REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BEECHAM GROUP. P.L.C.,
BRISTOL MYERS CO.,
AMERICAN HOME PRODUCTS,
and CHEMFIELDS, INC.,
Petitioners,

- versus - C.T.A. CASE NO. 3812

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

3/30/92

D E C I S I O N

The petition for review seeks a tax credit from the Commissioner of Internal Revenue for overpayment in withholding taxes on royalties paid by Chemfields Inc. to Beecham Group P.L.C., Bristol Myers Co. and American Home Products.

Chemfields, Inc. is a corporation engaged in the manufacture of semi-synthetic antibiotics, principally ampicillin and amoxycillin. It is registered with the Board of Investments as a preferred pioneer enterprise on October 18, 1988. (Exh. "B".)

In the course of manufacturing the ampicillin, Chemfields had to utilize the various product and process patents of the other petitioners, Beecham Group, P.L.C., Bristol Myers Co., American Home

Products, and it was granted a compulsory license over said patents by the Philippine Patent Office in a Decision rendered in Inter Partes Cases Nos. 1327-1331 (Exhs. A & A-1). The decision ordered Chemfields to pay a royalty of 30% based on the net wholesale price to be shared among the patent owners as follows:

a. The 2% royalty on the product patents shall be apportioned as follows:

Beechem Group	-	75%
Bristol Myers Co.	-	25%

b. The remaining 1% royalty on the process patent shall be apportioned as follows:

American Home Products	-	67%
Koninklijke Nederlandsche-		33%

The RP-US Tax Treaty contains the following provisions on taxes and royalties:

"(1) Royalties claimed by a resident of one of the contracting states;

"(2) However, the tax imposed by that other contracting state shall not exceed -

"(a) In the case of the United States, 15 percent of the gross amount of the royalties, and

"(b) In the case of the Philippines, the least of:

(i) 25 percent of the gross amount of the royalties,

(ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities, and

(iii) the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State."

Similarly, the RP-UK Tax Treaty provides as follows:

"1) Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the Contracting State may be taxed in that other State.

"2) Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State. However, the tax so charged shall not exceed:

"(a) 15 percent of the gross amount of the royalties, where the royalties are paid:

"(i) by an enterprise registered with the Philippine Board of Investment and engaged in preferred areas of activity.

xxx

"(b) in all other cases, 25 percent of the amount of the royalties."

Chemfields initially applied a withholding tax of 35% on royalties paid to the patent owners for the year ended December 31, 1981. (Exhs. C, C-1, C-2 and C-3). Starting 1982, until the quarter ended March 31, 1984, it applied the rate of 25%. (Exhs. D to D-1, inclusive of sub-markings).

The use of rates 35% and 25% in the withholding tax resulted in overpayment with respect to Beecham Group P.L.C., a British corporation, and Bristol Myers Co. and American Home Products, both American corporations, respectively.

Fernando Marucot testified that as Finance and Administrative Officer of Chemfields, he and his staff were responsible for the payment of taxes. He cited the decision of the Patent Office (Exhs. A and A-1) as the basis for paying royalties to the other petitioners. He then identified the official receipts issued by the BIR and the summary of patented products manufactured and sold by Chemfields to show the royalties paid to the patents owners, the withholding tax rates applied and the actual taxes paid (Exhs. D to I, inclusive of sub-markings). The various summaries of manufactured and sold patented products were prepared by him based on the books of account of the company like sales journals and other books. (TSN, Dec. 8, 1988, pp. 4-14).

Based on the revenue tax receipts, confirmation receipts and date from the books of the company, Fernando Marucot and his staff prepared a summary of royalty payments and taxes withheld from 1981 to March 31, 1984 (Exh. J). He also prepared another Summary of Sales, royalties and withholding taxes paid as allocated to the four different patent owners (Exhs. K,K-1). Finally, he prepared a schedule of creditable taxes due to the patent owners based on the overpayment brought about by the erroneous application of the rates of 35% and 25%, whereas the applicable rates is 15% as provided for in RP-US and RP-UK Tax Treaties, considering Chemfield was granted pioneer preferred status by the Board of Investments.

The respondent Commissioner of Internal Revenue has not contested the documentary and testimonial evidence presented by petitioners. In fact identical petition for the credit filed with the BIR has been processed (Exh. M) and no objections have been put forward all these years that the case has been pending.

It is finally the view of this Court that petitioner's evidence conclusively show that the following tax credits are due the parties as follows:

Beechem Group P.L.C.	P105,983.47
Bristol Myers Company	27,375.34
American Home Products	67,734.68

WHEREFORE, petitioners Beechem Group P.L.C., Bristol Myers Company and American Home Products, is entitled, from the Commissioner of Internal Revenue, to the issuance of tax credit certificates

in the amounts of P105,983.47, P27,375.34 and P67,734.68 respectively.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 30, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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