REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

\- versus -

C.T.A. CASE NO. 4957

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
OCT 05 1995

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D E C I S I O N

This is an appeal from the decision of respondent denying petitioner's claim for refund of customs duties paid on petroleum products purchased from Petron Corporation pursuant to the provisions of Section 17 of Presidential Decree No. 66, otherwise known as the EPZA Law.

Petitioner, Philippine Phosphate Fertilizer Corporation (PHILPHOS for short) is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the manufacture and production of fertilizers for domestic and international distribution. It is registered with the Export Processing Zone Authority (EPZA).

For the periods covering the months of October to December 1991 and January to June 1992, Philphos purchased from Petron fuels and other petroleum products used directly or indirectly in the manufacture of fertilizers. The customs duties on these purchased fuels and petroleum products were passed on by Petron to Philphos as part of the selling price and paid the amount of P20,149,473.77 corresponding to said tax. Philphos deemed the payment erroneously and illegally collected by the respondent.

Philphos relies on the provision of Section 17(1) of Presidential Decree No. 66, quoted as follows:

> "SEC. 17. ***Tax Treatment of Merchandise in the Zone.*** - **(1)** Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to Customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding."

Philphos heretofore entitled to the privilege accorded under the aforequoted provision of Presidential Decree No. 66, being a registered zone export enterprise, filed through its counsel a letter claim for refund with the respondent on September 22, 1992, covering the periods October to December

1991 and January to June 1992 in the amount of P20,149,473.77 (Exh. A).

On January 19, 1993, counsel for petitioner received a copy of the decision of respondent dated January 4, 1993, denying the claim for refund/tax credit pertinent portion of said decision reads as follows:

> "Please be informed that petroleum products (fuel, etc.) locally purchased by a zone operator, and brought into the Zone for its own use, or otherwise, do not enjoy special tax treatment under Section 17 of P.D. No. 66.
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> The petroleum products purchased by PHILPHOS from PETRON, it maybe noted, were derived from crude oil imported by the latter who, upon payment of customs duties due thereon, processed and subsequently sold to the former in connection with its operations. The customs duties due on the importations of the raw material (crude oil) from which the finished products were taken and sold to PHILPHOS have been settled by the importer thereof, and the importation terminated, (Section 1202, TCC). That they may have been locally consumed by a Zone operator registered under P.D. No. 66 does not make the transaction, or any other local sale for that matter, by the oil supplier, a proper and legal case of refund. Indeed, such local sales and transportation of the finished products to the Zone are not subject to any Customs laws and regulations as prescribed in Section 17 since the importation by the supplier, as earlier stated, had long been terminated when the imported articles were released from Customs custody.
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> In view thereof, the claim for refund/tax credit is hereby denied." (Exh. B)

Hence, this petition for review filed on February 18, 1993.

In his answer to Philphos's petition for review, respondent alleges by way of affirmative and special defenses that: (a) The Court has no jurisdiction over the case absent the decision of respondent Commissioner of Customs on the protest denied by the Collector of Customs; (b) Assuming arguendo that the Court has jurisdiction, still the claim for refund has no basis since the fuels and petroleum products purchased from Petron were not imported therefore no customs duties were paid and collected thereon; (c) The customs duties paid on the imported crude oil have been settled by the importer (Petron) and therefore payment of the customs duties terminate the importation pursuant to Section 1202 of the Tariff and Customs Code. The subsequent sale of the finished product, petroleum and fuels does not give rise to the refund of customs duties under Section 17 of Presidential Decree No. 66; (d) Section 17(1) should be read in relation with Section 18(i) of the same Decree, as amended by P.D. 1449, June 11, 1978, that the supplies used in the manufacture or production of export products must form part of the finished product, i.e. fertilizer; (e) Tax exemptions must be expressed; (f) Article 79 of E.O. 226, otherwise known as the Omnibus Investments Code, which provides: "All doubts concerning the benefits and incentives granted enterprises and investors by this Code shall be resolved in favor of investors and registered enterprises" cannot be applied since there is not doubt for the law is clear; and (g) The Secretary of Finance in a Ruling dated 18 July 1991, superseded a previous ruling dated December 11, 1984, which exempts EPZA enterprises from customs, internal revenue and local taxes.

The jurisdiction of this Court has been settled in our Resolution dated December 13, 1993. Section 2402 of the Tariff and Customs Code provides for the remedy of appeal to the Court of Tax Appeals from the ruling of the Commissioner of Customs in any matter brought before him upon protest or by his action or ruling in any case of seizure. Petitioner filed a claim for refund with the respondent stating its desire to recover erroneously paid customs duties. Petitioner after receiving the adverse decision of respondent filed within thirty (30) days its petition for review by way of appeal to this Court pursuant to Section 7(2) of Republic Act No. 1125. Having pursued all legal remedies allowed by law in the administrative level, petitioner's next recourse was to file a petition for review with this Court within the prescriptive period. All having been accomplished, the Court therefore acquires jurisdiction over the case.

The only question left to be resolved is whether or not petitioner is exempt from paying customs duties added as cost to its purchases of fuel and petroleum products and where passed on to it by oil companies.

Our view is not new. We have already resolved this issue involving the same parties in the case of **Philippine Phosphate Fertilizer Corporation v. The Hon. Commissioner of Customs, C.T.A. Case No. 4661, May 31, 1993,** where the Court held:

"Contrary to the allegation of the Respondent that Section 17(1) does not provide for duty and tax exemption privilege, this Court disagrees. The phrase 'shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding' cannot be interpreted in any other manner than to mean that merchandise or supplies brought into the zone are exempt from customs duties and taxes. The incentive given under Section 17(1) is broader than a mere tax exemption. The phrase is so broad to include not only the exemption from customs duties and taxes but everything required in the enforcement of the customs and internal revenue laws save on the exceptions and conditions specified in the EPZA law itself. Considering that the customs and internal revenue laws are primarily enacted to impose duties and taxes, the phrase cannot be interpreted to exclude these impositions. More so, the phrase will also include exemption from other rules and regulations which are normally followed in the discharge of importation such as the filing of import entries, examination and other requirements attendant to the importation of goods into the country.

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Section 17(1) covers domestic merchandise, raw materials, supplies, articles and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed or used directly or indirectly in such activity shall not be subject to customs and internal revenue laws and regulations. Oil products produced by local oil companies may be classified as domestic merchandise, raw materials or supplies as legally defined in the Supreme Court case of Commissioner of Customs vs. Caltex (Philippines), Inc. (G.R. No. L-13067, Dec. 29, 1959, 106 Phil. 829) which states that supplies or materials shall include gasoline and other petroleum products for purposes of exemption from customs duties under Article 103 of Republic Act No. 387. For what purpose, among others, these products may be brought into the zone for processing, manipulation, manufacture, mixed with foreign and domestic merchandise or used directly or indirectly in such activity. In our particular case, the petroleum products deliverd to Petitioner is used in the processing of fertilizer for export. While Respondent may be correct that these products did not form part of the fertilizer exported nevertheless, the law does not provide for such requirement but only requires the use of such materials directly or indirectly in such activity. The use of petroleum products like bunker oil as fuel will easily fall under the phrase 'used directly or indirectly in such activity'. Clearly these petroleum products can easily qualify for tax and duty free privileges under Section 17(1) of P.D. 66.

Regarding the allegation of Respondent that Section 18(i) shall govern the situation and therefore the claim for refund of customs duties should be denied as the bunker oil used as fuel did not actually form part of the finished product exported. This Court believes that this section introduced by P.D. 1449 merely grants additional incentive to an EPZA registered enterprise and was not meant to supersede Section 17 of P.D. 66. This is clear as the heading clearly indicates that it is an 'additional incentive'. The grantee of the incentive may or may not avail itself of it. In fact, this Court would interpret that this incentive as a surplusage. Its provision was not intended to restrict the enjoyment of the privileges under Section 17, otherwise the amending law, P.D. 1449, should have stated so. On the contrary it was meant only as an incentive in addition to those already being enjoyed by an EPZA registered enterprise.

This interpretation is strengthened by the enactment of E.O. 226 (The Omnibus Investments Code). The tax treatment of merchandise inside the zone was re-enacted under Article 77 of Book IV of the Code but not Section 18(i). Said Section 18(i) was deleted from Book VI governing incentives of EPZA registered enterprise and was incorporated as one of the incentives of a BOI registered enterprise under Book I which an EPZA registered enterprise may also enjoy as an additional incentive under Art. 78.

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Finally under paragraph (2) of E.O. 226 aforequoted, the purchase of merchandise by a registered zone enterprise was likewise considered as export sale and the exporter shall be entitled to the benefits allowed by law for such transaction. This will entitle the exporter to duty drawback under Section 106 of the Tariff and Customs Code and tax credit under Section 127(d) of the National Internal Revenue Code. Considering that pursuant to the aforequoted provision of the LOI and E.O. 226, the mere act of selling and delivering products to the export processing zone enterprise can be considered already as export sale without awaiting for actual exportation, the allegation of the Respondent that the article sold to an EPZA registered enterprise should form part of the finished product actually exported will hold no water at all.

All the above incentives spring from the concept that an export processing zone is carved out of the Philippine territory for purposes of enforcement of customs and tax laws. So that the area or areas fixed or delimited by presidential proclamation or by board resolution of the Export Processing Zone Authority as export processing zone shall be referred to as the 'zone' and the national territory outside of the zone shall be called 'customs territory' (Section 2(e) & (f) of the Amended Rules and Regulations to Implement P.D. 66). The basic policy in establishing a zone is to attract enterprises especially foreign investors who will be manufacturing products primarily for export and be able to do so without their supplies and raw materials entering, and the export products leaving the Philippine territory within the context of customs and revenue regulations. Export is the backbone of our economy and is being encouraged by providing enterprises with all the incentives including those which we have discussed above. For which reason the law further states that 'All doubts concerning the benefits and incentives granted enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises'. (Article 79 E.O. 226.)"

Respondent's contention that the previous Ruling dated December 11, 1984, issued by the Ministry of Finance which confirmed that petroleum products sold by Petroleum Corporation to EPZA Enterprises are not subject to customs laws, internal revenue laws nor local tax ordinances, had been superseded by a subsequent Ruling dated July 18, 1991, issued by then Secretary of Finance, Jesus P. Estanislao, is untenable. We quote in full the Ruling invoked by respondent dated July 18, 1991, to wit:

"Republic of the Philippines
DEPARMENT OF FINANCE
Manila

18 July 1991

Hon. Peter D. Garrucho, Jr.
Secretary
Department of Trade and Industry
Makati, Metro Manila

Dear Secretary Garrucho,

We were in receipt of your letter referring to the request of the Philippine Associated Smelting and Refining Corporation (PASAR) for confirmation of its tax and duty drawbacks due from its purchases of petroleum products.

The claim of PASAR had been previously brought to our attention and we had referred the same to the Commissioner of Internal Revenue for evaluation. Based on the review, the claim for refund of excise taxes paid on purchases of petroleum products by PASAR cannot be allowed on the following considerations:

a. Section 18(i) of PD 66 allows refunds through tax credit of duties and taxes paid on supplies only if the supplies used in the manufacture, processing or production of export products form part of the finished products.

b. The tax exemption must be justified by the clearest grant of organic or statute law and that this should be explicit and categorical.

We have also estimated that the claim of tax refunds will result to P108 million in revenue loss for government.

Sincerely yours,

(Sgd.) JESUS P. ESTANISLAO
Secretary"

The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law. **(Commissioner of Internal Revenue v. The Hon. court of Appeals, R.O.H. Auto Products Philippines, Inc. and The Hon. Court of Tax Appeals, G.R. No. 108358, January 20, 1995.)** In case of conflict between a law and an administrative regulation, the law prevails. **(Wise & Co., Inc., et. al., v. Bibiano L. Meer, Collector of Internal Revenue, G.R. No. L-48231, June 30, 1947, 78 Phil. 655)**

In the case at bar, Section 17(1) of P.D. 66 is the controlling statute. Any ruling issued by the Secretary of Finance which runs in conflict with Section 17(1) cannot be given the force of law. For only regulations or ruling issued in consonance with the law it implements shall be valid. The requisites for validity of regulations are: (1) They must be useful, practical and necessary for the enforcement of the law; (2) They must be reasonable in their provisions; and (3) They must not be contrary to law **(Inter-provincial Auto Bus Co. v. Collector, 52 O.G. No. 22, p. 791.)** and they must be published in the Official Gazette **(Secs. 79-B and 551, Adm. Code; Lim Hoa Ting v. Central Bank, 104 Phil. 573; Angela S. Lazatin v. Commissioner of Customs, CTA Case No. 782, January 19, 1962; see also Nolledo, Bar Reviewer in Taxation, 1990 ed., p. 36).** Thus, respondent's submission that the Ruling of the Secretary of Finance dated 18 July 1991, which superseded a previous ruling dated December 18, 1984, denying PASAR's claim for refund of excise taxes paid on purchases of petroleum products, is positively without merit and could not have revoked the grant of exemption from customs duties to petitioner under Section 17(1) of P.D. 66, as amended.

Last, but not least, with regard to the claim for tax credit, there appears to be no dispute with respect to the amount claimed. Petitioner had satisfied the Court with the evidence presented that it is entitled to be credited the amount of P20,149,473.77 (see Exhs. C to E, inclusive of their submarkings).

WHEREFORE, the Court finds the petition to be meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to issue in favor of petitioner a Tax Credit Certificate in the amount of P20,149,473.77, representing erroneously paid customs duties on purchases of fuel and petroleum products for the periods covering the months of October to December 1991 and January to June 1992. No costs of suit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate 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