REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

C.T.A. CASE NO. 5282

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 17 2007, 1:05 pm

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DECISION

BAUTISTA, L., J.:

Before Us is a case remanded by the Supreme Court for the reception of evidence necessary for the proper and immediate determination of the amount to be refunded to petitioner which constitutes excise taxes paid for the period September 1993 to December 1994.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines registered with the Export Processing Zone Authority (EPZA). It is engaged in the business of manufacturing fertilizers for domestic and international distribution and as such, utilizes fuel oil and oil products.

On the other hand, respondent Commissioner of Internal Revenue is a public officer who heads the Bureau of Internal Revenue (BIR) with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

In a letter dated August 28, 1995, to then Commissioner Liwayway Chato, petitioner sought for the refund of the excise taxes it paid for fuel supplies purchases covering the months of September 1993 to December 1994 in the amount of Six Hundred Two Thousand and Three Hundred Forty-Nine Pesos (P602,349.00) pursuant to Section 17(a) of Presidential Decree No. 66.[1]

According to petitioner, it purchased fuel supplies from local distributors, one of which is Petron Corporation (PETRON). These fuel supplies are brought to the Export Processing Zone for use therein by petitioner. While the fuel supplies do not form part of the finished products, they are indispensable in the manufacturing cycle of petitioner because they are used to run the machineries and equipment which transform raw materials into exportable finished product and for other purposes.

PETRON, as the importer of the fuel supplies, initially pays the corresponding taxes and custom duties to the BIR but when these supplies are sold to petitioner, the taxes and customs duties are in turn billed to petitioner.

Being an EPZA-registered enterprise, petitioner believes that it is not liable for the excise taxes being billed by PETRON upon it for its purchases.

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[1] SEC. 17. Tax Treatment of Merchandise in the Zone. – 1) Except as otherwise provided in this decree, foreign and domestic merchandise, raw materials, <u>supplies</u>, articles, equipment, machineries, spare parts and wares of every description except those prohibited by law, <u>brought into the Zone</u>, to be assembled, installed, sorted, cleaned, 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 the local tax ordinances, the provisions of the law to the contrary notwithstanding.

Petitioner then filed a Petition for Review before this Court a few days later, or on September 1, 1995, in order to toll the running of the prescriptive period provided for under the Tax Code.

After trial on the merits, a Decision was promulgated by this Court on August 11, 1998, denying petitioner's claim due to its failure to submit the invoices supporting the schedules of petroleum products sold and delivered to it by PETRON. Pertinent portions of the Decision are hereby quoted:

> "[P]etitioner, 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 enterprise like the petitioner, tax credit shall be granted to the latter. 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 petitioner on the petroleum products should be refunded or credited in its favor. Thus, the only thing left for us to do is to determine whether or not petitioner is entitled to the amount claimed for refund. xxx
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> [P]etitioner merely presented a summary of petroleum products sold and delivered by Petron during the period covered by the claim. We cannot, by the summary alone, ascertain the veracity of the amount being claimed neither can it prove the existence of the invoices referred to therein. Petitioner should have submitted the invoices supporting the schedules of petroleum products sold and delivered to it by Petron. These invoices would reveal whether or not the amount claimed for refund by petitioner is correct. xxx"

On September 3, 1998, petitioner moved for reconsideration of the above-quoted Decision but in a Resolution promulgated on January 6, 1999, this Court denied the motion for lack of merit. Thus, on January 29, 1999, petitioner filed a

"Motion for Reconsideration and Motion for New Trial" seeking the reconsideration of this Court's Decision of August 11, 1998 and Resolution of January 6, 1999. The said motion was also denied in a Resolution of March 12, 1999.

Aggrieved, petitioner elevated the case to the Court of Appeals by way of a Petition for Review dated April 4, 1999, thereat docketed as CA-G.R. SP No. 52093.

In a Resolution promulgated June 18, 1999, petitioner's petition was denied due course outright and was dismissed by the Court of Appeals on the ground that it was petitioner's counsel who executed the "Affidavit of Non-Forum Shopping" and not the petitioner, in violation of Supreme Court Administrative Circular No. 04-94.

Petitioner filed a "Motion for Reconsideration" thereof which was denied by the Court of Appeals on August 25, 1999 due to late filing. A Motion for Reconsideration (Re: Resolution of 25 August 1999) was then filed by petitioner. The Court of Appeals, in a Resolution promulgated on February 15, 2000, lifted and set aside its August 25, 1999 Resolution but still denied petitioner's Motion for Reconsideration of the June 18, 1999 Resolution.

Not being satisfied, Petitioner went to the Supreme Court by filing a Petition for Review dated March 20, 2000 and docketed as G.R. No. 141973.

On June 28, 2005, the Supreme Court rendered a Decision remanding the case to this Court for the reception of evidence. To quote:

> "The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. This is because tax refunds are in the nature of tax exemptions, the statues of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. xxx
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> <u>In this case, there is no dispute that petitioner is entitled to exemption from the payment of excise taxes by virtue of its being an EPZA registered enterprise</u>. As stated by the CTA, the only thing left to

be determined is whether or not petitioner is entitled to the *amount* claimed for refund.

Petitioner's entire claim for refund, however, was denied for petitioner's failure to present invoices allegedly in violation of CTA Circular No. 1-95. But nowhere in said Circular is it stated that invoices are required to be presented in claiming refunds. xxx

The CTA in denying petitioner's motion for reconsideration, also mentioned for the first time that petitioner's failure to present a "certification of an independent CPA" is another ground that justified the denial of its claim for refund.

Again, we find such reasoning to be erroneous. The certification of an independent CPA is not another mandatory requirement under the Circular which petitioner failed to comply with. It is rather a requirement that must accompany the invoices should one decide to present invoices under the Circular. Since petitioner did not present invoices, on the assumption that such were not necessary in this case, it logically did not present a certification because there was nothing to certify.

<u>The CTA also could not deny that in its previous decisions involving petitioner's claim for refund, invoices were not deemed necessary to grant such claims. It merely said that in said decisions, CTA Circular 1-95 was not yet in effect</u>. Since CTA Circular No. 1-95 did not make it mandatory to present invoices, coupled with the previous cases of petitioner where the certifications issued by Petron sufficed, it is understandable that petitioner did not think it necessary to present invoices and the accompanying certifications when it filed the present case for refund before the CTA.

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In this case, it cannot be said that petitioner did not act with ordinary prudence in claiming its refund with the CTA, in light of its previous cases with the CTA which did not require invoices and the non-mandatory nature of CTA Circular No. 1-95.

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<u>Since it is not disputed that petitioner is entitled to tax exemption, it should not be precluded from presenting evidence to substantiate the amount of refund it is claiming on mere technicality especially in this case, where the failure to present invoices at the first instance was adequately explained by petitioner</u>.

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> WHEREFORE, the petition is GRANTED. The assailed resolution is SET ASIDE and the case is REMANDED to the Court of Tax Appeals for the reception of evidence, particularly invoices supporting the schedules of petroleum products sold and delivered to petitioner by Petron and the corresponding certification of an independent Certified Public Accountant, for the proper and immediate determination of the amount to be refunded to petitioner." *(Underscoring Supplied)*

In compliance with the above-quoted Decision, this Court conducted several hearings to receive petitioner's testimonial and documentary evidence.

Furthermore, upon motion of petitioner in open Court, the commissioning of an independent Certified Public Accountant (CPA) was granted by this Court. Thereafter, this case was submitted for decision after considering petitioner's Memorandum filed on September 6, 2006 sans respondent's Memorandum.

Is petitioner entitled to the refund or tax credit of excise taxes paid for the period September 1993 to December 1994 in the amount of P602,349.00?

As already settled, petitioner is exempt from the payment of taxes for supplies brought into the Zone to be used, whether directly or indirectly, in its activity. Thus, it is entitled to claim for the refund or issuance of a tax credit certificates of the excise taxes it paid for supplies purchases for the subject period. What is left for this Court to determine is the amount which petitioner is entitled.

In this connection, it is important to verify whether petitioner actually purchased petroleum products from PETRON and whether the corresponding taxes of the petroleum products were actually paid by PETRON and subsequently billed upon petitioner.

Petitioner, in support of its claim, submitted to this Court *"Certification"* from PETRON Corporation *(Exhibits "A" and "A-a")* to show that PETRON paid the specific/excise taxes to the BIR in the amount of P602,349.00 on the petroleum products sold to petitioner for the period September 1993 to December 1994 (period subject of the claim) and billed the same to petitioner; *"Petroleum Products Sold & Delivered to Philphos for the Period September, 1993 to December, 1994" (Exhibit A-1" and "A-1-a")* to show the summary of purchases of petitioner from PETRON for the period September 1993 to December 1994; BIR *"Authority to Accept Payment for Excise Taxes"* Returns *(Exhibit A-2" to "A-80")* to establish that excise taxes on the petroleum products sold and delivered to petitioner during the period September 1993 to December 1994 were paid by PETRON to the BIR; Invoices *("C-1 to C-59", "C-61, "C-63 to C-86")* to establish that petroleum products were sold and delivered to petitioner by PETRON for the period September 1993 to December 1994; *"Independent CPA's Certification" (Exhibit "D")* prepared by Mr. John Aguilar, the duly commissioned Independent CPA, to establish that based on the available invoices and the corresponding Authority to Accept Payment Returns issued by the BIR, excise taxes in the amount of P516,618.15 have been paid on the fuel products purchased by petitioner for the period September 1993 to December 1994; and *"Summary"* prepared by Mr. John Aguilar *(Exhibit "E")* to show that based on the available invoices and the corresponding BIR Authority to Accept Payment Returns issued, petitioner purchased petroleum products for the period September 1993 to December 1994 for which excise taxes in the amount of P516,618.15 were paid.

A verification of Exhibits "A" and "A-a" shows that PETRON itself certified that it sold petroleum products to petitioner for the subject period and that the corresponding taxes of the same were in turn billed upon petitioner. Furthermore, the "Authority to Accept Payment of Excise Taxes Returns" *(Exhibits "A-2 to A-80")* proved that PETRON paid the corresponding taxes on the petroleum products sold to petitioner.

Likewise, a reading of Exhibits "A-1" and "A-1-a" shows that PETRON sold and delivered 1,288,116 liters of petroleum product to petitioner from September 1993 to December 1994. The excise taxes thereof amounted to P602,349.00, computed as follows:

11,760 total volume in liters of AVTURBO	
X 2.38 tax rate	P 27, 988.80
1,276,356 total volume in liters of DIESEL	
X .45 tax rate	P574, 360.20
Total Amount of Excise tax	**P602, 349.00**

In addition, the invoices submitted by petitioner to this Court prove that petitioner purchased petroleum products from PETRON.

In fine, as can be seen from the aforesaid evidence, petitioner was able to prove its purchases from PETRON for the period September 1993 to December 1994 and that PETRON initially paid the taxes thereof but subsequently billed it to petitioner. These facts having been verified and settled, We will now determine the amount to be refunded to petitioner.

After a scrutiny of the documents submitted, this Court agrees with the findings of the commissioned independent CPA *(Exhibit "D")* that petitioner, based on available invoices and corresponding Authority to Accept Payment issued by the BIR, was able to substantiate only the amount of P516, 618.15, detailed as follows:

AV TURBO	11760 Liters
Tax Rate	2.38
Amount due	P 27, 988. 80
DIESEL	1,085,843 Liters
Tax Rate	.45
Amount due	P488, 629.35
GRAND TOTAL	**P516, 618.15**
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WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby ***PARTIALLY GRANTED.*** Accordingly, respondent is **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** to the petitioner in the reduced amount of **P516,618.15** representing excise taxes paid for the period September 1993 to December 1994.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice