date of the contract and not on the date of shipment.

On November 17, 1989, petitioner wrote respondent Commissioner another letter requesting the latter to reconsider his earlier decision denying petitioner's request for recomputation. Subsequently, on December 1, 1989, without waiting for the resolution of its request for reconsideration, petitioner filed the instant petition.

Petitioner contends that the proper rate of export duty to be used should be that prevailing at the time of shipment on October 7 and 28, 1985 (i.e., 5% as provided under E.O. 1056) and not that prevailing on the date the export sales contracts were entered into and executed. It relies principally on the provisions of Section 514 of the

Tariff and Customs Code, Executive Order Nos. 920, 968 and 970, all of which provide that the export duty should be based on the "gross FOB value at the time of shipment". In addition, petitioner also relies on the "ruling" issued by Deputy Commissioner Feria dated August 15, 1986, to the effect that the correct rate of export duty to be applied should be that prevailing "at the time of shipment, more specifically at the time of completion of loading". Petitioner further argues that PCA Administrative Orders No. 01 and 01-A, insofar as these run counter to the provisions of Section 514 of the Tariff and Customs Code and the other laws cited by petitioner, should not be given any force and effect.

On the other hand, respondent Commissioner contends that the applicable law on the matter is Presidential Decree No. 1960 as implemented by PCA Administrative Orders No. 01 and 01-A, series of 1985. The aforesaid administrative orders provide that the tax exemption granted under P.D. 1960 should be computed based on the prevailing export duty rate at the date of contract and not at the time of shipment. Respondent argues that P.D. 1960 should prevail being a special law and one of later enactment. Additionally, respondent Commissioner also raises the question of jurisdiction, contending that the instant petition is improper because no protest was filed by petitioner with said respondent. There being no such protest, there is therefore, no adverse ruling or decision by said respondent which can be the subject of an appeal to this Court. Finally, respondent Commissioner also points out that petitioner was totally exempted from paying any export duties on the two shipments in question, and that accordingly, there is nothing to be "refunded" to petitioner.

We rule against petitioner.

It is elementary that this Court's appellate jurisdiction is to review the decisions of respondent Commissioner in any matter brought before the latter "upon protest" as well as in cases involving claims for refund. In this regard, it should be noted that petitioner never disputed nor protested the assessment of the Collector of Customs of Tacloban City, assessing the export duties on its coconut oil shipments at the rate of 9%. There is, strictly speaking, no protest as required under Sections 2313 and 2402 of the Tariff and Customs Code, and therefore no decision or ruling by respondent Commissioner in a "protest" action which would require the exercise by this Court of its appellate jurisdiction.

This brings Us to our second point: may petitioner's so-called "request for [a] recomputation" be considered a claim for refund? We do not think so. A claim for refund presupposes that the claimant actually paid something to the government in excess of what it should have actually paid under the circumstances. In the instant case, it is not disputed that petitioner never actually paid any export duty on the shipments in question, as it was exempted from such payments under the provisions of P.D. 1960. Thus, not having actually paid anything to the government, it cannot now claim any right to be refunded any "excess payment".

The contention that petitioner actually "paid" the assessed export duty by tendering the Certificates of Export Duty Exemption issued by the PCA is clearly untenable. Precisely, by virtue of the exemption granted under P.D. 1960, petitioner was absolved from any liability to pay export duties on the shipments in question. The certificates issued by the PCA merely attested to the fact that no export duties were actually due from petitioner despite the assessment issued by the Collector of Customs. Besides, it cannot be gainsaid that said certificates are by no means legal tender in this jurisdiction, and cannot therefore be used in the "payment" of petitioner's obligations (assuming, that is, that petitioner had any such obligations).

Lastly, an examination of the certificates in question shows that the same were issued irrespective of the amount of export duties due on the shipments, the only relevant consideration being the volume of goods exported. Thus, a typical certificate contains the following entries, among others:

Name of Exporter: SOL OIL, INC.

Commodity: Crude Coconut Oil

Quantity: 500 LT

Total CIF Value: $252,000.00

Gross FOB Value: $223,300.00

<u>Quantity Exempted: 500 LT</u>

<u>Quantity Subject to Tax: None</u>

From the foregoing, it is clear that petitioner was totally exempted from paying the appropriate export duties on the entire quantity of coconut oil it exported, regardless of the amount of duties involved and, more importantly, regardless of the rate used in computing such duties. Thus, irrespective of the rate used in computing the assessed duties, petitioner was exempted from paying such duties as long as the quantity of goods it exported did not exceed the quantity stated in the certificate. In other words petitioner was exempted from paying the correct or appropriate export duties, no more no less. Accordingly, even assuming that the Collector of Customs erred in applying the rate of 9% instead of 5% as required under E.O. 1056, this would not have made a difference inasmuch as an adjustment in the amount of export duties due from petitioner would also necessarily result in a corresponding reduction in the limit of the liability covered by the exemption to the correct or appropriate amount. In any event, there would be no "excess" duties to speak of much less any "excess" payment which would entitle petitioner to a refund.

In view of the foregoing, the Court finds it unnecessary to rule on the issue of the validity of P.D. 1960 and PCA Administrative Orders No. 01 and 01-A in relation to Section 514 of the Tariff and Customs Code and E.O. Nos. 920, 968 and 970.

WHEREFORE, the instant petition is denied for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, 9 June 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(inhibits)
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