lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILEX MINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3133

COMMISSIONER OF CUSTOMS,
Respondent.

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

1/31/84

D E C I S I O N

This refers to petitioner's appeal seeking the review of respondent's decision dated July 7, 1980, denying its claim for refund and/or tax credit of the total amount of ₱2,368,853.24, representing the export tax and premium duty, paid by it under Official Receipt No. 140071 on its exportation of copper concentrates abroad.

Petitioner is a corporation organized under the laws of the Philippines, with offices at Philex Building, Brixton and Fairlane Streets, Pasig, Metro Manila. (Par. 2, Amended Petition, p. 23, CTA rec.; admitted in Par. 2, Answer, p. 30, CTA rec.) It is engaged in the business of exporting copper concentrates abroad. (Annex "C", p. 10, CTA rec.)

Sometime on July 1, 1973, the President of the Philippines issued and promulgated Presidential Decree

No. 230, imposing export tax and premium duty on, among others, mineral products inclusive of copper concentrates. The imposition of said export tax and premium duty was, however, lifted by the President when he issued the following Executive Orders on various dates, namely: Executive Order No. 434 on October 2, 1974, Executive Order No. 450 on March 25, 1975, Executive Order No. 457 on November 4, 1975, and Executive Order No. 568 on November 19, 1979. (Par. 1, Stifact, p. 64, CTA rec.)

On March 11, 1980, the President again issued Executive Order No. 581, reimposing export tax and premium duty on certain export products, including the copper concentrates in question. On March 22, 1980, petitioner made a shipment of said copper concentrates on board the vessel "Sun Elza" at the Port of San Fernando, La Union, under Export Entry No. 012971-80 and Shipment No. 382. After the petitioner has effected the said exportation of copper concentrates covered by said Export Entry No. 012971-80, the President again promulgated Executive Order No. 587 on March 25, 1980, suspending once more the imposition of export tax and premium duty on those products which included the copper concentrates stated in said Executive Order No. 581, except veneer and lumber. (Pars. 2, 3 and 4, Stifact, pp. 64-65, CTA rec.)

On March 27, 1980, petitioner received the Order of Payment dated March 27, 1980, directing it to pay the amounts of ₱1,579,235.49 and ₱789,617.75 as export tax and premium duty, respectively, on the exportation of copper concentrates shipped on March 22, 1980, and accordingly paid the corresponding export tax and premium duty in the total amount of ₱2,368,853.24, covered by Official Receipt No. CB-140071 dated June 19, 1980.

Subsequently, petitioner filed a claim for refund and/or tax credit with the Commissioner of Customs of the said total amount of ₱2,368,853.24 in its favor on the ground that Executive Order No. 581, which imposes such export tax and premium duty, was suspended by Executive Order No. 587 dated March 25, 1980. (Annex "C", p. 10, CTA rec.; Pars. 5, 6 and 7, Stifact, pp. 65-66, CTA rec.) However, this claim for refund and/or tax credit was denied by respondent Commissioner of Customs, in his letter dated July 7, 1980, for lack of legal basis. (Annex "D", p. 13, CTA rec.; Par. 8, Stifact, p. 66, CTA rec.) On the basis of the denial of respondent Commissioner of Customs, petitioner appealed to this Court on August 18, 1980. (p. 1, CTA rec.) On October 18, 1980, petitioner filed an amended petition for review (p. 23, CTA rec.); and, in answer to the said Amended Petition, respondent set up the following special and affirmative defenses, to wit:

6. Petitioner has no valid and sufficient cause of action against respondent. Under sections 2308, 2309, 2310, 2312 and 2313 of the Tariff and Customs Code, as amended, petitioner should have presented to the Collector of Customs of the Port of San Fernando, La Union a written protest setting forth its objections to the assessment and collection of the sum of ₱2,368,853.24, representing export and premium duties on its copper concentrates exportation, together with the reasons therefor. In the event of an adverse ruling an appeal therefrom may be brought to the respondent, whose decision in such appeal may, in turn, be reviewed by this Honorable Court. Petitioner failed to follow the procedure prescribed by law. Instead of presenting its written protest to the Collector of Customs of San Fernando, La Union, petitioner directly requested respondent for the refund of the sum in question. This explains the absence of a ruling or decision of respondent on the matter of refund, which could have been the subject of review by this Honorable Court. It is plain that petitioner has failed to exhaust the administrative remedies provided by law, hence, petitioner has no cause of action against respondent Commissioner of Customs (Allied Brokerage Corporation vs. Commissioner of Customs, 40 SCRA 555).

7. Respondent's letter dated July 7, 1980, addressed to petitioner's lawyers informing them that their request for the refund of the amount of ₱2,368,853.24, representing export and premium duties paid by petitioner could not be granted for lack of legal basis is not a ruling or decision of the Commissioner of Customs as contemplated in Section 2402, of the Tariff and Customs Code, as amended, which may be the subject of appeal to this Honorable Court. Said letter was merely in response to petitioner's request for refund. There is, therefore no ruling or decision of respondent that this Honorable Court may review or take cognizance of.

> 8. Assuming arguendo that respondent's letter dated July 7, 1980 may be considered a decision and is reviewable by this Honorable Court, petitioner's action for refund is devoid of factual and legal basis.
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> On March 22, 1980 when petitioner caused the exportation of the copper concentrates, the law enforced was Executive Order No. 581 which imposed export and premium duties on exportation of mineral products, including copper concentrates. Executive Order No. 587 which suspended the imposition of export and premium duties on exportation of copper concentrates took effect on March 25, 1980. Petitioner could not avail itself of the latter Executive Order because it was not given retrospective effect. Any interpretation that will give it retroactive effect will be in derogation of the cardinal precept that "where a provision of law speaks categorically the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms." (pp. 40-42, CTA rec.)

After the hearing and during the submission of the case for decision, respondent had abandoned the ground of lack of jurisdiction of this Court. (See Respondent's Memo., pp. 123-128, CTA rec.)

The sole issue, therefore, posed for decision of this Court is whether or not petitioner is entitled to the refund and/or tax credit in the total sum of ₱2,368,853.24 representing the export tax and premium duty paid by it to respondent under O.R. No. CB-140071 dated June 19, 1980.

There is no dispute over the fact that petitioner, on March 22, 1980, has exported copper concentrates shipped on board the vessel "Sun Elza" at the Port of

San Fernando, La Union; that at the time this exportation was effected, the law then enforced was Executive Order No. 581, promulgated by the President on March 11, 1980, and which reimposed the export tax and premium duty on mineral products, which included copper concentrates, which petitioner had exported eleven (11) days after the effectivity of said Executive Order No. 581. (Par. 3, Stifacts, p. 65, CTA rec.) Section 1 of Executive Order No. 581, as far as pertinent, is hereby quoted as follows:

> "Sec. 1. - The export duty on certain export products, namely: gold, silver, copper ore/concentrates, refractory chrome, veneer and lumber provided for in Presidential Decree No. 230, as amended, the imposition of which was temporarily suspended by virtue of the provisions of Executive Order Nos. 434, 450, 457 and 568 is hereby reimposed in accordance with the following schedule specified in the column Export Duty:
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> In addition to the export duty, herein referred to as the basic rate, there shall be levied, assessed and collected a premium duty based on the difference between the current price as established by the Bureau of Customs and the base price in accordance with the schedule specified under the column Premium Duty. x x x
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> This order shall take effect immediately." (Underlining supplied).

The aforequoted provision of Executive Order No. 581 is clear and explicit. The President intended to reimpose the export tax and premium duty on the articles exported and enumerated in said Executive Order 581, which included the subject exportation of copper concentrates, immediately or on March 11, 1980, the date the law was promulgated and effective. Where the intention of the President in promulgating the law is clearly shown from the provision of the law itself, the fundamental rule to be observed is that the law as worded is only to be applied and no interpretation of the same should be allowed. The statutory construction of the law should be made only where the provisions thereof is ambiguous or where there is doubtfulness or obscureness in meaning. In statutory construction, the following rule is well settled:

> "A statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute requires interpretation, that is, where the statute is ambigious, or will bear two or more construction, or is of such doubtful or obscure meaning, that reasonable minds might be uncertain or disagree as to its meaning. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning. In the case of such unambiguity, it is the established policy of the courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. The plain and obvious meaning of the language used is not only the safest guide to follow in construing it, but it has been presumed conclusively that the clear and explicit terms of a statute expresses the legislative intention, so that such plain and obvious provisions must control. A plain and unambiguous statute is to be applied, and not interpreted,

> since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity." (50 Am. Jur. 204-207.)

It is the inevitable conclusion, therefore, that inasmuch as the subject copper concentrates was exported on March 22, 1980, or during the effectivity of Executive Order No. 581, petitioner is definitely liable for the export tax and premium duty on the subject exportation.

With respect to petitioner's claim for refund or tax credit of the amount it paid as export tax and premium duty on its exportation on March 22, 1980, petitioner based its claim on its interpretation and belief that the intention of the President in promulgating Executive Order No. 587, on March 25, 1980 was to completely cancel the imposition of the export taxes and premium duties as of March 11, 1980, among others, on copper concentrates, and not merely to suspend the enforcement of said Executive Order No. 581, effective on March 11, 1980. Petitioner concludes that said Executive Order No. 587 should and must, therefore, be given retroactive effect in line with the supposed intention of the President. This Court cannot subscribe to the contention of the petitioner. To begin with, it is wise to quote the pertinent provisions of Executive Order No. 587, which states as follows:

> "Now, Therefore, I Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by law, do hereby order and direct that the export tax and premium duty re-imposed by Executive Order No. 581 dated March 11, 1980, be suspended, with the exception of lumber and veneer.
>
> This Order shall take effect immediately." (p. 65, CTA rec.)

The intention of the President in promulgating Executive Order No. 587 is clearly manifested when he merely suspended the imposition of the export tax and premium duty effective March 25, 1980. There is nowhere in said law where he said he cancels or condons the export tax and premium duty already levied and the payment thereof already due upon those exportation of mineral products under Executive Order No. 581 as of March 11, 1980 and thereafter but prior to the effectivity of Executive Order No. 587 on March 25, 1980. When the President used the word "suspend", he meant to withdraw temporarily, cease for a time, set aside or make temporarily inoperative, the function of collecting the export tax and premium duty. (See Webster's Third New International Dictionary, 1976 Ed., G & C Meriam Co., p. 2303.) The primary and significant reason for the President's suspending the imposition of the export tax and premium duty is because of business reverses prevalent in our economy.

Were this Court give retroactive effect to Executive Order No. 587 and grant petitioner a refund of the export tax and premium duty it has paid on the exportation of copper concentrates effected during the effectivity of Executive Order No. 581 is contrary to the well-settled principle that a statute should be prospectively enforced, whether it enacts, amend, or repeal a law, unless the language of that statute states in very clear language that it shall have retroactive effect. (Lorenzo vs. Posadas, 64 Phil. 366-367; See also American Airlines Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 3046, April 16, 1984.) In the instant case, we find no provision in Executive Order No. 587, positively and clearly, which grants the retroactive effect thereof or which exempts the exporter from the payment of the export tax and premium duty on the exportations of mineral products, among which is the copper concentrates in question, effected during the enforcement of Executive Order No. 581, or from March 11, 1980 to March 25, 1980.

It is well settled too in our jurisdiction that tax refund cases partakes of the nature of an exemption, and as such, tax exemption cannot be allowed unless granted in the most explicit and categorical language. (Resin Incorporated vs. Auditor General of the Philippines, et. al., G.R. No. 17888, October 29, 1980; Union Carbide Philippines vs. Commissioner of Internal Revenue, CTA Case No. 2876, August 15, 1983; Union Carbide Philippines vs. Commissioner of Internal Revenue, CTA Case No. 2891, August 15, 1983; Union Carbide Philippines vs. Commissioner of Internal Revenue, CTA Case No. 2892, August 15, 1983.)

Petitioner also contends that inasmuch as the Order of Payment was issued by respondent on March 27, 1980 when Executive Order No. 581 was no longer in effect since the said Executive Order was repealed or cancelled by Executive Order No. 587, which took effect on March 25, 1980, respondent cannot, consequently, legally issue the said Order of Payment and there will be no legal obligation whatsoever on the part of petitioner to pay said export tax and premium duty called for in said order of payment after March 25, 1983. We find this view devoid of merit. We are in full agreement with respondent when he stated as follows:

> "Said contention is untenable. Export and premium duties accrue at the time of exportation. Considering that exportation took place on March 22, 1980, during the effectivity of Executive Order No. 581, hence, the same is subject to the payment of premium and export duties." (pp. 127-128, CTA rec.)

In the case at bar, since the exportation in question was effected on March 22, 1980, or during the effectivity of Executive Order No. 581, we find petitioner's claim for refund and/or tax credit without merit, and, therefore, the same is hereby DENIED.

WHEREFORE, the petition for review is hereby dismissed. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, July 31, 1984.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge