REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
Quezon City

THIRD DIVISION

DIAGEO PHILIPPINES FREEPORT, INC.,
Petitioner,

-versus-

CTA Case No. 7575

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ

COMMISSIONER OF INTERNAL REVENUE and THE COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:
FEB 14 2011

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DECISION

COTANGCO-MANALASTAS *J.:*

THE CASE

This is a Petition for Review filed on February 15, 2007 by Diageo Philippines Freeport, Inc. (petitioner), pursuant to Rule 8, Section 4(a), in relation to Rule 4 of the Revised Rules of the Court of Tax Appeals, to review by appeal the inaction of respondents Commissioner of Internal Revenue and Commissioner of Customs over petitioner's administrative claim for tax refund or tax credit in the aggregate amount of P69,377,797.59, representing alleged erroneous payment of excise tax, value-added tax (VAT) and tariff and customs duties on the importation into the Subic Bay Freeport Zone of liquors and spirits sometime during the first, second, and fourth quarters of 2005.

THE FACTS

Petitioner is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and is engaged in the business of importation and wholesale trading of liquors and spirits with retail outlets located within the Subic Bay Freeport Zone.[1] Its primary purpose is to "deal in, barter, exchange and dispose of all kinds of goods, wares, articles, commodities, merchandise and products such as but not limited to liquors, spirits, chemicals, hardware, electrical equipment and supplies, books and periodicals on wholesale basis only, conduct and engage in the business as importers and exporters of all kinds of commodities, and act as agents or representatives of firms and individuals whether domestic or foreign and as such develop, promote and extend the business interests of such firms and/or individuals".[2]

Petitioner is duly registered in the Subic Bay Freeport Zone as a "Subic Bay Freeport Enterprise" as evidenced by its Certificate of Registration and Tax Exemption Subic Bay Freeport Enterprise Certificate No. 94-0002 dated February 5, 2005.[3] It is likewise registered with the Bureau of Internal Revenue (BIR) Revenue District Office

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1 Exhibits "A" and "A-1"
2 Exhibit "A-1"
3 Exhibit "A-2"

No. 019, bearing the Taxpayer Identification No. 002-830-343-000, as evidenced by its Certificate of Registration No. 4RC0000163351.[4]

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is the official of the government charged with the assessment and collection of all national internal revenue taxes, fees and charges, and with the enforcement of all forfeitures, penalties and related fines. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the government official charged with the assessment and collection of lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws. He holds office at the Bureau of Customs, Port Area, Manila.

Petitioner imported certain liquors and spirits into the Subic Special Economic and Freeport Zone sometime during the first and second quarters of 2005.[5] However, it exported out of the Subic Special Economic and Freeport Zone sometime during the fourth quarter of 2005, some of the said imported liquors and spirits.[6]

On October 23, 2006, petitioner filed with respondent, through the Large Taxpayer Service, the appropriate administrative claim for refund/tax credit in the total amount of P54,138,531.20, representing the excise tax and VAT paid by petitioner for taxable year 2005 on its importation into Subic Bay Freeport Zone of liquors and spirits, which were subsequently exported.[7]

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4 Exhibit "A-3"
5 Exhibits "B" to "B-339"; Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 267
6 Exhibits "C" to "C-108"; Par. 2, Joint Stipulation of Facts, JSFI, docket, p. 267
7 Exhibit "D"

On October 25, 2006, petitioner filed with respondent Commissioner of Customs the appropriate administrative claim for refund/tax credit in the amount of P15,239,266.39, representing the alleged erroneous payment of tariff and customs duties by petitioner for taxable year 2005, on its importation into and exportation from Subic Bay Freeport Zone of liquors and spirits.[8]

However, due to the inaction of both respondents Commissioner of Internal Revenue and Commissioner of Customs on petitioner's administrative claims for refund/tax credit, petitioner filed the instant Petition for Review on February 15, 2007.

Respondent CIR filed his Answer[9] on April 18, 2007, interposing the following defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);
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> 5. The amount of P54,138,531.20 being claimed by petitioner as alleged erroneous payment of VAT on the importation into the Subic Bay Freeport Zone is not properly documented;
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> 6. Petitioner must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;
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> 7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code. Further, Section 112 (D) of the 1997 Tax Code, as amended, requires **the submission of**

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8 Exhibit "D-1"

9 Docket, pp. 562-567

complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.

9. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670)**;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and** as such; they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**.

SPECIAL AND AFFIRMATIVE DEFENSES

11. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

'Section 112. *Refunds or Tax credits of Input Tax —*

xxx xxx xxx

(D) *Period within which refund or Tax Credit of Input Taxes shall be Made* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**

In case of full or partial denial for tax refund or tax credit, or the failure on the part of the Commissioner to

> act on the application within the period prescribed above, the taxpayer affected may, within **thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (Emphasis supplied.)

12. As stated in the petition, petitioner filed the administrative claim for refund with the Bureau of Internal Revenue on October 23, 2006. Subsequently on February 15, 2007, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction."

On the other hand, respondent COC filed his Answer[10] on July 10, 2007, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

6. The instant petition must be dismissed. Petitioner invokes the applicability of the rules of statutory construction in the instant case. Purportedly, RA 9394, a subsequent general law on taxation, cannot repeal the provisions of RA 7227, a prior special law that deals specifically with the grant of preferential tax rates and/or tax exemptions for enterprises located in the Subic Bay Free Port Zone and duly registered with the Subic Bay Metropolitan Authority.

7. However, contrary to petitioner's perception, Republic Act 9334 specifically provides that taxes, duties and charges including excise taxes are made to apply even to the Subic Special Economic and Freeport Zone. Section 131 of the National Internal Revenue Code (NIRC), as amended by RA No. 9334, reads:

'xxx xxx xxx

> The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free

[10] Docket, pp. 187-193

shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. **This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227**;

xxx xxx xxx

(Emphasis supplied)

7. It is clear from the foregoing that the provisions of RA 9334 are clear enough as to leave no doubt on its applicability. It is well-settled that the court may not construe a statute that is clear and free from doubt. 'Time and again, it has been repeatedly declared by this court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application' (***Cebu Portland Cement Co. vs. Municipality of Naga***, *24 SCRA 708, 712 [1968])*. When the law is clear, the function of courts is simple application (***AB Leasing and Finance Corporation vs. Commissioner of Internal Revenue***, *405 SCRA 380)*. Construction or interpretation comes only after it has been demonstrated that application is impossible or inadequate without it. It is the very last function which the court should exercise, for if there is more application and less construction there would be more stability in the law (***Lizarraga Hermanos v. Yap Tico***, *24 Phil. 504 [1913])*.

8. Petitioner further argues that under Section 129 of the NIRC, exported goods are subject to excise taxes while in Section 130 (d) thereof, excise taxes paid on goods actually exported shall be subject to tax credit on tax refund. Petitioner claims that imported goods are to be given the same privilege on tax credit as domestically manufactured goods.

9. Since tax credit under Section 130 of the NIRC are in the nature of tax exemption then petitioner cannot just invoke by analogy its privilege for tax credit under the said section. The cardinal rule in taxation is that exemptions are highly disfavored and whoever claims an exemption must justify his right by the clearest grant of the organic or statute law (***China Banking Corporation vs. Court of*** *Appeals, 403 SCRA 634 [2003]*). Tax exemption cannot rise by mere implication and any doubt about whether the exemption exists is strictly construed against the taxpayer and in favor of the taxing authority (***China***

Banking Corporation vs. Court of Appeals, *403 SCRA 634 [2003]).*

10. As to the petitioner's proof of exportation which were attached to its petition for review, respondent is not inclined to accept the annexes on its face value since they are merely photocopies thus herein respondent cannot confirm the authenticity of the voluminous annexes without the original being presented.

11. In sum, the instant petition must be dismissed."

During trial, petitioner presented Mr. Fernando Manotok, its Finance Manager[11] and Ms. Ma. Victoria C. Españo[12], the Court-commissioned Independent Certified Public Accountant (CPA) as its witnesses.

Thereafter, petitioner filed on May 5, 2009 its Formal Offer of Evidence[13], submitting Exhibits "A" to "J" and "X" to "Z", inclusive of their sub-markings; which were admitted by this Court in the Resolution[14] dated June 19, 2009.

On the other hand, counsel for respondent CIR manifested during the hearing held on November 5, 2009 that since she has no report of investigation from the Assessment Service, she is waiving the right of respondent to present evidence.[15] As a consequence, the Court directed the parties to submit their respective Memorandum within thirty (30) days from said date.

On February 25, 2010, this case was submitted for decision, considering respondent's Memorandum filed on February 3, 2010 and the report dated February 22, 2010 of the Records Division that no memorandum has been filed by petitioner.[16]

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[11] Minutes, docket, pp. 312 and 329
[12] Minutes, docket, pp. 327, 333, and 334
[13] Docket, pp. 337-379
[14] Docket, p. 385
[15] Docket, p. 389
[16] Docket, p. 440

THE ISSUES

The following are the parties' jointly stipulated issues[17] submitted for this Court's resolution:

"As proposed by respondent Commissioner of Internal Revenue:

1. Whether or not the instant petition is prematurely filed.

2. Granting, without necessarily admitting, that it is not prematurely filed, whether or not petitioner is entitled to a refund in the amounts of P37,959,511.96, P16,179,019.24 and P15,239,266.39 as alleged erroneous payment of excise tax, VAT, and tariff and customs duties, respectively, for the year 2005.

As proposed by respondent Commissioner of Customs:

Whether or not petitioner is exempt from all local as well as national internal revenue taxes such as, but not necessarily limited to, excise tax and VAT, as well as tariff and customs duties on importations under Section 12 (c) of R.A. No. 7227 and section 43 of its Implementing Rules and Regulations.

As proposed by petitioner:

1. Whether or not petitioner is exempt from all local as well as national internal revenue taxes such as, but not necessarily limited to, excise tax and VAT, as well as tariff and customs duties on importations, pursuant to Section 12 (c) of Republic Act No. 7227, infra, and Section 43 of the Implementing Rules and Regulations of Republic Act No. 7227, infra.

2. Whether or not petitioner paid excise tax on the imported liquors and spirits amounting to PHILIPPINE PESOS THIRTY SEVEN MILLION NINE HUNDRED FIFTY NINE THOUSAND FIVE HUNDRED ELEVEN AND NINETY SIX CENTAVOS (P37,959,511.96), VAT on the imported liquors and spirits amounting to PHILIPPINE PESOS SIXTEEN MILLION ONE HUNDRED SEVENTY NINE THOUSAND NINETEEN AND TWENTY FOUR CENTAVOS (P16,179,019.24), and tariff and customs duties on the imported liquors and spirits amounting to PHILIPPINE PESOS FIFTEEN MILLION TWO HUNDRED THIRTY NINE THOUSAND TWO HUNDRED SIXTY SIX AND

[17] Docket, pp. 267-269

THIRTY NINE CENTAVOS (P15,239,266.39) for a total of PHILIPPINE PESOS SIXTY NINE MILLION THREE HUNDRED SEVENTY SEVEN THOUSAND SEVEN HUNDRED NINETY SEVEN AND FIFTY NINE CENTAVOS (P69,377,797.59) in excise tax, VAT and tariff and customs duties.

3. Whether or not the excise tax on the imported liquors and spirits that were exported amounting to PHILIPPINE PESOS THIRTY SEVEN MILLION NINE HUNDRED FIFTY NINE THOUSAND FIVE HUNDRED ELEVEN AND NINETY SIX CENTAVOS (P37,959,511.96), the VAT on the imported liquors and spirits that were exported amounting to PHILIPPINE PESOS SIXTEEN MILLION ONE HUNDRED SEVENTY NINE THOUSAND NINETEEN AND TWENTY FOUR CENTAVOS (P16,179,019.24), and the tariff and customs duties on the imported liquors and spirits that were exported amounting to PHILIPPINE PESOS FIFTEEN MILLION TWO HUNDRED THIRTY NINE THOUSAND TWO HUNDRED SIXTY SIX AND THIRTY NINE CENTAVOS (P15,239,266.39) for a total of PHILIPPINE PESOS SIXTY NINE MILLION THREE HUNDRED SEVENTY SEVEN THOUSAND SEVEN HUNDRED NINETY SEVEN AND FIFTY NINE CENTAVOS (P69,377,797.59) in excise tax, VAT and tariff and customs duties were, therefore, '**erroneously**' paid by petitioner.

4. Whether or not petitioner is, therefore, legally entitled to claim a refund/credit, under Sections 204 and 229 of the National Internal Revenue Code, infra:"

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the total amount of P69,377,797.59 allegedly representing excise tax, VAT and tariff and customs duties erroneously paid by petitioner on its imported and exported liquors and spirits in 2005."

THE COURT'S RULING

Petitioner claims that it is entitled to a refund/tax credit for its previously paid excise tax, VAT, and tariff and customs duties, pursuant to Section 12(c) of Republic Act No. 7227 and Section 43 of the Implementing Rules and Regulations of Republic

Act No. 7227; which allegedly exempt petitioner from all national internal revenue taxes and tariff and customs duties on importations, including excise tax.

In his Answer, respondent CIR, among others, counters that the amount of P54,138,531.20 being claimed by petitioner as erroneous payment of VAT on the importation into the Subic Bay Freeport Zone is not properly documented; and that this Court has no jurisdiction to entertain the instant Petition for Review for failure of petitioner to comply with the provision of Section 112(D) of the National Internal Revenue Code (NIRC) of 1997.

Respondent COC adds that petitioner is not exempt pursuant to Republic Act (RA) No. 9334, which specifically provides that taxes, duties and charges, including excise taxes, are made to apply even to the Subic Special Economic and Freeport Zone, citing Section 131 of the NIRC, as amended by RA No. 9334.

This Court, before addressing the substantial issue raised in the petition, shall first resolve the jurisdictional issue raised in the Answer of respondent CIR.

It bears stressing that Section 112(D)[18] involves or contemplates a claim for refund or tax credit by a VAT-registered taxpayer of unutilized input VAT attributable to zero-rated or effectively zero-rated sales or due to retirement from or cessation of business under Sections 112(A) and (C) of the same Code.

Here, petitioner is a non-VAT-registered person[19] and this is a claim for refund of VAT paid on importation based on petitioner's exemption privilege pursuant to RA No. 7227. Thus, the applicable provisions are Sections 229 and 204(C) of the NIRC of 1997, instead of Section 112(D).

[18] now Section 112(C)
[19] Exhibit "A-3"

Sections 229 and 204(C) of the National Internal Revenue Code of 1997 provide:

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**; *Provided however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

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"SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* The Commissioner may -

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied*)

Based on the foregoing provisions, petitioner has two (2) years from the date of payment of tax within which to file both its administrative and judicial claims for tax refund or issuance of tax credit certificate.

The present claim involves petitioner's alleged erroneous payment of excise tax, VAT, and tariff and customs duties incurred for the first, second, and fourth quarters of 2005. Counting from the dates of payment of the said taxes, as evidenced by Land Bank's official receipts[20], petitioner had until the following dates within which to file its claim, both in the administrative and judicial levels:

Land Bank OR No.	Date of Payment of Tax	End of Two (2) Year Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
72636	3/31/2005	3/31/2007		
72629	3/31/2005	3/31/2007		
72635	3/31/2005	3/31/2007		
72631	3/31/2005	3/31/2007		
72632	3/31/2005	3/31/2007		
72634	3/31/2005	3/31/2007		
72633	3/31/2005	3/31/2007		
97514	7/13/2005	7/13/2007		
97513	7/13/2005	7/13/2007	10/23/2006	02/15/2007
97507	7/13/2005	7/13/2007	and	
97509	7/13/2005	7/13/2007	10/25/2006	
97506	7/13/2005	7/13/2007		
97512	7/13/2005	7/13/2007		
97508	7/13/2005	7/13/2007		
97511	7/13/2005	7/13/2007		
97510	7/13/2005	7/13/2007		
97724	7/21/2005	7/21/2007		

[20] Exhibits "B-1", "B-23", "B-45", "B-65", "B-86", "B-107", "B-128", "B-148", "B-166", "B-187", "B-204", "B-227", "B-254", "B-273", "B-294", and "B-319"

As shown above, petitioner had until March 31, 2007, the earliest date, within which to file its claim both in the administrative and judicial levels. In the instant case, petitioner filed its administrative claims with respondent CIR on October 23, 2006[21] and with respondent COC on October 25, 2006,[22] and filed its judicial claim on February 15, 2007. Therefore, counting from March 31, 2005, when petitioner made the earliest payment of tax, both the administrative and judicial claims fall within the two-year prescriptive period.

This Court shall now proceed to address the substantive issue of this case pertaining to the question of petitioner's entitlement to refund.

Petitioner anchors its allegation of exemption from excise tax, VAT, and customs duties on Section 12(c) of Republic Act No. 7227, enacted on March 13, 1992, which provides:

> "(c)The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.
>
> In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;"

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[21] Exhibit "D"

[22] Exhibit "D-1"

The said tax exemption is purportedly recognized and implemented under Section 43 of the Implementing Rules and Regulations of Republic Act No. 7227, which states:

> "SEC. 43. Tax Exemption – SBF enterprises shall be exempted from all national and local taxes, including but not limited to the following:
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> a. Customs and import duties and national internal revenue taxes, such as VAT, excise and ad valorem taxes on foreign articles;
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> b. Internal revenue taxes, such as VAT, ad valorem and excise taxes on their sales of goods and services for which they are directly liable;
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> c. Income tax on all income from sources within the SBF and foreign countries, Export Processing Zones, Bonded Warehouses and other Special Economic Zones within the Philippines, as well as all other areas that may now or hereafter be considered to be outside the Customs Territory, whether or not payment of such income is actually received, made or collected within such areas; provided, that SBF Enterprises shall, as withholding agents for the National Government, withhold tax on compensation and income payments to persons or individuals subject to expanded withholding tax; and
>
> d. Franchise, common carrier or value-added taxes and other percentage taxes on public and service utilities and enterprises within the SBF;
>
> In lieu of paying taxes, all SBF Enterprises shall pay a final tax of five (5%) percent of gross income earned in accordance to breakdown specified and defined under Section 57 hereunder."

Congress passed Republic Act No. 9334, otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products Amending for the Purpose Sections 131, 141, 142, 143, 144, 145, and 288 of the National Internal Revenue Code of 1997, as Amended", which took effect on January 1, 2005. The said law amended Section 131 of the NIRC of 1997. Section 131 of the NIRC as amended, provides:

"SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory." (*Emphasis supplied*)

Based on the foregoing amendment introduced by RA No. 9334, it is clear that "the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon"; this shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227. It is categorically provided that the amendments will affect chartered or legislated freeports of Subic Special Economic and Freeport Zone, created under Republic Act No. 7227. The law is, therefore, clear that "the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes. The phrase "all applicable taxes" includes tax liability for the payment of VAT on importation under Section 107 of the NIRC, as amended.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[23]

In *Republic of the Philippines, et al. vs. Hon. Ramon S. Caguioa, et al.*[24], the Supreme Court held that Section 131, as amended by RA No. 9334, now provides that taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Subic Bay Freeport, to wit: h

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23 Milagros E. Amores vs. House of Representatives Electoral Tribunal and Emmanuel Joel J. Villanueva, G.R. No. 189600, June 29, 2010

24 G.R. No. 168584, October 15, 2007

> "It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.
>
> **By subsequently enacting R.A. No. 9334, however, Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines.** xxx
>
> xxx xxx xxx
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> To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall *not apply* to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.
>
> On the other hand, Section 131, as amended by RA No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall *apply* to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF." (*Emphasis supplied*)

Likewise, petitioner's claim for refund of paid excise tax, VAT, and customs duties covers taxable year 2005; which period is within the effectivity of the above-stated amendment as provided by RA No. 9334. Hence, petitioner's claim for refund of excise tax, VAT, and customs duties in the amount of P69,377,797.59 should be denied.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[25] And the taxpayer claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its

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[25] *Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 27, 2005

entitlement to a claim for refund.[26] Since petitioner failed to overcome such burden, its claim for refund must fail.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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26 *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 336

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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