REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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KOYO MANUFACTURING (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6494 and 6598

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
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DECISION

CASANOVA, C., J.:

These two Petitions for Review seek the refund or issuance of a tax credit certificate of alleged erroneously paid excise taxes on purchases of diesel fuel in total amount of P9,385,540.00 for the period June 1, 2000 to January 31, 2002.

The facts as culled from the records and evidence of the case are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office located at Lima Technology Center, Malvar, Batangas. It is principally engaged in the manufacture and export of miniature bearings for hard disk drives. It is registered with the Philippine Economic Zone Authority as an Ecozone Enterprise with Certificate of Registration No. 98-012 issued on February 6, 1998 under Republic Act No. 7916, as amended by Republic Act No. 8748. It is also registered with

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the Bureau of Internal Revenue as an export enterprise taxpayer with Certificate of Registration No. 97-590-000583 dated September 16, 1997.

On July 14, 2000, petitioner entered into Fuel Supply and Purchase Agreement with Toyota Tsusho Corporation (Manila Branch), a corporation organized and existing under the laws of the Philippines, for the supply of its monthly requirement of petroleum products estimated to be at 500,000 liters *(Exhibit B)*. The price of the fuel products was stipulated to include specific tax at the rate of P1.630 per liter *(Exhibits B-1 and B-3)*.

For the period June 1, 2000 to January 31, 2002, petitioner purchased diesel fuel from Toyota Tsusho Corporation (Toyota Tsusho) which was purchased by the latter from Caltex (Philippines), Inc. Petitioner paid Toyota Tsusho excise taxes on said purchases of fuel products in the aggregate amount of P9,385,540.00 in compliance with their agreement. However, it alleged that such payment was erroneous because under Section 135(c) of the National Internal Revenue Code of 1997, the petroleum products sold to an ecozone entity, which is by law exempt from direct and indirect taxes, are exempt from excise tax. Petitioner relies upon Section 24 of Republic Act No. 7916 otherwise known as "The Special Economic Zone Act of 1995", as amended, as legal basis for its exemption from direct and indirect taxes.

Believing that it is entitled to the refund of an alleged erroneously paid excise tax, petitioner filed on two (2) occasions two (2) separate applications for claim for refund with the Revenue District Office No. 59 (Lipa City) of the Bureau of Internal Revenue. The first application was filed on June 28, 2002, covering the period June 2000 to June 2001 in the amount of P5,744,120.00 *(Paragraph 5, Joint Stipulation of Facts and Issues, CTA Case No. 6494, **should be June 27, 2002**)*. The second application was filed on January 16, 2003 covering the period July 2001 to January 2002 in the amount of P3,641,420.00 *(Paragraph 5, Joint Stipulation of Facts and Issues, CTA Case No. 6598)*.

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On June 28, 2002 and January 31, 2003, petitioner filed the instant Petitions for Review in order to toll the running of the two-year prescriptive period under the law docketed as:

CTA Case No.	Period Covered	Amount
6494	June 2000 to June 2001	P 5,744,120.00
6598	July 2001 to January 2002	3,641,420.00
	Total	P 9,385,540.00

These two cases were ordered to be consolidated on May 6, 2003 upon the hearing of the written motion of petitioner. On May 12, 2003, a confirming Resolution was subsequently issued relative thereto *(pages 79, 89 and 90, CTA records, CTA Case No. 6494)*.

In his Answers filed on August 12, 2002 for CTA Case No. 6494 and on March 6, 2003 for CTA Case No. 6598, respondent raised the following as his Special and Affirmative Defenses:

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
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> 5. The amounts of P5,744,120.00 and P3,641,420.00 being claimed by petitioner as alleged specific taxes paid on its purchases of diesel fuel from Caltex Philippines, Inc. for the period June 2000 to June 2001 and July 2001 to January 2002, respectively, were not properly documented;
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> 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;
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> 7. Petitioner must show that it has complied with the provisions of Section 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and
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> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

Respondent however added as his Special and Affirmative Defense in CTA Case No. 6598 that the Petition for Review is too premature and therefore, cannot be taken cognizance by this Honorable Court.

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The issues to be resolved by the Court as jointly stipulated by the parties are as follows:

1. Whether or not petitioner is exempt from payment of excise tax on its purchases of petroleum products;

2. Whether or not petitioner actually paid excise taxes on the purchases of diesel fuel from Caltex Philippines, Inc. for the period June 2000 to January 2002;

3. Whether or not the purchases of diesel fuel from Caltex Philippines, Inc. and the payment of excise taxes thereon are duly substantiated; and

4. Whether or not petitioner is entitled to a tax credit certificate/refund in the amount of P9,385,540.00 representing specific taxes paid on its purchases of diesel fuel from Caltex Philippines, Inc. for the period June 2000 to June 2001.

Anent the first issue, petitioner asserts that it is exempt from payment of direct and indirect taxes as an ecozone enterprise. It cites as legal anchor Section 24 of R.A. No. 7916 which provides:

> SECTION 24. *Exemption from Taxes Under the National Internal Revenue Code.* — Any provision of existing laws, rules and regulations to the contrary notwithstanding, **no taxes, local and national**, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. This five percent (5%) shall be shared and distributed as follows:
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> (a) Three percent (3%) to the national government;
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> (b) One percent (1%) to the local government units affected by the declaration of the ECOZONE in proportion to their population, land area, and equal sharing factors; and
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> (c) One percent (1%) for the establishment of a development fund to be utilized for the development of municipalities outside and contiguous to each ECOZONE: *Provided, however,* That the respective share of the affected local government units shall be determined on the basis of the following formula: xxx *(Underlining supplied).*

Consequently, it is exempt from payment of excise taxes on its purchases of fuel products which were shifted to it by Toyota Tsusho. It further argues that petroleum products sold to an ecozone enterprise, such as petitioner, are not subject to excise tax pursuant to Section 135(c) of the National Internal Revenue Code of 1997, to wit:

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> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — Petroleum products sold to the following are exempt from excise tax:
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> "(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided,* That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
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> "(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
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> "(c) Entities which are by law exempt from direct and indirect taxes."

Therefore, its payment of excise taxes in the gross amount of P9,385,540.00 from June 1, 2000 to January 31, 2002 is erroneous and can be recovered by way of the present action pursuant to Section 229 of the Code. To quote:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. xxx"

On the other hand, respondent maintains that petitioner is not entitled to the refund. He asserts that excise tax is in the nature of an indirect tax, hence, when passed on to the buyer, the same is no longer a tax but forms part of the purchase price. And assuming *arguendo* that petitioner is entitled to a refund, it is not the proper party that may ask for a refund from the BIR. The proper party who can seek a refund of the tax is the person on whom the tax is imposed by law and who paid the tax even when he shifts the burden to another, which in this case is Caltex Philippines, Inc. which allegedly paid and remitted the excise tax to the BIR.

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We will settle the present controversy in the light of the foregoing laws, evidence on record and jurisprudence on the matter.

We agree with the petitioner that under Section 24 of Republic Act No. 7916, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE if it pays 5% preferential tax to the national government. However, such fiscal incentive is not absolute.

Section 23 of R.A. No. 7916 provides two (2) sets of fiscal incentives which an ecozone enterprise may choose from. For easy reference Section 23 of R.A. No. 7916 is hereby quoted as follows:

> SECTION 23. *Fiscal Incentives.* — Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone authority, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. *(Emphasis supplied)*

For emphasis, these fiscal incentives are: (1) those provided for under Presidential Decree No. 66, as amended, which pertain to Section 24 of RA 7916 and (2) those provided for under Book VI of Executive Order No. 226. The first incentive includes the 5% preferential tax on gross income earned which is in lieu of payment of national and local taxes while the second refers (but not limited) to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes. This ruling was already affirmed by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Cebu Toyo Corporation, G.R. No. 149073, February 16, 2005***, wherein it held:

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> Petitioner's contention that respondent is not entitled to refund for being exempt from VAT is untenable. This argument turns a blind eye to the fiscal incentives granted to PEZA-registered enterprises under Section 23 of Rep. Act No. 7916. Note that under said statute, the respondent had two options with respect to its tax burden. It could avail of an income tax holiday pursuant to provisions of E.O. No. 226, thus exempt it from income taxes for a number of years but not from other internal revenue taxes such as VAT; **or** it could avail of the tax exemptions on all taxes, including VAT under P.D. No. 66 and pay only the preferential tax rate of 5% under Rep. Act No. 7916. Both the Court of Appeals and the Court of Tax Appeals found that respondent availed of the income tax holiday for four (4) years starting from August 7, 1995, as clearly reflected in its 1996 and 1997 Annual Corporate Income Tax Returns, where respondent specified that it was availing of the tax relief under E.O. No. 226. Hence, respondent is not exempt from VAT and it correctly registered itself as a VAT taxpayer. In fine, it is engaged in taxable rather than exempt transactions. *(Underlining supplied).*

These two sets of incentives are in the alternative and cannot be availed of at the same time by a PEZA registered enterprise ***(Overseas Ohsaki Construction Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6347, May 25, 2004; Rohm Apollo Semiconductor Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6534, May 27, 2004; and SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6532, December 29, 2004).***

Corollarily, We have to determine the fiscal incentive adopted by petitioner. Perforce, it must prove to this Court its payment of 5% preferential tax to be entitled to the exemption from direct and indirect taxes as mandated under Section 24 of R.A. No. 7916.

Lamentably, petitioner failed to establish its claimed exemption. Petitioner did not present proof of payment of its 5% preferential tax. Neither was there any document on record that would prove its availment of the fiscal incentive under P.D. 66. Thus, petitioner fell short in establishing its exemption from payment of excise tax.

What is evident, based on petitioner's Certificate of Registration with the BIR *(Annex "B" for both CTA Case Nos. 6494 & 6598)*, is its coverage to both direct and indirect taxes. In the said certificate, petitioner was registered as a "VALUE-ADDED TAX

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TAXPAYER". This means that petitioner is subject to output VAT and entitled to input VAT credit that may be shifted to it by its suppliers of goods and services. The output VAT is its direct liability while the input VAT credit is its indirect tax liability. And similar to its input VAT credit is the excise tax, also an indirect tax, shifted to petitioner by Toyota Tsusho. There being no evidence that proves otherwise, We conclude that petitioner availed of the fiscal incentive under Book VI of Executive Order No. 226 in view of its liability to both direct and indirect taxes. Petitioner therefore has no basis in law.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority ***(Commissioner of Internal Revenue vs. General Foods (Phils.), Inc, 401 SCRA 545, 550, April 24, 2003; Commissioner of Internal Revenue vs. Solidbank Corp., 416 SCRA 436, 461, November 25, 2003; and Agpalo, Statutory Construction (2nd Ed., 1990), p. 217; all cited in Commissioner vs. Seagate Technology (Phil.), G.R. No. 153866, February 11, 2005).***

Tax refunds are in the nature of such exemptions. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims; and of showing, by words too plain to be mistaken, that the legislature intended to exempt them ***(BPI Leasing Corp. vs. CA, 416 SCRA 4, 14, November 18, 2003; Paseo Realty & Development Corp. vs. CA, G.R. No. 119286, October 13, 2004, p. 14; and Surigao Consolidated Mining Co., Inc. vs. Collector of Internal Revenue, 119 Phil. 33, 37, December 26, 1963; all cited in Commissioner vs. Seagate Technology (Phil.), supra.)***

In view of the foregoing pronouncements, We will no longer delve on the remaining issues at bar for they are now considered moot and academic for discussion.

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WHEREFORE, the instant Petitions for Review are hereby ***DENIED*** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice

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