Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Hawaiian-Philippine Company,
Petitioner,

- versus - **C.T.A. CASE NO. 4108**

Commissioner of Internal Revenue,
Respondent.

3/11/93

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D E C I S I O N

This is a claim for refund of the amount of P283,352.00 representing petitioner's erroneously paid compensating tax for the period from November 1984 to May 1985 pursuant to Section 1 of Presidential Decree No. 791, as amended by Presidential No. 1710.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal place of business located at Silay City, Negros Occidental. It is a sugar central principally engaged in the business of manufacturing, milling, processing or refining of sugar.

For its milling operations, petitioner imported, for its own use, plant machinery, spare parts and equipments. Petitioner imported the shipment of the following :

Description of Goods	Official Receipt No.	Date	Amount	Exhibit
1 box parts for sugar mill centrifugal	558352	11/14/84	P 22,759.00	"B"
1 ctn steam turbine parts for Worthington turbine	580222 573340	02/01/85	P 7,780.00	"E"
1 case parts for Man diesel engine	597397	03/15/85	P 95,003.00	"I"
1 box parts for steam turbine	582861	03/25/85	P 37,412.00	"L"
1 box parts for steam turbine	597683	03/25/85	P 63,168.00	"O"
1 ctn parts for steam turbine	582922	04/09/85	P 2,893.00	"R"
1 case parts for electric diesel engine	617760	05/03/85	P 29,749.00	"U"
1 box parts for sugarmill centrifugal	617664 580256	04/30/85	P 2,928.00	"X"
parts of W.S. sugarmill centrifugal	609755	04/09/85	P 10,900.00	"AA"
1 ctn parts gear reducer	558650 573424 1579380	11/26/84 01/03/85 05/30/85	 P 5,920.00 P 4,840.00	"CC" "DD"
T O T A L			P 283,352.00	

The said compensating tax of P283,352.00 was collected on the alleged revocation of the tax and duty exemptions of sugar millers by Presidential Decree No. 1955 effective October 15, 1984 and Fiscal Incentives Review Board (FIRB) Resolution No. 2-85. Under FIRB Resolution No. 53-85 dated October 1, 1985, the tax and duty exemption priveleges of sugar millers granted under Presidential Decree No. 791, as amended, and withdrawn by Presidential Decree No. 1955, were restored with respect to imported articles which arrived in the Philippines on or before June 30, 1985.

Petitioner, claims that as a sugar central engaged in the business of manufacturing, milling, processing and refining of sugar it continued to enjoy the tax and duty exemptions pursuant to Presidential Decree No. 791, as amended by Presidential Decree No. 1710. And that, its payment of compensating tax totalling P283,352.00 during the période November 1984 to May 1985 which it erroneously paid is refundable.

On March 21, 1986, petitioner, through its agent, filed with Respondent's Bureau Appellate Division a claim for refund of erroneously paid compensating tax in the total amount of P283,352.00.

Respondent has not yet granted petitioner's request for refund, hence this appeal.

This appeal, as well as the claim for refund, was filed within two years from the date of payment of the tax sought to be refunded in accordance with Section 292 and 295 (now Section 243 and 246) of the Tax Code.

The sole issue to be resolved in this case is whether or not petitioner's importation of plant machinery, spare parts and equipments for use in its milling operations is exempt under Presidential Decree 791, as amended by Presidential Decree 1710 from payment of compensating tax.

Presidential Decree No. 791 as amended by Presidential Decree No. 1710 provides as follows :

> "Section 1. Any person, partnership, company or Corporation who or which is now engaged or shall engage in the business of manufacturing, milling, processing or refining sugar <u>shall be exempted from the payment of</u> special import tax, <u>compensating tax,</u> and customs and tariff duties in respect to the importation of plant machinery, spare parts and other equipment effective upon the approval of this Decree until June 30, 1985.
>
> Section 2. The exemption under this Decree shall cover only the <u>importation of plant machinery, spare parts and other equipment,</u> including road building equipment, sugarcane transport, agricultural tractors and implements thereof, directly and actually needed and to be used exclusively in the development of the factory site and in the production, manufacture, milling, processing and refining of sugar by the grantee of the exemption under this Decree, if the shipping

> documents covering the importation are in the name of tax - exempt firms to whom the goods shall be delivered by the customs authorities" (underlining ours).

This case does not come as new, for we have already settled and ruled the issue in this case involving the same petitioner in Hawaiian - Philippine Company vs. Commissioner of Internal Revenue, CTA Case No. 3650, June 31, 1989.

Considering that the petitioner is a sugar central engaged in the business of manufacturing, milling, processing or refining of sugar; and likewise petitioner imported the machinery and spare parts within the prescribed period, that is, prior to June 30, 1985; and that the importation consisted of plant machinery, spare parts and other equipment directly and actually needed and to be used exclusively in the development of the factory site and in the production, manufacture, processing or refining of sugar; and that the shipping documents covering the importation are in the name of the tax - exempt firm, thus we hold that petitioner is exempt from paying compensating tax under Presidential Decree No.791, as amended by Presidential Decree No. 1710.

Moreover, the exemption under said Decrees was restored by FIRB Resolution No. 53-85 dated October 1, 1985 pertinent portion of which reads :

> "__Be It Resolved as It Is Hereby Resolved,__ That the tax and duty exemption priveleges of sugar millers granted under PD. No. 791, as amended, and withdrawn by PD. No. 1955, are hereby restored :
>
> __Provided,__ That such priveleges shall extend only to imported articles which arrived in the Philippines on or before 30 June 1985." (Emphasis ours).

In the case at bar, there is substantial compliance with the requirements provided for by law. It has clearly established its right to the exemption sought for by way of material and documentary exhibits, not to say the clear and unequivocal intent of the provision in question.

It should be noted however that with this decision granting the claim for refund, there is a complete reversal, not to say, an abandonment in the findings of the Court in San Carlos Milling Co. Inc. vs. Commissioner of Internal Revenue, CTA. Case No. 4107.

In that case of San Carlos Milling Co. Inc. which invoked the decision in National Power Corporation vs. Province of Albay. et. al., 186 SCRA 198, the Supreme Court ruled on the power or authority of the Fiscal Incentives Review Board, under P.D. 776, to grant or extend tax and duty exemption privileges of the grantee. The power of the FIRB was merely to recommend to the President of the Philippines what subsidies or tax exemption grants should be withrawn, modified, revoked or suspended. The Supreme Court added that "The FIRB has no authority to impose taxes or revoke existing ones, which, after all, under the Constitution, only the legislative may accomplish." By itself, it could not have validly prescribed exemptions or restore taxability. (Napocor v. Prov. of Albay, et.al., supra)

To further substantiate the reversal of the decision in the case of San Carlos Miling Co. Inc., it has been enunciated in Maceda vs. Macaraig, Jr., 197 SCRA 771, that, the FIRB Resolutions then in issue which restored NPC's tax exemption privileges included the restoration of the indirect tax exemption of the NPC on petroleum product it used. In this connection, suffice it to state, the FIRB Resolution No. 53-85 could have validly restored the tax exemption privilege of petitioner when that same privilege has already been withdrawn by P.D. No. 1955 effective October 15, 1984. True it is that the then Secretary of Justice in Opinion No. 77 dated August 6, 1977 was of the view that the powers conferred upon the FIRB by Sections 2 (a), (b), (c), and (d) of Executive Order No. 93 constitute undue delegation of legislative power and, is therefore unconstitutional. However, he was overruled by the respondent Executive Secretary in a letter to the Secretary of Finance dated March 30, 1989. The Supreme Court ruled that "the Executive Secretary, by authority of the President, has the power to modify, alter or reverse the construction of a statute given by a department secretary."

With this latest precedent granting the claim for refund, the law does look with favor on tax exemptions to those who would seek to be thus privileged and could justify it by words too plain to be mistaken and too categorical to be misinterpreted.

WHEREFORE, the claim for refund of petitioner in the amount of P283,352.00 representing payment of compensating tax for importation during the period November 1984 to May 1985 is hereby granted.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 11, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR :

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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