REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

C.T.A. CASE NO. 6373

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF THE BUREAU OF CUSTOMS and the ONE-STOP SHOP INTER AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER,
Respondents.

Promulgated:

AUG 04 2006

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DECISION

BAUTISTA, L., J.:

This Petition for Review seeks the reversal and setting aside of the denial by respondent One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of petitioner's claim for duty drawbacks in the amount of ONE HUNDRED EIGHTY FIVE MILLION THREE HUNDRED ONE THOUSAND SEVEN HUNDRED SEVENTY SIX PESOS (₱185,301,776.00) corresponding to the special additional levy imposed under Executive Order No. 115.

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The following are the uncontroverted facts:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with address at the Shell House, 156 Valero Street, Salcedo Village, Makati City.

Respondent *Commissioner of Customs* ("Respondent Commissioner") is the head of the Bureau of Customs ("BOC"), the government agency tasked with the function of assessing and collecting duties, fees and other charges under the Tariff and Customs Code of the Philippines ("TCCP") and the enforcement of provisions of the TCCP and related laws, rules and regulations governing, among others, the grant of refund of duties, or duty drawbacks.

Respondent *One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center* (the "Center") is a government unit created pursuant to Administrative Order No. 266 ("AO 266") tasked to process applications or claims for tax credits and duty drawbacks for and in behalf of respondent *Commissioner* with respect to duties, fees and charges under the TCCP.

Petitioner is engaged in the business of marketing petroleum products, which it refines from imported crude oil. Such importations are subject to the payment of duties, fees and other charges under the TCCP.

Pursuant to Section 106(c) of the TCCP, petitioner is entitled to a refund or tax credit corresponding to duties paid on imported crude oil which is refined and thereafter exported (said refund or tax credit is referred to as "duty drawback"). As such, petitioner has been claiming, and granted, duty drawbacks on its export sales of petroleum products, as well as sales thereof to international carriers ("international sales"), which are considered exports.

Petitioner paid the special duty imposed by Executive Order No. 478 ("Estanislao Levy") on its importations of crude oil and oil products.[1]

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1 "Imposing Special Duties On Crude Oil And Oil Products Under Section 104 Of The Tariff And Customs Code Of The Philippines, As Amended." It reads:

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Petitioner included the Estanislao Levy and later a similar special duty imposed by Executive Order ("E.O.") No. 115 (the "Leung Levy")[2] in its claims for duty drawback on its export sales and international sales.[3]

The *Center* approved and paid all the duty drawback claims of petitioner on the Estanislao levy, but for a time deferred action on similar claims on the Leung Levy and, later, denied the same.

During the period January 3, 1994 to June 17, 1994, petitioner filed with the *Center* claims for duty drawback totaling ₱270,136,430.00 on its export and international sales for the period October 28, 1993 to March 31, 1994. Of this total claim, the amount of ₱152,593,159.00 was approved and paid by the *Center* corresponding to the regular duty and the Estanislao Levy while the balance of ₱117,543,271.00 in claims was disallowed, which corresponded to petitioner's claims on the special duty imposed by E.O. No. 115 or the Leung Levy. The details are as follows:

> SECTION 1. A special duty of P0.95 per liter or P151.05 per barrel on imported crude oil falling under Hdg. No. 27.09 and P1.00 per liter on imported oil products falling under Hdg. Nos. 27.10 and 27.11 of Section 104 of the Tariff and Customs Code of the Philippines, as amended, and listed in Annex "A" hereof shall be levied in addition to the existing ad valorem rates imposed on these articles.
>
> SECTION 2. Upon the effectivity of this Executive Order, the articles listed in Annex "A" hereof when entered or withdrawn from warehouses in the Philippines for consumption shall be subject to the additional rates of duty prescribed therein.

2 The two forms of levies were respectively named after the incumbent Secretary of Finance at the time of their imposition.

3 Executive Order No. 115 ("*Increasing the Special Duties of Crude Oil and Oil Products Under Section 104 of the Tariff and Customs Code of the Philippines, As Amended*") reads:

> SECTION 1. A special duty of P1.90 per liter or P302.10 per barrel on imported crude oil falling under Hdg. No. 27.09 and P2.00 per liter on imported oil products falling under Hdg. Nos. 27.10 and 27.11 of Section 104 of the Tariff and Customs Code of the Philippines, as amended, and listed in Annex "A" hereof shall be levied in addition to the existing ad valorem rates imposed on these articles.
>
> SECTION 2. Upon the effectivity of this Executive Order, the articles listed in Annex "A" hereof when entered or withdrawn from warehouses in the Philippines for consumption shall be subject to the new additional rates of duty prescribed therein.
>
> SECTION 3. The special duties imposed by Executive Order No. 478 on crude oil and imported oil products are hereby amended.

Pursuant to 106(c) of the TCCP

CLAIM NO.	PRODUCT EXPORTED	EXPORT DATE	TOTAL AMOUNT OF CLAIM	DATE FILED	AMOUNT NOT GRANTED EQUIV. TO LEUNG PESO SPECIAL LEVY
4882	NAPTHA	28-Oct-93	11,798,792.00	3-Jan-94	5,188,148.00
4885	AVTUR/GASOIL/FUEL OIL	Nov-93	33,668,276.00	24-Jan-94	14,757,783.00
4886	NAPTHA	4-Nov-93	13,663,358.00	2-Feb-94	6,008,060.00
5834	NAPTHA	14-Nov-93	11,834,357.00	3-Feb-94	5,204,172.00
5911	AVTUR/GASOIL/FUEL OIL	Dec-93	30,035,259.00	11-Feb-94	13,034,617.00
5893	NAPTHA	20-Dec-93	14,665,490.00	9-Feb-94	6,386,013.00
6061	AVTUR/GASOIL/FUEL OIL	Jan-94	31,610,332.00	11-Mar-94	13,676,361.00
6062	NAPTHA	19-Jan-94	30,286,946.00		13,103,791.00
6462	NAPTHA	25-Jan-94	14,886,955.00		6,440,909.00
6065	NAPTHA	31-Jan-94	20,207,303.00	15-Mar-94	8,742,786.00
6943	AVTUR/GASOIL/FUEL OIL	Feb-94	31,292,846.00	12-May-94	13,547,104.00
5889	NAPTHA	8-Feb-94	12,487,856.00		5,406,165.00
6951	NAPTHA	31-Mar-94	13,698,660.00	17-Jun-94	6,047,362.00
			P 270,136,430.00		P 117,543,271.00

In addition to its business of marketing petroleum products, petitioner used to sell feedstock (a residual product after crude oil undergoes the refining process) to its former subsidiary, the Philippine Petroleum Corporation (subsequently named as Shell Philippine Petroleum Corporation). The latter company was entitled to duty drawbacks with respect to the duty component of the feedstock it used to produce into base oil and other products for its export sales.[4]

On February 10, 1994 to May 20, 1994, Philippine Petroleum Corporation ("PPC") filed with the *Center* claims for duty drawback totaling ₱154,581,621.00 with respect to its export sales during the period November 1993 to March 1994. Only a total of ₱86,823,116.00, corresponding to regular duty and special duty imposed under E.O. No. 478 or the Estanislao Levy, was approved and paid by the *Center*, while the balance of ₱67,758,505.00, corresponding to the special duty imposed under EO 115 or the Leung Levy, was disallowed. Thus:

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[4] By virtue of Section 106(c) of TCCP and its Certificates of Registration No. 69-100 and 80-864 granted under R.A. No. 5186.

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Pursuant to RA 5186

CLAIM NO.	PRODUCT EXPORTED	EXPORT DATE	TOTAL AMOUNT OF CLAIM	DATE FILED	AMOUNT NOT GRANTED EQUIV. TO LEUNG PESO SPECIAL LEVY
5915	BASEOIL/SPINDLE OIL	Nov-93	P 17,664,256.00	10-Feb-94	P 7,745,218.00
5913	BASEOIL/SPINDLE OIL	Dec-93	16,704,561.00	11-Feb-94	7,326,889.00
8087	BASEOIL/SPINDLE OIL	Feb-94	17,335,780.00	30-May-94	7,549,284.50
8586	BASEOIL/SPINDLE OIL	Mar-94	12,673,478.00	27-Jun-94	5,594,782.50
8583	BASEOIL	Apr-94	59,314.00	21-Jun-94	26,184.50
6170	WAX	Nov-93	185,357.00	2-Mar-94	81,273.00
6427	WAX	Dec-93	126,681.00	20-May-94	55,608.00
8088	WAX	Feb-94	311,244.00	30-May-94	135,375.00
8584	WAX	Mar-94	62,945.00	31-May-94	27,787.50
5914	EXTRACTS	Dec-93	1,434,851.00	10-Feb-94	629,137.00

Pursuant to Section 106(c) of the TCCP

6429	ASPHALT	Dec-93	260,750.00	13-Apr-94	114,459.00
8086	ASPHALT	Jan-94	255,380.00	31-May-94	111,077.00
8582	ASPHALT	Mar-94	1,044,004.00	21-Jun-94	456,000.00
6467	FUEL OIL	Nov-93	66,705,203.00	20-May-94	29,248,122.84
6466	EXTRACTS	Dec-93	19,757,817.00	20-May-94	8,657,308.00
			P 154,581,621.00		P 67,758,505.84

On July 1, 1994, PPC merged with petitioner. The latter was the surviving entity and, thus, acquired the property rights of the dissolved PPC. The *Center* was duly notified of such merger.

The claims for duty drawbacks of petitioner were the subject of continuing discussions between petitioner and the *Center* for several years and the claims were formally denied by the *Center* in a letter dated November 27, 2001, which was received by the petitioner on December 7, 2001.

Hence, this petition.

The parties submitted the following issues for this Court's resolution:

1. Whether or not the Leung Levy (or the special duty imposed under E.O. No. 115) was imposed on all importations of crude oil of petitioner;

2. Whether or not petitioner paid the Leung Levy on its importations of crude oil during the time that said levy was in force;

3. Whether or not petitioner's claims for duty drawbacks on the Leung Levy have legal and factual basis.

   a. Whether or not the law allows duty drawbacks or tax credits for petitioner's payments on the Leung Levy on imported crude oil which it refined and subsequently, directly or through PPC, exported or sold to international carriers.

   b. If so, whether or not petitioner, directly or through PPC, exported or sold to international carriers the products to which the subject duty drawback claims pertain.

4. Whether or not the Leung Levy was paid by petitioner using certificates of reimbursement from the OPSF funds specifically designed to free the oil companies from shouldering the said levy; and

5. Whether or not, as a matter of practice and procedure, the Bureau of Customs had applied its Administrative Order No. 14-72 to importations of crude oil by the oil companies.

The crux of the case is the determination of whether petitioner's claims for duty drawbacks on the Leung Levy have legal and factual basis.

On July 24, 1993, then President Fidel V. Ramos issued Executive Order No. 115 (the "Leung Levy") imposing a special additional duty of P0.95 per liter on imported crude oil and P1.00 per liter on oil products made from September 1993 to December 1993. Because of the additional levy imposed on imported crude oil and oil products, the Department of Finance ("DOF") held consultations with oil companies and entered into an agreement. In his letter dated September 8, 1993 to the respective Presidents and CEOs of Caltex, (Phils.) Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation, Acting Secretary of Finance, Ernest C. Leung stated:

> "In our consultations with you, we have agreed that the additional levy should not impose an added working capital business on the industry. In this regard, we have designed a scheme that will address the adverse impact on working capital of the oil companies arising from the ₱1/liter levy.

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"As explained, domestic oil prices will not be affected by the imposition of the additional levy for duration of reimbursement from positive balances of OPSF. xxx."[5]

He further explained therein that the deferred payment scheme, which the DOF shall be implementing, wherein the BOC shall accept payment only after the oil companies have received their reimbursement from the OPSF.

Subsequently, the Energy Regulatory Board Resolution No. 93-16 was issued, which became the basis for the OPSF reimbursements, and it reads:[6]

WHEREAS, an examination and review of documents and papers pertaining to the oil companies' importations of crude during the period July – August, 1993 indicates that the actual average FOB cost thereof was $15.3158 per barrel, which was lower than the May – June, 1993 level of $16.4331 per barrel;

WHEREAS, the peso-dollar exchange rate of P28.25 per U.S. dollar falls within the range of from P28.00 – P29.00 a dollar expected by the Central Bank to the prevailing level for the period September – December of 1993;

WHEREAS, the Board has taken official notice of Executive Order (E.O.) No. 115 dated July 24, 1993, which imposed an additional special duty of P0.95 per liter on imported crude oil and P1.00 per liter on imported oil products except, among other products, fuel oil/feedstock thereby making the total special duty on crude oil and oil products P1.90 per liter and P2.00 per liter, respectively, as indicated in Annex "A" of the said E.O.;

WHEREAS, the P1.90 per liter special duty on imported crude oil is equivalent to P2.00 per liter duty on products;

WHEREAS, when considered along with the aforementioned lower FOB cost of crude and higher peso-dollar exchange rate, the additional special duty of P1.00 per liter of product, which became effective on August 27, 1993, would necessitate an immediate increase in the wholesale posted and pump/retail prices of petroleum products unless the increased cost resulting from the imposition of such additional special duty is, in the meantime, reflected as an increase in the netback of the oil companies and a corresponding adjustment in the Oil Price Stabilization Fund (OPSF) component of the petroleum price build-up is made;

WHEREAS, the OPSF was established to absorb fluctuations in crude and products importation cost in order to minimize frequent changes in the prices of petroleum products sold locally or maintain the stability of such prices for as long a period as possible;

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5 Exhibit 1.
6 Dated September 22, 1993.

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WHEREAS, the exemption of fuel oil/feedstock from the aforesaid special duty imposition may adversely affect locally produced fuel oil/feedstock since the raw materials from which such fuel oil/feedstock were produced have been subjected to a special import duty on crude oil of P1.90 per liter, thereby rendering the price of locally-produced fuel oil/feedstock uncompetitive;

WHEREAS, there is a need to apply the P1.90 per liter special duty on imported crude oil as P2.00 per liter special duty to all products across-the-board to make the price of locally-produced fuel oil/feedstock competitive.

WHEREFORE, considering the foregoing, and pursuant to Letter of Instructions No. 1441 dated November 20, 1984, this Board hereby orders an increase in the oil companies' existing netback on the different petroleum products by an average amount of EIGHTY TWO POINT ZERO NINE CENTAVOS (P0.8209) per liter of product effective September 1, 1993. This amount shall be reflected in the OPSF component of the resulting price build-up and allocated among the various petroleum products, as follows:

xxx xxx xxx

The Board further directs that the P1.90 per liter special duty on imported crude oil be applied as P2.00 per liter special duty among the different petroleum products across-the-board. Furthermore, all importations of fuel oil and other similar products identified as feedstock, slop oils and used/waste recyclable oils, which are exempt from the special duty imposition under E.O. 115, shall be subject to a two-peso (P2.00) per liter contribution/payment to the OPSF, such contribution/payment to be made at the time of the withdrawal of such products from warehouse in the Philippines for consumption, based on net oil content.

In instances where the ERB-determined OPSF impost is negative, importers who are not qualified to withdraw/claim from the OPSF shall be required to contribute/pay thereto only the difference between the two-peso (P2.00) per liter special duty rate and the negative OPSF impost, provided, however, that the said deductible negative impost shall in no case exceed P2.00 per liter.

Remittance of the aforesaid OPSF contribution shall be made to the Department of Energy in accordance with existing guidelines.

The reimbursements received from the OPSF shall be used by the oil companies to remit payment for the additional levy to the BOC. This is clear from Acting Secretary Leung's letter dated September 8, 1993. To quote:

3) Cognizant of the possible delays in OPSF reimbursement, the Bureau of Customs shall be flexible and accept payments only after the oil companies have received their reimbursements from the OPSF, provided that the oil companies submit an affidavit, to be attested by the Department of

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Energy, stating that OPSF reimbursement has not been received yet. On the other hand, if the OPSF reimbursement is made before the 15th day of the second month following the month of arrival, the oil companies shall remit payment to the Bureau of Customs within five days after receipt of the reimbursement.

Thus, the oil companies obtained reimbursements from the OPSF in the amount equal to the volume of importations during the period when the "Leung Levy" was in effect. Respondent's evidence[7] shows that petitioner received reimbursements from the OPSF in the aggregate amount of P1,817,589,024.13, broken down as follows:

DOE DV	Exhibit No.	DOE Check No.	Date	Exhibit No.	PSPC OR No.	Date	Exhibit No.	Amount
151-93-10-104	**14**	349976	10/29/93	**9**	38252	10/29/93	**19**	489,726,794.27
151-93-12-115	**15**	349985	12/9/93	**10**	38254	10/12/93	**20**	479,104,585.69
152-93-12-119	**16**	349990	12/23/93	**11**	46792	12/27/93	**21**	443,279,107.42
151-94-03-014	**17**	350012	3/14/94	**12**	38260	3/15/94	**22**	78,650,786.82
151-94-03-020	**18**	350017	3/28/94	**13**	38262	3/28/94	**23**	326,827,749.93
TOTAL								**1,817,589,024.13**

We do not agree with petitioner that the OPSF could not be used to pay the Leung Levy. The Oil Price Stabilization Fund ("OPSF") was created for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or an increase in world market prices of crude oil and imported petroleum products. It shall be used to reimburse the oil companies for cost increases on crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil. And, funds may be drawn from the Trust Account only for the following purposes:

> 1) To reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil;
>
> 2) To reimburse the oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. The magnitude of the underrecovery, if any, shall be determined by the Ministry of Finance. 'Cost underrecovery' shall include the following:

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7 Various checks issued by the DOE to petitioner, the related disbursement vouchers of the DOE and official receipts issued by petitioner to DOE

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i. Reduction in oil company take as directed by the Board of Energy without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;

ii. Reduction in internal *ad valorem* taxes as a result of foregoing government mandated price reductions;

iii. Other factors as may be determined by the Ministry of Finance to result in cost underrecovery.[8]

In a Resolution in *Citizens' Alliance for Consumer Protection vs. Energy Regulatory Board, Caltex Philippines, Inc., Pilipinas Shell Petroleum Corporeation and Petrophil Corporation* (G.R. Nos. 78888-90; 79501-03 and 79590-92, June 23, 1988), the Supreme Court *En Banc* declared:

> "xxx The OPSF was established precisely to protect local consumers from the adverse consequences that such frequent oil price adjustments may have upon the economy. Thus, OPSF serves as a pocket, as it were, into which a portion of the purchase price of oil and petroleum products paid by consumers as well as some tax revenues are inputted and from which amounts are drawn from time to time to reimburse oil companies, when appropriate situations arise, for increases in, as well as underrecovery of, costs of crude importation. The OPSF is thus a buffer mechanism through which the domestic consumer prices of oil and petroleum products are stabilized, instead of fluctuating every so often, and oil companies are allowed to recover those portions of their costs which they would not otherwise recover given the level of domestic prices existing at any given time. To the extent that some tax revenues are also put into it, the OPSF is in effect a device through which the domestic prices of petroleum products are subsidized in part. xxx"

In the case of *Maceda vs. Energy Regulatory Board, et al.* (G.R. Nos. 95203-05, December 18, 1990), the Supreme Court emphasized:

> "The OPSF, as the Court held in the aforecited CACP[9] cases, must not be understood to be a funding designed to guarantee oil firms' profits although as a subsidy, or a trust account, the Court has no doubt that oil firms make money from it. As we held there, however, the OPSF was established precisely to protect the consuming public from the erratic movement of oil prices and to preclude oil companies from taking advantage of fluctuations occurring every so often. As a buffer mechanism, it stabilizes domestic prices by bringing about a uniform rate rather than leaving pricing to the caprices of the market."

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[8] E.O. No. 137

[9] Citizens Alliance for Consumer Protection

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Clearly, from the foregoing, the OPSF may be used to reimburse oil companies the additional levy imposed by E.O. 115 on crude oil and other oil products for local consumption.

Petitioner also argues that it paid the Leung Levy. However, the Court is not persuaded. If the evidence touching a disputed fact is equally balanced, or if it does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail.[10] The petitioner's mere assertion, that it used its own checks against its own bank deposits, is not sufficient. Petitioner must show that it did not receive reimbursements from the OPSF on the subject importations or that its claim for duty drawbacks covers an entirely different importation/s of crude oil and oil products.

Now, is petitioner entitled to a duty drawback? The Court holds in the negative.

Section 106(c) of the Tariff and Customs Code reads:

> *(c) On Articles made from Imported Materials.* – Upon exportation of articles manufactured or produced in the Philippines, including the packing, covering, putting up, marking or labeling thereof either in whole or in part of imported materials for which duties have been paid, refund or tax credit shall be allowed for the duties paid on the imported materials so used including the packing, covering, putting up, marking or labeling thereof, subject to the following conditions:
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> 1. The actual use of the imported materials in the production or manufacture of the article exported with their quantity, value, and amount of duties paid thereon, having been established;
> 2. The duties refunded or credited shall not exceed one hundred (100) percent of duties paid on the imported materials used;
> 3. There is no determination by the National Economic and Development Authority of the requirement for certification on non-availability of locally-produced or manufactured competitive substitutes for the imported materials used at the time of importation;
> 4. The exportation shall be made within one (1) year after the importation of materials used and claim of refund or tax credit shall be filed within six (6) months from the date of exportation;

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10 Francisco, *Evidence*, 1994 ed., p. 555.

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> 5. When two or more products result from the used of the same imported materials, an apportionment shall be made on its equitable basis.
>
> For every application of a drawback, there shall be paid to and collected by the Bureau of Customs as filing, processing and supervision fees the sum of Five Hundred Pesos (₱500.00) which amount may be increased or decreased when the need arises by the Secretary of Finance upon the recommendation of the Commissioner of Customs.

A "drawback," as held in *Uy Chaco Sons vs. Collector of Customs,*[11] is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign markets upon the same terms as if it had not been taxed at all.[12] And, under the above-quoted section, petitioner is entitled to a duty drawback provided that it is able to establish that the imported materials are actually used in the production or manufacture of the exported article.

In denying petitioner's duty drawback for the special additional duty imposed under E.O. 115, Assistant Secretary Antonio P. Belicena explained in a Memorandum he wrote for Undersecretary and Executive Director Juanita D. Amatong of the *Center* that:

> First. The Leung Levy was shouldered by the Oil Price Stabilization Fund (OPSF). Although it appeared on the Bureau of Customs (BOC) Official Receipts that the actual payments of Leung levy were made by the oil industry, it can be shown that the OPSF actually shouldered the burden of paying the Leung Levy, nay, it may even be demonstrated that the funds used to pay the Leung levy actually came straight from the OPSF.
>
> As may be seen from the scheme outlined by then Acting Secretary Leung, there was a provision for a 2-1/2 month lag period within which the oil industry may pay the Leung Levy, and that 2-1/2 month period corresponds to the date when the industry receives its reimbursements from the OPSF. It is only after that date (within five days from receipt of the reimbursements, according to the letter of Secretary Leung) that the Bureau of Customs may require the oil companies to pay the Leung levy. This facts concerning the payment of the Leung levy appear to be undisputed.
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> The oil industry however would want to put a wedge between the drawback claim and the OPSF reimbursement and that the OPSF reimbursement does not have any effect on the drawback claim. We find

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11 24 Phil. 548 [1913], citing *U.S. vs. Passavant* (169 U.S., 16; 42 L. ed., 646).

12 In *Black's Law Dictionary With Pronunciations*, 6th ed., drawback is defined as "an allowance made by the government upon the duties due on imported merchandise when the importer, instead of selling it here, re-exports it; or the refunding of such duties if already paid. This allowance amounts, in some cases, to the whole of the original duties; in others, to a part only."

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that the link connecting the two is clear and material, affecting as it does the very nature and essence of drawbacks.

Bouvier's Law Dictionary defined drawback as follows:

> Drawback – an allowance by the government to merchants on the re-exportation of certain imported goods liable to duties, which in some cases consist of the whole, or in others of a part, of the duties which had been paid upon the importation. Goods can thus be sold in a foreign market at their natural cost in the home market.

It has been held that the drawback is resorted to enable a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all, and that its object, partly, is to encourage domestic manufacturing.

In the instant claims however the oil industry, as stated earlier, <u>did not shoulder the cost of the Leung levy</u>. The OPSF did. It would not therefore serve the purpose and objective of the device in Customs law called drawback to grant claims of this circumstances would not only result in revenue foregone on the part of the government, but it would even incur actual loss to the extent of the drawback which may be granted the claimant. In other words, we would have a situation where drawback becomes a means for the merchant to gain additional funds from the government, at no expense to the merchant.

Now, it is a cardinal rule in statutory construction that the intent or spirit of the statute is within the statute. This rule is especially applicable where adherence to the letter would lead to absurdity, injustice, contradictions, or defeat the plain purpose of the act. Considering that the funds used to pay the Leung levy actually came from public funds, which is the nature of OPSF, it is rather productive of absurd consequences for the government to grant drawbacks which the government, itself, had shouldered. In granting drawbacks, the condition is that government impositions were shouldered by the merchant such that the goods would be less competitive in the international market unless the burden previously imposed on the goods be removed; and the drawback merely removes such imposition in order to make the goods competitive.

Here, we have a situation where the oil industry would extract drawbacks from the government, at no expense to the oil companies (because the OPSF fully settled the Leung levy) and at the expense of the government. Where drawback is merely intended to restore the merchant to the same terms as if he had not been taxed at all, the oil industry seeks to profit from the oil levy at the expense of the government. To pursue this line of argument of the oil industry, we will have a situation where taxation could become the cause of loss and ruin of the government. This situation that the oil companies would have us accept is rather absurb and unacceptable.

We have to remember that by taxation the government makes exactions for revenue in order to support their existence and carry out their

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legitimate purpose and that upon taxation depends the government's ability to serve the people for whose benefit taxes are collected.

Second. The reimbursements by the oil firms from the OPSF estop the oil firms from claiming that the oil imports subjected to Leung levy were used in the export of other oil products.

Per DOF Circular No. 2-86 and 4-86, only local sales are entitled to reimbursement from the OPSF. When the oil companies presented their claim for reimbursement with the OPSF, invariably, they would be required to submit the import documents corresponding to the oil for which they claimed reimbursement. As a matter of fact, the oil companies submitted the import documents for oil imports subjected to Leung levy. These circumstances under which the oil companies made their claim for reimbursement from the OPSF impact on the present claim of the oil companies. Their claim with the OPSF meant that the oil imports subjected to Leung levy were sold locally. If we take into account the statement of the Department of Energy that the OPSF settled in full the P1/liter Leung levy, we can say that the oil imports subject of the Leung levy were also sold locally *in toto*.

As a consequence of the foregoing, the oil firms are now estopped from using the import documents for the oil imports subject of the Leung levy in their drawback claims. As stated earlier, the oil firms, by presenting the import documents for the oil imports subjected to Leung levy, represented that these oil imports were sold locally. Having made such representation with the OPSF, the oil industry may not be allowed to claim before the Department of Finance another thing, that the oil import (or a part thereof) were exported.

While we have no difficulty in admitting the exportations, we have to screen the import documents which were previously presented before the OPSF for reimbursement. But the import documents for the oil imports subjected to the Leung levy were presented by the oil industry before the OPSF. It is now, the prerogative of the DOF-CENTER to reject such import documents used as supporting papers for the exportations made, and effectively deny the claim for drawback. In this case, import documents are inappropriate to support the exportations made.

Import documents are inappropriate where it could be shown that these import documents could not have been, legally or actually, the import documents for the oil imports used in producing or manufacturing the exported product. Thus, an import document with a date later than the date of the export date is an inappropriate document when the same is used to support the drawback claim for the earlier exportation. In the instant case, the oil industry presented import documents which were previously represent before the OPSF as the import documents for the oil imports subject of the Leung levy. By so making a representation with the OPSF, the oil industry will now be legally estopped from claiming that this import documents were also the import documents for the oil imports used in producing the export products for which it claimed for drawbacks. In fact, according to the Department of Energy in its letter of 15 June 1994,

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> had they (the oil companies) alerted the DOE to the fact that they would also claim duty drawback on these oil imports subjected to Leung levy, then the DOE would have reimbursed the oil companies based on the total imports volume net of exports therefrom.
>
> It is true that the TCCP or EO 226 grants drawbacks/tax credits on export sales, but the fact of exportation is not the only condition for such drawbacks/tax credits. It is necessary that appropriate documents be used to support the claims.[13]

Such report and recommendation is supported by both the Department of Energy and the Department of Finance. In a letter dated May 31, 1994 to DOE Director III Cesar Ramirez, DOF Assistant Secretary Antonio P. Belicena wrote:

> "We understand that oil companies are allowed to claim for reimbursement from the OPSF in the amount corresponding to the special levy they paid the Bureau of Customs for certain imported products covered by E.O. 115. Our initial impression is that oil companies may no longer be allowed to claim for duty drawback on the special levy for which they were reimbursed by the OPSF. This, we feel, would result to double payment for the same amount of special levy paid by the oil companies."[14]

In response, DOE Director III Cesar Ramirez wrote to DOF Assistant Secretary Antonio P. Belicena on June 15, 1994:

> "We support your view that there might be double payment if oil companies would be allowed to claim the aforementioned duty drawbacks considering that it was the OPSF which settled in full the ₱1/liter additional special levy based on the total oil imports volume from September 1 to December 31, 1993. It is noteworthy that the ten percent ad valorem duty and the original ₱1/liter special levy, wherein duty drawbacks could have been previously allowed in favor of oil companies, are different in the sense that the oil companies were the ones who paid them to the Bureau of Customs prior to withdrawal of crude oil imports from Customs custody and before the refined petroleum products derived therefrom were sold either in the local or international market.
>
> xxx xxx xxx
>
> "It is therefore, our belief that the duty drawbacks on foreign sales covering said period be accrued and immediately returned to the OPSF. Had we known beforehand that a portion of these oil imports would be exported, then we could have reimbursed the oil companies based on total imports volume net of exports therefrom."[15] (Underlining supplied.)

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13 Exhibit 5
14 Exhibit 3.
15 Exhibit 4.

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The Court agrees with the above findings. Petitioner cannot claim reimbursements from the OPSF and subsequently claim for duty drawbacks on the same imported products. Otherwise put, petitioner can no longer be allowed to claim for duty drawback on the special levy for which it was reimbursed by the OPSF. It can be seen from the above that it was the DOF that provided for a scheme wherein the oil companies shall receive "reimbursements" from the OPSF and the oil companies shall use the reimbursements to remit payments of the "Leung Levy". To allow petitioner to claim for duty drawback under Section 106(c) of the TCCP shall unduly prejudice the government.

It must be emphasized that the findings made by the concerned government agencies should be accorded respect, even finality, for the same were rendered within their fields of expertise or special technical knowledge and training.[16] They were able to scrutinize and verify petitioner's documents submitted in support of its claim; and they were in the best position to establish the validity of petitioner's claim.

Finally, We do not subscribe to the argument of petitioner that CAO No. 14-72 is not applicable.[17] CAO No. 14-72 was issued pursuant to the power of the Commissioner of the BOC to promulgate rules necessary to enforce the provisions of the customs laws. Petitioner's right to claim for duty drawbacks is determined by existing customs law, as well as rules and regulations issued for the enforcement thereof or related thereto.

Basic is the rule that petitioner has the burden of proof to establish its claim by the amount of evidence required by law,[18] which in this case is preponderance of evidence.[19] By "preponderance of evidence" is meant simply evidence which is of greater weight or more convincing than that which is offered in opposition to it. It means the weight, credit and

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16 *Bernardo vs. Court of Appeals*, 429 SCRA 285; *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers vs. San Juan De Dios Educational Foundation, Inc.*, 430 SCRA 193; *Globe Telecom, Inc. vs. National Telecommunications Commission*, 435 SCRA 110; *Office of the Ombudsman vs. Angeles*, 439 SCRA 260; *Hydro Resources Contractors Corporation vs. National Irrigation Administration*, 441 SCRA 614; and *Batelec I Electric Corporation, Inc. vs. Energy Industry Administrative Bureau*, 447 SCRA 482.

17 "Prescribing rules and regulations governing drawback under Section 106(b) of the Tariff and Customs Code of the Philippines."

18 Section 1, Rule 131, Revised Rules of Court.

19 Section 1, Rule 133, Revised Rules of Court.

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value of the aggregate evidence on either side and it is usually considered to be synonymous with the terms "greater weight of evidence" or "greater weight of the credible evidence;" probably the truth; or it is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[20] Simply put, by "preponderance of evidence" is meant that the evidence as a whole adduced by one side is superior to that of the other.[21]

The petitioner, in the instant case, failed to adduce such superior evidence necessary for this Court to grant its prayer for duty drawbacks. Respondents made a categorical statement that the Leung Levy was already reimbursed through the OPSF. Petitioner however did not present rebuttal evidence showing that the reimbursements it received from the Department of Energy did not include the Leung Levy[22] being claimed in the instant petition. Petitioner should have presented a reconciliation statement pertaining to the amounts it received as reimbursements from the OPSF and such other supporting documents wherein this Court can verify that indeed the reimbursements were only for the price adjustments and the levy on importations, which were subsequently sold in the local market.

A claim for refund is in the nature of exemption and, hence, construed in *strictissimi juris* against the taxpayer.[23] In the absence of a clear and convincing evidence showing that petitioner is entitled for claim for refund of duty drawback, the same should be denied.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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20 *Republic vs. Court of Appeals*, 204 SCRA 160 [1991]; and *New Testament Church of God vs. Court of Appeals*, 246 SCRA 266 [1995].

21 *Sapu-an vs. Court of Appeals*, 214 SCRA 701 [1992].

22 on crude oil and oil products it alleged to have subsequently exported

23 *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 332.

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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