REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ASSOCIATED SMELTING
AND REFINING CORPORATION,
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4709

Promulgated:
FEB 13 1995

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DECISION

This is a suit brought by the petitioner for the refund of an aggregate amount of P57,211,166.78 representing the ad valorem and specific taxes alleged to have been paid on the petroleum products it purchased from Petrophil Philippines and Caltex Philippines Inc. covering the period November 1985 to December 31, 1990.

Petitioner, Philippine Associated Smelting and Refining Corporation (PASAR), is a domestic corporation engaged in the business of smelting and refining copper concentrates for the production and export of copper cathodes and related by-products. It is registered with the Export Processing Zone Authority (EPZA) as shown by

Certificate of Registration No. 82-40 (see Exhibit "A") and is a registered export producer with the Board of Investment under C.R. No. 80-1120 (Exhibit "A-1").

The nature of the business of the petitioner requires the regular use of fuel supplies, such as diesel fuel oil, bunker oil, lubricant and other petroleum products, which it purchases from the oil companies namely: Petrophil Corporation and Caltex Philippines Inc.

The specific and ad valorem taxes imposed by law on these petroleum products were paid by these oil companies and were subsequently passed on to petitioner.

Based on its belief that it is exempt from paying taxes on these products, petitioner made several applications for tax credit on the fuel delivered to it by these oil companies as evidenced by Exhibits "Q-1" to "Q-12", detailing therein the dates covered and the amount applied for as tax credit. In response, the BIR issued letters acknowledging receipt of the applications but denied all of petitioner's claims focusing primarily on its own interpretation of Section 17 of Presidential Decree No. 66 and related laws. It is the opinion of the then Commissioner of the BIR, Jose U. Ong, that the aforecited Section of PD 66 "does not clearly state that the petroleum products sold and delivered to EPZA-registered enterprises are exempt from taxes". Moreover, he asserts that the petroleum products purchased by the petitioner do not form part of the export products manufactured, thus it falls outside the ambit of Section 18(i) of the same Presidential Decree.

From this denial, petitioner elevated its case to this Court on February 3,1992.

In its Answer, respondent adopts the same line of defense as contained in the letters of denial earlier issued by the Commissioner of Internal Revenue. Quoted hereunder are the Special and Affirmative Defenses of Respondent:

> 5. Section 17 of P.D. No. 66 does not clearly state that petroleum products sold and delivered to EPZA registered enterprises are exempt from taxes;
>
> 6. Under paragraph (i), Section 18 of P.D. No. 66, as amended by P.D. No. 1449, tax credit to be given to a registered zone enterprise shall cover the sales, compensating specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacture or processing or production of its export products and forming part thereof;
>
> 7. In the case at bar, the ad valorem and specific taxes sought to be refunded/credited were paid on petroleum products which do not form part of the export products manufactured by petitioner;
>
> 8. In an action for refund and/or tax credit, the taxpayer has the burden of showing that the taxes paid were erroneously collected

and failure to sustain this burden is fatal to the action for refund and/or tax credit;

9. Claims for refund are construed strictly against claimants since they are in the nature of an exemption from taxation. It cannot be allowed unless granted in the most explicit and categorical language (**Manila Electric Co. vs. Commissioner of Internal Revenue,** 67 SCRA 351);

10. The right of the petitioner to file a judicial action for the refund and/or credit of the ad valorem and specific taxes paid before February 3, 1990 has already prescribed;

11. The instant petition states no cause of action as it does not allege the date when the tax sought to be refunded was paid (**Manufacturer's Bank and Trust Company vs. The Commissioner of Internal Revenue,** C.T.A. Case No. 1657, November 19, 1985);

Respondent did not controvert the amounts prayed for in the petition but takes exception to the legal basis of the claim for refund.

Petitioner anchors its claim on the tax incentive provided for by Section 17 of P.D. No. 66 creating the Export Processing Zone Authority which states, thus:

> **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 the law to the contrary notwithstanding.

Respondent disputes the claim of the petitioner and maintains that the aforementioned Section does not clearly and expressly exempt petroleum products from taxes.

To further bolster its claim, respondent in her memorandum quotes Section 18(i) of P.D. No. 66, as amended by P.D. No. 1449, requiring that the raw materials upon which specific and ad valorem taxes are imposed must be used in the manufacture of the exported products and form part thereof to fall within the exemption. She asserts that this does not hold true in the present case. Quoted hereunder is the aforementioned section:

> **Section 18(i)** *Tax Credit* - Every registered zone enterprise shall enjoy a tax credit equivalent to the sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof: Provided, that the tax credit shall accrue to the registered zone enterprise only after the final product has in fact been exported. The tax credit shall be used by the Secretary of Finance upon presentation of the export documents, and shall be in lieu of refunds. It may be used to pay taxes, duties, charges and fees due to the national government in connection with its operations. A tax credit shall be non-transferable, except when such transfer is by hereditary succession or occurs by operation of law, it may be used by the person or entity to whom it is issued only so

> long as it enjoys the benefits and incentives provided for in this Decree; and may not be used so as to result in a refund.

Respondent, also in her memorandum questions the propriety of the petitioner to ask for a refund because the entities or persons directly liable for the payment of the specific and ad valorem taxes are Petrophil and Caltex Philippines, thus the right to claim for a refund properly belongs to them and not to petitioner.

The issue presented to this Court for determination is whether or not petroleum products purchased and used by an EPZA-registered enterprise are exempt from ad valorem and specific taxes.

This particular issue is not of first impression. In the case entitled "**Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Customs**, CTA Case No. 4661, dated May 31, 1993, this Court was called upon to interpret Section 17 of Presidential Decree No. 66 as it relates to the question of whether the petroleum products fall within the exemptions provided by law. This same case gave a comprehensive interpretation of the pertinent provisions of P.D. 66 by tracing its background and objectives as well as its relation to other laws giving us ample authority to rule on the issue presently before Us.

Presidential Decree No. 66 creating the Export Processing Zone Authority is an offshoot of an earlier law namely, Republic Act No. 5490 which originally established the Mariveles Port in Bataan as a foreign trade zone. Presidential Decree No. 66 amended said law to extend the tax incentives to the raw materials used in the manufacture of the finished products for export. The objective of these two laws is apparent in that it encourages enterprises to engage in the manufacture of products primarily for export by providing for incentives particularly in the form of tax exemptions. A subsequent law, Presidential Decree No. 1449 was issued to introduce more amendments to P.D. 66 one of which is the addition of new subsections to Section 18, particularly subsection (i), which is also the subject of dispute between petitioner and respondent. Respondent sees the amendment as adding new restrictions to the tax exemptions provided by P.D. 66. This Court holds otherwise and We believe that the amendments introduced to P.D. 66 is still in line with the basic policy of the government of attracting enterprises especially foreign investors to engage in export-oriented activities within the zone. Thus, these amendments serve not to restrict or impose additional requirements to what had earlier been provided but seek to introduce more incentives to make it more attractive. Proof of this is the issuance of Executive Order No. 226, better known as the Omnibus Investment Code of 1987, which makes reference to Section 18(i) of P.D. 66 as one of the additional incentives an EPZA registered enterprise may be entitled to.

As to the argument of respondent that these petroleum products do not form part of the export products manufactured hence taxes imposed are not refundable, the aforecited Philippine Phosphate case has this to say:

> 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.** (GR 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 delivered 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.

Similarly, we can say that although the petroleum products do not directly form part of the copper cathodes produced by petitioner, they are nevertheless used indirectly in the manufacturing process, thus they may fall within the tax exemption provided by law.

The Philippine Phosphate case also passed upon the disputed interpretation of Section 17(1)(2) of P.D. 66 when it ruled, thus:

> A close analysis of the said Section 17(1)(2) will show that it allows <u>foreign</u> or <u>domestic merchandise</u>, <u>raw materials</u> and <u>supplies</u>, except those prohibited by law to be brought into the zone for sale, storage, repacking, processing, manufacturing, mixed with foreign or domestic merchandise or <u>used whether directly or indirectly</u> in such activity and <u>shall not be subject to customs and internal revenue laws and regulations</u> nor to local tax ordinances. This privilege will be enjoyed notwithstanding the provision of other law to the contrary.
>
> 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.

Anent the issue of whether petitioner is the proper party to ask for a refund, this Court rules in the affirmative. The tax exemption privilege provided by Presidential Decree No. 66 extends to EPZA-registered enterprises, therefore, petitioner as an EPZA-registered enterprise has the personality to invoke this privilege.

Having thus established that petitioner has sufficient legal basis to ask for a refund/tax credit of the ad valorem and specific taxes, we are now called upon to delve into the factual basis of petitioner's claim.

A comparative analysis of the invoices, certifications, confirmation receipts and payment orders issued by the BIR reveals that out of the P57,211,166.78 prayed for, only the amount of P4,503,972.53 can be granted for the following reasons:

1) In computing for the prescriptive period with respect to excise taxes particularly on petroleum products, the date of payment is counted from the date of removal pursuant to Section 127 of the Tax Code which provides in part, thus:

> Section 127 - *Payment of excise taxes on domestic products.* - (a) Persons liable; time for payment.

> \- unless otherwise especially allowed, excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production. Provided, that the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Section 145 and 151(a)(4) respectively, of this Title shall be paid within 15 days from the date of removal thereof from the place of production. x x x

Thus, in the overall computation of the amount to be refunded, we excluded the excise taxes on these petroleum products that were paid prior to February 3, 1990 (Exhibits "D-109", "D-110" "D-119", "D-123" to "D-136", "E-1" to "E-176", "F" to "F-1" to "F-215", "G-1" to "G-326", "H-1" to "H-263" and "I") because the right to claim for the same had already prescribed pursuant to section 230 of the Tax Code which requires that claims for refund should be made within two years from the date of payment of the tax sought to be refunded. The judicial claim for refund in the form of this Petition was filed only on February 3, 1992, thus, excise taxes paid on these petroleum products from November 1985 to February 2, 1990 cannot be included in the computation.

2) Claims for refund made by the petitioner in the administrative level (BIR) for the year 1991 (Exhibits "Q" and "Q-1") were likewise excluded from the computation as they were not brought before this Court

for adjudication. The instant petition is limited to the amount of P57,211,166.78 which covers the period from November 1985 to December 31, 1990 only. This is evidenced by paragraph 6 of the Petition for Review which provides in part, thus:

> 6. After November, 1985 and onwards, PASAR's application for tax refunds, specifically for indirect taxes paid for specific tax and ad valorem taxes, have not been acted upon by the Bureau of Internal Revenue with finality, and in the meantime, the tax claim/refunds of PASAR have amounted to FIFTY SEVEN MILLION TWO HUNDRED ELEVEN THOUSAND ONE HUNDRED SIXTY SIX PESOS AND SEVENTY EIGHT CENTAVOS (P57,211,166.78) as of December 31, 1990 as summarized in Annex A-1 to A-10, inclusive x x x (Underscoring supplied).

Hereunder is the detailed computation of the amount to be granted to Petitioner as refund of the specific and ad valorem taxes paid on the petroleum products, thus:

Computation of Refundable Excise Tax:
(Exhs. "D", "K-1" to "K-11-A")

Product	Invoice Number	Invoice Date	Exh.	Volume Liter	Volume Kg.	Ad Valorem/ Specific Tax Rate	Ad Valorem/ Specific Tax
Kerosene	75938	12-03-90	D-1	420		0.50	210.00
Diesel	70057	12-31-90	D-2	292,840		0.45	131,778.00
Extra	03094	11-28-90	D-3	8,000		2.52	20,160.00
Diesel	70044	11-30-90	D-4	357,137		0.45	160,711.65
Kerosene	75909	10-26-90	D-5	210		0.50	105.00
Diesel	70029	10-01-90	D-6	310,480		1.3351	414,521.85
LPG	40646	10-04-90	D-7		3,920	1.9312	7,570.30
Diesel	70015	09-21-90	D-8	225,532		1.3351	301,107.77

Product	Invoice Number	Invoice Date	Exh.	Volume Liter	Volume Kg.	Ad Valorem/ Specific Tax Rate	Ad Valorem/ Specific Tax
Diesel	70017	09-30-90	D-9	104,454		1.3351	139,456.54
LPG	40624	09-01-90	D-10		3,820	1.9312	7,377.18
LPG	40626	09-04-90	D-11		3,840	1.9312	7,415.81
LPG	40632	09-08-90	D-12		3,840	1.9312	7,415.81
LPG	40635	09-11-90	D-13		3,860	1.9312	7,454.43
LPG	40637	09-14-90	D-14		3,890	1.9312	7,512.37
LPG	40640	09-28-90	D-15		1,930	1.9312	3,727.22
LPG	40630	09-06-90	D-16		300	1.9312	579.36
LPG	40643	09-29-90	D-17		3,870	1.9312	7,473.74
Extra	90180	08-30-90	D-18	10,000		3.5964	35,964.00
Kerosene	75857	08-30-90	D-19	420		1.1704	491.57
Diesel	70004	08-01-90	D-20	327,658		1.1532	377,855.21
LPG	40602	08-06-90	D-21		3,880	1.8946	7,351.05
LPG	40608	08-09-90	D-22		1,950	1.8946	3,694.47
LPG	40611	08-10-90	D-23		3,860	1.8946	7,313.16
LPG	40613	08-13-90	D-24		3,870	1.8946	7,332.10
LPG	40615	08-16-90	D-25		3,840	1.8946	7,275.26
LPG	40619	08-18-90	D-26		3,830	1.8946	7,256.32
LPG	40622	08-22-90	D-27		3,800	1.8946	7,199.48
LPG	40623	08-27-90	D-28		3,810	1.8946	7,218.43
LPG	40606	08-08-90	D-29		250	1.8946	473.65
Extra	69860	07-05-90	D-30	10,000		3.5964	35,964.00
Kerosene	98632	07-03-90	D-31	420		1.1704	491.57
Diesel	56289	07-31-90	D-32	325,717		1.1532	375,616.84
LPG	40657	07-02-90	D-33		3,760	1.8946	7,123.70
LPG	40663	07-04-90	D-34		3,760	1.8946	7,123.70
LPG	40666	07-07-90	D-35		2,400	1.8946	4,547.04
LPG	40678	07-14-90	D-36		1,910	1.8946	3,618.69
LPG	40679	07-16-90	D-37		3,850	1.8946	7,294.21
LPG	40683	07-18-90	D-38		3,850	1.8946	7,294.21
LPG	40686	07-20-90	D-39		1,930	1.8946	3,656.58
LPG	40690	07-24-90	D-40		3,880	1.8946	7,351.05
LPG	40693	07-26-90	D-41		3,880	1.8946	7,351.05
LPG	40696	07-28-90	D-42		3,860	1.8946	7,313.16
LPG	40698	07-31-90	D-43		3,850	1.8946	7,294.21
LPG	40682	07-17-90	D-44		150	1.8946	284.19
Diesel	56270	06-30-90	D-45	256,826		1.1982	307,728.91
LPG	40523	06-01-90	D-46		3,820	1.0751	4,106.88
LPG	40528	06-05-90	D-47		3,840	1.0751	4,128.38
LPG	40531	06-08-90	D-48		3,850	1.0751	4,139.14
LPG	40533	06-11-90	D-49		3,830	1.0751	4,117.63
LPG	40541	06-16-90	D-50		3,850	1.0751	4,139.14
LPG	40542	06-18-90	D-51		3,850	1.0751	4,139.14
LPG	40545	06-21-90	D-52		3,880	1.0751	4,171.39
LPG	40549	06-25-90	D-53		1,940	1.0751	2,085.69

Product	Invoice Number	Invoice Date	Exh.	Volume Liter	Volume Kg.	Ad Valorem/ Specific Tax Rate	Ad Valorem/ Specific Tax
LPG	40652	06-26-90	D-54		3,870	1.0751	4,160.64
LPG	40655	06-28-90	D-55		3,940	1.0751	4,235.89
LPG	40527	06-04-90	D-56		150	1.0751	161.27
LPG	40548	06-22-90	D-57		250	1.0751	268.78
Diesel	69914	06-01-90	D-58	10,000		1.1982	11,982.00
Diesel	69918	06-02-90	D-59	10,000		1.1982	11,982.00
Diesel	69922	05-03-90	D-60	10,000		1.1982	11,982.00
Diesel	56255	05-31-90	D-61	424,879		1.1982	509,090.02
LPG	40590	05-04-90	D-62		3,850	1.0751	4,139.14
LPG	40600	05-14-90	D-63		1,260	1.0751	1,354.63
LPG	40519	05-30-90	D-64		1,910	1.0751	2,053.44
LPG	40594	05-09-90	D-65		300	1.0751	322.53
LPG	40509	05-26-90	D-66		200	1.0751	215.02
Diesel	69795	04-26-90	D-67	10,000		1.3371	13,371.00
Diesel	69800	04-27-90	D-68	10,000		1.3371	13,371.00
Diesel	69906	04-28-90	D-69	10,000		1.3371	13,371.00
Diesel	69910	04-29-90	D-70	10,000		1.3371	13,371.00
Diesel	69912	04-30-90	D-71	10,000		1.3371	13,371.00
Diesel	56243	04-30-90	D-72	291,609		1.3371	389,910.39
LPG	40558	04-02-90	D-73		3,660	1.0817	3,959.02
LPG	40563	04-05-90	D-74		3,060	1.0817	3,310.00
LPG	40568	04-11-90	D-75		3,810	1.0817	4,121.28
LPG	40571	04-14-90	D-76		3,790	1.0817	4,099.64
LPG	40576	04-18-90	D-77		1,990	1.0817	2,152.58
LPG	40584	04-24-90	D-78		3,810	1.0817	4,121.28
LPG	40587	04-30-90	D-79		3,830	1.0817	4,142.91
LPG	40562	04-03-90	D-80		250	1.0817	270.43
LPG	40575	04-17-90	D-81		100	1.0817	108.17
Extra	56191	03-03-90	D-82	10,000		3.6583	36,583.00
Diesel	56125	03-02-90	D-83	10,000		1.3371	13,371.00
Diesel	56388	03-03-90	D-84	10,000		1.3371	13,371.00
Diesel	56387	03-03-90	D-85	10,000		1.3371	13,371.00
Diesel	56389	03-06-90	D-86	10,000		1.3371	13,371.00
Diesel	56394	03-06-90	D-87	10,000		1.3371	13,371.00
Diesel	56396	03-07-90	D-88	10,000		1.3371	13,371.00
Diesel	56399	03-08-90	D-89	10,000		1.3371	13,371.00
Diesel	69702	03-09-90	D-90	10,000		1.3371	13,371.00
Diesel	56226	03-30-90	D-91	235,920		1.3371	315,448.63
Diesel	56227	03-31-90	D-92	7,543		1.3371	10,085.75
LPG	22169	03-05-90	D-93		3,830	1.0817	4,142.91
LPG	22172	03-06-90	D-94		3,860	1.0817	4,175.36
LPG	22181	03-13-90	D-95		3,850	1.0817	4,164.55
LPG	22185	03-14-90	D-96		3,860	1.0817	4,175.36
LPG	22186	03-15-90	D-97		3,860	1.0817	4,175.65
LPG	22187	03-16-90	D-98		3,870	1.0817	4,186.18

Product	Invoice Number	Invoice Date	Exh.	Volume Liter	Volume Kg.	Ad Valorem/ Specific Tax Rate	Ad Valorem/ Specific Tax
LPG	22192	03-20-90	D-99		3,830	1.0817	4,142.91
LPG	22196	03-22-90	D-100		3,850	1.0817	4,164.55
LPG	22199	03-24-90	D-101		3,830	1.0817	4,142.91
LPG	40552	03-27-90	D-102		3,850	1.0817	4,164.55
LPG	40555	03-29-90	D-103		3,860	1.0817	4,175.36
LPG	22166	03-01-90	D-104		150	1.0817	162.26
LPG	22182	03-13-90	D-105		400	1.0817	432.68
LPG	22194	03-21-90	D-106		200	1.0817	216.34
LPG	40553	03-27-90	D-107		150	1.0817	162.26
Diesel	56211	02-28-90	D-108	318,100		1.2599	400,774.19
LPG	22135	02-12-90	D-111		3,770	0.9351	3,525.33
LPG	22139	02-14-90	D-112		3,780	0.9351	3,534.68
LPG	22143	02-16-90	D-113		3,770	0.9351	3,525.33
LPG	22151	02-21-90	D-114		1,900	0.9351	1,776.69
LPG	22157	02-24-90	D-115		3,860	0.9351	3,609.49
LPG	22158	02-26-90	D-116		3,850	0.9351	3,600.14
LPG	22162	02-27-90	D-117		3,870	0.9351	3,618.84
LPG	22164	02-28-90	D-118		3,840	0.9351	3,590.78
LPG	22134	02-10-90	D-120		200	0.9351	187.02
LPG	22141	02-15-90	D-121		150	0.9351	140.27
LPG	22155	02-23-90	D-122		150	0.9351	140.27
		TOTAL AMOUNT REFUNDABLE					P4,503,972.53

WHEREFORE, in view of all the foregoing, this Court hereby orders the issuance of a tax credit certificate in the amount of P4,503,972.53 in favor of the petitioner.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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 VII of the constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals