REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REPUBLIC OF THE PHILIPPINES represented by DEPARTMENT OF FINANCE (DOF),
Petitioner,

-versus-

GRANDTEQ INDUSTRIAL STEEL PRODUCTS, INC. herein represented by its President, ABELARDO GONZALEZ,
Respondent.

CTA EB CASE NO. 981
(CTA CASE NO. 8201)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 30 2014
4:24 p.m.

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DECISION

Fabon-Victorino, J.:

In the instant Petition for Review,[1] petitioner Republic of the Philippines, represented by Department of Finance, seeks to reverse and set aside the Decision dated September 27, 2012[2] and the Resolution dated January 17, 2013[3] promulgated by the Court in Division granting respondent Grandteq Industrial Steel Products, Inc.'s claim for refund in the amount of P156,101.00, representing its alleged unutilized advance deposit under Letter of Credit (L/C) No. 066/LC/001523/06.

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[1] En Banc docket, pp. 6-23.
[2] *Id.*, pp. 25-47.
[3] *Id.*, pp. 48-55.

The following facts as established during the trial on the merits remain undisputed.

The Republic as petitioner is represented by the Secretary of the Department of Finance (DOF), the head of the government agency in charge of, among others, the Bureau of Customs (BOC). He holds office at the DOF Building, BSP Complex, Roxas Boulevard cor. Pablo Ocampo Sr. St., Manila.

Respondent Grandteq Industrial Steel Products, Inc. is a domestic corporation with office address at No.2 Cooper Street corner Benitez Street, San Francisco del Monte, Quezon City.

Respondent applied for a Letter of Credit (L/C) in the amount of One Hundred Fifty Six Thousand One Hundred One Pesos (P156,101.00) with Metropolitan Bank and Trust Company (Metrobank) on its shipment of tool steel from Germany. Upon payment of the pre-requisite advance deposit for the said L/C in the same amount of ONE HUNDRED FIFTY SIX THOUSAND ONE HUNDRED ONE PESOS (P156,101.00), it was issued L/C No. 001523/06 as reflected in Import Entry Declaration (IED) No. 25615091.

The said importation however, did not materialize. Consequently, the unutilized L/C was cancelled on January 18, 2007, as stated in the Metrobank letter of even date.

On February 16, 2007, respondent filed a claim for refund of the said unutilized advance deposit with the District Collector of the Bureau of Customs.

Acting on the said claim for refund, the Deputy Collector for Assessment of the Port of Manila, in his 1st Indorsement dated March 16, 2007, recommended that the request for refund through tax credit be given due consideration.

On November 17, 2008, respondent paid the refund processing fee of P700.00, as evidenced by BCOR No. 158096267.

The BOC, via Disposition Form dated April 20, 2009, recommended the approval of respondent's claim for refund of unutilized advance deposit under L/C No. 001523/06.

However, when the refund claim of respondent was elevated to the Secretary of Finance, the latter, through 2nd Indorsement dated June 17, 2010, denied the refund claim on the ground that respondent failed to pay the required processing fee within the statutory limit. Respondent's Motion for Reconsideration was likewise denied in the 3rd Indorsement dated October 11, 2010.

Aggrieved, respondent filed a Petition for Review before the Court in Division on December 16, 2010.

In its Answer filed on March 7, 2011[4], petitioner argued that while respondent filed its request for refund on February 16, 2007, or within the statutory limit of one (1) year as prescribed by Customs Administrative Order No. 2-95 (CAO 2-95), the refund processing fee was paid only on November 17, 2008, or after the lapse of the period to claim for refund. Since petitioner's right to refund had been lost, the BOC had no basis to process the claim. Petitioner likewise invoked Section 3301, in relation to Section 3303 of the Tariff and Customs Code of the Philippines (TCCP), which provides that fees must be paid for services rendered and documents issued by the BOC, evidenced by a documentary stamp tax, absent which no document or other paper shall be received or recognized by any custom officials.

Petitioner further averred that CAO 5-92 should be read in the context of the policy of Sections 3301 and 3303 of the TCCP. Claims for refund of advance taxes and duties paid must be made within one (1) year from the date the totally or partially unutilized L/C is cancelled by the Authorized Agent Bank (AAB) and that before the BOC may act upon the claim, the required processing fee must be paid within

[4] Division docket, pp. 65-70.

the same period lest the claim shall not be deemed received or recognized by the BOC. This requirement is essential and by no means a mere technicality of law or procedure. The failure of petitioner to satisfy the requirement deprives the BOC of jurisdiction to entertain the claim for refund.

Finally, tax refunds are in the nature of tax exemptions, regarded as in derogation of sovereign authority, hence should be strictly construed against the person or entity claiming the exemption.[5]

On September 27, 2012, the Court in Division granted respondent's claim for refund in the assailed Decision, in this wise:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P156,101.00, allegedly representing unutilized advance deposit under Letter of Credit No. 066/LC/001523/06.
>
> SO ORDERED.

In the similarly assailed Resolution of January 17, 2013, petitioner's motion for reconsideration was denied for lack of merit.

Hence, the instant Petition for Review raising the lone issue for the resolution of the Court *En Banc*, to wit:

> Whether or not respondent's failure to pay the refund processing fee within the prescribed period of one (1) year within which a claim for refund of advance

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[5] *Bank of the Philippine Islands vs. Court of Appeals*, 416 SCRA 4, 15 [2003]; *Nestle Philippines, Inc. vs. Court of Appeals*, 360 SCRA 575, [2001].

> taxes and duties paid under an unutilized letter of credit may be made, is fatal to its claim for refund.

Petitioner admits that respondent's claim for refund was filed within one (1) year from the date the unutilized Letter of Credit was cancelled by the AAB as prescribed in CAO 2-95. However, it insists that respondent failed to pay the refund processing fee within the same prescribed period which justifies the denial of its claim. Petitioner again invokes Section 3301, in relation to Section 3303 of the TCCP, which provides in effect that unless the refund processing fee is paid within the said one (1) year period, such claim cannot be deemed received or recognized by the BOC.

Petitioner further reiterates that interpretation of a statute should commence with the assumption that the legislature intended to enact effective law. Moreover, interpretation of the law, if possible, should be avoided if the statute or provision being construed will be defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory.[6] The spirit, rather than the letter of a law determines its construction; hence, a statute, as in this case, must be read according to its spirit and intent.[7]

Besides, tax refunds are in the nature of tax exemptions, a derogation of sovereign authority, hence, should be strictly construed against the person or entity claiming the exemption.[8] The burden of proof lies upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[9]

However for respondent, there is nothing in Sections 3301 and 3303 of the TCCP which says that failure of the taxpayer to pay within the alleged period of one (1) year

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[6] *Paras vs. Comelec*, 264 SCRA 49 [1996].
[7] *Supra*.
[8] *Supra,* Note 5.
[9] *Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue*, 465 SCRA 308 [2005].

shall cause the denial of a claim for refund. Even CAO No. 5-92 does not indicate the need to pay for the refund processing fee within the period for filing of the claim for refund. In any event, it substantially complied with the requirement when it paid the P700.00 processing fee on November 17, 2008.

Further, the law creating the Court of Tax Appeals specifically provides that proceedings before it shall not be governed strictly by technical rules of evidence.[10] For respondent, there can be no just determination of the present action if its claim would be denied on the ground of technicality.

Lastly, in enacting the TCCP, the legislators obviously intended that only those acts specified in Section 1708 of the TCCP shall govern claims for refund of customs duties and taxes. The provision does not prescribe a period within which to pay the required refund processing fees.

RULING OF THE COURT *EN BANC*

The instant petition lacks merit.

An examination of the arguments set forth by petitioner in its Petition for Review readily shows that they are mere restatement if not repetition of its arguments in its Answer filed on March 7, 2011,[11] which were exhaustively considered and discussed by the Court in Division in the assailed Decision of September 27, 2012 and affirmed in the subsequent Resolution of January 17, 2013.

Petitioner has not raised any new or substantial ground that will require or justify a departure from the previous conclusion and findings of the Court in Division that respondent is entitled to its claim for refund or tax credit certificate in the amount of P156,101.00, representing respondent's unutilized advance deposit under L/C No. 066/LC/001523/06.

[10] Section 8 of Republic Act No. 1125.
[11] Division docket, pp. 65-70.

As found and ruled by the Court in Division, the right to claim for refund of customs duties and taxes is specifically governed by Section 1708 of the TCCP, which provides as follows:

> SEC. 1708. *Claim for Refund of Duties and Taxes and Mode of Payment.* — All claims for refund of duties shall be made in writing and forwarded to the Collector to whom such duties are paid, who upon receipt of such claim, shall verify the same by the records of his Office, and if found to be correct and in accordance with law, shall certify the same to the Commissioner with his recommendation together with all necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall cause the same to be paid if found correct.
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> If as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue.

Thus, to be entitled to a refund of customs duties and taxes, it was incumbent upon respondent to establish that the following requirements have been complied with, to wit:

1. The written claim for refund addressed to the District Collector of the port concerned has been filed;
2. The Collector has verified the claim from the records of his office;
3. Having found the claim to be correct and in accordance with law, the Collector has certified it to the Commissioner of Customs with his recommendation with all necessary papers and documents; and
4. Having found the claim meritorious, the Commissioner has approved and granted the request for refund.

In relation to the foregoing provision, CAO 5-92, specifically Section III thereof enumerates the procedure to be followed in a claim for refund of advance deposit of custom duties, thus:

III. <u>OPERATIONAL PROVISIONS</u>

A. <u>Procedures</u>

1. Application for Refund under this Order shall be made in a Standard Application Form (Annex "A") to be filed by the claimant or authorized representatives at the Collection Division/Unit of the Port. The application shall be supported by the following documents:

a. <u>For Totally Unutilized Letter of Credit (L/C)</u>

1. Importer's original copy of the Import Entry Declaration (IED) and BCOR;
2. Clearance number and date of issue by the Liquidation and Billing Division (LBD) and Collection Service;
3. Certification of AAB as to cancellation of L/C because there are no corresponding importation made whatsoever, no outward remittance of foreign exchange, and no automatic refund of the advance customs duties as allowed by CB 909 have ever been effected.

xxx xxx xxx

2. Collection Division/Unit of the Port, as main office of the District Collector of Customs level, receives the application, checks the same for completeness and attaches the checklist, (Annex "B"), gives the application its docket number,

> indicates the date of receipt thereof, initials the same and returns a copy of the application to claimant. Claims not supported by all requirements are returned to the claimant.
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> xxx xxx xxx
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> 3. The RAD verifies the claim from the list of cancelled L/Cs to be provided by Central Bank, Current Imports Commodity Classification Department (CB, CICCD), prepares certification of payment remittance and transmits all pertinent documents to the Accounting Division (AD).
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> 4. The AD processes the claim and prepares the following:
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>   a. Journal Voucher for the Commissioner's approval;
>   b. Tax Credit Certificate (TCC) and Disposition Form for the approval of the Deputy Commissioner for Revenue Monitoring Group.
>
> 5. The claim folder with signed TCC is returned to the Accounting Division for final recording and release to claimant or its authorized representative.

The record shows that respondent was able to submit the documents enumerated in Section III (A) of CAO 5-92 which upon verification by the Deputy Collector for Assessment of the Port of Manila found to be complete and in order and that the amount subject of refund remained unutilized. Precisely, he issued the 1st Indorsement dated March 16, 2007 recommending that the request of respondent for refund be given due consideration. Subsequently, the BOC, through Disposition Form dated April 20, 2009, recommended the approval of the petitioner's claim for refund. In other words, respondent was able to meet the requirements under the pertinent provision of the TCCP which merited the favorable action by the BOC on its claim for refund.

Anent the prescriptive period within which to file a claim for refund of unutilized advance custom duties, the Court *En Banc* quotes with approval the disquisition of the Court in Division on the matter, thus:

> With respect to the prescriptive period within which to file a claim for refund of unutilized advance custom duties, *Section II (C) of CAO 5-92* provides:
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> II. GENERAL ADMINISTRATIVE PROVISIONS
>
> A. Coverage
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> xxx xxx xxx
>
> C. Period to File Claim for Refund
> The importer/claimant shall have a period of one (1) year from the date the totally or partially unutilized L/C is cancelled by the AAB.
>
> A review of the records show that the procedure mentioned in CAO 5-92 as well as in Section 1708 of the TCCP was followed by petitioner. In fact BOC recommended the approval of petitioner's claim for refund as it was made in accordance with pertinent Customs laws, rules and regulations. Likewise, based on the foregoing provisions, the period to claim for refund of advance deposit for unutilized letter of credit is one year from the date the totally unutilized L/C is cancelled by the AAB.
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> In the instant case, the L/C issued by Metrobank was cancelled on January 18, 2007 and the claim for refund was filed by petitioner on February 16, 2007. Accordingly, the claim for refund was timely filed.

However, it is respondent's main contention that petitioner is not entitled to refund of its unutilized advance deposit for its failure to pay the required refund processing fee within the statutory limit.

Contrary to respondent's claim, a perusal of all the foregoing provisions would show that there is indeed no mention that the refund processing fee should be paid within the one year period provided under CAO 5-92, in order to be entitled to a claim for refund of customs duties. In fact even a reading of Customs Administrative Order No. 2-2001, which enumerates the rates of customs brokerage fees, including the refund processing fees, does not provide for a prescriptive period within which to pay the said refund processing fee nor a penalty for non-payment thereof.

Further, even the contention of respondent that CAO 5-92 should be read in the context of the policy of *Sections 3301 and 3303 of the TCCP* does not run counter to the approval of petitioner's claim since as argued by respondent *Sections 3301 and 3303 of TCCP* require the payment of charges and fees before the BOC may recognize any document or render any service. In the instant case, it is undisputed that petitioner paid the refund processing fee on November 17, 2008. Such being the case, the recommendation by BOC for the approval of petitioner's claim for refund of unutilized advance deposit is just proper.

Further, respondent argues that tax refunds are in the nature of tax exemptions. It is true that it is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. In the instant case, however, petitioner was

> able to prove that it was indeed entitled to its claim for refund considering that it had complied with the requirements provided by applicable laws, rules and regulations.
>
> As held by the Supreme Court in the case of *Nestle Philippines, Inc. vs. Court of Appeals*, in all claims for refund of customs duties, the Collector to whom such customs duties are paid and upon receipt of such claim is mandated to verify the same by the records of his Office. If such claim is found correct and in accordance with law, the Collector shall certify the same to the Commissioner with his recommendation together with all the necessary papers and documents.
>
> Considering that the BOC have recommended the approval of petitioner's claim for refund and finds that petitioner have complied with requirements provided by law, rules and regulations, this Court sees no reason to deny the same in view of established doctrine that findings of fact of administrative agencies are accorded not only respect but also finality when supported by substantial evidence.

Finally, considering that respondent had clearly shown its entitlement to its claim for refund and had substantially complied with the requirements of the law, to deny respondent of its right would result to unjust enrichment on the part of government. As held in the case *State Land Investment Corporation vs. Commissioner of Internal Revenue*[12], to wit:

> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the

[12] G.R. No. 171956, January 18, 2008.

> expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.

WHEREFORE, the Petition for Review filed by petitioner Republic of the Philippines, represented by Department of Finance is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated September 27, 2012 and January 17, 2013, respectively, are **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(on leave)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice