Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESSO STANDARD FERTILIZER &
AGRICULTURAL CHEMICAL CO.,
INC. (PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 1974

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

5/29/81

D E C I S I O N

At bar is the claim of petitioner Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) for refund or tax credit of the sum of ₱12,333.00 as alleged excess payment of advance sales tax on its importations on October 27, 1966, November 20, 1966, January 10, 1967 and February 5, 1967 of urea, coated and pelleted.

There is no question as to the facts of the case. After petitioner and respondent were not able to settle this appeal extrajudicially, i.e., on the administrative level, they submitted the case for decision on the basis of the pleadings and the records of the Bureau of Internal Revenue bearing on this proceeding. And the pleadings and records show that:

1. Petitioner is a corporation organized and existing under the laws of the Philippines, with principal office at Manila Banking Corporation Building, Ayala Avenue, Makati, Rizal. Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such for the Republic of the Philippines.

2. Petitioner is a manufacturer of fertilizer and agricultural chemicals. In connection with this business, petitioner imported during the latter part of 1966 and the early part of 1967 several bags of urea, coated and pelleted. The details of these importations are as follows:

Date of Arrival	Name of Vessel and Registry No.	No. of Bags of Urea, coated and pelleted	Import Entry No.
Oct. 27, 1966	S.S. "Toyo Maru" No. 1, Reg. No. 1880	40,000	101808-1966
Nov. 20, 1966	S.S. "Eastern Visayas," Reg. No. 1845	50,000	100188-1966
Jan. 10, 1967	S.S. "Subic Bay" Reg. No. 54	30,000	03300-1967
Feb. 5, 1967	S.S. "Shink Maru" Reg. No. 204	40,000	12090-1967

On the above importations of urea, coated and pelleted, the Collector of Customs of the Port of

Manila, for and in behalf of respondent Commissioner of Internal Revenue, assessed and collected from petitioner the 7% advance sales tax computed on the basis of the 10% ad valorem duty provided for in paragraph 29.26B of the Tariff and Customs Code.

Parenthetically, paragraph 29.26B of the then in force Tariff and Customs Code imposed on urea an ad valorem duty of 10% if the nitrogen content of the importation is more than 45%. However, if its nitrogen content is 45% or less, the duty is only 5% under tariff paragraph 31.02B. The Bureau of Customs appraiser classified the above importations under tariff paragraph 29.26B and imposed the higher tariff duty of 10%.

4. The payments of the above advance sales tax which are evidenced by the following official receipts:

Official Receipt No.	Date Issued	Amount
54871	Dec. 2, 1966	₱86,122.00
56023	Dec. 9, 1966	68,900.00
61531	Jan. 16, 1967	51,660.00
65231	Feb. 13, 1967	66,624.00

were made by petitioner in view of its immediate need for the shipments. However, petitioner lodged corresponding protests against the additional 5% ad valorem duty and the corresponding advance sales tax pending the results of the chemical analysis then being conducted by the National Institute of Science and Technology (NIST) to determine the true nitrogen content of the urea of each of the four shipments.

5. In view of the findings of the National Institute of Science and Technology (NIST) that neither of the urea of each of the four shipments contains more than 45% of nitrogen, petitioner maintains that it is subject only to 5% ad valorem duty on its above importations, instead of 10% imposed and collected by the Bureau of Customs. Petitioner, therefore, claims that it has overpaid the corresponding advance sales tax thereof in the total amount of ₱12,333.00.

6. On August 22, 1968, petitioner filed separate claims for refund of the excess advance sales tax paid on the importations covered by Official Receipts Nos. 54871, 56023 and 61531. On September 6, 1968, petitioner filed another claim for refund of the excess advance sales tax paid on the importation covered by Official Receipt No. 65231.

After no seasonable action was taken by respondent on its claims for refund, petitioner filed this petition for review with this Court for the purpose of interrupting the running of the prescriptive period for instituting judicial action for the recovery of the aforesaid overpayments of advance sales tax.

The parties are not in controversy on the computation of the advance sales tax payable by, or the amount refundable to, petitioner as the case may be.

Is petitioner Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) entitled to the refund of the sum of ₱12,333.00 as overpaid advance sales tax on the imported urea involved in this case? The resolution of this issue depends upon the question whether said imported urea contains more than 45% or less nitrogen.

An analysis of the nitrogen content of said imported urea by the National Institute of Science and Technology upon request by the Bureau of Customs shows the following: (pp. 55, 57, 58, 60 & 68, BIR records.)

Date of Arrival & Import Entry No.	No. of Bags of Urea Coated & Pelleted	Nitrogen Content	Analysis Number
Feb. 5, 1967 12090	40,000	42.48%	2-67-003-3
Jan. 10, 1967 03300	30,000	44.8%	1-67-003-143
Nov. 20, 1966 100188	50,000	45%	1-67-003-70
Oct. 27, 1966 101808	40,000	45%	1-67-003-71

It appearing from the aforesaid analysis reports that error was committed by the customs appraiser in imposing 10% ad valorem duty on the said imported urea instead of only 5%, resulting in excess advance sales tax payments, to wit:

O.R. NO.	Date Issued	Amount Paid	Excess
65231	2-13-66	₱ 66,624.00	₱ 3,006.00
54871	12- 2-66	86,122.00	3,886.00
56023	1- 9-66	68,900.00	3,109.00
61531	1-16-67	51,600.00	2,332.00
	T O T A L . .	₱273,306.00	₱12,333.00

petitioner Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) should have paid only ₱260,973.00 instead of ₱273,306.00 advance sales tax on its urea importations.

The records show that the aforesaid payments as well as the discrepancy reports duly approved by the Bureau of Customs have been verified by the office of respondent. (p. 67, BIR records.) In the absence of contrary finding and analysis as to the nitrogen content of the urea involved in this case, we see no valid reason for us not to grant a tax credit in favor of petitioner the total amount of ₱12,333.00 as excess payment of advance sales tax on its importations of urea involved in this case. Paragraph 31.02B of the then in force Tariff and Customs Code imposed on urea an *ad valorem* duty of 5% if the nitrogen content of the importation is 45% or less. The law is clear and specific. Our plain duty therefore is to apply the law as it is written.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) the amount of ₱12,333.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 29, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge