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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACLEOD INTERNATIONAL, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4095

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

11/16/90

D E C I S I O N

This is a judicial claim for tax credit under then Section 202 (then Section 167), in relation to Section 166(c), of the Tax Code, of the total amount of P832,135.09, representing advance sales tax paid on materials used in the manufacture of articles exported abroad in 1985.

Petitioner, during the year 1985, made an export sale to L.C.&S., Ltd., a U.S. Corporation, of various trucks, tractors and equipment. *(Exhs. A, B, C & D; testimony of Tomas L. Rotairo)*

On said exported articles, petitioner had a total creditable tax of P832,135.09, representing advance sales tax paid on components of said exported articles. *(Exhs. A, E & F)*

Petitioner was unable to utilize as tax credit the said amount of P832,135.09 in any of its percentage tax returns for 1985 and 1986, or claim the same in any government agency.

Hence, on August 6, 1986, petitioner, through its agent, filed with respondent's Bureau an application for tax credit for taxes paid on materials used in the manufacture of exported articles totalling P832,135.09.

Inasmuch as respondent Commissioner has not yet granted petitioner's request for the issuance of tax credit of P832,135.09, a petition for review was filed on August 22, 1986 in order to preserve petitioner's right to claim the tax credit.

Respondent had submitted his case on the pleadings and the records of this case.

The sole issue to be determined in this case is whether or not petitioner is entitled to a tax credit of advance sales tax paid on components of articles exported by petitioner.

The evidence of petitioner and the records established that petitioner made an export sale to L.C.&S., LTD., a U.S. Corporation, of various trucks, tractors, and equipment. *(Exhs. A, B, C & D)* This fact of exportation was confirmed by witness Tomas L. Rotairo. *(t.s.n.)*

During the hearing, it was established by petitioner's books of accounts that it had on said exported articles, creditable taxes totalling P832,135.09. The Deferred Sales Tax Subsidiary Ledger *(Exh. E)* of petitioner clearly showed that it had available sales tax credit on its inventory of goods at hand which it could claim if said articles were sold locally. This was explained by petitioner's witness, Tomas L. Rotairo, as follows:

> "Q. Mr. Witness, in this case deferred sales tax credit account book there appears to be on the first fourteen pages, there appears the words "Inventory" et cetera plus a certain figure beginning balance and the figure appears below it. Would you kindly inform this Honorable Court of the significance of this beginning balance?
>
> A. That entry there as the <u>beginning balance on our deferred deferred sales tax credit subsidiary ledger is the amount that represents our ending inventory of advance sales tax credit in 1984, as of December 1984</u>. In 1984, we are required to file the inventory of deferred sales tax credit in order that we can avail of it in the future when we were able to sell the units.
>
> Q. Mr. Witness, where did you get these figures for this beginning balances?
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> A. Well, <u>that came from inventory of advance sales tax credit that we have filed with the Bureau of Internal Revenue</u>.
>
> Q. Mr. Witness, would you inform this Honorable Court of what were the

imported items for which these advance sales tax payments were made?

A. Well, the advance sales tax payment were made for the components of knockdown trucks and the component for the semi-knockdown tractors that we have imported at that time." (Emphasis ours).

Take note that as testified to by witness, Tomas L. Rotairo, the beginning balance of said Subsidiary Ledger were taken from the inventory of advance sales tax credit *(Exh. F)* which was required by law to be submitted to the Bureau of Internal Revenue.

The same Deferred Sales Tax Subsidiary Ledger *(Exh. E)* which included the articles exported as goods at hand likewise reflected the tax credit available on each article exported. Hence, the total tax credits available on said exported articles can readily verified. As explained by Rotairo on direct examination, the amount of P832,135.09 was ascertained as follows:

"Q. Mr. Witness, in this journal entry dated October 23, 1985 there appears a line here 'Pre-paid Sales Tax 441 and P832,135.09'. Will you kindly tell this Honorable Court of the significance of these items?

A. Well, this pre-paid sales tax code 441 is the code that we are using in our general ledger which corresponds to the pre-paid sales tax. The amount of P832,135.09 represents the amount of advance sales tax paid correspondingly to the units that were exported abroad.

Q. And how did you arrive at this figure of P832,135.09, Mr. Witness?

A. Well, I first ascertain the goods sold by going over the invoice and then I referred to our deferred sales tax credit book and determine if there is any advance sales tax paid on the exported goods. Upon verification and noted if there are any advance sales tax, I noted it and compiled the amount and arrived at that figure of P832,000.00." (Emphasis ours).

(pp. 9-10, T.S.N., September 10, 1987).

And on cross-examination, the witness stated:

"Q. Now, Mr. Witness, will you kindly tell us how did you arrive with the amount of P832,135.09 which is the subject of this claim for tax credit?

A. Well, as I have said before, I first ascertained the units that were sold, and after ascertaining the units that were sold I refer to our deferred sales tax credit book subsidiary ledger book and then I was able to ascertain the corresponding advance sales tax that were paid on the goods that were exported.

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Q. How did you come to ascertain that the amount of P832,135.09 is the amount claimed to be the advance sales tax on exported items?

A. Well, our deferred sales tax credit book subsidiary ledger book has description on the models that we have, and if you will compare the invoice it is indicated in the invoice the models of the unit that were exported abroad. And based on the comparison we could ascertain the amount of the sales tax paid."

(pp. 19-21, T.S.N., September 10, 1987).

The Deferred Sales Tax Subsidiary Ledger as well as the books of accounts were prepared in the ordinary course of business of petitioner. It was also prepared in accordance with existing regulations on the subject. The correctness and accuracy of said books were never impugned. No evidence to the contrary was presented by respondent Commissioner of Internal Revenue.

We hold that the said export sale of petitioner is exempt from sales tax. Under the then applicable laws (Sec. 202 of the Tax Code, taken in relation to Sec. 167 of the same Tax Code), all export sales made by petitioner are exempt from sales tax. Section 202(d) of the then Tax Code provides that -

"Sec. 202. Articles not subject to percentage tax on sales. - with The following shall be exempt from the percentage taxes imposed in Sections 194, 195, 196, 197, 198, 199 and 201:

xxx xxx xxx

> (d) Articles shipped or exported by the manufacturer or producer, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the articles so exported.

xxx xxx xxx

> Any percentage or specific tax paid under this Title IV respectively, on domestically manufactured or on imported raw materials used in the manufacture of finished products exported shall be allowed to be credited against other tax liabilities of the manufacturer-exporter: Provided, however, That the amount of the tax on the article shall be indicated as a separate item in the sales invoice.

xxx xxx xxx

The above provision was thereafter amended by Executive Order No. 36 effective August 1, 1986, to read as follows:

> "Section 167. Articles and transactions not subject to sales tax - The following shall be exempt from the sales tax imposed in Section 163 hereof:

xxx xxx xxx

> (d) Articles shipped or exported by the manufacturer, producer, or trader, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the articles so exported.

xxx xxx xxx

On the other hand, the remedies available to the exporter were:

> "Sec. 166. Tax Credit.
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> xxx xxx xxx
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> (b) Tax credit on articles exported. - Any excise, sales, miller's or advance sales tax paid under this Title IV of this Code on domestically manufactured or imported raw materials used in the manufacture and forming part of the finished products subject to tax under Section 163 (1), (2) and (4) hereof shall be allowed as a tax credit against any internal revenue tax liability directly due from the manufacturer exporting said products: Provided, That the amount of the tax on locally purchased raw material, part, accessory, or other article is indicated as a separate item in the sales invoice of the supplier from whom it was last purchased; and Provided, further, That the direct exporter shall file an application for tax credit within one year from the close of the taxable year in which the export was effected. In case finished products are exported by an export trader other than the manufacturer or producer, the entire amount of sales and excise taxes separately indicated in the sales invoice of the immediate seller of the finished products exported shall be allowed to be credited against other tax liabilities of the export trader subject to the filing of an application as prescribed by the Bureau."

It is a fact that petitioner had, on the aforementioned exported articles, paid creditable taxes totalling P832,135.09, which were established, both documentary and testimonial, and which were uncontroverted by respondent.

WHEREFORE, petitioner Macleod International,

Inc. is entitled to tax credit of the amount of P832,135.09.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 16, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals