# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

**PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,**
Petitioner,

- versus - **C.T.A. CASE NO. 5158**

**THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
MAY 06 1999

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## DECISION

This is a petition for review filed by the petitioner, **PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION** (PASAR), against respondent COMMISSIONER of **INTERNAL REVENUE**, for the latter's inaction on petitioner's claim for refund in the amount of ₱3,019,071.00, representing petitioner's alleged excise taxes paid on petroleum products purchased from Petron Corporation for the period October, 1992 to March, 1994.

As represented, petitioner is a domestic corporation engaged in the business of exporting, processing, smelting and refining metals. It is registered with the Export Processing Zone Authority (EPZA) as a Zone Export Enterprise (Exh. N) and with the Board of Investments (BOI) as an Export Producer with the status of a preferred pioneer enterprise (Exh. O). Its plant is located at the Leyte Industrial Development Estate

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(LIDE), an area covered by the provisions of Presidential Decree No. 66, as amended, otherwise known as the "EPZA Law".

Petitioner's business operations require the indispensable use of petroleum products such as diesel fuel, bunker fuel oil, lubricants and other petroleum products and as such, petitioner purchased these products from local distributors like Petron Corporation (Petron).

Petitioner alleges that specific taxes imposed by law on these petroleum products were paid by Petron to the Bureau of Internal Revenue and Petron subsequently passed on to the petitioner the amount of taxes it paid on the fuel oil eventually sold to petitioner.

Petitioner, believing that it is exempt from paying the said taxes under Section 17 of P.D. No. 66, applied for tax credit of specific taxes paid on purchases of petroleum products from Petron through the following letters:

| EXHIBIT | DATE | AMOUNT | PERIOD COVERED |
|---|---|---|---|
| B | June 11, 1993 | ₱ 135,500.55 | Oct. to Nov. 1992 |
| E | Feb. 18, 1994 | 1,633,755.90 | Dec.1992 to Aug. 1993 |
| H | July 12, 1994 | 1,249,814.55 | Sept. 1993 to Mar. 1994 |
| | | ₱ 3,019,071.00 | |

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

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> 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 did not controvert the amount prayed for in the petition but instead concentrated on disputing the legal basis of the request for refund/tax credit.

Through a letter, dated September 2, 1994 (Exhibit "L"), respondent denied petitioner's claim for refund covering the period October 1991 to November 1992 on the ground that the provisions of Section 17 of P.D. No. 66 and BIR Ruling No. 126-86 does not state clearly that petroleum products sold and delivered to EPZA registered enterprises are exempt from taxes. Respondent maintains that it is a settled rule in taxation that tax exemptions cannot be created by implication because exemptions from taxation are highly disfavored in law and one who claims exemption from tax must be able to justify his claim by the clearest grant of organic or statute law.

Respondent also asserts that the petroleum products purchased by the petitioner do not form part of the export products manufactured, thus falling outside the ambit of Section 18(i) of P.D. No. 66 as amended by P.D. 1449, to quote:

> ***"(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 <u>and forming part thereof</u>: Provided, that the tax credit shall accrue to the registered zone enterprise only after the final product has in fact been exported. The <u>tax credit</u> shall be used by the Secretary of Finance upon presentation of the export documents, and shall be <u>in lieu of refunds</u>. It may be used to pay taxes, duties, charges and fees

> due to the national government in connection with its operation. A tax credit shall be non-transferrable, 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 for as 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." (underscoring supplied)

And finally, respondent contends that at the time the products in question were sold and delivered to the petitioner by Petron, the same were already tax paid and the use of these products within the zone does not render the collection of the tax illegal or erroneous with respect to the tax previously paid by Petron. The taxes having been legally paid and collected at the time of payment, the same cannot be the subject of refund or tax credit.

Petitioner construed this particular denial by the respondent as an implied rejection of its other claims for refund of a similar nature, hence petitioner filed the instant petition for review on October 12, 1994 where petitioner consolidated all such claims.

Respondent in his Answer, adopted the same line of defenses as contained in his letter of denial addressed to the petitioner. Quoted hereunder are the special and affirmative defenses maintained by the respondent:

> "3. Section 17(l) of P.D. No. 66 relied upon by the petitioner does not clearly state that the petroleum products sold and delivered to EPZA registered enterprises are exempt from taxes. Settled is the rule that tax exemptions cannot be created by implications as they are highly disfavored in law. And considering further that a claim for tax refund partakes of the nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language. (BIR Ruling No. 126-86 dated July 23, 1986);

4. Contrary to the petitioner's assertions, Section 18(i) of P.D. No. 66, as amended by P.D. No. 1449, states that the tax credit to be given to a registered zone enterprise shall cover the sales, compensating and 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. Certainly, the ad valorem and specific taxes herein sought to be refunded/credited by the petitioner do not form part of the export products manufactured by it and therefore, not refundable;

5. Moreover, an indirect tax (i.e., ad valorem and specific taxes) when added to the cost of goods sold is no longer a tax but an additional cost which the purchaser has to pay to obtain the goods (Commissioner vs. American Rubber Co., 18 SCRA 1056). In the instant case, petitioner merely paid the added cost of the regular gasoline and diesel fuel, not the ad valorem tax, the entity or person subject thereto being Petron Corporation, the manufacturer;

6. A cursory reading of the 1981 Opinion of the then Ministry of Justice, the Ministry of Finance Ruling dated December 11, 1984, L.O.I. No. 942 dated October 16, 1979 and Article 79 of the Omnibus Investment Code being invoked by the petitioner does not in any way show much less provide that the alleged ad valorem and specific tax erroneously billed to petitioner by Petron Corporation in the total amount of ₱3,019,071.00 for the period October 1992 to March 1994 is refundable to the former on its purchases of regular gasoline and diesel fuel from the latter;

7. Petitioner which has the burden of proving its entitlement to the tax refund has failed to establish any clear interest in or right over the alleged ad valorem and specific taxes in the total amount of P3,019,071.00;

8. In an action for tax refund/credit, the burden of proof is upon the taxpayer to show that the tax paid was erroneously or illegally collected and failure to substantiate the same is fatal to the action;

9. It is likewise incumbent upon the petitioner to show that it has complied with the provisions of Sections 204 and 230 of the Tax Code."

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Respondent did not present any evidence to prove his case, instead he submitted the same based on the records. He also failed to file his memorandum for this case.

It should be noted at this point that this petition for review was denied in this Court's decision dated February 17, 1998 due to insufficiency of evidence, however in a resolution dated May 19, 1998, We decided to grant petitioner's Motion for New Trial to enable the latter to adduce additional evidence to further support its claim for refund.

Upon admission of petitioner's additional evidence, this case was again submitted for decision on October 7, 1998 (see CTA Resolution, page 273, CTA Records).

The issue now confronting Us remains the same and that is whether or not the petroleum products purchased and used by petitioner in its business operations in LIDE are exempt from duties and taxes, hence, it is entitled to the refund or issuance of a tax credit certificate in the amount of ₱3,019,071.00.

We rule in the affirmative. This is not the first time that this Court has been confronted with such issue at hand. This Court resolved the same issue in the cases of Philippine Phosphate Fertilizer Corporation vs. Hon. Commissioner of Customs, CTA Case No. 4661, May 31, 1993 and Philippine Phosphate Fertilizer Corporation vs. Hon. Commissioner of Customs, CTA Case No. 4957, October 5, 1995, which are anchored on similar factual circumstances and on all fours with the case at bar. Thus, we find no cogent reason to depart from the wisdom of our decision in said case, which states to wit:

> "Based on the above-quoted authority, <u>petitioner, as an EPZA registered enterprise is exempted from the payment of excise taxes, and if said taxes were passed on by the supplier to EPZA registered enterprises like the petitioner, tax credit shall be granted to the latter</u>.

> The fact that it was not the petitioner who had paid the taxes directly to the Bureau of Internal Revenue does not have an adverse effect on petitioner's action for refund. The law granting the exemption makes no distinction as to the circumstances when the law shall apply. Since the law makes no distinction, neither should we. The exemption is so broad as to cover the present situation. Since an export processing zone is not considered to be covered by Philippine customs and internal revenue laws, the taxes paid by the petitioner on the petroleum products should be refunded or credited in its favor. x x x" (underscoring supplied).

The legal issue having been settled, what remains to be resolved by the Court as of the moment involves factual matters, and that is, whether or not petitioner has established by evidence its claimed refund.

To support its claim for refund, petitioner adduced in evidence, *inter-alia*, certifications issued by **PETRON** attesting to the fact that it actually paid specific taxes to the Bureau of Internal Revenue (BIR) and billed the same to herein petitioner (Exhibits C, F & I). Likewise, petitioner presented in evidence the schedules of petroleum products sold and delivered by **PETRON** to it (Exhibits C-1, F-1 and I-1) as well as the Confirmation Receipts and Payment Orders issued by the BIR to PETRON, to prove that the subject excise taxes were paid by the latter to the BIR. Further, petitioner submitted to the Court the invoices supporting the schedules of petroleum products sold and delivered by Petron (Exhibits P-1 to P-79).

After a minutiose scrutiny of the evidence adduced by petitioner (Exhibits A to PP-79), the Court finds the same sufficient to grant the desired relief of petitioner but only in the amount of ₱1,498,716.45, as this was the only amount duly supported by invoices. Hereunder is the summary of the specific taxes which can be refunded to the petitioner in accordance with Section 145 of the Tax Code.

| DATE | INVOICE NO. | EXHIBIT | VOLUME IN LITER | RATE PER LITER | AMOUNT |
|---|---|---|---|---|---|
| 10/22/92 | 26086 | P- 1 | 420 | 0.50 | 210.00 |
| 11/05/92 | 10359 | P- 2 | 10,000 | 2.52 | 25,200.00 |
| 11/20/92 | 10354 | P- 3 | 10,000 | 0.45 | 4,500.00 |
| 11/23/92 | 30525 | P- 4 | 420 | 0.50 | 210.00 |
| 11/28/92 | 56449 | P- 5 | 224,179 | 0.45 | 100,880.55 |
| 11/28/92 | 78113 | P- 6 | 10,000 | 0.45 | 4,500.00 |
| 12/08/92 | 78139 | P- 7 | 10,000 | 0.45 | 4,500.00 |
| 12/15/92 | 78165 | P- 8 | 10,000 | 0.45 | 4,500.00 |
| 12/17/92 | 30559 | P- 9 | 210 | 0.50 | 105.00 |
| 12/24/92 | 78188 | P-10 | 10,000 | 0.45 | 4,500.00 |
| 12/31/92 | 56468 | P-11 | 294,511 | 0.45 | 132,529.95 |
| 01/02/93 | 86405 | P-12 | 10,000 | 0.45 | 4,500.00 |
| 01/11/93 | 86425 | P-13 | 10,000 | 0.45 | 4,500.00 |
| 01/19/93 | 86450 | P-14 | 10,000 | 0.45 | 4,500.00 |
| 01/28/93 | 86472 | P-15 | 10,000 | 0.45 | 4,500.00 |
| 01/30/93 | 56490 | P-16 | 406,366 | 0.45 | 182,864.70 |
| 02/03/93 | 86497 | P-17 | 10,000 | 0.45 | 4,500.00 |
| 02/08/93 | 98817 | P-19 | 420 | 0.50 | 210.00 |
| 02/09/93 | 86609 | P-18 | 10,000 | 2.52 | 25,200.00 |
| 02/13/93 | 86629 | P-20 | 10,000 | 0.45 | 4,500.00 |
| 02/19/93 | 86654 | P-21 | 10,000 | 0.45 | 4,500.00 |
| 02/26/93 | 86671 | P-22 | 10,000 | 0.45 | 4,500.00 |
| 02/27/93 | 24704 | P-23 | 329,543 | 0.45 | 148,294.35 |
| 03/03/93 | 98846 | P-24 | 420 | 0.50 | 210.00 |
| 03/06/93 | 86693 | P-25 | 10,000 | 0.45 | 4,500.00 |
| 03/06/93 | 86694 | P-26 | 10,000 | 0.45 | 4,500.00 |
| 03/19/93 | 78331 | P-27 | 10,000 | 0.45 | 4,500.00 |
| 03/29/93 | 78364 | P-28 | 10,000 | 0.45 | 4,500.00 |
| 03/31/93 | 24719 | P-29 | 297,391 | 0.45 | 133,825.95 |
| 04/05/93 | 78383 | P-30 | 10,000 | 2.52 | 25,200.00 |
| 04/05/93 | 78384 | P-31 | 10,000 | 0.45 | 4,500.00 |
| 04/13/93 | 10217 | P-32 | 10,000 | 0.45 | 4,500.00 |
| 04/21/93 | 10248 | P-33 | 10,000 | 0.45 | 4,500.00 |
| 04/29/93 | 10276 | P-34 | 10,000 | 0.45 | 4,500.00 |
| 05/10/93 | 12439 | P-35 | 420 | 0.50 | 210.00 |
| 05/15/93 | 10441 | P-36 | 10,000 | 0.45 | 4,500.00 |
| 05/17/93 | 10417 | P-37 | 10,000 | 0.45 | 4,500.00 |
| 05/19/93 | 10451 | P-38 | 10,000 | 2.52 | 25,200.00 |
| 05/27/93 | 10475 | P-39 | 10,000 | 0.45 | 4,500.00 |
| 06/29/93 | 10606 | P-40 | 10,000 | 0.45 | 4,500.00 |
| 07/05/93 | 10627 | P-41 | 10,000 | 2.52 | 25,200.00 |
| 07/06/93 | 10628 | P-42 | 10,000 | 0.45 | 4,500.00 |

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|---|---|---|---|---|---|
| 07/14/93 | 10670 | P-43 | 12,000 | 0.45 | 5,400.00 |
| 07/23/93 | 10589 | P-44 | 10,000 | 0.45 | 4,500.00 |
| 08/02/93 | 34741 | P-45 | 10,000 | 0.45 | 4,500.00 |
| 08/09/93 | 34763 | P-46 | 10,000 | 0.45 | 4,500.00 |
| 08/17/93 | 34782 | P-47 | 10,000 | 0.45 | 4,500.00 |
| 08/24/93 | 27780 | P-48 | 420 | 0.50 | 210.00 |
| 08/24/93 | 34807 | P-49 | 10,000 | 0.45 | 4,500.00 |
| 08/25/93 | 34810 | P-50 | 10,000 | 2.52 | 25,200.00 |
| 08/30/93 | 24819 | P-51 | 348,712 | 0.45 | 156,920.40 |
| 09/06/93 | 34842 | P-52 | 12,000 | 0.45 | 5,400.00 |
| 09/09/93 | 34854 | P-53 | 12,000 | 0.45 | 5,400.00 |
| 09/09/93 | 34746 | P-54 | 12,000 | 0.45 | 5,400.00 |
| 10/14/93 | 34893 | P-55 | 10,000 | 2.52 | 25,200.00 |
| 10/05/93 | 27833 | P-56 | 210 | 0.50 | 105.00 |
| 10/01/93 | 813252 | P-57 | 10,000 | 0.45 | 4,500.00 |
| 10/06/93 | 813258 | P-58 | 10,000 | 0.45 | 4,500.00 |
| 10/11/93 | 34886 | P-59 | 12,000 | 0.45 | 5,400.00 |
| 10/22/93 | 58813 | P-60 | 13,000 | 0.45 | 5,850.00 |
| 10/29/93 | 34885 | P-61 | 10,000 | 0.45 | 4,500.00 |
| 11/04/93 | 27881 | P-62 | 210 | 0.50 | 105.00 |
| 11/08/93 | 58852 | P-63 | 12,000 | 0.45 | 5,400.00 |
| 11/19/93 | 58889 | P-64 | 12,000 | 0.45 | 5,400.00 |
| 11/25/93 | 34905 | P-65 | 12,000 | 0.45 | 5,400.00 |
| 12/02/93 | 34926 | P-66 | 10,000 | 2.52 | 25,200.00 |
| 12/10/93 | 27938 | P-67 | 420 | 0.50 | 210.00 |
| 12/08/93 | 34951 | P-68 | 12,000 | 0.45 | 5,400.00 |
| 12/21/93 | 34972 | P-69 | 12,000 | 0.45 | 5,400.00 |
| 12/29/93 | 34989 | P-70 | 14,000 | 0.45 | 6,300.00 |
| 01/24/94 | 58969 | P-71 | 10,000 | 2.52 | 25,200.00 |
| 01/21/94 | 32207 | P-72 | 210 | 0.50 | 105.00 |
| 01/18/94 | 58950 | P-73 | 12,000 | 0.45 | 5,400.00 |
| 01/22/94 | 58965 | P-74 | 12,000 | 0.45 | 5,400.00 |
| 02/07/94 | 59038 | P-75 | 86,093 | 0.45 | 38,741.85 |
| 02/23/94 | 59200 | P-76 | 12,000 | 0.45 | 5,400.00 |
| 02/28/94 | 59040 | P-77 | 244,486 | 0.45 | 110,018.70 |
| 03/10/94 | 813333 | P-78 | 10,000 | 2.52 | 25,200.00 |
| 03/03/94 | 813292 | P-79 | 12,000 | 0.45 | 5,400.00 |
| **TOTAL REFUNDABLE AMOUNT** | | | | | **₱1,498,716.45** |

**IN THE LIGHT OF ALL THE FOREGOING**, the instant petition for review is partially **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate to herein petitioner in the amount of ₱1,498,716.45, representing the latter's excise taxes paid for the period October, 1992 to March, 1994. No costs.

**SO ORDERED**.

**ERNESTO D. ACOSTA**
Presiding Judge

WE CONCUR:

( On Leave )
**RAMON O. DE VEYRA**
Associate Judge

**AMANCIO Q. SAGA**
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals