REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERNATIONAL WIRING SYSTEMS (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5358

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 03 2000

x - x

DECISION

This is a judicial claim for refund/tax credit in the amount of P11,230,995.00 allegedly representing overpaid income tax on domestic sales of Petitioner for the period ended December 31, 1993.

Petitioner is a domestic corporation with office address at Luisita Park, Special Export Processing Zone, San Miguel, Tarlac, Tarlac. It is a Special Export Zone enterprise (Exh. A) engaged in the manufacture of wiring harness and components for cars and motorcycles integrated with manufacture of low tension wires (Exh. B) and corrugated and vinyl tubes for export (Exh. C-1). Formerly, Petitioner was registered with the Board of Investments as a non-pioneer enterprise for the production of low tension wires and components of wiring harness.

The corporate annual income tax return of the Petitioner for 1993 (Exh. D) bears unclear stamp of receipt as regards the date of filing. Even its witness could not testify as to the exact date of filing thereof (TSN, Sept. 24, 1996, pp. 30 & 31). However, petitioner submitted certifications (Exhs. D-19 & D-20) from Security Bank to the effect that the latter received from the former a BIR check payment (Exh. D-21) amounting to P12,258,818.00 last April 15, 1994 (Exh. D-22). Petitioner also submitted its 1994 income tax return to prove that the amount of P11,233,895.00 was not applied against its tax liability for the year 1994 (Exhs. K to K-23).

As borne by testimonial (TSN, March 17, 1997, p.9) and documentary evidence (Exhs. D-23 & I) Petitioner's claim for income tax refund amounts to P11,233,895.00. But Petitioner's administrative claim filed on March 26, 1996 (Exh. G) as well as its judicial claim for refund filed on April 12, 1996, is only for the sum of P11,230,995.00, broken down as follows:

Income Tax on:

Indirect Exports	P 312,441.00
Other Domestic Sales	10,918,514.00
Total	P11,230,995.00

Petitioner anchors its claim from Article 78, in relation to Article 39, of the Omnibus Investments Code of 1987 (E.O. 226) granting tax holidays to Export Processing Zone Authority (EPZA) registered enterprises. The letter of EPZA Administrator, Tagumpay R. Jardiniano, dated June 6, 1995 (Exh. E) confirming that Petitioner's domestic sales is covered by income tax holiday subject to certain conditions, bolsters Petitioner's stand.

Respondent, by way of Special and Affirmative Defenses, avers, that:

1. Taxes are presumed to have been paid and collected in accordance with law and BIR rules and regulations;

2. In an action for tax refund or tax credit, herein Petitioner must show and establish that the taxes were paid erroneously or collected illegally. The failure of Petitioner to sustain this burden is fatal to its action for refund; and

3. Claims for refund are construed strictly against the claimants since they are in the nature of an exemption from taxation.

To support its case, Petitioner presented testimonial and documentary evidence. Respondent, on the other hand, did not present any evidence although he submitted a Memorandum.

Thus, the only issue to be resolved in this case is whether or not Petitioner is exempt from income tax on domestic sales to be entitled to the claim sought.

It is worth noting that this case was originally submitted for decision on October 6, 1998, however Petitioner filed a Motion to Present Additional Evidence which was granted by this Court hence, the date this case was submitted for decision was moved to September 28, 1999.

After a detailed review of the attending facts in this case, the issues involved, arguments of the parties, apposite laws and jurisprudence in point, this Court finds for the Petitioner.

Article 78 of E.O. 226, provides:

> Art. 78. *Additional Incentives.* - A zone registered enterprise shall also enjoy all the incentive benefits provided in Article 39 hereof under the same terms and conditions stated therein. xxx

Article 39 is quoted hereunder:

> Art. 39. *Incentives to Registered Enterprises.* - All registered enterprises shall be granted in the following incentives to the extent engaged in a preferred area of investment:
>
> (a) *Income Tax Holiday.-*

(1) For six (6) years from commercial operation for pioneer firms and <u>four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government</u>. xxx (Underscoring Supplied.)

Based on the above provisions of the law, EPZA registered enterprises are exempt from income tax for a period of six (6) years from start of commercial operations, if such enterprise is a pioneer firm and for four (4) years if the enterprise is a non-pioneer firm. Being an EPZA registered enterprise and a non-pioneer firm, Petitioner is exempt from income tax for a period of four years from the date of its original registration and/or start of its commercial operations. Petitioner started commercial operations for the production of components for automotive wire harness on July 1, 1992 (Cert. No. EP 92-123) and for the production of wiring harness integrated with low tension wires on October 25, 1990 (Cert. No. EP 90-587). Therefore, Petitioner was exempt from income tax on sales generated from the said activities in 1993, which was within the four-year period from the start of its commercial operations abovementioned. Where the language of a statute is plain and unambiguous and conveys clear and definite meaning, there is no occasion for resorting to the rule of statutory interpretation and must be enforced as written. (**Lorenzo vs. Posadas**, 164 Phil. 366; **Science Park of the Phils., Inc. vs. CIR**, CTA Case No. 5144, Oct. 5, 1998).

In relation thereto, Section 230 of the Tax Code, as amended , mandates that:

Sec. 230. *Recovery of tax erroneously or illegally collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained,

> whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.

As adverted to, this case involves the year 1993. Petitioner paid its income tax due for the said period on April 15, 1994 (Exhs. D-19 to D-22). The claim for refund was filed with the BIR on March 26, 1996 (Exh. G) and the instant petition was filed on April 12, 1996. Petitioner's claim for refund/tax credit was therefore filed within the two-year period allowed by law.

Accordingly, what is left for consideration in the instant case is whether or not Petitioner has fully substantiated its claim.

The letter of EPZA Administrator, Tagumpay R. Jardiniano, sets forth the following conditions (Exh. E-1), to wit:

> Domestic sales made under EPZA registration which was on January 15, 1993 and commercial operation of which started in April 1993, shall be covered by income tax holiday, provided, that: (a) you have met the required export volume; (b) you have not exceeded the 20% past export limit; and (c) the yearly renewal of the authority to sell locally has been complied with.

Respondent, in his memorandum, asserts that Petitioner failed to fully substantiate its claim for tax refund/tax credit inasmuch as it failed to submit photocopies of export documents showing the amount of export, the date and destination of the goods exported, as well as the name of the person or entity to whom the goods were delivered.

Contrary to this assertion, however, Petitioner has submitted all those documents and more, in order to show compliance with the conditions already mentioned (Exh. I). Documents examined by the independent Certified Public Accountant retained by the Petitioner (SGV & Co.) with respect to export sales of Petitioner in 1992 and 1993 consisted of export invoices, bills of lading, export declaration and bank credit memoranda (Exhs. J-1-1 to J-1-754; J-2-1 to J-2-882 and J-3-1 to J-3-75). With regard to its domestic sales, the documents verified were the sales invoices and delivery receipts (Exhs. J-4-1 to J-4-294). Thus, after due determination of the accuracy and completeness of the said documents, it was determined that:

1) The export sales of the petitioner for 1993 of 883.91 kilomanhours (KMH) (equivalent to P710,364,186.71 – Exhs. 2,2-A, 2-B) exceeded the required export sales volume of 717.56 KMH;

2) The export sales for 1992 was 719.93 KMH (equivalent to P506,517,249.57 – Exhs. 1, 1-A, 1-B), 20% of which is 143.99 KMH and domestic sales in 1993 was 129.24 KMH (equivalent to P139,662,050.77 – Exhs. 3 to 3-F), (net of exceptions noted). Hence, less than 20% of its 1992 domestic sales.

It is worthy to note that the last requirement laid down by EPZA is not applicable in the instant case since petitioner was only registered with EPZA on January 15, 1993. At that time, there was no need for Petitioner to renew as yet its authority from EPZA to sell locally. Further, an examination of Petitioner's 1993 final/ quarterly income tax returns filed/tax paid (Exhs. D to D-17, H to H-4), certifications from Security Bank (Exhs, D-19 & D-20), and Petitioner's income tax computation sheet (Exh. D-23) shows that the income tax on domestic sales of P11,233,995.00 was part of the total amount of income tax paid for the year 1993 amounting to P12,258,818.00.

WHEREFORE, in view of all the foregoing, Petitioner's tax refund/tax credit is hereby granted. Respondent, Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of the Petitioner in the total amount of P11,230,995.00 representing overpaid income tax on domestic sales for the period ending December 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge