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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE POLYAMIDE INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3491

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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3/31/89

D E C I S I O N

This suit involves a claim for refund of the total amount of P690,331.00 representing alleged 5% internal revenue tax collected on petitioner Philippine Polyamide Industrial Corporation's importations of raw materials for the period from July 8, 1980 to January 7, 1981.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws with office at Bo. Mapayapa, Calamba, Laguna. It is registered with the Board of Investments as a preferred pioneer enterprise under Republic Act No. 5186 for the production of nylon 6 filament. As a preferred pioneer enterprise, petitioner is entitled to exemption from all national internal revenue taxes, except income tax, on a diminishing basis.

For the period from July 8, 1980 to January 7, 1981, petitioner on several occasions made importations of raw materials in its manufacture of nylon filament yarns and paid the 5% internal revenue tax thereon in the amount of P690,331.00 pursuant to Presidential Decree No. 1352 as amended by Presidential Decree No. 1395. Claiming however that Presidential Decree No. 1584 in relation to Executive Order No. 569 restored its tax exemption privileges under Republic Act No. 5186 thereby exempting its importations from the 5% internal revenue tax, petitioner filed its claim for refund with respondent Commissioner of Internal Revenue and this instant petition for review on July 8, 1982.

Since no action was seasonably taken by respondent on petitioner's claim for refund, the parties submitted this case for decision, after hearing and submission of evidence, on the issue of whether petitioner is exempt from the 5% internal revenue tax (advance sales tax) paid on the importations in question and thereby entitled to a refund of the sum of P690,331.00.

It seems clear that under Republic Act No. 5186, particularly Section 8(a) thereof, enacted by Congress on September 16, 1967, petitioner as a preferred pioneer enterprise, is entitled to exemption from all national internal revenue taxes, except income tax, on a diminishing basis as follows:

(1) One hundred per cent up to December 31, 1972;

(2) Seventy-five per cent up to December 31, 1975;

(3) Fifty per cent up to December 31, 1977;

(4) Twenty per cent up to December 31, 1979; and

(5) Ten per cent up to December 31, 1980.

However, on April 21, 1978, with the promulgation of Presidential Decree No. 1352, the tax-free importation privilege granted to petitioner as a preferred pioneer enterprise under Republic Act No. 5186 was withdrawn and instead subject to a five percent customs duty and five percent internal revenue tax. To quote the pertinent provisions of Presidential Decree No. 1352:

> SECTION 1. All importations which are presently exempt from customs duties and/or internal revenue taxes under the provisions of any general or special laws shall be subject to a 5 percent customs duty and 5 percent internal revenue taxes subject to the same limitations and conditions prescribed under such law, if any. The duty and tax imposed herein shall be computed in accordance with the applicable provisions of the Tariff and Customs Code, as amended, and the National Internal Revenue Code of 1977, respectively.
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> The customs duty and internal revenue taxes imposed under this section shall not apply to the following importations:
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> > 1. Those which are exempt in pursuance of or in compliance with international treaties or commitments, such as the ADB-RP Host Agreement (1966); the 1947 Convention on Privileges and Immunities of the United Nations and its specialized agencies; the United States Agency for International Development-RP Agreement; the 1947 Military Bases Agreement; and other similar treaties or commitments;
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> > 2. Those which are exempt under Section 17 of Presidential Decree No. 66;

3. Those which are exempt under Section 12 of Presidential Decree No. 87;

4. Those which are exempt under Presidential Decree No. 215;

5. Those which are exempt under Section 1 of Presidential Decree No. 292;

6. Those which are exempt under Presidential Decree No. 529;

7. Those which are exempt under Section 15 of Presidential Decree 572;

8. Those which are exempt under Presidential Decree No. 604;

9. Those which are exempt under Presidential Decree No. 666;

10. Those which are exempt under Section 76 of Presidential Decree No. 768;

11. Those which are exempt under Presidential Decree No. 783;

12. Those which are exempt under Presidential Decree No. 972; and

13. Those which are exempt under Section 18 of Republic Act No. 6234.

SEC. 2. The pertinent provisions of Presidential Decree No. 218,

> Presidential Decree No. 269, Presidential Decree No. 348, Presidential Decree No. 413, Presidential Decree No. 440, Presidential Decree No. 535, Presidential Decree No. 538, Presidential Decree No. 634, Presidential Decree No. 681, Presidential Decree No. 690, Presidential Decree No. 926, Presidential Decree No. 990, Presidential Decree No. 992, Presidential Decree No. 1159, Republic Act No. 720, Republic Act No. 3470, Republic Act No. 4156, Republic Act No. 5186, Republic Act No. 6135, Republic Act No. 1161, Republic Act No. 1370, Republic Act No. 2640, Republic Act No. 3054, Republic Act No. 4690, Republic Act No. 4850, Republic Act No. 4071, and Republic Act No. 6042 are hereby repealed or amended accordingly. (emphasis supplied)
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> SEC. 3. All pertinent provisions of special charters granting franchise and/or similar provisions of other general and special laws are likewise repealed or amended accordingly; *Provided, however*, That the President may, upon recommendation of the Fiscal Incentives Review Board, declare a particular provision of an existing law other than those enumerated in the preceding paragraph as not among those repealed or amended by this paragraph.

As a matter of fact, as clearly and expressly provided in Section 2 thereof, quoted above, the pertinent provisions of Republic Act No. 5186 - exemption from all national internal revenue taxes on a diminishing basis - were repealed or amended accordingly. And to remove whatever doubts as to the taxability of all importations which were then totally or partially exempt from customs duties and/or internal revenue taxes under any general or special law, Section 1 of Presidential Decree No. 1395, promulgated on May 31, 1978, reiterates in clear and unambiguous terms:

> SECTION 1. Presidential Decree No. 1352 is hereby amended to read as follows:
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> > "SECTION 1. All importations which are at present totally or partially exempt from customs duties and/or internal revenue tax under the provisions of any general or special law shall be subject to a five (5%) percent customs duty and five (5%) percent internal revenue tax, subject to the same limitations and conditions prescribed under such law, if any.
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> > "In the case of importations enjoying partial exemption, the said duty and tax shall be imposed on the exempt portion in addition to the duty and tax due on the taxable portion.
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> > "The duty and tax imposed herein shall be computed in accordance with the applicable provisions of the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code of 1977, as amended, respectively.
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xxx xxx xxx

"SEC. 4. The pertinent provisions of the following laws are hereby repealed or amended accordingly:

"(a) Presidential Decree No. 218, as amended by Presidential Decree No. 348;

"(b) Presidential Decree No. 413;

"(c) Presidential Decree No. 440;

"(d) Presidential Decree No. 535;

"(e) Presidential Decree No. 538;

"(f) Presidential Decree No. 634;

"(g) Presidential Decree No. 992;

"(h) Presidential Decree No. 1159;

"(i) Republic Act No. 720;

"(j) Republic Act No. 1370;

"(k) Republic Act No. 2640;

"(l) Republic Act No. 3470, as amended;

"(m) Republic Act No. 5186, as amended;

"(n) Republic Act No. 6135, as amended; and

> "(o) Other general and special laws, and special charters granting franchises. (emphasis supplied)
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> xxx xxx xxx

Petitioner however argues that Presidential Decree No. 1584, promulgated on June 11, 1978, in conjunction with Executive Order No. 569, impliedly repealed Presidential Decree No. 1352, as amended by Presidential Decree No. 1395, insofar as the latter seeks to impose the 5% internal revenue tax on the importations at issue made by petitioner, to which full tax exemption was extended under said Presidential Decree No. 1584 and Executive Order No. 569, both of which are later and special enactments. Petitioner stresses that Presidential Decree No. 1352 promulgated on April 21, 1978, as amended by Presidential Decree No. 1395 dated May 31, 1978 which withdrew the tax exemption granted to Board of Investments registered enterprises under Republic Act No. 5186, are earlier enactments. According to petitioner, Presidential Decree No 1584 restored the exemption earlier withdrawn under Presidential Decree No. 1352 as amended by Presidential Decree No. 1395. Being a later and special enactment, Presidential Decree No. 1584, in relation to Executive Order No. 569, should prevail over both Presidential Decree Nos. 1352 and 1395.

Insofar as pertinent hereto, Presidential Decree No. 1584, which took effect on June 11, 1978, provides:

> SECTION 1. Section 15 of Republic Act No. 5186 is hereby amended by the addition of subsections "q" and "r", which shall read as follows:
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> "q. Recommend to the President in meritorious cases, the literalization of incentives granted by the Board for particular firms or specific industries under Republic Act No. 5186, Republic Act No. 6135, and Presidential Decree No. 1159; the President may in the interest of national socio-economic development, general welfare and/or national security liberalize incentives for such particular firms or specific industries by: (1) extending the period of availment of incentives, which may be enjoyed only for a limited period; or (2) increasing the rates of tax exemptions prescribed for enterprises registered with the Board.

> "r. Recommend to the President, who, in the interest of general welfare and development, may eliminate, reduce or suspend the enjoyment of any of the tax incentives administered by the Board of Investments provided that such reduction shall not affect firms previously registered or approved by the Board prior to such reduction."

Shortly thereafter, the then President of the Philippines on November 23, 1979, pursuant to the above-quoted provision promulgated Executive Order No. 569 wherein he authorized the Board of Investments not to merely recommend, but to actually extend the period of availment of incentives by any registered enterprise for a period not exceeding five (5) years and/or increase the rate of exemption of registered pioneer enterprises.

Upon request of petitioner, the Board of Investments during its meeting on March 20, 1980 extended the time within which petitioner can enjoy tax exemptions under Section 8(a) of Republic Act No. 5186 at increased exemption rates pursuant to Presidential Decree No. 1584. (Exh. J, p. 60, CTA records) To quote the Board of Investments' letter of March 26, 1980 to petitioner:

1980 March 26

Philippine Polyamide Industrial Corp.
Suite 701 Ermita Center
Roxas Boulevard
M a n i l a

Attention: Mr. Ramon C. Lee
President

Gentlemen:

The Board during its meeting last March 20, 1980 approved your request for an extention in time within which to enjoy tax exemptions under Sec. 8(a) of R.A. 5186 at increased exemption rates, pursuant to P.D. 1584, as follows:

Rate of Exemption	Period
100%	Up to December 31, 1984
75%	Up to December 31, 1986
50%	Up to December 31, 1988
20%	Up to December 31, 1989

It is understood that the BOI reserves the right to withdraw, terminate or reduce, at any time the extended period and/or increased exemption benefits, whenever in the opinion of the BOI, your firm no longer needs such assistance.

Please be guided accordingly.

Very truly yours,

H. ZAYCO
Governor

Since Presidential Decree No. 1352 issued on April 21, 1978 and Presidential Decree No. 1395 promulgated on May 31, 1978 had already withdrawn petitioner's tax free importation privilege as a preferred pioneer enterprise under Republic Act No. 5186 and instead subjected it to a five percent customs duty and five percent internal revenue tax, obviously, the tax exemptions of petitioner under Section 8(a) of Republic Act No. 5186 cannot anymore be extended. Presidential Decree No. 1352 imposing a five percent customs and five percent internal revenue tax in lieu of the duty and/or tax-free importation privilege is very clear and explicit on this point. Section 2 and Section 3 thereof expressly and clearly provide, respectively, that the pertinent provisions of Presidential Decree No. 5186 and all pertinent provisions of special charters granting franchise and/or similar provisions of other general and special laws are otherwise repealed or amended accordingly.

The pertinent provisions of Presidential Decree No. 1584 are very specific and mandatory. "Recommend to the President in meritorious cases, the liberalization of incentives granted by the Board for particular firms or specific industries under Republic Act No. 5186", but there is no more incentive to liberalize because petitioner's tax-free importation privilege under Republic Act No. 5186 had already been withdrawn by Presidential Decree No. 1352 on April 21, 1978. Then, by "(1) extending the period of availment of incentives, which may be enjoyed only for a limited period; or (2) increasing the rates of tax exemption prescribed for enterprises registered with the Board". However, Presidential Decree No. 1584 could not have extended the tax exemption privilege of petitioner under Republic Act No. 5186 since the pertinent provisions of Republic Act No. 5186 on this matter of tax exemption have already been repealed upon the promulgation of Presidential Decree Nos. 1352 and 1395 on April 21, 1978 and May 31, 1978 respectively. If we are to adhere, as we should, to the commonly accepted meaning of words in consonance with settled rules of interpretation, the very logical view is that you cannot liberalize an incentive or extend a period which has already been repealed.

The rule is well settled that one who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer; they being highly disfavored and may almost be said "to be odious to the law". He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-190707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

WHEREFORE, we find no merit in the instant petition for review and the same is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 31, 1989.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

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

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals