REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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FILPRIDE RESOURCES INCORPORATED duly represented by ANIEBETH S. DIONZON,
Petitioner,

C.T.A. CASE NO. 6696

Members:

- versus -

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

BUREAU OF INTERNAL REVENUE and/or COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:
MAR 14 2007; 2:25 PM

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DECISION

BAUTISTA, L., J.:

Before Us is a Petition for Review seeking a refund or an issuance of a tax credit certificate in the amount of P4,581,375.80 allegedly representing excess payment of excise taxes arising from petitioner's sales of fuel to the National Power Corporation for the taxable year ended December 31, 2001 pursuant to Section 13 of Republic Act No. 6395 in relation to Section 135 of the National Internal Revenue Code of 1997, as amended.

Petitioner is a domestic corporation organized and existing by virtue of the laws of the Republic of the Philippines with business address at 304 J. P. Rizal Street, Mandaluyong City.[1] It is a duly registered taxpayer with the Bureau of Internal Revenue (BIR) with a Taxpayer Identification No. 000-216-589-000.[2]

On the other hand, respondent Commissioner of Internal Revenue is vested with the authority to exercise the functions of the said office including, *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessively or wrongfully collected, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

Petitioner is engaged in the business of buying and selling including the importation of fuel and other petroleum products for various customers.[3] In the course of its business operations, it entered into sale transactions with the National Power Corporation (NPC) for the supply of oil and other petroleum products. These deliveries of fuels were covered by NPC's Open Purchase Orders in lieu of the Standard 2001-2002 Contract for the Supply/Delivery of Oil Based Fuel to various Power Plants of NPC-SPUG or the Strategic Power Utilities Group. The contract between petitioner and NPC provides for a contract that is net of duties and taxes by virtue of Republic Act No. 6395.

According to petitioner, between the months of June to December 2001, it delivered and sold to NPC two million eight hundred ten thousand six hundred sixty (2,810,660) liters of fuel pursuant to the above-mentioned open purchase orders

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[1] Par. 1, Joint Stipulation of Facts and Issues.
[2] Par. 4, Joint Stipulation of Facts and Issues; par. 3, Petition for Review.
[3] Par. 4, Joint Stipulation of Facts and Issues.

and these fuel deliveries came from the fuel importations of petitioner on May 30, 2001, June 01, 2001 and June 28, 2001 for which it paid one peso and sixty three centavos (P1.63) of excise tax for every liter of fuel imported.

Petitioner believes that because of the tax-exempt status of NPC, it is entitled to a refund or issuance of a tax credit certificate for all the excise taxes it paid on its importations of fuel which it subsequently sold and delivered to NPC for 2001.

Consequently, petitioner filed an administrative claim with the BIR on February 20, 2002.[4] On November 11, 2002, however, petitioner filed a *"Consolidated Application for Excise Tax Refund" (Exhibit "A")* whereby it corrected the volume of fuel sold to NPC which is the subject of its claim, as follows:

Sales to NPC per application	2,806,880 liters
Adjustment:	
For cancellation (Inv. # 18704)	(17,220 liters)
Additional Invoice (Inv. # 18915)	21,000 liters
Correct Volume	2,810,660 liters @ Ph 1.63/liter
Total Corrected Amount for Refund	**PH 4,581,375.80**

Considering that the two-year prescriptive period was about to lapse and respondent had neither approved nor granted petitioner's claim, petitioner filed the instant Petition for Review on May 23, 2003 in order to protect its rights and interests.

In his Answer, respondent alleged the following Special and Affirmative Defenses:

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[4] Par. 3, Joint Stipulation of Facts and Issues; par. 9, Petition for Review, par. 9.

6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

8. The grant of a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; and

9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

During the hearing held on June 2, 2004, this Court declared the petitioner to have waived its right to present evidence due to the repeated absences of petitioner's counsel despite warnings issued by this Court.[5]

Subsequently, in a Resolution of this Court dated August 20, 2004, the case was dismissed for failure to prosecute. A Motion for Reconsideration was filed by petitioner on August 27, 2004 begging the indulgence of this Court to exercise its equity jurisdiction and to set aside the Resolution dated June 14, 2004 because it had not abandoned nor intended to abandon its right to prosecute the case. Petitioner alleged that its failure to present its documentary evidence in support of its case was due primarily to the voluminous documents that had to be examined and the task of looking an independent Certified Public Accountant. On October 8, 2004, the motion of petitioner was denied in view of the absence of petitioner's counsel.[6] The case was then considered closed and terminated.

[5] Confirmed in the Resolution of June 14, 2004.
[6] Confirmed in a Resolution dated October 20, 2004.

On April 5, 2005, an "Entry of Judgment" was made of the Resolution confirming the denial of the motion for reconsideration of the petitioner.

However, on May 18, 2005, a *"Petition for Relief from Judgment"* was filed by petitioner's new counsel. It was submitted that the former counsel did not inform petitioner that it was considered to have waived its right to present evidence; that the case was dismissed for failure to prosecute; and that the case was considered closed and terminated. It was only upon receipt of the Entry of Judgment on April 6, 2005 that the former counsel informed petitioner of the said dismissal. Clearly then, petitioner was deprived of its day in court.

This Court, in the exercise of utmost discretion and in the interest of justice and truth, granted the Petition for Relief from Judgment.[7]

Thus, trial on the merits ensued. Petitioner submitted testimonial and documentary evidences in support of its claim. A Certified Public Accountant (CPA) was likewise commissioned by this Court.

For his part, respondent, during the hearing held on July 13, 2006, manifested that he is no longer submitting any evidence.

Finally, in a Resolution dated September 4, 2006, this case was submitted for decision sans respondent's Memorandum.

Petitioner and respondent jointly stipulated on the following issues:

a. Whether or not petitioner supplied and delivered fuel and/or petroleum products to NPC coming from the importation of the petitioner;

b. Whether or not petitioner paid the corresponding excise taxes for every liter of imported fuel/petroleum products which the latter sold and delivered to NPC;

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[7] Records, pp. 107-109.

c. Whether or not NPC is a tax-exempt entity which exempts the latter from payment of all forms of taxes, duties, etc.;

d. Whether or not the sale transaction between petitioner and NPC is tax-exempt, hence, petitioner should be refunded/reimbursed for the excise taxes it paid for the fuel/petroleum products it imported that were subsequently sold and delivered to NPC; and

e. Whether or not petitioner is entitled to its claim for tax refund and/or issuance of tax credit certificate.

All of the above issues being interrelated, they shall be discussed jointly.

A careful scrutiny of the records of this case would show that there is no question that petitioner supplied and delivered fuel to NPC net of duties and taxes. The various NPC Open Purchase Order *(Exhibits "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", and "R")* submitted by petitioner proved that NPC issued purchase orders to the petitioner for the supply and delivery of diesel fuel to NPC thereby evidencing the contract of sale and delivery of petroleum products between NPC and petitioner. On the other hand, the "Certification" *(Exhibit "AA")* issued by NPC to petitioner would disclose that the contracted price between petitioner and NPC is net of duties and taxes.

Since there is no more doubt that a contract really existed between petitioner and NPC, We will now go to the other issues of this case.

Petitioner's claim for refund or issuance of a tax credit certificate is anchored on the following provisions of the National Internal Revenue Code (NIRC) of 1997, as amended:

> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* – Petroleum products sold to the following are exempt from excise tax:
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) Entities which are by law exempt from direct and indirect taxes."

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 assessed or 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 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: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis Supplied)*

As can be gleaned from the above provisions, the following are the basic requirements for the entitlement to the claim of refund or issuance of tax credit certificate:

1. That the entity to which the petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes;
2. That petitioner actually paid the claimed excise taxes on the same petroleum products sold to the exempt entity;
3. That the petitioner's claim was filed within the two-year prescriptive period as provided for under Section 229 of the NIRC of 1997.

With regard to the first requisite, it is noteworthy that the issue of whether or not the National Power Corporation or NPC is exempt from direct and indirect taxes is not of first impression. No less than the High Court itself has already settled the issue in the case of ***Maceda vs. Macaraig,***[8] the pertinent portions thereof is quoted hereunder:

"The NPC is a non-profit public corporation created for the general good and welfare wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate

[8] G.R. No. 88291, May 31, 1991.

existence, the NPC enjoyed preferential tax treatment to enable the Corporation to pay the indebtedness and obligation and in the furtherance and effective implementation of the policy enunciated in Section one of "Republic Act No. 6395 xxx

xxx xxx xxx

It is noted that in the earlier law, R.A. No. 358, the exemption was worded in general terms, as to cover "**all** taxes, duties, fees, imposts, charges, etc., xxx" However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC to cover, among others, **both direct and indirect taxes** on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "**all forms of taxes,** duties, fees, imposts, as well as costs and service fees including filing fees, appeal bonds, *supersedeas* bonds, in any court or administrative proceedings."

The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC 'shall devote all its returns from its capital investments as well as excess revenues from its operation, for expansion. Xxx

xxx xxx xxx

It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from **all forms of taxes** including direct taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

Furthermore, respondent also recognizes that NPC is a tax-exempt entity as he actually admitted such fact in the "Joint Stipulation of Facts and Issues" filed with this Court on January 28, 2004.

Clearly, from the above discussions, petitioner has complied with the first requisite.

Going now to the second requisite, petitioner, aside from testimonial evidences, submitted "Landbank Official Receipts" *(Exhibits "B-2", "C-2", and "D-2")*, and "Details of Tax Payment for the Period January to December 31, 2001" *(Exhibit "V")* in order to prove that it actually paid the excise taxes due on the petroleum products it imported on May 30, June 1, and June 28, 2001.

Likewise, since petitioner is claiming that the petroleum products it sold to NPC came from its importations on May 30, June 01 and June 28, 2001, it likewise submitted to this Court, the following:

> "Bureau of Customs Import Entry and Internal Revenue Declaration" *(Exhibits "B", "C" and "D")*, to prove that petitioner's importations for May 30, June 01 and June 28, 2001 was covered with proper Bureau of Customs Import Entry and Internal Revenue Declaration;
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> "Importation by ATRIG"[9] which is the summary of importations of fuel by the petitioner *(Exhibit "W")*, to show that the subject excise taxes were paid on the imported fuel of the petitioner as covered by a BIR Authority to Release Imported Goods;
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> "Authority to Release Imported Goods" *("W-1" and "W-2")*, to show that all the releases by the petitioner of fuel for sale, supply and delivery to NPC were covered by Authority to Release Imported Goods;
>
> "Volume of Claim versus Volume of Sales to NPC" *(Exhibit "X")*, to show the actual volume of sales of fuel by petitioner to NPC from January to December 31, 2001;
>
> "Breakdown of Sales of to NPC vs. Actual Deliveries for the Year Ended December 31, 2001" *(Exhibit "X-1")*; and
>
> Sales invoices and official receipts issued by petitioner to NPC *(Exhibit "X-1-1" to "X-1-149")*, to show that petitioner's sale of diesel fuel to NPC from January to December 31, 2001 are duly documented and covered with invoices and receipts.

An examination of the above documents would show petitioner's compliance with the second requisite. Furthermore, such compliance is confirmed by the commissioned Certified Public Accountant himself, as per his report *(Exhibit "T")*, to wit:

[9] ATRIG - Authority to Release Imported Goods.

"Applying the First – In, First Out (FIFO) method of inventory, we ascertained that the diesel fuel sold to NPC were withdrawn from the inventory of imported diesel fuel for which taxes were paid."

However as correctly reported by the commissioned CPA, petitioner was able only to properly substantiate the amount of P4,580,461.46, as follows:

"Based on our review and the validation procedures we performed we have the determined the following:

1. There is a difference of 561 liters between the volume of sales to NPC per claim and the actual sales to NPC. Please refer to Exhibit X. As a result, the amount of the claim should be reduced to P4,580,461.46 computed as follows:

Amount of claim		P4,581,375.80
Overstatement of actual sales		
volume in liters	561	
multiply by excise tax per liter	1.63	914.34
Allowable Claim		P 4,580,461.46"

Finally, with respect to the third requisite, petitioner has likewise complied with the same. In accordance with Section 229 of the NIRC of 1997, as amended, the reckoning of the two-year prescriptive period for the refund of erroneously paid tax shall be from the date of payment of the tax. In relation thereto Section 130 of the NIRC of 1997, as amended, provides:

"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.* –

xxx xxx xxx

(2) *Time of 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: xxx"

An examination of the "Details of Tax Payment of Petitioner for the Period January to December 31, 2001" *(Exhibit "V");* official receipts of the Land Bank of the Philippines *(Exhibit "B-1", "C-1", and "D-2");* "Bureau of Customs Import Entry and Internal Revenue Declaration" *(Exhibits "B", "C", and "D"),* "Importations by ATRIG" *(Exhibits "W")* and "Authority to Release Imported Goods" *(Exhibits "W-1" and "W-2"),* would reveal that the earliest payment made by petitioner of the subject excise tax was on May 30, 2001. Thus, petitioner had until May 30, 2003 within which to file its claim for refund. Apparently, the administrative claim of the petitioner filed on February 20, 2002 and the instant petition for review filed on May 23, 2003, are well within the two-year prescriptive period.

WHEREFORE, 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 P4,580,461.46 representing erroneously paid excise taxes arising from the sale of fuel by petitioner to National Power Corporation covering the period January to December 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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
Presiding Justice
Chairperson, First Division