REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA CORDAGE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 6032

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 05 2002

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DECISION

This Petition for Review seeks the refund or issuance of a tax credit certificate amounting to P3,212,327.95 allegedly representing excise taxes paid on raw materials used in the production of ropes and twines for export during the period January 1, 1998 to May 31, 1999.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines with principal office at No. 2372 Osmeña Street, Makati City. It is registered with the Bureau of Internal Revenue as a taxpayer effective June 10, 1994, under Certificate of Registration No. 94-490-000-233 with Taxpayer's Identification No. 000-165-235V. It is likewise, registered with the Board of Investments as an export producer of abaca yarn in accordance with the provisions of Republic Act No. 6135 and covered by Certificate of Registration No. 74-522 dated November 11, 1974 on a non-pioneer status.

For the periods January 1, 1998 to June 30, 1998, July 1, 1998 to December 31, 1998 and January 1, 1999 to May 31, 1999, Petitioner allegedly purchased from Mobil Philippines, Inc., Seaoil Petroleum Corporation and Quatrolube Philippines, Inc., a total of 713,850.65 liters of batching oil used as raw material in the production of abaca rope and twines for export. The specific taxes on said raw materials for the corresponding periods are computed as follows:

	Jan. 1, 1998 to Jun 30, 1998	July 1, 1998 to Dec. 31, 1998	Jan 1, 1999 to May 31, 1999
Total liters of batching oil used	229,810.30	237,387.01	246,653.34
Specific tax of batching oil	P 4.50	P 4.50	P 4.50
Total Excise Tax Paid	P1,034,146.37	P1,068,241.55	P1,109,940.63

Petitioner filed separate applications for refund or issuance of tax credit certificates representing excise taxes paid on the purchases of batching oil used as raw materials in the production of ropes and twines it exported for the periods January 1, 1998 to June 30 1998, July 1, 1998 to December 31, 1998, January 1, 1999 to May 31, 1999, to wit:

Date of Application for refund or Issuance of Tax Credit	Period Covered	Amount of Excise Tax
February 16, 1999	January 1, 1998 to June 30, 1998	P1,034,146.37
October 28, 1999	July 1, 1998 to December 31, 1998	1,068,241.55
March 7, 2000	January 1, 1999 to May 31, 1999	1,109,940.03
Total Claim		P3,212,327.95

Since Respondent Commissioner has not yet acted on the foregoing claims for refund, Petitioner filed with this Court a Petition for Review on March 29, 2000 in the aggregate amount of P3,212,327.95.

In support of its claims, Petitioner offered the following documents:

Exhibit	Particulars
A	BIR Certificate of Registration
B	BOI Certificate of Registration
C, D and E	Letter Claims for Refund filed on February 16, 1999, October 28, 1999, and March 7, 2000
F	Flow Chart of Cordage Manufacturing
G	Letter from Industrial Technology Development Institute dated May 13, 1996
H	Letter of R. S. Bernaldo and Associates dated August 17, 2000 addressed to this Court
B-1 to B-261, D-1 to D-268, F-1 to F-318	Various export invoices, bills of lading, export declarations and bank credit memos

In his Answer, Respondent raised the following Special and Affirmative Defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The total amount of P3,212,327.95 being claimed by Petitioner as alleged excise taxes paid for January 1, 1998 to May 31, 1999 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

The issues jointly stipulated by the parties are as follows:

"1. Whether or not the excise taxes paid by Petitioner on its purchases of batching oil used as raw materials for the production of ropes and twines it exported, in the amount of P3,212,327.95, qualify for refund or issuance of a tax credit certificate, representing excise taxes paid for the period January 1, 1998 to May 31, 1999, in accordance with Section 130 of the National Internal Revenue Code, as amended;

2. Whether or not Petitioner's various purchases of batching oil as illustrated above, were actually used as raw materials in the manufacture of rope and twine for export;

3. Whether or not the fact of exportation and the said manufactured rope and twine, may be duly substantiated by proofs of actual exportation and receipts evidencing foreign exchange payment for the same; and

4. Whether or not the Petitioner actually paid excise taxes on the purchases of batching oil used as raw materials."

We rule in favor of Petitioner.

Quoted hereunder are pertinent provisions of the Tax Reform Act of 1997:

"**SEC. 130**. *Filing of Return and Payment of Excise Tax on Domestic Products.* –

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –

(1) x x x

(2) *Time for Filing of Return and Payment of the Tax.* – Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: *Provided, That* the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and before removal from

> the place of production of such products from January 1, 1999 and thereafter: x x x
>
> x x x x x x x x x
>
> (D) Credit for Excise Tax on Goods Actually Exported. — When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported."

Based on the foregoing provisions of law, Petitioner must comply with the following conditions in order to be entitled to the claim for refund or issuance of a tax credit certificate, viz:

1. That the excise taxes were actually paid on locally manufactured goods;
2. That such locally manufactured goods were exported either in their original state or as ingredients or parts of any manufactured goods or products; and
3. That there must be proof of actual exportation of the said goods and receipt of the corresponding foreign exchange payment.

Petitioner must likewise prove that the claim for refund was filed within the two-year prescriptive period provided under Section 229 in relation to Section 130 (A)(2), both of the Tax Reform Act of 1997.

The issues jointly stipulated by the parties shall be resolved in the light of the aforementioned three (3) requirements.

The first requirement was sufficiently complied with. Records reveal that for the period January 1, 1998 to May 31, 1999, Petitioner purchased batching oil from Mobil

Philippines, Inc, Seaoil Petroleum Corporation and Quatrolube Philippines, as evidenced by the various sales invoices issued by the said suppliers (pre-marked exhibits A-1 to A-41, C-1 to C-39 and E-1 to E-41, inclusive).

Specific taxes at the rate of P4.50/liter relating to the aforementioned purchases in the aggregate amount of P2,496,233.95 were charged to Petitioner as shown by the price quotations, BIR certifications and sales invoices issued by Seaoil Petroleum Corporation and Quatrolube Philippines, Inc. (pp. 951-952; 378-380, 660-664 & 953-955, BIR Records).

The records, however, failed to show that the amounts billed or charged in the sales invoices issued by Mobil Philippines, Inc. relating to Petitioner's batching oil purchases of 159,132 liters, included the specific taxes in the aggregate amount of P716,094.00 broken down as follows:

Per	Invoice		Quantity	Claimed
Exhibit	Number	Date	(Liters)	Specific Tax
H-5	39080B1	5/14/98	4,000	P 18,000.00
H-5	39365B1	5/20/98	5,922	26,649.00
H-5	40178B1	6/4/98	5,953	26,788.50
H-5	1011626R1	6/12/98	6,000	27,000.00
H-5	40545B1	6/15/98	6,000	27,000.00
H-5	1011948R1	6/26/98	5,901	26,554.50
H-5	41253B1	6/29/98	5,904	26,568.00
H-7	41471B1	7/3/98	5,960	26,820.00
H-7	41746B1	7/10/98	6,000	27,000.00
H-7	42067B1	7/17/98	6,000	27,000.00
H-7	42533B1	7/27/98	6,000	27,000.00
H-7	43227B1	8/12/98	5,989	26,950.50
H-7	43229B1	8/12/98	5,971	26,869.50
H-7	43317B1	8/14/98	5,929	26,680.50
H-7	43890B1	8/27/98	5,980	26,910.00
H-7	43956B1	8/28/98	5,955	26,797.50
H-7	44360B1	9/8/98	5,949	26,770.50
H-7	44481B1	9/10/98	5,991	26,959.50
H-7	44818B1	9/21/98	6,000	27,000.00
H-7	45574B1	10/7/98	5,945	26,752.50

H-7	46013B1	10/19/98	6,000	27,000.00
H-7	46509B1	11/4/98	5,998	26,991.00
H-7	46839B1	11/13/98	5,920	26,640.00
H-7	47194B1	11/23/98	6,000	27,000.00
H-7	47544B1	12/1/98	5,931	26,689.50
H-9	50630B1	2/25/99	5,987	26,941.50
H-9	50700B1	2/26/99	5,947	26,761.50
			159,132.00	P 716,094.00

To prove compliance with the second requirement, Petitioner presented various export invoices, bills of lading and export declarations to establish the fact that it manufactured and exported 3,752,566.12 kilos of abaca rope for the period January 1, 1998 to May 31, 1999 (pre-marked exhibits B-1 to B-261, D-1 to D-268, F-1 to F-318 and Exhibits H-11 to H-19).

This fact was further certified by the Industrial Technology Development Institute and testified to by Petitioner's Quality Manager, Mr. Eleuterio San Miguel Francisco, that Petitioner uses 190.23 liters of batching oil as raw material for every metric ton of abaca rope it manufactured, or 713,850.65 liters of batching oil for 3,752,566.12 kilos (3,752.57 metric tons) of abaca rope exported for the period January 1, 1998 to May 31, 1999 (see TSN dated July 19, 2000).

With regard to the third requirement, Petitioner likewise submitted various export invoices, bills of lading and export declarations for the period January 1, 1998 to May 31, 1999, to prove its actual exportation consisting of 3,752,566.12 kilos of abaca rope with a sales value of US$4,825,172.81 (pre-marked Exhibits B-1 to B-261, D-1 to D-268 and F-1 to F-318). The foreign currency proceeds corresponding to the exportation was likewise established to have been inwardly remitted as evidenced by the bank credit memos (pre-marked Exhibits B-1 to B-261, D-170 to D-268 and F-1 to F-318).

The report submitted by R.S. Bernaldo and Associates, commissioned independent CPA, stated that it has examined the foreign currency inward remittances relating to the export sales of 719,184.72 kilos with sales value of US$934,362.26 and the corresponding specific taxes claimed in the amount of P615,643.25. However, this Court cannot ascertain the veracity of the said report since Petitioner failed to present the corresponding bank credit memos and bank certifications. Such being the case, specific taxes in the amount of P615,643.25 are excluded from the claim, details of which are listed hereunder:

Per Exh.	Customer	Invoice Number	Quantity Kilos Hard Fiber	Value (US$) F.O.B.
H-11	Aamstrand and twines	80472	3,977.00	5,415.60
H-11	Wellington Leisure Products, Inc.	80469-70	19,444.20	29,744.52
H-11	The Leheigh group	80688	19,414.40	31,190.36
H-11	Wellington Leisure Products, Inc.	80692-93	19,710.90	29,025.48
H-11	Frank W. Winnie & Sons, Inc.	80691	1,079.20	1,562.47
H-11	Manho Rope & Wire, Ltd.	80827	5,480.60	5,754.63
H-11	The Leheigh group	80694	19,713.10	31,482.24
H-11	Wellington Leisure Products, Inc.	81122-23	19,684.40	28,585.63
H-11	Rope Construction	80690	6,829.60	10,097.56
H-11	Wellington Leisure Products, Inc.	81480-81	19,608.40	28,520.39
H-11	Carl Kohl (GmbH&co.)	81379	10,528.40	12,592.25
H-12	The Leheigh group	81382	15,587.10	23,418.74
H-12	Phoenix Rope and Cordage Co., Inc	81383-84	18,115.30	24,075.05
H-12	Manho Rope & Wire, Ltd.	81385	500.00	525.00
H-12	Oklahoma Rig & Supply Co., Inc.	81479	20,431.20	26,348.12
H-12	Katradis Marine Ropes Ind.	81613	11,704.20	14,232.31
H-12	Wingglesworth and Co.	81760	18,463.60	22,507.42
H-12	Continental Western Corporation	81758-59	21,637.30	26,593.59
H-12	A.N.E. Roussos & Co., Ltd.	81665	3,307.20	5,433.73
H-12	The Leheigh group	81667	15,214.40	23,710.74
H-12	The Rope Company, Inc.	81763	20,497.90	26,454.50
H-12	Phoenix Rope and Cordage Co., Inc	81761-62	17,804.10	23,370.56
H-12	CRI Distribution, LLC.	81838	20,785.30	24,663.32
H-12	Oklahoma Rig & Supply Co., Inc.	81839	19,128.00	24,893.33
H-12	Chee Chee and Company PTE, LTd.	81804	19,065.60	19,164.60
H-12	O. Chuachareon Ltd.	81915	24,608.30	20,670.97
H-12	Nautilus Australia Ltd.	81914	10,428.70	14,642.16

H-12	Wellington Leisure Products, Inc.	81917-18	19,679.02	28,837.91
H-12	Oklahoma Rig & Supply Co., Inc.	81916	20,398.10	26,347.02
H-12	Shamco Trading Company LLC.	81968	11,628.50	12,558.78
H-12	Kinnear PTY LTD.	82061	13,275.80	18,306.97
H-12	Jordan International Mktg.	82096	7,902.60	11,310.99
H-12	Oklahoma Rig & Supply Co., Inc.	82154-55	20,412.30	26,500.04
H-12	Wingglesworth and Co.	82275	19,174.20	23,851.69
H-12	Frank W. Winnie & Sons, Inc.	82281	19,377.60	22,015.44
H-12	Phoenix Rope and Cordage Co., Inc	82279-80	17,893.10	22,199.24
H-12	Boniface A.C.M.A.	82278	1,435.20	2,511.60
H-12	The Leheigh group	82369	16,823.50	25,364.42
H-12	Wellington Leisure Products, Inc.	82590	20,495.40	29,790.93
H-12	Continental Western Corporation	82598	19,467.00	23,457.88
H-13	Wingglesworth and Co.	82589	18,516.70	23,180.97
H-13	Amjays Ropes Twines	82599	12,938.50	17,197.47
H-13	Chee Chee and Company PTE, LTd.	82666	19,457.20	18,873.48
H-13	Kinnear PTY LTD.	82667	4,414.80	5,967.58
H-13	Katradis Marine Ropes Ind.	82668	11,836.00	14,392.58
H-18	CRI, Distribution , LLC	86519	41,310.80	47,022.00
			719,184.72	934,362.26

Abaca exports w/o foreign currency remit (in kilos)	719,184.72
Divided by 1,000 kgs	1,000.00
Equivalent tonnage	719.18
Multiplied by liter usage per metric ton	190.23
Liters of batching oil used	136,809.61
Multiplied by specific tax rate	P 4.50
Claimed specific taxes related to Abaca exports w/o foreign currency remittances	P615,643.25

To ascertain whether or not Petitioner has timely filed his claim for refund, we refer to the date the Petition for Review was filed, March 29, 2000. This date was deemed to be the last day for filing Petitioner's claim for refund pursuant to Section 229 of the Tax Reform Act of 1997, hence, the reckoning date of the two (2) year prescriptive period shall commence on March 30, 1998.

Corollary thereto, Section 130 (A)(2) of the Tax Reform Act of 1997 provides that specific tax on locally manufactured petroleum products removed from the place of production from January 1, 1998 to June 30, 1998 shall be paid within ten (10) days from removal thereof.

Since the two (2) year prescriptive period commenced to run on March 30, 1998, which was the date the excise tax was paid, the petroleum products were thus removed from its place of production ten (10) days earlier, or on March 20, 1998. Therefore, the claims for refund of specific tax paid on all removals from place of production prior to March 20, 1998 are barred by prescription.

Moreover, records reveal that the specific taxes were merely passed on to the Petitioner thus, the date appearing in the invoices of Petitioner's suppliers are considered the date of removal of locally manufactured petroleum products from place of production. Hence, the following claimed specific taxes amounting to P509,590.31 covered by invoices issued by Quatrolube Philippines, Inc. and Seaoil Petroleum Corporation dated prior to March 20, 1998 are already barred by prescription, to wit:

Per Exhibit	Supplier	Invoice Number	Invoice Date	Quantity (liters)	Claimed Specific Tax (P4.50/liter)
H-5	Quatrolube Trading	6516	12/3/97	5,975.28	P 26,888.76
H-5	Quatrolube Trading	6612	1/10/98	5,988.76	26,949.42
H-5	Quatrolube Trading	6639	1/15/98	6,000.00	27,000.00
H-5	Quatrolube Trading	6677	1/22/98	6,000.00	27,000.00
H-5	Quatrolube Trading	6676	2/2/98	5,993.25	26,969.63
H-5	Seaoil Petroleum Corp.	25627	1/6/98	5,963.00	26,833.50
H-5	Seaoil Petroleum Corp.	25752	1/19/98	5,974.00	26,883.00
H-5	Seaoil Petroleum Corp.	25854	1/29/98	5,969.00	26,860.50
H-5	Seaoil Petroleum Corp.	25902	2/5/98	5,978.00	26,901.00
H-5	Seaoil Petroleum Corp.	25937	2/9/98	6,000.00	27,000.00
H-5	Seaoil Petroleum Corp.	25991	2/13/98	5,976.00	26,892.00
H-5	Seaoil Petroleum Corp.	26019	2/16/98	5,949.00	26,770.50
H-5	Seaoil Petroleum Corp.	26032	2/17/98	5,901.00	26,554.50
H-5	Seaoil Petroleum Corp.	26090	2/23/98	5,962.00	26,829.00
H-5	Seaoil Petroleum Corp.	26106	2/24/98	5,932.00	26,694.00
H-5	Seaoil Petroleum Corp.	26144	2/27/98	5,914.00	26,613.00
H-5	Seaoil Petroleum Corp.	26283	3/10/98	5,873.00	26,428.50

H-5	Seaoil Petroleum Corp.	26330	3/13/98	5,958.00	26,811.00
H-5	Seaoil Petroleum Corp.	26364	3/16/98	5,936.00	26,712.00
				113,242.29	P 509,590.31

In sum, Petitioner has sufficiently established its entitlement to the refund sought but only to the extent of P1,508,239.94, computed as follows:

Claimed Specific Taxes		P 3,212,327.95
Less: Disallowances		
1.) Claimed specific taxes on batching oil purchases from Mobil Phils., Inc.	P 716,094.00	
2.) Claimed specific taxes related to abaca exports without proof of foreign currency inward remittances (see Schedule 1)	478,403.70 **	
3.) Prescribed claim on batching oil purchases from Seaoil & Quatrolube	509,590.31	1,704,088.01
Refundable Specific Taxes		P1,508,239.94

Schedule 1

Purchased from	Batching Oil Liter Usage	Claimed Specific Taxes	% to Total
Mobil Phils., Inc.	159,132.00	P 716,094.00	22.29%
Seaoil/Quatrolube	554,718.65	2,496,233.93	77.71%
total:	713,850.65	P 3,212,327.93	100.00%

Allocation of Claimed Specific Taxes on Abaca Exports w/o foreign currency remittances

	Batching Oil Liter Usage	Claimed Specific Taxes
abaca exports w/o forex remittances	136,809.61	P 615,643.25
allocated to:		
Mobil Phils., Inc.	30,497.68	P 137,239.55
Seaoil/Quatrolube	106,311.93	478,403.70 **
total:	136,809.61	P 615,643.25

WHEREFORE, in view of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE**

a **TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P1,508,239.94 representing excise taxes paid for the period covered January 1, 1998 to May 31, 1999.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge