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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3637

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

D E C I S I O N

This case involves originally a claim for refund in the amount of P37,992,879.00 representing the 10% manufacturer's tax imposed under Section 199 in relation to Section 193 of the National Internal Revenue Code for the years 1981, 1982 and the first quarter of 1983. The petitioner, however, recovered portion of said refund through a subsidy scheme of the government, thus its petition for review, reducing its original claim for refund to P6,898,380.00.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at PPI Building, Esteban St., Legaspi Village, Makati, Metro Manila; while respondent Commissioner of Internal Revenue is authorized as such to represent the government of the Republic of the Philippines, who hold office at the B.I.R. Building, Diliman, Quezon City, where he may be served with summons and other court processes (*Paragraph I Amended Answer, pp. 61 and 83, CTA rec.*).

Petitioner is engaged in the business of manufacturing and selling fertilizer and used to pay, among others, the 10% manufacturing tax pursuant to Section 199, in relation to Section 193 of the Tax Code. (*Paragraph II, Amended Petition for Review; admitted in paragraph I, Amended Answer, pp. 61 and 63, CTA rec.*)

For the first, second, third and fourth quarters of the year 1981, as well as for the year 1982, and the first quarter of 1983, petitioner filed its percentage tax returns and reflected its quarterly taxes thereto which petitioner paid to the respondent in the total sum of P37,992,879.00 covering the aforesaid years. (*Exhs. B, B-1, B-2, B-3, C, C-1, C-2, C-3, D, D-1, D-2, D-3, E, E-1, E-2, E-3, F, F-1, F-2, F-3, G, G-1, G-2, G-3, H, H-1, H-2, H-3, I, I-1, I-2, I-3, J, J-1, J-2 and J-3, pp. 113-114, CTA rec.*)

Sometime in February 1983, petitioner through its president, Mr. Alfredo Montelibano, requested for a ruling from Acting Minister of Finance, Alfredo Pio de Roda, Jr., as to whether or not petitioner is subject to manufacturer's tax of 10% imposed by the Tax Code. (*See paragraph 3 of the latter's Exhibit K dated May 4, 1983, p. 145, CTA rec.*)

On April 12, 1983, the said Acting Finance Minister issued a ruling to the effect that petitioner, being a local fertilizer manufacturer, is exempt from the payment of the 10% manufacturer's tax under the National Internal Revenue Code pursuant to Section 6(II-5) of Presidential Decree No. 1144 (*Exhibit A, pp. 111-112, CTA rec.*) and for ready reference said ruling is hereby quoted below:

Republic of the Philippines
MINISTRY OF FINANCE
Office of the Minister
Manila

April 12, 1983

Mr. Alfredo Montelibano
President
Planters Products, Inc.
Planters Products Building
Esteban St., Legaspi Village
Makati, Metro Manila

S i r :

This has reference to your request for a ruling on the tax exemption privileges granted to the Fertilizer and Pesticide Authority (FPA) under Presidential Decree No. 1144 as it applies to the fertilizer industry. The issues raised are as follows:

> "1. Whether or not the sale of locally-produced fertilizer is exempt from the payment of manufacturer's tax of 10%; and
>
> 2. Whether or not the local purchase of refinery gas from BRC is tax exempt from specific tax and company duties, just like naptha.
>
> 3. Whether or not industrial diesel oil and industrial fuel oil are likewise exempt from specific taxes, duties and other government imposts - it being a basic input to local manufacturing of fertilizer."

These issues were raised in connection with the request of your company and Atlas Fertilizer Corporation (AFC) for tax exemption pursuant to Section 6(II-5) of Presidential Decree No. 1144, which reads as follows:

> "To import fertilizer and fertilizer inputs exempt from custom duties, compensation and sales taxes and all other taxes, and to purchase naptha locally, free from specific taxes and the corresponding duty on the imported crude, and to sell and convey such fertilizer or fertilizer input to any individual, association from the payment of custom duties and all other taxes."

From the above-quoted provision of law, it is very evident that the purpose

> of the exemption is to provide the much-needed incentive to local fertilizer manufacturers. Fertilizer is a vital input to all the government's production program. Cognizant with the underlying purpose of Section 6(II-5) as above-stated, this Ministry believes that local fertilizer manufacturers are exempted from payment of 10% manufacturer's tax imposed by the National Internal Revenue Code. This conclusion is supported by the language of the law granting the exemption which in referring to the exemption uses the broad and all encompassing phrase "customs duties and all other taxes."
>
> With respect to the local purchase of refinery gas which is a substitute to naptha, the same is exempted from the payment of specific tax. Likewise, diesel oil and industrial fuel oil which are basic inputs to the manufacture of fertilizer are exempt from customs duties and taxes pursuant to Section 6(II-5) from Presidential Decree No. 1144.
>
> Very truly yours,
>
> ALFREDO PIO DE RODA, JR.
> Acting Minister

On the basis of the aforesaid ruling, petitioner requested respondent for the refund of the amount of P37,992,879.00 representing the 10% manufacturer's tax paid by it covering the aforesaid years 1981, 1982 and the first quarter of 1983. (*Exhibit K*, pp. 145-147) The said claim for refund, not having been acted upon by respondent, petitioner, on May 24, 1983, interposed its appeal to the Court. (*Petition for Review, p. 1, CTA rec.*)

During the pendency of this case, petitioner had applied for the fertilizer cash subsidy scheme (*Exhibit L, pp. 148-151, CTA rec.*) thereby reducing its claim for refund from P37,992,879.00 to P6,858,380.00. The latter figure is not covered by the subsidy scheme of the government. (*Respondent's memo, p. 192, CTA rec.; Petitioner's memo, p. 181, CTA rec.*) Hence, petitioner requested for a tax credit or refund in the aforesaid balance of P6,858,380.00 in its favor. (*Exhibit M, p. 154, CTA rec.*) In view of this reduced claim for tax credit, petitioner, on October 30, 1985, filed an Amended Petition for Review merely on the reduced amount of P6,858,380.00 (*See pp. 61-65, CTA rec.*) and on April 8, 1986, respondent Commissioner of Internal Revenue filed its Amended Answer and raised the following Special and Affirmative Defenses (*pp.84-85, CTA rec.*), to wit:

> "5. Petitioner's claim for refund/tax credit is pending investigation;

6. Refund of manufacturer's tax paid prior to May 24, 1981 has already prescribed;

7. the Minister of Finance, only upon recommendation of the Commissioner of Internal Revenue, is authorized by law, to issue and promulgate rules and regulations concerning National Internal Revenue Taxes (*Section 326, NIRC*). Here, there is no showing that the Commissioner of Internal Revenue recommended issuance of the ruling dated April 12, 1983, to the effect that local fertilizer manufacturers are exempt from the 10% manufacturer's tax;

8. Moreover, as a rule, revenue rules, rulings and regulations are prospective in operation unless the intent that the same are to operate retrospectively is distinctly expressed;

9. Taxes are presumed to have been collected in accordance with law;

10. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 296 of the Tax Code;

11. Claims for refund or tax credit are strictly construed against claimants since a claim for refund or tax credit is in the nature of exemption from taxation. (***Commissioner of Internal Revenue vs. Ledesma***, *L-17509, January 30, 1970, 31 SCRA 95*) A refund partakes the nature of exemption and the same cannot be allowed unless granted in the explicit and categorical language (***Resin, Inc. vs. Auditor General***, *L-17888, October 29, 1968, 25 SCRA 754*)."

Before Us for resolution is whether or not petitioner is entitled to tax credit and/or a refund in the amount of P6,858,380.00 paid as manufacturer's tax.

Respondent does not question the mathematical computation of petitioner's claim for refund. However, petitioner's basis on its claim for refund is being questioned by respondent. The ruling of the Ministry of Finance, through Acting Minister, Alfredo Pio de Roda, Jr., was allegedly issued without the recommendation by the Commissioner of Internal Revenue required under Section 326 of the Tax Code.

For ready reference, the said Section 326 of the Tax Code relied upon by respondent in support of his contention is hereby quoted as follows:

> "Sec. 326. Authority of Secretary of Finance to promulgate rules and regulations. - The Secretary of Finance, upon recommendation of the Commissioner shall promulgate all needful rules and regulations for effective enforcement of the provisions of this Code.
>
> The authority of the Secretary of Finance to determine articles similar or analogous to those subject to a rate of sales tax under a certain category enumerated in Sections 194, 196 and 197 of this Code shall without prejudice to the power of the Commissioner of Internal Revenue to make implementation of the provisions of internal revenue laws, including ruling on the classification of article for sales tax and similar purposes." *(As amended by P.D. 1457)*

We find respondent's contention without merit. The said provision is not applicable to the case at bar. Section 326 (*now Section 245*) of the Tax Code refers to rules and regulations promulgated by the Secretary of Finance in the exercise of administrative power necessary to the proper enforcement and execution of laws. These rules and regulations are intended to carry into effect the general provisions of the Tax Code through supplementation of the details of administration and procedure and to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of the Department. Upon the other hand, rulings are the less general interpretations of tax laws in the form of "opinions" on tax questions meant to clarify certain provisions therein. Rulings or opinions are in the nature of substantive rules.

Hence, the exercise of administrative power by the Secretary of Finance through the adoption of certain rules and regulations providing for the detail of the management and control of his department has been construed in relation to Section 79(B) of the Administrative Code.

(*Interprovincial Autobus Co., vs. Collector of Internal Revenue*, *98 Phil. 291, 294, 1956, Citing other cases*) Moreover, it is noteworthy that one of the requisites for a valid regulation which is the requirement of publication in the Official Gazette (*Lim Hoa Ting vs. Central Bank*, *104 Phil. 573, Sec. 551, Revised Administrative Code*) is not applicable to an "opinion" or ruling. Just as well, the impracticability and unsoundness of the contention of respondent becomes more obvious in the light of the rule that rulings of the Commissioner of Internal Revenue may be revoked by the Secretary of Finance if the latter finds them not in accordance with law. (*Section 327, now Section 246 of the Tax Code*, ***Hilado v. Collector of Internal Revenue***, *100 Phil. 288, 1956*) Logically then, the Secretary of Finance need not await the recommendation of the Commissioner of Internal Revenue where he makes rulings, either to reverse the latter or on his own as in this case.

It is asserted by respondent that the ruling of the Ministry of Finance is erroneous. The tax exemption privilege provided under Section 6(II-5) of P.D. 1144 allegedly refer to transactions only of the FPA on importations of fertilizer and fertilizer inputs, purchase of naptha locally and sale of conveyances of fertilizer or fertilizer inputs to any individual, association or corporation. Nothing is said in the decree about exempting local fertilizer manufacturers from the payment of 10% manufacturer's tax nor does the decree speak of granting incentives to local manufacturers.

A careful reading of the decree (*P.D. 1144*) and examination of the records of this case, however, prove otherwise. The Fertilizer and Pesticide Authority (FPA) was created to regulate, control and develop both the fertilizer and the pesticide industries. Pursuant to this purpose, Section 6(I-7) and Section 8(a) of the decree provides for authority to the FPA "to delegate such selected privileges, powers or authority as may be allowed by law to corporations, cooperative, associations or individuals to assist the FPA in carrying out its functions" and "to issue licenses for "handlers" of pesticides, fertilizer and other agricultural chemicals or for any farmer, planter or end-user of the same as the case may be to engage in any form of production, importation, distribution, storage and sale in commercial quantities", respectively. (*Underscoring supplied*) As a result, Section 6(II-5) alludes to the existence of individuals, associations, or corporations granted the privilege of tax exemption as the said section, in outlining the powers and functions of the FPA, speaks in this wise: "to import fertilizer and fertilizer inputs exempt from customs duties, compensating and sales taxes and all other taxes, and to purchase naptha locally free from specific taxes and the corresponding duty on the imported crude, and to sell or convey such fertilizer or fertilizer input to any individual, association, or corporation likewise exempt from the payment of customs duties and all other taxes" (*Underscoring supplied*).

One such "handler" is the petitioner. In its amended petition, petitioner avers, and this was not contested by respondent, that it sold fertilizer products at prices set by the FPA under a no-gain no-loss basis or "loss-reimbursement scheme" where the government reimbursed its losses, and later, even modified this subsidy scheme by allowing for a reasonable return for petitioner's fertilizer operation. The Fertilizer Cash Subsidy Scheme, as embodied in *Exhibit L*, shows not only

70

the mechanism of the cash subsidy scheme but also proves the intent of government to give to authorized fertilizer companies other incentives, aside from the tax exemption privilege at issue in this case.

Section 6(I-7) of the decree contravenes the proposition of the respondent that the decree does not show any intent to provide incentives to local manufacturers of fertilizer. As had been stated, said section provides for the power of the FPA to delegate privileges to corporations that assist the FPA in its functions. Thus, the fact that petitioner was licensed by the FPA to engage in the production and sale of fertilizer under Section 8(a) of the decree means that the former could as well enjoy the privileges mentioned by Section 6 (I-7), which would include exemption from customs duties and all other taxes.

The FPA regulated the fertilizer industry by setting "ceiling prices" for fertilizer in a no-gain no-loss basis, modified only after May 21, 1982 (*Exhibit L-1*) to allow for reasonable return in the operation of petitioner. It merely delegated the function of selling, producing and importing fertilizer to authorized "handlers".

Under these circumstances it is but proper, therefore, that if the FPA issued the license to sell and produce fertilizer to petitioner, it also delegated to the latter its privileges as incentive.

Indeed, We have reason to favor the opinion of the Minister of Finance who construed the tax exemption as part of the incentive because he had in his hand the knowledge of the operations of the FPA, being a member of the Board of Directors therein (*Section 1, P.D. 1144*). It was within his competence to infer, albeit correctly, that petitioner could enjoy the tax exemption as part of the incentive to local fertilizer manufacturers/ Here, his contemporaneous construction of the statute as the executive officer whose duty is to enforce the law deserves great respect from this Court. (***Tan v. Mun. of Pagbilao***, *Quezon, L-14264, April 30, 1963, 7 SCRA 887*)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or issue a tax credit in favor of Planters Products, Inc., in the amount of P6,858,380.00 representing the 10% manufacturer's tax paid by petitioner under the Tax Code.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 10, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(on leave)
ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals