REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHEMICAL INDUSTRIES OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5887

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 08 2000

x - x

DECISION

This case involves a claim for refund of stock transaction tax in the amount of P536,861.85 allegedly paid by the Petitioner on June 27, 1997.

Petitioner is a domestic corporation with business address at Chemphil Bldg., 851 Antonio F. Arnaiz Avenue, Makati City.

On June 27, 1997, an Agreement was executed by and among Petitioner Chemical Industries of the Philippines, Inc. (CIP) and Eusebio Y. Tanco, Rescom Developers Corporation (Rescom), Alta Vista Resources Development Corporation (Alta Vista) and Malogo Agriventures and Management Services, Inc. (Malogo), collectively referred to as the Tanco Group (Exh. D).

In said Agreement, Petitioner agreed to sell in favor of the Tanco Group 142,643,111 shares of stocks owned and held by it in LMG Chemicals Corporation (LMG), constituting approximately 73% of the total outstanding shares of stocks therein.

Upon the signing of the Agreement on June 27, 1997, the Tanco Group acquired and purchased, individually and severally, from herein Petitioner the first tranche of CIP shares (the "Initial CIP Shares"), consisting of 35,790,790 LMG shares representing approximately 18.49% of the total outstanding stock of LMG, through a cross sale in the Philippine Stock Exchange (PSE) for a declared price of Three Pesos (P3.00) per share or a total of P107,372,370.00. Petitioner then paid the transaction tax due thereon in the sum of P536,861.85 on July 3, 1997 (Exh. C).

Pursuant to the cross sale, the Tanco Group was issued the following stock certificates by LMG Chemicals Corporation on July 4, 1997:

Certificate No.	Name	Shares	Exh.
954	Eusebio H. Tanco	2	E
955	Francis G. Gaston	2	E-1
956	Douglas L. Lu Yin	2	E-2
959	Malogo	5,790,788	E-3
960	Roland U. Young	1	E-4
961	Rescom	17,999,997	E-5
962	Alta Vista	11,999,998	E-6
	Total	35,790,790	

Sections 3, 3.1 and 3.2 of the same Agreement provide, to wit:

> 3. Resolutory Conditions for the Cross Sale covering the Initial CIP Shares and Conditions Precedent to the Sale of the Residual CIP Shares.
>
> 3.1 The Cross Sale shall be effective unless any of the following resolutory conditions occur prior to or as of Closing Date:
>
> (a) LMG shall not have maintained its listed status at the PSE;
>
> (b) The TOMEN Group and the Tanco Group shall not have reached an agreement for the sale and transfer to the Tanco Group of the TOMEN Group Shares by Closing Date;
>
> (c) A writ of injunction, garnishment, or order shall have been promulgated by a court or other competent government agency

enjoining or prohibiting the disposition of the CIP shares, thereby rendering legally impossible the transfer to and acquisition by the Tanco Group by Closing Date of all of the CIP Shares, free from all liens and encumbrances; and

(d) The approvals from the stockholders and the board of directors of CIP shall not have been procured for the sale of the Residual CIP shares in favor of the Tanco Group.

3.2 If any of the foregoing conditions specified in section 3.1 occurs prior to or as of Closing Date, then the Cross Sale covering the Initial CIP Shares and the agreement to sell and purchase the Residual CIP Shares may be rescinded/revoked, at the option of either party. The option herein granted shall be exercised by the delivery of a written notice to the other party, indicating therein the decision to exercise such option and stating the effective date of rescission/revocation.

Petitioner asserts that some of the conditions above occurred prompting it to exercise the option to rescind/revoke (Exh. F). As a consequence thereof, the stocks subject of the cross sale were indorsed back to Petitioner (Exhs. E to E-7) and the purchase price therefor was allegedly returned to the Tanco Group.

It is the position of the Petitioner that inasmuch as the cross sale was rescinded/revoked, the stock transaction tax in the amount of P536,861.85 paid on said sale of the first tranche of CIP shares should be refunded.

On March 31, 1998, Petitioner requested for a ruling from the Bureau of Internal Revenue for the refund of the transaction tax amounting to P536,861.85 (Exh. G). No ruling having been issued, the instant petition was filed on May 31, 1999.

Petitioner claims that the Agreement clearly involved an indivisible obligation and indivisible object comprising the 73.70% of the total LMG shares. Considering that the "purchase closing" contemplated by the parties could not be effected, the cross sale on June 27, 1997 was not consummated. There being no sale to speak of, the basis for the transaction tax no longer existed.

Respondent, for his part, raised the following Special and Affirmative Defenses:

> 1) Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by the respondent's Bureau;
>
> 2) In a claim 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;
>
> 3) Rudimentary is the rule that claims for refund are construed in *strictissimi juris* against the taxpayer for they partake the nature of exemption from tax; and
>
> 4) Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery on refund, which are found in Sections 204 and 229 of the Tax Code, as amended.

However, Respondent merely submitted the case for decisions based on the pleadings.

The issue for resolution is whether or not Petitioner is entitled to the refund of stock transaction tax in the amount of P536,86 .85 paid on the sale of the first tranche of CIP shares.

We rule in the negative.

Petitioner alleged that a letter-claim for refund was filed with the Bureau of Internal Revenue on March 31, 1998 (Exh. G). However, it is glaringly obvious that said document is not a letter-claim for refund but a letter requesting for a ruling for the refund of the tax allegedly paid by the Petitioner. Moreover, the same was addressed to the Deputy Commissioner contrary to the mandate of the law which led Us to believe that Petitioner really intended to request for a ruling from the Deputy Commissioner. In short, the letter alluded to as the request claim for refund is not the written claim required by law before a judicial claim may be had in the Court of Tax Appeals.

It must be likewise stressed that Section 230 (now 229) of the Tax Code, as amended, provides in part, viz:

> **SEC. 230.** ***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 excessive 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. (Underscoring supplied.)

Thus, granting for the sake of argument, that a written claim was filed with the Commissioner, still Petitioner failed to comply with the requirement of the abovecited law, i.e., the tax subject of the claim must be alleged to have been erroneously or illegally assessed or collected.

In the case at bar, it was never alleged that at the time the stock transaction tax was paid by the Petitioner, no such tax was due and payable. In other words, there was no allegation that payment therefor was erroneous. In fact, it was agreed by the parties that "The stock transfer taxes and documentary stamp taxes due and payable on account of the Cross Sale and sale and transfer of the Residual CIP shares contemplated under this Agreement shall be for the account of the CIP and the Tanco Group, respectively".

This only proves that the parties to the Agreement which includes herein Petitioner, admit that the cross sale on June 27, 1997 was a consummated transaction whereby a transaction tax was due and payable. And indeed, Petitioner paid the transaction tax. The contemplated sale of Residual CIP Shares is another transaction and the taxes due thereon is for the account of the Tanco Group.

Further, it was also agreed that "in the event of rescission/revocation referred to Section 3, the stock transfer taxes and documentary stamp taxes due and payable, if any, in implementing Section 3.3. shall be for the account of CIP." Therefore, even if the Agreement was rescinded/revoked, the parties acknowledged that there may still be due stock transfer taxes and documentary stamp taxes. And the same will be shouldered by the Petitioner.

Section 124-A of the Tax Code, as amended is hereunder quoted:

> **SEC. 124-A.** ***Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.*** - (a) Tax on sale, barter or exchange of shares of stock listed and traded through the local stock exchange. - <u>There shall be levied, assessed, and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange</u> other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged, or otherwise disposed which shall be paid by the seller or transferor.

Article 1458 of the New Civil Code provides that by the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price (Article 1475, New Civil Code).

Records will reveal that on June 27, 1997, Petitioner effected the transfer of 35,790,790 shares in favor of the Tanco Group and the latter paid the corresponding purchase price of P107,372,370.00 in favor of the former. Hence, the cross sale was not only perfected but consummated as of this date. It is noteworthy that new stock certificates were issued in favor of Malogo (Exh. E-3), Rescom (Exh. E-5) and Alta Vista (Exh. E-6) on July 4, 1997. Said certificates are indubitable proof that the cross sale was already consummated and ownership was then transferred to the Tanco Group. The cross sale subject to certain resolutory conditions, notwithstanding, the same remained effective until one or more of the conditions occurred. To put it differently, when the cross sale was made on June 27, 1997, the payment of tax thereon on July 3, 1997 was proper and legal.

IN THE LIGHT OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above 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