REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MONSANTO PHILIPPINES, INC.,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4828

Promulgated:
FEB 22 1996

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DECISION

This is a claim for refund of alleged erroneously paid value-added taxes in the amount of P2,412,861.00 imposed on the chemicals imported by the petitioner corporation covering the period from April to August 1990.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. On several occasions in the year 1990, petitioner caused the importation of Machete (Butachlor) Technical Minimum, a chemical used in the manufacture of herbicide. Petitioner alleges in its petition for review that customs duties and value-added taxes were correspondingly paid on these importations as evidenced by the official receipts issued by the Bureau of Customs

(Exhibits "F", "P", "P-1", "W", "BB"), detailed as follows:

Date of Shipment	VAT Paid
April 25, 1990	P527,267.00
April 25, 1990	398,786.00
June 21, 1990	533,805.00
July 7, 1990	541,017.00
August 9, 1990	411,986.00
	P2,412,861.00

On September 12, 1990, respondent issued VAT Ruling No. 197-90, the pertinent portions of which are quoted hereunder, thus:

> In connection with your request for reconsideration dated June 20, 1990, of VAT Ruling No. 149-90 subjecting your importation of Machete (Butachlor) Technical Minimum (chemicals used in the manufacture of herbicide) to 10% VAT, please be informed that the same has been given due course. In other words, since herbicide is one of the substances which are placed in the category of pesticides pursuant to Section 3(a) of P.D. No. 1144 reading:
>
> > "a. Pesticide. - any substance or product or mixture thereof, including active ingredients, adjuvants and pesticide formulations, intended to control, prevent, destroy, repel or mitigate directly or indirectly any pest. The term shall be understood to include insecticide, fungicide, bactericide, nemalicide, herbicide, molluscicide, avicidem rodenticide, plant regulator, defoliant, desiccant and the like."
>
> the aforesaid chemicals which are used in the formulation of the herbicides, are in effect, chemicals used in the formulation of

> pesticides; hence, exempt from VAT under Section 103 (c) of the Tax Code, as amended, provided the Fertilizer and Pesticides Authority (FPA) will certify that the same will be used for agricultural purposes.
>
> Accordingly, VAT Ruling No. 149-90 dated May 24, 1990 is hereby revoked.
>
> Very truly yours,
>
> JOSE U. ONG
> Commissioner of Internal Revenue

The above-quoted ruling prompted the petitioner to file a claim for refund or tax credit on October 10, 1990 with the BIR in the amount of P2,412,861.00 representing the value-added taxes it had paid on the importations made in 1990 covering the months April to August of that year. Respondent did not act upon this claim for refund so in order to preserve its right to claim for a refund, petitioner filed a petition for review with this Court on July 9, 1992.

It is the contention of the petitioner that his right to claim for a refund is based on Section 103(c) of the Tax Code which exempts the importation of chemicals for the formulation of pesticides from the value-added tax and since the word "pesticides" necessarily includes herbicides in accordance with Section 3(a) of P.D. 1144. Therefore, its importation of Butachlor Technical should not have been subjected to the payment of value-added tax.

Respondent on the other hand, confined the allegations in his Answer to generalities which failed to address the issue presented by the petitioner when it adduced the following Special and Affirmative Defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> 4. Petitioner has failed to state any cause of action under Section 204 of the Tax Code, under which the Commissioner of Internal Revenue allegedly may credit or refund taxes erroneously or illegally received.
>
> In the instant case, petitioner begs the issue, as it has miserably failed to show on the face of the petition that the collection of the aforesaid tax liability in the amount of P2,412,861.00 is illegal and erroneous as against the legal presumption that the collection thereof is lawful and regular.
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> 5. In addition, well-settled is the doctrine that provisions on the tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption.
>
> 6. Besides, in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund.
>
> 7. Moreover, and in this case, the claim for refund is still under investigation.

No objection was raised by the respondent to the admission of the exhibits presented by the petitioner. Moreover, counsel for respondent waived the presentation of evidence and opted to submit this case for decision based on the records and pleadings available.

The only issue raised in this petition is whether or not petitioner is entitled to the refund of P2,412,861.00 representing erroneously paid value-added tax paid during the periods from April to August 1990.

We find for the petitioner.

The applicable provision of the law is Section 103(c) of the Tax Code which provides, thus:

> Sec. 103. *EXEMPT TRANSACTIONS* - the following shall be exempt from the value-added tax:
>
> (c) Sale or importation of fertilizers, pesticides and herbicides; chemical for the formulation of pesticides; seeds, seedlings and fingerlings; fish, animal and poultry feeds; and soya bean and fish meals;
>
> xxx xxx xxx

Machete (Butachlor) technical the chemical imported by the petitioner in 1990 to be used in the manufacture of herbicide falls within the aforequoted exemption as it can be categorized as a "chemical for the formulation of pesticides". In fact the term "pesticides" as defined by Section 3 of P.D. 1144 comprehends the substance herbicide, thus:

> Section 3. *Definitions*. For the purpose hereof, the terms herein below shall be understood to mean as follows:

> a) "Pesticides" - any substance or product, or mixture thereof, including active ingredients, adjutants, and pesticide formulations, intended to control, prevent, destroy, repel or mitigate directly or indirectly, any pest. The term shall be understood to include insecticide, fungicide, bactericide, nematocide, <u>herbicide</u>, molluscide, avicide, rodenticide, plant regulator, defoliant, desceciant and the like. (Underscoring supplied)

Respondent Commissioner himself agrees with the proposition of petitioner when he ruled in VAT Ruling No. 197-90 that the importation of Butachlor Technical Minimum is exempt from VAT in accordance with Section 103(c) of the Tax Code provided that "the Fertilizer and Pesticides Authority (FPA) will certify that the same will be used for agricultural purposes" (supra). However, We cannot grant the total amount claimed in this petition for review as a careful analysis of the records and the evidence submitted by the petitioner reveal that there are several payments made by the petitioner that are barred by prescription, hence can no longer be the subject of the claim for refund. It should be noted that claims for refund of erroneously paid taxes must be made within two years from the date of payment in accordance with Section 230 of the Tax Code, thus:

> **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 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 of Internal Revenue; 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 (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

This petition for review was filed on July 9, 1992 therefore the following payments of value-added taxes made prior to July 9, 1990 have prescribed and can no longer be included in the amount to be awarded by this Court thus:

Date of Shipment	Import Entry No.	Exh.	VAT Paid	Date of Payment	Exh.
04-25-90	279070	J	₱527,267.00	05-27-90	M
05-25-90	289874	D	398,786.00	06-04-90	F
06-15-90		P	533,805.00	06-22-90	R

Moreover, Official Receipt No. 1901748 of the Bureau of Customs offered by the petitioner as Exhibit "W" does not indicate any value-added tax having been paid on the importation of herbicide under Import Entry No. 324252. What has been noted in this official receipt is the payment of advance sales tax, hence the amount indicated therein cannot be included.

Among the various documents submitted by the petitioner, it is only the value-added tax paid on the importation covered by Import Entry No. 304581 and evidenced by the Bureau of Customs' Official Receipt No. 1939434 (Exhibit "BB-1") in the amount of P423,992.00 that can be allowed as refund of erroneously paid value-added taxes.

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner, the amount of P423,992.00 representing erroneously paid value-added taxes.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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
ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals