REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHEMFIELDS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4362

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 28 1994

x - x

D E C I S I O N

The instant case arose out of the claim for issuance of tax credit filed by petitioner with respect to the unapplied advance sales taxes paid by it on various importations of pharmaceutical products and raw materials used in the manufacture of antibiotics for the year 1987.

Petitioner, Chemfields, Inc., is a domestic corporation duly organized and existing under the laws of the Philippines. It is mainly engaged in the manufacture and sale of antibiotics duly licensed and registered to operate as a BOI Registered Pioneer Enterprise under Republic Act No. 5186.

From May 14, 1987 to December 28, 1987, petitioner imported various chemicals and raw materials from different suppliers of pharmaceutical products abroad to be used in the manufacture of antibiotics such as Ampicillin and Amoxycillin. The corresponding customs duties, advance sales taxes and import processing fees were paid on these importation. With the advent of the Value Added Tax (VAT) in 1988, petitioner was not able to apply as tax credit from its sales tax the sum of P14,658,216.00, representing advance sales taxes paid for 1987 to the succeeding year 1988. An analysis of the unapplied advance sales tax for 1987 was presented by petitioner as follows:

	1985	1986	1987
I. SALES TAX DUE:			
NET SALES	127,123,454.00	111,038,005.29	170,592,491.42
SALES TAX THEREON	6,356,172.70	11,103,800.53	17,059,249.15
Less: BOI Exemption	(971,905.93)	(1,110,380.05)	(1,705,924.91)
NET SALES TAX DUE	5,384,266.77	9,993,420.48	15,353,324.24
II. CREDITABLE TAX			
CREDITABLE TAX ON CURRENT YEAR PURCHASES			
Local	340,418.61	613,096.12	1,191,383.35
Imported	9,160,378.00	10,301,754.00	21,602,174.00
TOTAL	9,500,796.61	10,914,850.12	22,793,557.85
BALANCE OF UNAPPLIED TAX TAX CREDIT OF PRIOR YEAR	1,766,506.46	6,296,553.36	7,217,982.90
TOTAL CREDITABLE TAX	11,267,303.07	17,211,403.48	30,011,540.75
III. PAYMENTS MADE DURING THE YEAR			
1st QTR 1985 CR # B6443054	413,517.06	0.00	0.00
IV. BALANCE OF UNAPPLIED TAX CREDIT	(6,296,553.36)	(7,217,982.90)	(14,658,216.51)

On June 29, 1988, petitioner requested the respondent to issue a tax credit for the unapplied Deferred Sales Tax Credit for 1987 in the amount of P14,658,216.51. Up to this date, respondent has not acted on that request except for a letter requiring petitioner to submit documentary evidence showing payment of the tax sought to be credited. Thus, on May 12, 1989, petitioner filed this petition for review praying that judgment be issued in its favor.

Respondent in answer to the petition alleged that the petition failed to state the dates when the alleged advance sales taxes sought to be credited were paid. She added that taxes paid prior to May 12, 1987 have prescribed for it was filed beyond the two-year prescriptive period to file a suit for the recovery of an erroneously or excessively collected tax, considering that the petition was filed on May 12, 1989. In claims for refund or tax credit of taxes, the burden of proof is on the taxpayer to show that it is entitled thereto for claims for refund/credit are strictly construed against the claimant it being in the nature of an exemption.

The sole issue to be resolved is whether or not petitioner is entitled to a tax credit of P14,658,216.00, representing the unapplied advance sales tax for the year 1987.

Section 162(c) of the National Internal Revenue Code provides:

"Sec. 162. **Returns and payment of sales and other taxes.**

> (c) Imported articles. - When the articles are imported, the percentage taxes established in Sections 163, 164 and 165(A) of this Code shall be paid in advance by the importer prior to the release of such article from customs custody, based on the total value used by the Bureau of Customs in determining tariff and customs duties, including customs duties and other charges on the original sale, barter, exchange or transfer of such imported articles by importer himself, there shall be levied, assessed and collected a sales tax at the same rate on the gross value in money of the articles so sold, bartered, exchanged and transferred: **Provided,** <u>that the tax paid in advance by the importer shall be credited against the sales tax due on the original sale</u>. The tax required to be paid herein shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to excise tax under Title IV of this Code: **Provided, however,** That where the National Economic and Development Authority certifies to the availability of local raw materials of sufficient quantity, comparable quality and price to meet the needs of manufacturers subject to excise tax, the importation of such raw materials shall be subject to the tax herein imposed. (as amended by PD 1358, 1705, 1773, 1959, 1991, 1994, 2006 and 2031)" [Emphasis Ours.]

The advance sales tax is a percentage tax imposed upon articles imported from abroad for the purpose of sale or for use in the manufacture of articles for sale and are subject to the sales tax. It is in lieu of the sales tax on imported articles. The main purpose of said tax is to collect the sales tax in advance of the sale, that is, before the withdrawal of the goods from the customhouse, to prevent leakage and simplify collection with the least expense. (UMALI, Reviewer in Taxation, 1980 ed., p.383.) Hence, the advance sales tax being a sales tax paid in advance upon withdrawal from the customhouse is therefore credited or deducted from the sales tax on manufactured items sold.

In this case, petitioner, not having been able to apply the remaining tax credit of advance sales taxes paid from its sales tax liability for the year 1987, seeks for the issuance of a Tax Credit Certificate in the amount of P14,658,216.00. While it was true that the unapplied tax credit of P14,658,216.51 was initially included (in Line No. 9) as part of the Input VAT of petitioner's Value Added Tax (VAT) Return for January 1-March 31, 1988, particularly described as "Carried - Over From Previous Quarter (1987 DSTC & 8% Presumptive Tax on Supplies) - amounting to P14,845,094.66" still the same amount of P14,658,216.51 was deducted (in Line No. 15) thereof indicated as "Tax Credit Certificate Applied For". Therefore, the amount of P14,658,216.51 was not actually applied as a credit in the Input VAT for the First Quarter of 1988. Petitioner instead opted to apply for a Tax Credit Certificate.

Petitioner presented as evidence Bureau of Customs Official Receipts, Purchase Invoices, Central Bank

Release Certificates, Import Entry and Internal Revenue Declaration Consumption Entry, Manufacturer's Quarterly Sales Tax Returns for the years 1985, 1986 and 1987, Corporate Quarterly Income Tax Returns for the years 1987 and 1988 together with the Payment Orders and Confirmation Receipts for each quarters of 1987 and 1988 and the Value Added Tax (VAT) Returns for each quarters of 1988.

For her part, respondent merely submitted the case for decision waiving her right to present any evidence to rebut the evidence of petitioner. The weight of evidence offered by petitioner bolster its position. With respect to respondent's contention that taxes paid prior to May 12, 1987 have prescribed, it would appear from the evidence presented by petitioner that payments made prior to May 12, 1987 refers to the import duties paid in advance from April 15 to May 8, 1987 (Exhs. A, B, C-1, J-1, K-1, T-1, FF-1 and GG-1) and not to the payment of advance sales tax which were all covered within the two-year prescriptive period for judicially claiming for a refund or tax credit. While the petition did not allege the dates when the advance sales taxes were paid still during the hearing of this case petitioner was able to present the official receipts showing the dates when the same were paid. The Court can very well determine from the evidence presented by petitioner the dates of payment of the tax sought to be credited.

After a careful examination of the evidence presented by petitioner, the records will show that indeed it is entitled to a tax credit. However, we are inclined to grant only the sum of P14,621,732.00 which were duly supported by evidence as shown in the Bureau of Customs Official Receipts indicating the amount of Advance Sales Taxes Paid on its various importations (see Annex A - Schedule of Advance Sales Taxes Paid).

WHEREFORE, in view of the foregoing, the petition is granted only insofar as the amount of P14,621,732.00 is concerned it being found to be duly supported by evidence. Respondent Commissioner of Internal Revenue is ordered to issue the corresponding Tax Credit Certificate in favor of petitioner Chemfields, Inc., in the amount of P14,621,732.00, representing erroneously and excessively paid advance sales taxes for the year 1987.

Without pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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

I hereby certify that the 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
Presiding Judge
Court of Tax Appeals

Chemfields, Inc.
Schedule of Advance Sales Taxes Paid
and Tax Credit Due for the period
May 14, 1987 to December 28, 1987

Exh.	Internal Revenue Declaration No.	Advance Sales Tax	Exh.	BCOR No.	Date	[1] Amount	Exh.	BCOR No.	Date	[2] Amount	[1 + 2] Total
A-4	0727818	P 152,110	A	909674	4/24/87	P 107,851	A-1	943616	6/15/87	P 208,838	P 316,689
B-4	0735508	223,469	B	904902	4/15/87	120,424	B-1	937622	6/30/87	212,821	333,245
C-4	0735503	758,481	C	970456	7/20/87	737,663	C-1	904916	4/22/87	393,196	1,130,859
D-4	0725947	2,981	D	937508	5/14/87	1,375	D-1	937618	6/29/87	267	1,642
E-4	0733514	22,605	E	937610	6/24/87	22,855	E-1	937547	6/04/87	10,947	33,802
F-4	0733512	22,605	F	973623	6/24/87	22,855	F-1	943434	6/05/87	10,947	33,802
G-4	0733513	22,605	G	937609	6/24/87	22,855	G-1	927546	6/04/87	10,947	33,802
H-4	0733515	22,605	H	973624	6/24/87	22,855	H-1	943435	6/05/87	10,947	33,802
I-4	0735108	24,851	I	970417	7/14/87	24,922	I-1	937512	5/14/87	12,219	37,141
J-4	0735110	188,687	J	985979	7/15/87	182,349	J-1	942527	4/27/87	99,044	281,393
K-4	0735109	44,778	K	985847	7/14/87	44,269	K-1	909621	4/20/87	21,730	65,999
L-4	0733507	22,591	L	937623	6/30/87	22,840	L-1	937582	6/09/87	10,942	33,782
M-4	0733519	22,591	M	973725	6/30/87	22,840	M-1	943597	6/10/87	10,942	33,782
N-4	0725954	22,591	N	970418	7/14/87	22,840	N-1	937599	6/11/87	10,942	33,782
O-4	0733520	22,591	O	937624	6/30/87	22,840	O-1	937583	6/10/87	10,942	33,782
P-4	0733508	22,591	P	973724	6/30/87	22,840	P-1	943653	6/10/87	10,942	33,782
Q-4	0733526	22,591	Q	985848	7/14/87	22,840	Q-1	943658	6/11/87	10,942	33,782
R-4	0734933	11,710	R	985978	7/15/87	11,788	R-1	943220	6/01/87	5,797	17,585
S-4	0742966	73,612	S	970464	7/27/87	71,645	S-1	937507	5/14/87	36,287	107,932
T-4	0733518	62,337	T	985849	7/14/87	62,628	T-1	942657	5/08/87	30,409	93,037
U-4	0741286	757,508	U	970419	7/14/87	757,812	U-1	970355	6/17/87	371,615	1,129,427

V-4	0741299	751,498	V	986521	7/29/87	662,782	V-1	943224	6/02/87	457,685	1,120,467
W-4	0741279	908,177	W	982701	7/30/87	908,471	W-1	937587	6/10/87	445,580	1,354,051
X-4	0741287	3,219	X	986402	7/28/87	3,469	X-1	973540	6/18/87	1,390	4,859
Y-4	0741288	41,605	Y	970474	7/30/87	41,852	Y-1	970364	6/19/87	20,277	62,129
Z-4	0734141	273,077	Z	982722	8/12/87	280,669	Z-1	970356	6/18/87	126,531	407,200
AA-4	0734142	228,712	AA	943114	5/25/87	106,021	AA-1	986846	8/10/87	235,040	341,061
BB-4	0760196	18,297	BB/MMM-1	937584	6/10/87	17,119	BB-1/MMM	982766	8/20/87	18,701	35,820
CC-4	0749448	747,296	CC	1014857	8/31/87	760,284	CC-1	973876	6/30/87	353,919	1,114,203
DD-4	0756127	167,476	DD	937545	6/03/87	80,230	DD-1	982767	8/20/87	164,532	244,762
EE-4	0756125	33,460	EE	937586	6/10/87	15,615	EE-1	982721	8/12/87	33,750	49,365
FF-4	0764568	19,907	FF	1014924	9/03/87	19,700	FF-1	942659	5/08/87	10,090	29,790
GG-4	0756129	374,759	GG	982787	8/24/87	381,831	GG-1	937600	4/16/87	176,959	558,790
HH-4	0763506	49,257	HH	937585	6/10/87	19,466	HH-1	982800	8/31/87	52,228	71,694
II-4	0763508	259,357	II	1015363	9/16/87	277,635	II-1	973796	6/29/87	107,519	385,154
JJ-4	0761356	9,105	JJ	1029026	8/31/87	9,263	JJ-1	970445	7/15/87	8,217	17,480
KK-4	0770400	27,942	KK	1015461	9/21/87	27,952	KK-1	985762	7/07/87	25,438	53,390
Order	of Payment										
No.	0418452	1,261,138	LL	982678	7/23/87	567,269	LL-1	1029045	9/09/87	1,266,544	1,833,813
MM-4	0764593	75,183	MM	986468	7/27/87	20,920	MM-1	1015259	9/11/87	88,469	109,389
NN-4	0762053	58,454	NN	1029034	9/03/87	59,296	NN-1	982695	7/30/87	25,800	85,096
OO-4	0775749	1,203,851	OO	970388	7/01/87	519,894	OO-1	1029105	9/25/87	1,230,625	1,750,519
PP-4	0768816	55,619	PP	1029101	9/23/87	60,833	PP-1	982746	8/17/87	20,140	80,973
QQ-4	0773848	321,545	QQ	986268	7/16/87	121,522	QQ-1	1043906	9/28/87	346,099	467,621
RR-4	0768815	320,999	RR	1043806	9/23/87	323,591	RR-1	986274	7/17/87	143,253	466,844
SS-4	0778461	321,137	SS	1014603	8/19/87	162,319	SS-1	1044186	10/06/87	304,725	467,044
TT-4	0773849	478,043	TT	1030852	10/07/87	465,619	TT-1	982782	8/21/87	229,550	695,169
UU-4	0773850	43,548	UU	1044344	10/12/87	41,493	UU-1	1014545	8/18/87	21,909	63,402
VV-4	0778604	3,854	VV	1014544	8/18/87	15,320	VV-1	1044413	10/14/87	250	15,570
WW-4	0790348	20,499	WW	982745	8/17/87	19,168	WW-1	1030941	10/27/87	20,038	39,206
XX-4	0778453	611,505	XX	1060609	10/12/87	613,411	XX-1	1010507	8/21/87	275,837	889,248
YY-4	0773851	304,159	YY	1029020	9/04/87	133,932	YY-1	1030872	10/14/87	308,413	442,345
ZZ-4	0773853	354,803	ZZ	1029071	9/14/87	159,632	ZZ-1	1030948	10/29/87	356,345	515,977
AAA-4	0800658	61,077	AAA	982783	8/21/87	29,067	AAA-1	1063417	10/23/87	59,806	88,873

BBB-4	0796129	100,114	BBB	1029055	9/09/87	99,490	BBB-1	1063358	11/06/87	91,625	191,115
CCC-4	0807815	791,769	CCC	1063471	12/09/87	737,683	CCC-1	1030848	9/30/87	413,662	1,151,345
DDD-4	0773854	22,338	DDD	1084185	11/10/87	21,408	DDD-1	1044017	9/29/87	26,580	47,988
EEE-4	0796136	35,264	EEE	1063401	11/16/87	30,131	EEE-1	1029011	9/02/87	37,245	67,376
FFF-4	0773855	15,224	FFF	1084340	11/17/87	14,519	FFF-1	1044015	9/29/87	7,728	22,247
GGG-4	0755958	11,687	GGG	1015030	9/03/87	12,480	GGG-1	1119021	12/28/87	9,906	22,386
HHH-4	0800659	80,333	HHH	1030840	9/27/87	41,337	HHH-1	1063425	11/27/87	75,539	116,876
III-4	0801568	963,034	III	1063421	11/26/87	920,632	III-1	1030920	10/28/87	479,750	1,400,382
JJJ-4	0807813	351,986	JJJ	1084904	12/07/87	360,777	JJJ-1	1044704	10/23/87	151,108	511,885
KKK-4	0807814	286,401	KKK	1044575	10/23/87	119,151	KKK-1	1084922	12/09/87	297,375	416,526
LLL-4	0809076	28,534	LLL	1081666	12/21/87	31,047	LLL-1	1030922	10/29/87	23,478	54,525
		P14,621,732				P11,665,486				P10,051,318	P21,716,804

Ernesto D. Acosta