REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KRAFT GENERAL FOODS (PHILS.), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4590

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 21 1995

x ------------------------------------ x

D E C I S I O N

This case involves petitioner's appeal on the decision of respondent, dated February 11, 1991, received by petitioner on February 28, 1991, modifing the Deficiency Value-Added Tax (VAT) Assessment issued against petitioner for the first semester of 1988 from P2,486,330.99 to P1,597,711.62.

As borne out by the pleadings, petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is a subsidiary of Kraft Foods, U.S.A.. Petitioner is engaged in the business of manufacturing cheese food products subject to the value-added tax. It is a VAT registered enterprise with VAT Registration No. 34-2-000024, Class A.

On October 11, 1988, petitioner received from the Bureau of Internal Revenue (BIR) Letter of Authority No. 0021561 NA, dated September 21, 1988, authorizing its representatives to examine petitioner's books of accounts and other accounting records corresponding to its business tax liabilities for the first semester of 1988. After a thorough examination was made on petitioner's books of accounts, the revenue examiners prepared and submitted a copy of their preliminary findings regarding petitioner's alleged Deficiency VAT for the first semester of 1988 and the same was received by petitioner's representatives on November 29, 1989. On the basis of the preliminary findings of the examiners, it appears that petitioner was found liable to pay the alleged Deficiency VAT for the first quarter of 1988 in the amount of P603,851.17, inclusive of 25% surcharge and interest, and Deficiency VAT for the second quarter of 1988 in the amount of P2,113,322.34, inclusive of 25% surcharge and interest, or a total of P2,717,173.51.

Petitioner, represented by the law office of Romulo, Mabanta, Buenaventura, Sayoc and De Los Angeles, filed on January 3, 1990 a Memorandum, dated December 28, 1989, disputing the Preliminary Findings of the Bureau of Internal Revenue, International Tax Affairs Division (BIR-ITAD). However, petitioner admitted that it is only liable to pay the amounts of P93,708.32 and P81,470.97, for the first and second quarters of 1988, respectively, or a total of P175,179.29.

The revenue examiners prepared a Memorandum Report, dated January 31, 1990, for the Commissioner of Internal

Revenue, stating the reasons why a Deficiency VAT Assessment in the amount of P2,486,330.99, should be issued against petitioner for the first semester of 1988. The examiners noted certain discrepancies on petitioner's books of accounts and accounting records thus resulting to the disallowance of the following, to wit:

"1. Input tax on importation of raw materials -

The amount of input tax claimed in the VAT return was arrived at by imputing a 10% input tax on the total cost of all importations received during the period covered, for 1st quarter (Jan. to Mar.) and for 2nd quarter (Apr. - June), regardless of the time when the tax on importations were paid.

It has been ascertained from the books that in 1987, the procedure adopted by the company is to record all Advance Sales Taxes (AST) paid as a debit to 'Deferred Sales Tax Credit' account upon actual payment regardless of whether or not the goods have been received.

Entry upon payment of AST:

Dr.	Deferred Sales Tax Credit	x x	
Cr.	Accts. Payable/Cash		x x

Subsequently, upon filing its quarterly sales tax return, the 'DSTC' account is credited to an amount corresponding to the tax credit availed per return.

Entry upon payment of Sales tax return:

Dr.	Sales tax payable	x x	
Cr.	Def. Sales Tax Credit		x x
	Cash		x x

Since the 'Deferred Sales Tax Credit' account were all used as tax credit in the 1987 last quarter sales tax return, it is clear that all the Advance Sales Taxes paid in 1987, whether or not the goods were received, were already claimed as tax credit. Claiming it again as input tax against 'VAT output Tax' on the succeeding quarter when the goods are actually received would result to double availment of tax credit.

Furthermore, simply imputing a straight 10% input tax on the cost of importations received is unacceptable. Under Sec. 15 of Rev. Reg. 5-87 on substantiation requrement, it states that 'credits for input tax on importations shall be supported with import entry or other equivalent document showing actual payment of the VAT on imported goods'.

The taxpayer, in their protest letter, stated that they could not have incurred this deficiency tax claiming their good faith by simply alleging that they have 'always adhered to the strictest and highest standards of accounting and does not and will not impair its solid and time-honored reputation for fair dealing'. They however failed to submit concrete evidences to dispute the factual bases of the aforementioned assessment.

2. Surcharge - The taxpayer refused to pay the 25% surcharge claiming that this can be waived. However, they failed to show an approval from the Commissioner waiving said surcharge.

3. Input tax disallowed - This amount represents the input tax allocated to the 'exempt sales' made to AFP/PC/INP Commissary."

On March 30, 1990, the BIR issued an Authority to Issue Payment Order/Accept Payment corresponding to the amount of P175,179.29 to which petitioner asserts its willingness to pay to the BIR. On the same date, petitioner paid the basic tax of P166,948.72 plus interest of P8,230.57 or the sum of P175,179.29, as evidenced by BIR Payment Order No. C 7598352 and CB Confirmation Receipt No. B 18977445.

On May 29, 1990, respondent issued Notice of Assessment No. FAS 1-88-90-002252, received by petitioner on June 7, 1990, for alleged 1988 Deficiency Business Tax - VAT, in the amount of P2,486,330.99, inclusive of increments, computed as follows:

Deficiency basic tax	P1,551,608.09
25% surcharge	387,902.02
Balance	P1,939,510.11
Interest	546,820.88
TOTAL AMOUNT DUE & COLLECTIBLE	P2,486,330.99

The Assessment was based on the findings of the examiners as incorporated in their Memorandum Report to the Commissioner. For a more detailed presentation, the alleged Deficiency VAT for the first and second quarters of 1988, inclusive of increments, are itemized as follows: (see pp. 262-264, Folder 1, BIR records)

KRAFT FOODS, INC.

Recomputation of Deficiency VAT
1st Semester of 1988

FIRST QUARTER:

Gross Sales:		
January	P 32,357,578.00	
February	28,020,438.00	
March	28,217,848.00	
Total Sales		P 88,595,864.00
Less: Exempt Sales		

Asia-Pacific Exports	1,220,618.00	
AFPCES/PC-INP	62,204.00	1,282,822.00
Gross Taxable Sales		P 87,313,042.00
Add: March sales recorded in April	880,991.82	
Faulty manufacture	57,666.00	938,657.82
Adjusted taxable sales		88,251,699.82
Less: Cash Discounts		(490,653.45)
Net Taxable Sales		P 87,761,046.37
10% VAT Due thereon		P 8,776,104.64
Less: Input tax		
a) on beg. inventory (8%)	205,403.13	
b) on importation	3,512.116.00	
c) on local purchase of goods and services	1,846,197.30	5,563,716.43
Balance		P 3,212,388.21
Add: Disallowed input tax on sale to AFPCES/PC-INP 62204/88,595,864 x 5,563,716.43		3,906.33
Tax Due thereon		P 3,216,294.54
Less: Tax already paid		2,905,808.65
Deficiency tax		P 310,485.89
Add: 25% Surcharge		77,621.47
Balance		P 388,107.36
Add: Interest at 20% p.a.		
a) on March sales recorded in April (3 mos.) (880,991.82 x 10% x 1.25%) =110,123.97 110,123.97 x .05		5,506.19
b) on others (up to 1-21-90) = 35% (388,107 - 110,123.97) = 277,983.03 x .35		97,394.06
TAX STILL DUE & COLLECTIBLE - - - - - - - - - - - - - - - - - -		P 490,907.61

SECOND QUARTER:

Gross Sales:		
April	P 21,587,060.00	
May	30,797,981.00	
June	38,404,469.00	
Total Sales		P 90,789,510.00
Less: Exempt Sales		
Asia-Pacific Exports	1,539,167.00	
AFPCES/PC-INP	39,743.00	1,578,910.00
Gross Taxable Sales		P 89,210,600.00
Add: June sales recorded in July	1,565,797.62	
Faulty manufacture	180,251.00	1,746,048.62
Adjusted taxable sales		P 90,956,648.62
Less: March sales recorded in April	880,991.82	

Cash Discounts	500,379.75	(1,381,371.57)
Net Taxable Sales		P 89,575,277.05
10% VAT Due thereon		P 8,957,527.70
Less: Input tax		
a) on importation	2,879,172.00	
b) on local purchase of goods and services	2,081,209.73	4,960,381.73
Balance		P 3,997,145.97
Add: Disallowed input tax on AFPCES/PC-INP 39,743/90,789,510 x 4,960,381.73		2,171.40
Tax Due thereon		P 3,999,317.57
Less: Tax already paid		2,758,195.17
Deficiency tax		P 1,241,122.20
Add: 25% Surcharge		310,280.55
Balance		P 1,551,402.75
Add: Interest at 20% p.a.		
a) on June sales recorded in July (1,565,797.62- 880,991.82 x % x 1.25% = 85,600.72		
85,600.72 x .20 x 3/12		4,280.03
b) on others (up to 1-21-90) = 30% (1,551,402.75 - 85,600.72) x 30%		439,740.60
TAX STILL DUE & COLLECTIBLE -------------------		P 1,995,423.38

S U M M A R Y

FIRST QUARTER:	Collection	Assessment	Total
Deficiency basic tax	P 89,305.56	P 221,180.33	P 310,485.89
25% Surcharge	-	77,621.47	77,621.47
Balance	P 89,305.56	P 290,801.80	P 388,107.36
Interest	4,402.76	98,397.49	102,800.25
T O T A L	P 93,708.32	P 397,199.29	P 490,907.61

SECOND QUARTER:			
Deficiency basic tax	P 77,643.16	P1,163,479.04	P1,241,122.20
25% Surcharge	-	310,280.55	310,280.55
Balance	P 77,643.16	P1,473,759.59	P1,551,402.75
Interest	3,827.81	440,192.82	444,020.63

TOTAL	P 81,470.97	P1,913,952.41	P1,995,423.38
GRAND TOTAL FOR 1st Semester - 1988	P175,179.29	P2,311,151.70	P2,486,330.99

On July 6, 1990, petitioner filed a timely protest with respondent. A supplemental letter of protest, dated December 3, 1990, was filed by petitioner on December 20, 1990. In a letter Decision, dated February 11, 1991, received by petitioner on February 26, 1991, respondent modified the Deficiency VAT Assessment for the first semester of 1988 to P1,597,711.62, subject to adjustment of interest up to the date of actual payment thereof, computed as follows:

Deficiency Value-Added Tax - 1st Semester 1988

Basic Tax deficiency - original assessment:		
First Quarter		P 310,485.89
Second Quarter		1,241,122.20
Total		P1,551,608.09
Less: Additional Advance Sales Taxes:		
LC# 5358120006/BCOR#1214955 dated May 5, 1988	P443,586.00	
LC# 5358103003/BCOR#1214667 dated May 6, 1988	121,502.00	565,088.00
Balance		P 986,520.09
Less: Tax already paid (CR# 7598352)		166,948.72
Deficiency tax per reinvestigation		P 819,571.37
Add: 25% Surcharge		204,892.84
Total		P1,024,464.21
Add: 20% Interest p.a. (7-20-88 to 2-20-91)		529,306.51
Total deficiency		P1,553,770.72
Add: 25% disputed surcharge on the basic tax already paid		43,940.90
TOTAL AMOUNT DUE AND COLLECTIBLE		P1,597,711.62

On March 27, 1991, petitioner filed a petition for review with this Court praying for the cancellation of the Amended Deficiency VAT Assessment for the first semester of 1988 or in the alternative, if the Assessment is found to be warranted by the Court, petitioner prays for the cancellation of the 25% surcharge and the interest already paid be credited in its favor.

Respondent failed to answer the petition within the period granted by the Court. Upon motion of petitioner to declare respondent in default, the Court granted petitioner's motion. Respondent filed a Motion for Reconsideration but the same was denied in Our Resolution dated October 1, 1992. Hence, petitioner presented its evidence ex parte. After having formally offered its evidence, the Court in a Resolution, dated April 4, 1994, admitted petitioner's Exhibits A to T, inclusive, without prejudice to the evaluation by the Court of their purpose, materiality, relevancy and probative value, with the exception of Exhibits D-26, D-27 and D-28, which were denied admission for the reason that these exhibits cannot be found in the records of this case. Thereafter, on May 23, 1994. petitioner filed a Memorandum in support of its case.

The issue is whether or not petitioner is liable to pay the alleged Deficiency Business Tax - VAT Assessment for the first semester of 1988 in the amount of P1,597,711.62, as amended.

We answer in the negative.

The Deficiency VAT Assessment issued against petitioner for the first semester of 1988 was anchored on the findings of respondent's revenue investigating examiners report stating that certain Advance Sales Tax paid on importations made in 1987 were claimed and at the same time have been credited as input VAT for the first semester of 1988. Thus, entitling petitioner to twice claim as a deduction the Advance Sales Tax in 1987 and 1988.

A perusal of the documents submitted by petitioner as evidence would show that there was no double deduction of Advance Sales Tax. Petitioner recorded in its books of account the Advance Sales Taxes paid only upon arrival of the raw materials imported and when it receives the Bank's Debit Memo corresponding to the actual duties and taxes due on said importation even though the duties and taxes were initially advanced by the Bank from the proceeds of the Letter of Credit.

As a consequence of the above position, petitioner maintains that the importations covered by Letters of Credit opened in 1987, although paid at the time was recorded only as prepaid taxes. It is only upon the arrival of the imported raw materials in 1988 and the actual duties and taxes have been ascertained by the Debit Memo issued by the opening Bank, the Order of Payment issued by the Bureau of Customs and Import Entry Declaration did petitioner record the Advance Sales Taxes paid. Obviously, the taxes paid were only availed as tax credits in 1988 when the same were actually paid and recorded per the advice of the Bank.

To illucidate further on the significance of the procedure adopted by petitioner, the following explanations made by petitioner's witness was adopted by this Court giving credence to the contention of petitioner. In importing raw materials, petitioner opens a Letter of Credit (L/C) with the opening Bank. The Bank charges customs duties, import processing fees, Advance Sales Tax against the L/C. Petitioner record this transaction as:

Dr.	Inventory in Transit	x x x	
Cr.	Cash in Bank		x x x

When the goods are shipped to petitioner, the invoice amount is paid through L/C indicating the value of the materials imported, the same is recorded as:

Dr.	Inventory in Transit	x x x	
Cr.	Cash in Bank		x x x

When the <u>raw materials arrived in the Philippines</u> and the actual duties and taxes are paid through the Debit Memo per advice of the Bank, the transaction is recorded as:

Dr.	Prepaid Taxes/Deferred Sales Tax Credit	x x x	
	Inventory in Transit (Balance of Advance Duty)	x x x	
Cr.	Cash in Bank		x x x

When the raw materials are actually delivered to petitioner's warehouse and are used in its production, this is recorded as:

Dr.	Inventory on Hand	x x x	
Cr.	Inventory in Transit		x x x

When the raw materials are converted into finished products in 1988, the prepaid Advance Sales Taxes paid are then treated as an expense and offsetted against the Sales Taxes on the finished product and recorded as:

Dr.	Sales Taxes Receivable	x x x	
Cr.	Prepaid Taxes/Deferred Sales Tax Credit		x x x

Payments for Advance Sales Tax are taken up in the books of petitioner only upon the arrival of the goods and the same have been released from the Customs warehouse when the customs duties and taxes have finally been settled and paid in full, that is, upon receipt of the Debit Advice from the Bank, Order of Payment from the Bureau of Customs and Import Entry Declaration.

Respondent assessed petitioner for Deficiency VAT covering importations made in 1987 which she claims to have been deducted also in 1988, more particularly described hereunder:

Supplies Described	Letter of Credit No.	Exhs.	Advance Sales Tax Paid
Cheese Curd	1162 (FEBTC)	A-21	P 59,621.00
Cheese Curd	1141 (FEBTC)	B-15	687,262.00
Rochester Sauce and Spice Mix	5988 (RCBC)	C-19	7,695.00
Skimmilk Powder	45003 (BPI)	D-16	89,631.00
Red Bell Pepper	6046 (RCBC)	E-18	58,213.00
Sliced Dill Pickles	6045 (RCBC)	F-16	31,621.00
Caps	5357344005 (Citibank)	G-4	107,967.00

A scrutiny of the exhibits presented in evidence by petitioner will reveal that L/C Nos. 1162, 1141, 5988, 45003 and 6046 were all released in 1987. (See Exhs. A-10, B-9, C-10, D-10 and E-9) This is supported by the Analysis of Advance Sales Tax for the Fourth Quarter of 1987 Importation (Exh. J-8). Therefore, following the accounting procedure of petitioner, when the importation of L/C Nos. 1162, 1141, 5988, 45003 and 6046 were released in 1987 and the same were thus paid, it was only at such time when the petitioner recorded the Advance Sales Tax paid. The Advance Sales Taxes on goods released in 1987 were recorded also in 1987. Nothing in the records will show that the same were deducted in 1988. The Advance Sales Taxes paid and recorded in 1987 are not reflected in the Analysis of Sales Tax Payments for the year 1988 (Exh. O, inclusive of its submarkings).

Now, with respect to the two remaining importations covered by L/C Nos. 6045 and 5357344005 these were released from customs warehouse in 1988 and therefore the Advance Sales Taxes on these importations were properly recorded in the books on the same year. The Advance Sales Taxes paid in 1988 were included in the Schedule of Advance Sales Tax Payments for 1988. (See Exhs. O-4 and O-5) They do not form part of Advance Sales Tax payments for 1987. At the final analysis, nothing was ever claimed as a deduction twice. For taxes paid in 1987 were deducted in 1987. Taxes paid in 1988 were deducted in 1988.

WHEREFORE, in view of the foregoing, We find the petition to be meritorious, the same is hereby **GRANTED**. Respondent's decision dated February 11, 1991 is hereby reversed. Accordingly, the Deficiency Business Tax - VAT Assessment issued by respondent against petitioner for the first semester of 1988 is cancelled and considered withdrawn.

No pronouncement as to cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
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