REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPATE
FERTILIZER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5524

THE HONORABLE COMMISSIONER
OF CUSTOMS,
Respondent.

Promulgated:
MAR 27 2000

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DECISION

This is a petition for Review instituted by petitioner praying for the refund or issuance of a tax credit certificate in the total amount of FOUR HUNDRED THOUSAND SIX HUNDRED SIXTY FIVE PESOS AND TWENTY SIX CENTAVOS (P400,665.26) representing customs duties paid on petroleum products covering the period of January 1995 to June 1995.

The facts of the case are as follows:

Herein Petitioner, Philippine Phosphate Fertilizer Corporation (PHILPHOS, for brevity) is a domestic corporation engaged in the business of manufacturing fertilizers for domestic and international distribution. It is registered with the Export Processing Zone Authority (EPZA) up to and until June 3, 1995 (See TSN, November 27,1997, p.8). In the production of the exportable fertilizer, it is essential for PHILPHOS to procure from local oil companies its fuel requirements like diesel, fuel oil and lubricant. While these fuel supplies do not form part of the finished product, they are indispensable in the manufacturing cycle because these fuel supplies, particularly the fuel oil and lubricants are necessary to run the machineries and lubrication of the equipment which transform raw materials into exportable finished products and for other purposes. The diesel fuel on the other hand is used as a coating agent in the fertilizer product (See TSN, Nov.27,1997 p.7).

These fuel requirements are procured by PHILPHOS from local oil companies like PETRON which imports the same and which pays the corresponding customs duties to the Bureau of Customs and the Ad Valorem and Specific taxes to the Bureau of Internal Revenue. These taxes are then passed on by PETRON to PHILPHOS. Thus, in a letter dated December 23, 1996, petitioner filed a claim for refund of the corresponding duties of petroleum products passed on to it by PETRON for the months of January 1995 to June 1995 (Annex A of the Petition, CTA docket pp.10-11).

In a letter dated April 7, 1997, Respondent denied the claim for refund/tax credit, the portion of which reads as follows:

x x x x x x x x x

> "In as much as previous claim of similar tenor and import has already been resolved in a letter dated October 15, 1992, copy enclosed, and considering that there is no new matter introduced in this latest letter, we regret to inform you that your request is hereby **DENIED** for lack of merit."

Hence on April 21, 1997, Petitioner elevated the matter before this Court as a Petition for Review. This Court takes cognizance of the case on the basis of Section 2402 of the Tariff and Customs Code and Section 7(2) of Republic Act No. 1125. Section 2402 of the Tariff and Customs Code provides for the remedy of appeal to the Court of Tax Appeals from the ruling of the Commissioner of Customs in any matter brought before him upon or by his action or ruling in any case involving customs duties, fees or other money charges. Petitioner filed a claim for refund with the Respondent stating its desire to recover erroneously paid customs duties. Petitioner, after receiving the adverse decision of respondent, filed within thirty (30) days its Petition for Review by way of appeal to this Court pursuant to Section 7(2) of Republic Act No.1125. Having pursued all legal remedies allowed by law in the administrative level, petitioner's next recourse was to file a Petition for Review with this Court within the prescriptive period. All having been accomplished, this Court has nothing to do but to adjudicate the case based on the merits.

During trial, petitioner presented the following documentary evidence to support its claim for refund:

(1) Certification from PETRON which shows that PETRON paid customs duties to the Bureau of Customs in the amount of P400,665.26 (Exhibit A);

(2) Summary of petroleum products sold and delivered to PHILPHOS which shows the volume of diesel oil delivered to PHILPHOS with the corresponding computation of customs duties (Exhibit A-5);

(3) Import Entry and Internal Revenue Declarations (Exhibit A-6) and Official Receipts from the Bureau of Customs (Exhibits A-6 and A-7) showing that there was importation of the products and that the taxes were paid by PETRON;

(4) Invoices from PETRON which shows that PETRON delivered and billed the fuel products to PHILPHOS (Exhibits D-1 to D-74).

Petitioner alleges that it is entitled to the refund being claimed pursuant to Section 17 of Presidential Decree No. 66 of the EPZA law, also citing a previous ruling of the Secretary of Finance on the matter. Petitioner advanced the concept of the Export Processing Zone as a foreign territory for customs purposes, for which reason, when merchandise is brought into the zone, no Philippine tax may be imposed. It also cited Letter of Instruction No. 942, dated October 16, 1979 and paragraph 2 of Article 17 of Executive Order No. 226, considering merchandise brought to the zone as "export sale".

Respondent, on the other hand, claims that mere invocation of the laws cited by Petitioner does not automatically confer the benefits of exemption to the latter because exemptions from taxation are highly disfavored in law and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. Furthemore, Respondent alleges that the ruling relied upon by Petitioner which was issued by Deputy Minister Alfredo Pio de Roda, Jr. has already been superseded by the ruling of Secretary Jesus P. Estanislao in a letter dated July 18, 1991 where the claim for refund of excise taxes paid on purchases of petroleum products by PASAR was disallowed for the following reasons:

a. Section 18(i) of PD 66 allows refunds through tax credit of duties and taxes paid on supplies only if the supplies used in the manufacture, processing or production of export products form part of the finished products;

b. The tax exemption must be justified by the clearest grant of organic or statute law and that this should be explicit and categorical.

The issues submitted for resolution of this Court are as follows:

1. WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF THE CUSTOMS DUTIES IT ALLEGEDLY PAID ON THE PETROLEUM PRODUCTS SUPPLIED TO IT BY PETRON; AND IF IN THE AFFIRMATIVE,

2. WHETHER OR NOT THE CLAIM FOR REFUND IS DULY SUPPORTED BY SUFFICIENT EVIDENCE.

The controversy that is set upon us is one that should be resolved in the light of the relevant provisions of Section 17(1) and Section 18(i) of Presidential Decree No. 66 as amended by P.D.No. 1449, quoted hereunder as follows:

x x x x x x xxx

Section 17. Tax Treatment of Merchandise in the Zone. – (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored , broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign and domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) Merchandise purchased by a registered zone enterprise from the customs territory, if paid for in the United States convertible foreign currency and subsequently brought into the zone, shall be considered as exported, and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.

Sec. 18. Additional Incentives. - A zone registered enterprise shall also enjoy the following incentives and benefits x x x:

(i) Tax Credit. Every registered zone enterprise shall enjoy tax credit equivalent to sales, compensating and specific taxes and duties on supplies, raw materials and semi

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> manufactured products used in the manufacture, processing of production of its export products and forming part thereof; Provided, that the tax credit shall accrue to the registered zone enterprise only after the final product has in fact been exported.

This Section 18 is further amended by PD No. 1449 adding new paragraphs which grants tax credit to every registered zone enterprise equivalent to the sales, compensating and specific taxes and duties on supplies and raw materials used in the manufacture of products exported and forming part thereof. Letter of Instruction No. 942 introduced the concept of Constructive Export whereby the sales and delivery of products to bonded warehouse of export-oriented manufacturers and to Export Processing Zone enterprises can be considered "export sales", such that tax credit and duty drawback can be availed of immediately without awaiting for actual exportation of the finished products abroad.

Executive Order No. 226 otherwise known as the Omnibus Investments Code of 1987, retained Section 17 (1) and (2) of PD No. 66 but with a little modification such that the requirement on the foreign exchange payment for merchandise was deleted. Thus, it provides:

E.O. No. 226
The Omnibus Investment Code of 1987

> Art. 77. Tax Treatment of Merchandise in the Zone.- (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter shall be entitled to the benefits allowed by law for such transaction.

It is evident from the aforementioned laws that the provision of Section 17 (1) of PD No. 66 is retained by Article 77(1) of E.O. No. 226 as a principal source of tax incentives for enterprises registered with the export processing zone. The granting of the tax exemption was never deleted, expressly or by implication, from the provisions of the EPZA law. Although Section 18 (i) of PD No. 66 as amended by PD 1449 was not reproduced under E.O.226, it was merely referred to in Article 78 as one of the additional incentives that an EPZA registered enterprise may be entitled under Article 39 of the said Executive Order. It goes to show that the tax privilege enjoyed by EPZA enterprises still subsists notwithstanding the series of changes in the provisions of the EPZA law.

The tax advantages granted by the aforequoted EPZA laws were conceived in order to attract enterprises especially foreign investors who will be manufacturing products primarily for export. Export is the backbone of our economy and is being encouraged by providing the enterprises with all the tax incentives available. For this reason, the law further states that "All doubts concerning the benefits and incentives granted enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises (Article 79, EO. 226).

The tax exemption privilege of said EPZA enterprise is clear. The law guarantees to them such incentives as they are vital to our economy. However, what should be given focus in the instant case perusing the issue at bar is the tax treatment of the petroleum products supplied by a local oil company (PETRON) to an export processing zone-registered enterprise. This is the subject of the dispute between the Petitioner and Respondent which this Court is called upon to interpret.

Section 17(1) of PD 66 covers domestic merchandise, raw materials, supplies, articles and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed or used directly or indirectly in such activity shall not be subject to customs and internal revenue laws and regulations. In fact this question has already been settled by this Court in several cases of the same nature and subject matter, and we quote:

> "Oil products produced by local oil companies may be classified as domestic merchandise, raw materials or supplies as legally defined in the Supreme Court case of Commissioner of Customs vs. Caltex (Philippines), Inc. (G.R. No. L-13067, Dec. 29, 1959, 106 Phil. 829) which states that supplies or materials shall include gasoline and other petroleum products for purposes of exemption from customs duties under Article 103 of RA No. 387. For what purpose, among others, these products maybe brought into the zone for processing, manipulation, manufacture, mixed with foreign and domestic merchandise or used directly or indirectly in such activity.
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> In our particular case, the petroleum products delivered to Petitioner is used in the processing of fertilizers for export. While Respondent may be correct that these products did not form part of the fertilizer exported, nevertheless, the law does not provide for such requirement but only requires the use of such materials directly or indirectly in such activity. The use of petroleum products like bunker oil as fuel will easily fall under the phrase "used directly or indirectly in such activity". Clearly these petroleum products can easily qualify for tax and duty free privileges under Section 17(1) of PD 66. (Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of the Bureau of Internal Revenue, CTA Case No. 5523 dated October 25,1999; Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 5128 dated August 18, 1998; Philippine Phosphate

> Fertilizer Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4993 dated July 7, 1996; Philippine Phosphate Fertilizer Corporation vs. The Honorable Bureau of Internal Revenue, CTA Case No. 5033, dated May 5, 1996 and Philippine Phosphate Fertilizer Corporation versus The Honorable Commissioner of Customs CTA Case No. 4661, May 31. 1993)

With all of the foregoing, it can now be concluded that the bunker fuel oil and other oil products sold and delivered by local oil companies to EPZA registered enterprises shall be exempted from customs duties and internal revenue taxes and if said duties and taxes were passed on by the supplier to the EPZA registered enterprises, duty drawback and tax credit shall be granted to the latter pursuant to the provisions of Section 17 (1) (2) of PD 66 as amended by Article 17 (1) (2) of EO 226.

Having established the legal right of the Petitioner to refund the customs duties it allegedly paid to the Respondent, we now proceed to evaluate whether the relief sought by Petitioner is duly substantiated with relevant and sufficient evidence.

In the most recent case of ***Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5523*** promulgated on October 25, 1999, this court granted petitioner's claim for refund on the basis of the invoices presented. The court has accepted these invoices issued by PETRON to show proof that the corresponding taxes thereon were shifted and paid by petitioner PHILPHOS to the respondent thru PETRON.

Prescinding from the "law of the case" with regard to the substantiation requirements, we rule that the documents submitted by petitioner are sufficient to grant the amount claimed. True enough petitioner in the case at bar submitted the various invoices issued by PETRON. Accompanying these invoices are certifications issued by

PETRON attesting that PETRON paid the customs duties to the Bureau of Customs which was later billed to PHILPOS; the summary of petroleum products sold and delivered to PHILPHOS; Import Entry and Internal Revenue Declaration and Official Receipt showing the fact of payment. This Court relies on the probative value of all the documents presented as it is consistent with the facts alleged by the petitioner. On the other hand, we give credence to the photocopied invoices as its correctness and authenticity is certified by PETRON as evidenced by the violet ink stamped on the face of the said documents. However, out of the total amount of P400,665.26, the amount of P74,374.87 is being disallowed by this court. This disallowed amount corresponds to the time when petitioner was no longer an EPZA registered entity. As alleged in the petition and testified to by a witness, petitioner is registered with EPZA only up to June 3, 1995. (See TSN, Nov. 27, 1997, p. 8). This shows that the tax incentive provided by Section 17 (1) and 18 (i) of P.D. No. 66 as amended by Art. 17 of EO 226 no longer applies to the petitioner. Hence, the claimed amount is reduced to P326,290.39, computed as follows:

Amount per claim				P400,665.26
Less: Customs duties paid on deliveries beyond June 3, 1995				
Exhibit	**Invoice No.**	**Invoice Date**	**Volume (in liters)**	
D-7	5-41571	6-14-95	12,000	
D-3	738524	6-27-95	14,000	
D-9	914213	6-06-95	12,000	
D-8	914214	6-21-95	12,000	
D-6	967705	6-21-95	12,000	
Total Volume in Liters			62,[illegible]	
Multiply by the conversion factor in bbl.			0.0062899	
Total volume in bbl.			₱190.7176	74,374.87
Amount Refundable				**₱326,290.39**

WHEREFORE, in view of the foregoing, the instant petition for review is hereby partially **GRANTED**. Respondent is ordered to issue in favor of petitioner a tax credit Certificate in the reduced amount of P326,290.39 representing erroneously paid customs duties on purchases of fuel and petroleum products covering the months of January 1995 to June 3, 1995.

SO ORDERED

AMANCIO Q. SAGA
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 with the members of the Court of Tax Appeals in accordance with Section 13 Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge