REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5523

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

Promulgated:
OCT 25 1999

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DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on April 21 1997, seeking for a refund of the amount of ONE HUNDRED FIFTY THOUSAND THREE HUNDRED PESOS (P150,300.00) representing specific taxes allegedly paid during the period January to June 1995.

The antecedent facts of the case giving rise to the controversy at bar are as follows:

Petitioner is a domestic corporation registered with the Export Processing Zone Authority (EPZA). It is engaged in the business of manufacturing fertilizer for domestic and international distribution. As manufacturer, it procures its fuel oil and other petroleum products locally.

As manufacturer of exportable fertilizer, Petitioner secured from Petron, an importer of petroleum and fuel supplies, the fuel oil and other oil products, such as diesel and lubricants, which are indispensable for its operations. The specific and ad-valorem taxes, including the customs duties on the subject petroleum products, were allegedly paid by Petron to the Bureau of Internal Revenue and the Bureau of Customs, respectively. When these petroleum products were later sold and brought to the Export Processing Zone for use therein in the Petitioner's production of exportable fertilizer, the latter was billed the corresponding taxes and customs duties. In other words, the taxes and customs duties originally paid by Petron upon importation of the petroleum products are in turn passed on and charged to Petitioner by Petron upon delivery and sale of the petroleum products. As a result, Petron was reimbursed by the Petitioner on the said taxes and duties it previously paid to the Respondent and the Bureau of Customs.

Relying on its tax-exempt status provided under Section 17 (1) of PD No. 66, Petitioner filed on April 2, 1997 with the Bureau of Internal Revenue an administrative claim for refund in the amount of P150,300.00 (Exh. 1) representing specific taxes paid on petroleum products purchased from Petron during the period January to June 1995.

Obtaining no affirmative response from the Respondent, Petitioner elevated its grievance with this Court on April 21, 1997..

As intimated earlier, Petitioner's assertion hinges mainly on the provisions of Section 17 (1) of PD No. 66, as amended, which provides:

> Section 17-Tax Treatment of Merchandise in the Zone- 1) Except as otherwise provided in this Decree, foreign and domestic merchandize, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description except those prohibited by law, brought into the zone, to be sold, stored, broken up, repacked, assembled, installed, sorted, cleared, 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 the local tax ordinances, the provisions of the law to the contrary notwithstanding. (underlining supplied)

On the other hand, in the Answer filed by the Respondent, the following Special and Affirmative Defenses were interposed:

4. Petitioner's claim for tax refund is yet under administrative investigation;

5. The total amount of P150,300.00 being claimed by the petitioner for the refund of the alleged specific taxes paid was not properly documented;

6. Taxes paid and received by the government are presumed to have been collected in accordance with law and regulations, hence, not refundable;

7. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the same is fatal to the action;

8. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 both of the Tax Code, as amended;

9. Well-settled is the rule that claims for refund are construed strictly against claimants, since they partake of the nature of exemption from taxation. (Resins, Inc. vs. Auditor General, 25 SCRA 754, 1968)

This case was deemed submitted for decision per resolution on April 13, 1999. Respondent did not submit Memorandum in support of his case.

Forming the crux of the matter in the case at bar is whether or not on the basis of the evidence presented, documentary and testimonial, Petitioner was able to establish its entitlement for refund in the amount of P150,300.00 representing excise taxes paid during the period January 1995 to June 1995.

The petition essentially raises a factual issue. We have time and again ruled that customs and internal revenue laws and regulations as well as local tax ordinances are not applicable to merchandise brought inside the Export Processing Zone provided that the said merchandise are used directly or indirectly in zone-related activities. This is the gist of Our ruling 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 4957, October 5, 1995, thus,

> Section 17 (1) covers domestic merchandise, raw materials, supplies, articles and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleared, graded, or otherwise processed, manipulated, manufactured, mixed or used directly or indirectly in such activity shall not be subject to customs and internal revenue laws and regulations. Oil products produced by local oil companies maybe classified as domestic merchandise, raw materials or supplies as legally defined in the Supreme Court case of Commissioner of Customs vs. Caltex (Philippines), Inc., GR No. L-13067, December 29, 1959. 106 Phil. 829 which states that supplies or materials shall include gasoline from custom duties under Article 103 of RA No. 387. For what purpose, among others, these products may be brought into the zone for processing, manipulation, manufacture, mixed with foreign and domestic merchandise or used directly or indirectly in such activity. In our particular case, the petroleum products delivered to petitioner is used in the processing of fertilizer for export. While respondent may be correct that these products did not form part of the fertilizer exported, nevertheless, the law does not provide for such requirement but only requires the use of such materials directly or indirectly in such activity. The use of petroleum products, like bunker oil as fuel will easily fall under the phrase `used directly or indirectly in such activity'. Clearly, these petroleum products can easily qualify for tax and duty free privilege under Section 17 (1) of PD No. 66.

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This interpretation is strengthened by the enactment of EO 226 (The Omnibus Investments Code). The tax treatment of merchandise inside the zone was re-enacted under Article 77 of Book 1V of the Code but not Section 18 (i). Said Section 18 (I) was deleted from Book 1V governing incentives of BOI registered enterprise under Book I which an EPZA registered enterprise may also enjoy as an additional incentive under Article 78.

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Finally, under paragraph 2 of EO 226 aforequoted, the purchase of merchandise by a registered zone enterprise was likewise considered as export sale and the exporter shall be entitled to the benefits allowed by law for such transaction. This will entitle the exporter to duty drawback under Section 106 of the Tariff and Customs Code and tax credit under Section 127 (d) of the National Internal Revenue Code. Considering that pursuant to the aforequoted provision of the LOI and EO 226, the mere act of selling and delivering products to the export processing zone enterprise can be considered already as export sale without awaiting for actual exportation, the allegation of the respondent that the articles sold to an EPZA registered enterprise should form part of the finished product actually exported will hold no water at all.

All the above incentives spring from the concept that an export processing zone is carved out of the Philippine territory for purposes of enforcement of customs and tax laws. So that the area or areas fixed or delimited by presidential proclamation or by board resolution of the Export Processing Zone Authority as export processing zone shall be referred to as the zone and the national territory outside of the zone shall be called customs territory (Section 2(e) and (f) of the Amended rules and Regulations to implement PD 66). The basic policy in establishing a zone is to attract enterprises especially foreign investors who will be manufacturing products primarily for export and be able to do so without their supplies and raw materials entering, and the export products leaving the Philippine territory within the context of customs and revenue regulations. Export is the backbone of our economy and is being encouraged by

> providing enterprises with all the incentives including those which we have discussed above. For which reason the law further states that "all doubts concerning the benefits and incentives granted to enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises."

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Pursuant to the above-quoted ruling, and as reiterated in subsequent decisions of this Court in cases involving similar factual milieu, Petitioner, being an EPZA registered enterprise, shall be exempt from the payment of excise taxes on the petroleum products secured by it from Petron Corporation, thus, all taxes paid by the Petitioner on the said products indispensable to its operations shall be refunded in its favor or credited and be applied against its future tax liabilities, if there be any.

Having settled the legal issue in the affirmative, We shall now proceed to the factual basis of Petitioner's claim.

It is clear from the records of this case that the specific taxes on the petroleum products sold and delivered by Petron to Petitioner were paid in advance by Petron to the Bureau of Internal Revenue which taxes were subsequently passed on and charged to Petitioner by Petron as evidenced by the following documents and as testified to by Petitioner's witness:

1.) Authority to Accept Payment for Excise Taxes (Exhibits B to J, inclusive)

2.) Invoices issued by Petron to petitioner (K-1 to K-74, inclusive)

3.) Testimony of Ms. Florita Guinto Evangelista, Supervisor, Controller Department, Petron Corp. (TSN, March 23, 1998, pp. 7-13)

However, upon scrutiny of the evidence, this Court found out that the sum of P27,900.00 representing specific taxes paid by Petitioner shall be disallowed since the same represent taxes on the petroleum products sold and delivered beyond June 3, 1995, the expiry date of Petitioner's EPZA registration. Thus, the refundable amount to Petitioner is computed as follows:

Amount per claim				P150,300.00
Less: Specific taxes paid on deliveries beyond June 3, 1995				
Exh.	Invoice Number	Invoice Date	Volume (in liters)	
K-7	541571	06/14/95	12,000	
K-3	738524	06/27/95	14,000	
K-9	914213	06/06/95	12,000	
K-8	914214	06/06/95	12,000	
K-6	967705	06/21/95	12,000	
	Total		62,000	
	Multiply by Tax Rate		x .45	27,900.00
Amount Refundable				P122,400.00

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P122,400.00 representing ad valorem and specific taxes for the period January to June 1995.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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