REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WRIGLEY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4292

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 10 1995

x - x

D E C I S I O N

This is a claim for the refund of alleged overpaid sales taxes for the period August 1, 1986 to December 31, 1987 in the total amount of P12,788,632.66.

Petitioner is a food manufacturer duly authorized by the Bureau of Food and Drugs (BFAD) engaged in the manufacture and sale of chewing gum (tabs and sticks), bubble gum and menthol gum carrying the brand names Juicy Fruit, Spearmint, Doublemint, Big Boy and Cool Crunch (collectively referred to as "Gum Products").

During the periods covered in this Petition, Petitioner paid the 20% sales tax due on the sale of their gum products by applying its accumulated tax credit on purchases and paying the additional amount in excess of the tax credits. The tax credits on purchases were computed on the basis of receipts and invoices on local purchases and Bureau of Customs receipts and other documents on importations submitted before this Court. (Exhs. "A-1a" to "RRa-3" and "SS1-a to SS179-a)

Petitioner, however, contended that there was an overpayment of sales tax since "processed food products for human consumption" are subject only to 10% tax rate. Hence, on February 26, 1988, Petitioner filed a written claim for refund of the alleged overpayment of sales tax, stating thus:

> For the period from August 1, 1986 to December 31, 1987, our client paid 20% sales tax on their sales of the aforementioned products, unaware that "processed food products for human consumption" are subject only to 10% tax rate pursuant to Section 163 (2) (a) of the National Internal Revenue Code, as amended by Executive Order No. 36. (Exh. "H")

The alleged overpayment of sales tax is in the total amount of P12,788,632.66 computed as follows:

WRIGLEY PHILIPPINES, INC.
COMPUTATION SHEET - CLAIM FOR SALES TAX REFUND
SALES TAX AT 10% EFF. 8-1-86

		Tax Due	
Period Covered	Taxable Sales	Rate	Amount
July 1986	P5,226,687.52	20%	P1,045,337.50
July invoices booked Aug. '86	977,864.30	20	195,572.86
August (excluding July invoices)	3,518,551.73	10	351,855.17
September	3,154,864.02	10	315,486.40
July-Sept. '86 Qtr.	14,877,967.57		2,108,251.93

Oct.-Dec. 1986	15,905,863.82	10	1,590,586.38
Jan.-Mar. 1987	24,214,379.09	10	2,421,437.91
Apr.-June	27,613,692.66	10	2,761,369.27
July-Sept.	24,776,961.15	10	2,477,696.12
Oct.-Dec.	26,702,014.07	10	2,670,201.41
TOTAL	P134,090,878.36	-	14,029,543.02

		Payments Made			
	Tax Credit Applied	Tax Credit Cert.	Cash Payment	Total	Overpayment
July-Sept. '86 Qtr.	P2,113,870.66	-	P 861,722.84	P2,975,593.50	P 867,341.57
Oct.-Dec. 1986	1,535,198.44	P562,074.00	1,083,900.31	3,181,172.75	1,590,586.37
Jan.-Mar. 1987	1,329,546.35	-	3,513,329.47	4,842,875.82	2,421,437.91
Apr.-June	5,383,142.78	-	442,595.75	5,522,738.53	2,761,369.26
July-Sept.	4,454,970.67	-	500,421.55	4,955,692.22	2,477,696.10
Oct.-Dec.	2,390,404.48	-	2,949,998.38	5,340,402.86	2,670,201.43
TOTAL	16,904,133.38	562,074.00	9,351,968.30	26,818,175.68	12,788,632.66

(Exh. H-2, CTA Records p. 119)

On August 6, 1988, Petitioner filed this Petition for Review in order to toll the running of the prescriptive period since until said date, Respondent has not granted Petitioner's claim for refund.

The facts of the case are undisputed leaving only one issue for resolution, that is: Whether or not Petitioner's "Gum Products" are within the scope of "processed products for human consumption" (Sec. 163(2)(a), 1977 NIRC, as amended) thereby entitled to a reduced tax rate Petitioner applied.

We answer in the affirmative.

Section 163 of the National Internal Revenue Code as amended by Executive Order No. 36 dated July 30, 1986 provides thus:

> "Section 163. *Percentage tax on original sales of articles.* - There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated a tax based on the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer, producer or importer:
>
> (1) Thirty per cent (30%), on the following non-essential articles:
>
> xxx xxx xxx
>
> (2) Ten per cent (10%), on the following essential articles:
>
> (a) Processed meat, fruits, vegetables, fish and other sea foods and other processed food products for human consumption.
>
> xxx xxx xxx
>
> (4) Twenty per cent (20%), on other articles not covered by subsections (1), (2) and (3) of this section."

Respondent advanced the theory that "the 'Gum Products' of the Petitioner is not covered by subsections (1), (2) and (3) of Section 163 of the 1977 Tax Code as amended but the 20% imposition of sales tax to the subsection (4) thereof" (Respondent's Memorandum, p.3). This is so, since according to her, "'Gum Products' are not 'Essential Foods' which is required by the Tax Code as amended" (ibid.) she elaborated her stand, thus:

> It is not disputed that under the Food and Drug Act "gum products" are within the general

classification "food". Legislative enactment of other countries like United States for purposes of regulations classified "gum products" as food. The National Internal Revenue Code as amended in referring not only to general term "food" but to "<u>essential</u> food, or articles."

Noted is the preceding section 163 (2) of the Tax Code which states that:

> "(2) Ten percent (10%) on the following <u>essential articles:</u>
>
> xxx xxx xxx

The Tax Code by inserting the word "<u>essential</u>" it has limited the general sense of the term food, eaten or drunk for nourishment. The term essential has been defined as "indispensably necessary" important in the highest degree; requisite" (p. 245 Words and Phrases, Permanent Edition, Volume 15). The term food in the Code therefor has been construed as:

> "Food" is the chief substance of regularly taken meals as distinguished from candy, appetizer, or condiments."
> (Webster's Third New International Dictionary, Volume 1; 1976 B & G Merriam Co.)

Gum products though may be considered food in the general sense of the term are not <u>necessary, important in the highest degree</u> for nourishment. There is a wide difference when one refers to "<u>food</u>" only and "<u>essential food</u>". In order one could avail of the 10% tax rate under the subject provision of the Tax Code, the articles and/or foods must be "<u>essential</u>". While "gum products" are classified as <u>food</u> precisely, they are not <u>essential food</u> as required by the said Code. (ibid., pp. 3-5)

We disagree.

Respondent, in trying to prove her case, put her own words into the law. She misinterpreted it, to suit her assessment.

We have read Section 163 of the Tax Code, as amended. And We have read it very carefully. Yet, nothing in the said law speaks of "essential food" in order that one can avail of the 10% tax rate. The subject law speaks of "<u>essential articles</u>" and food is cited only as one example of an essential article which is covered by the 10% tax rate. This enumeration of what are "essential articles likewise includes "clothes and textiles", "medicines", "soaps, detergents, toothbrush and toothpaste", "writing pads, notebooks, etc.", "fertilizers, pesticides..."' "spare parts and accessories of motor vehicles" and many others which are not and can not be classified as food. The term "essential" which is in the heading of Section 163 (2) of the Tax Code is only descriptive of the term "articles". Hence, it qualifies the term "articles" being enumerated thereunder as essential, and certainly, does not only refer to the term "food" or to the other items enumerated therein. To insist on following the argument of the Respondent would strike an absurd if not a hilarious interpretation referring the 10% tax rate not only to "essential food" but also to "essential soaps", "essential toothbrush" and probably "essential toothpaste", which we cannot imagine being the intention of the legislators. We, therefore, cannot accept such interpretation, made by the respondent's counsel.

It was not contested during the hearing of this case that Petitioner is engaged in the business of manufacturing and processing food products as evidenced by its license and authority to engage in the manufacture and processing of food products issued by the Bureau of Food and Drugs.

It was also not disputed, in fact, admitted by Respondent that "chewing gum" is classified as food not only in this jurisdiction (Sec. 10(e) of Republic Act No. 3720, otherwise known as the Food, Drug and Cosmetic Act) but also by the Federal Food, Drug and Cosmetic Act of the United States. Moreover, Petitioner's "gum products" are composed of various ingredients which are commonly known food substances, to wit: sugar, glucose, glycerine, flavors, cornstarch and modified starches (Exh. "Y", T.S.N. March 2, 1993, pp. 29-33).

Hence, gum products are indeed classified under "processed food products for human consumption" which has a tax rate of only 10% and not 20% as erroneously paid by the Petitioner.

The argument of the Respondent that the rule of *ejusdem generis* excludes chewing gum is also bereft of merit since the enumerated items, to wit:

> Processed meat, fruits, vegetable, fish and other seafoods and other processed food products for human consumption.

are all general words. Each item is a class by itself.

> Therefore, where the enumeration includes classes and general terms as well, or where the specific things in the enumeration have no distinguishable common characteristics, the rule of ejusdem generis does not apply. (Agpalo, Statutory Construction, 1986 ed., p. 187)

Hence, the rule of *ejusdem generis* cannot be applied in the interpretation of the meaning of Section 163 (2) (a) as amended by E.O. No. 36. Otherwise, it would run counter to the basic rule in interpreting tax laws that doubts are construed strictly against the government and liberally in favor of the taxpayer because burdens are not to be imposed beyond what statutes expressly and clearly import. (see **Collector** vs. **La Tondeña,** 115 Phils. 841, 846)

In view of the above discussions, We are now prepared to grant Petitioner's claim for refund BUT NOT THE WHOLE AMOUNT AS PRAYED BY THE PETITIONER. This is so since We can only grant the amount which are fully substantiated by evidences. Petitioner submitted to this Court voluminous documents (receipts and invoices) contained in six (6) big boxes which We meticulously and painstakingly assessed and determined. After a long and "laborious ordeal" We found that We can only grant the sum of P10,206,165.93 (instead of the P12,788,632.66 prayed by the Petitioner) computed as follows:

1986					
Third Qtr.			Fourth Qtr.		
Sales:					
July		P 6,204,551.82	Oct.		P 5,478,778.71
Aug.		3,518,551.73	Nov.		6,007,295.53
Sept.		5,154,864.02	Dec.		4,419,789.58
Total		14,877,967.57			15,905,863.82
Tax Due					
per EO#36		2,108,251.93			1,590,586.38
Less: Tax					
Credit	1,272,010.80		Credit	613,342.87	
Payment	861,722.84	2,133,733.64	Payment	1,083,900.31	1,697,243.18
Refundable		(25,481.71)	TC Memo		
			No. 3330	562,074	2,259,317.18
			Refundable		(668,730.80)

First Qtr.			Second Qtr.		
Sales:					
Jan.		P 6,641,177.91	April		P 8,941,870.65
Feb.		7,872,430.47	May		9,194,440.84
March		9,700,770.71	June		9,477,381.21
Total		24,214,379.09			27,613,692.70
Tax Due					
per EO#36		2,421,437.91			2,761,369.27
Less: Tax					
Credit	990,625.26		Credit	4,732,350.22	
Payment	3,513,329.47	4,503,954.73	Payment	442,595.75	5,174,945.97
Refundable		(2,082,516.82)	Refundable		(2,413,576.70)

Third Qtr.			Fourth Qtr.		
Sales:					
July		P 8,633,087.91	Oct.		P 9,580,599.62
Aug.		7,810,511.63	Nov.		10,771,990.99
Sept.		8,333,361.55	Dec.		6,349,423.66
Total		24,776,961.09			26,702,014.27
Tax Due per EO#36		2,477,696.11			2,670,201.42
Less: Tax					
Credit	4,350,835.93		Credit	2,362,501.57	
Payment	500,421.55	4,851,257.48	Payment	2,949,998.38	5,312,499.95
Refundable		(2,373,561.37)	Refundable		(2,642,298.53)

Total Refundable:	
Third Qtr. '86	25,481.71
Fourth Qtr. '86	668,730.80
First Qtr. '87	2,082,516.82
Second Qtr. '87	2,413,576.70
Third Qtr. '87	2,373,561.37
Fourth Qtr. '87	2,642,298.53
Total Refundable	10,206,165.93

(Please see working papers attached in the docket of this case.)

The amount claimed by Petitioner in excess of P10,206,165.93 is **DENIED** by this Court for being unsubstantiated and/or the evidence to prove the same were not presented.

WHEREFORE, in all the foregoing, the claim for refund in the amount of P10,206,165.93 is hereby **GRANTED** and the Respondent is hereby **ORDERED** to **PAY** said amount to the Petitioner.

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 between 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