REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4654

Promulgated :
JAN 24 1996

x - x

DECISION

This case involves a claim for refund or tax credit of Philippine Phosphate Fertilizer Corporation for the following periods and in the corresponding amounts:

January to December 1988	-	P1,138,665.12
January 1989 to June 1990	-	5,094,458.22
July 1990 to December 1990	-	1,628,504.48
January 1991 to May 1991	-	867,417.00
Total amount being claimed as refundable	-	P8,729,044.82

FACTS OF THE CASE

Philippine Phosphate Fertilizer Corporation (Philphos for short) is a domestic corporation engaged in the business of manufacturing fertilizer for domestic and international distribution. It is an Export Processing Zone Authority (EPZA) registered enterprise.

To maintain its operations, Philphos needs fuel and oil products which it buys from Petron Corporation (Petron). The latter imports said fuel and oil products and therefore, pays customs duties to the Bureau of Customs and ad valorem taxes to the Bureau of Internal Revenue (BIR). In turn, Petron bills Philphos for the payment of these duties and taxes every time the latter purchases fuel needs from the former.

Believing that it enjoys tax and non-tax incentives by virtue of its registration with EPZA, in a letter dated October 22, 1990, Philphos sought from the BIR the refund of P5,094,458.22 as ad valorem taxes it paid to Petron for the period from January 1989 to June 1990.

The BIR, in its letter dated November 9, 1990, denied this claim of Philphos in the amount of P5,094,458.22. Due to this denial, Philphos filed a petition for review with this Court on October 9, 1991.

On <u>November 14, 1991</u>, petitioner Philphos filed an Amended Petition for Review (pp. 26-33, CTA records) stating among others, the same allegations previously contained in its original petition for review and in addition thereto, as provided and underscored under paragraph 10 thereof, was the statement that <u>Philphos was officially notified of the BIR denial of its claim on October 14, 1991</u> (Annex "F" to Amended Petition for Review, pp. 46-47, *<u>Ibid</u>*)

On <u>November 29, 1991</u>, petitioner filed a Motion to Withdraw Amended Petition for Review, using "inadvertence" as its ground (see par. 2 thereof) which allegedly caused the amended petition for review to contain erroneous averments and inadequate allegations. In the said motion, petitioner prayed that it be allowed to submit not later than December 12, 1991 a corrected amended petition.

True enough as it prayed on <u>December 12, 1991</u>, petitioner filed its second amended petition for review (pp. 53-62, <u>Supra</u>.). In this amended petition, petitioner made mention again of its refund letter to the BIR dated October 22, 1990 wherein it sought refund of the total amount of P5,094,458.22 (par. 7 of the second Amended Petition). This time, however, petitioner alleged that the letter of BIR dated November 9, 1990 denying the above-mentioned claim, was received by it only on January 18, 1991 (par. 8 *Ibid.*). Moreover, according to petitioner, it moved for a reconsideration of the BIR denial in the former's letter dated January 28, 1991. Hence, it filed its petition for review on October 9, 1991 (par. 9, Supra).

On August 2, 1991, petitioner filed additional claims for refund of ad valorem taxes billed to it by Petron for the year 1988 and the period from July to December 1990 in the total amount of P2,767,169.60.

Then on October 3, 1991, petitioner again filed a claim for refund of specific taxes billed to it also by Petron for the period covering January to May 1991 in the total amount of P867,417.00.

The last two additional claims of petitioner were likewise denied by the BIR in a letter dated October 14, 1991, which letter was received by petitioner's counsel on November 12, 1991.

For the reason that the facts of the case are too confusing and difficult to remember, as they involve numerous dates, this Court deemed it proper and useful as a guide for a more vivid analysis and accurate discussion of the issues, to prepare and/or present hereinunder a tabulated summary of the material facts of the case.

Date of Administrative Claim for Refund	Amount Claimed as Refundable	Period Covered	Date of BIR's Letter of Denial	Date of Receipt of Denial by Philphos	Date of Filing Petition For Review
October 22, 1990 (p. 63, CTA rec.) filed on October 26, 1990	P5,094,458.22	January 1989 to June 1990	November 9, 1990 (p. 65 CTA rec.)	January 18, 1991	October 9, 1991 (See Original Petition for Review, p. 1 CTA record)
August 2, 1991 (p. 159, CTA rec.) filed on August 9, 1991	P2,767,169.60	Year 1988 and July 1990 to December 1990	October 14, 1991	November 12, 1991	Dec. 12, 1991
August 30, 1991 (p. 162, CTA rec.) filed on September 3, 1991	P 867,417.00	January 1991 to May 1991	October 14, 1991 (p. 165, CTA rec.)	November 12, 1991 (Ibid)	Dec. 12, 1991

ISSUES

1. Whether or not petitioner's right to appeal to this Court has prescribed; and

2. Whether or not petitioner is entitled to the refund of the total amount of P8,729,044.82.

Anent the first issue, respondent maintains that petitioner's right to appeal to this Court has prescribed. Petitioner received on January 18, 1991 the denial letter of BIR dated November 9, 1990. It appealed judicially only on October 9, 1991 or after the lapse of almost nine (9) months from receipt of BIR's denial letter. Since the date of judicial claim is beyond the thirty (30) day period required by Section 7 in relation to Section 11 both of Republic Act 1125 the pertinent provisions of which are as quoted hereunder:

> "**Sec. 7.** *Jurisdiction* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue;
> >
> > (2) x x x
> >
> > (3) x x x "(Underscoring supplied)
>
> "**Sec. 11.** *Who may appeal*; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
>
> > x x x " (Underscoring supplied)

the petition confers no jurisdiction and respondent prays as contained in its Memorandum (pp. 15-16 thereof; pp. 370-371, CTA rec.) that this Court dismiss the instant petition for having been filed out of time.

To support its view that non-compliance with the aforequoted provisions of R.A. 1125 confers no jurisdiction, respondent cited Supreme Court decisions stating that:

> "The 30-day period fixed in Section 11 of Republic Act No. 1125 within which the taxpayer may question any ruling of the Commissioner of Internal Revenue before the Court of Tax Appeals is jurisdictional. Thus, where the petition was filed outside of the 30-day period, the Court of Tax Appeals has no jurisdiction to entertain it, much less consider the right of the Government to collect the tax from the taxpayer." (**Acting CIR vs. Joseph**, No. L-14034, August 30, 1962).

> "The thirty-day period prescribed by Section 11 of Republic Act 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the Tax Court, is a jurisdictional requirement, and the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory." (**Surigao Electric Co., Inc. vs. Court of Tax Appeals**, 57 SCRA 523)

> "Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu." (**Commissioner of Internal Revenue vs. Villa**, 22 SCRA 3).

The Court finds for the respondent. No jurisdiction has been conferred to Us to try the Amended Petition for Review filed on December 12, 1991. The motion for reconsideration dated January 28, 1991 which petitioner allegedly filed with the BIR on the same date did not suspend the running of the 30-day period. It is NOWHERE TO BE FOUND in the three (3) folders of the BIR records (Folder I, 85 pages; Folder II, 87 pages; and Folder III, 125 pages) submitted to this Court by the respondent. Uncertified xerox copy of said motion for reconsideration appeared only for the first and last time in the CTA records, see Exh. "B", pp. 157-158 thereof, when petitioner filed with this Court on June 16, 1994 a written Formal Offer of Evidence, attaching thereto all his exhibits, among them was the aforementioned Exh. "B". The Court, therefore, casts strong doubt on the authenticity or valid existence of said document. Moreso, what has been attached or submitted in Court was not duly certified by the BIR. Although the existence of this document was admitted by respondent in her Comment filed on July 18, 1994, the Court in its Resolution promulgated on September 2, 1994 likewise admitted the same subject to the qualifications made by respondent and subject also to the Court's final evaluation of its probative value. Consequently, it is the Court's final evaluation that said document or exhibit has no probative value, therefore the running of the 30-day period is clearly not suspended from January 18, 1991, date of receipt by petitioner of BIR's denial. "And even if no answer or motion to dismiss is filed, the Court may dismiss the case for want of jurisdiction" (**Andaya vs. Abadia**, 228 SCRA 705).

At this juncture, the court wants to clarify that inasmuch as only the amount of ₱5,094,458.22 was the subject matter of BIR's denial dated November 9, 1990, received by petitioner on January 18, 1991, the Court lost jurisdiction only over said amount. As regards the other amounts being claimed by petitioner the judicial petition was just filed on time and this Court can try them on the merits.

In the aforementioned case of **Andaya vs. Abadia**, 228 SCRA 711, it has been ruled that:

> "x x x While it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters such as those affecting the corporation, its

> directors, trustees, officers, shareholders, the issue of consequential damages may just as well be resolved and adjudicated by the SEC".

Applying the abovequoted decision to the case at bar, it follows that the other claims of petitioner may be tried by the Court on the merits.

The Court, therefore, now comes to a consideration of the second issue, that is, if petitioner is entitled to the refund of the total amount of P8,729,044.82. As this Court has lost jurisdiction over the amount of P5,094,458.22, the remaining amounts to be decided upon are the amounts of:

P1,138,665.12 for January to December 1988;
1,628,504.48 for January 1989 to June 1990;
and 867,417.00 for January 1991 to May 1991.

That petitioner has a legal basis in pursuing its judicial claim for refund has already been decided by this Court in the case of **Philippine Associated Smelting And Refining Corporation** (PASAR) vs. **CIR,** CTA Case No. 4709, which decision was in favor of the petitioner and was promulgated on <u>February 13, 1995</u>.

The PASAR decision was also patterned or based on an even earlier decision involving the same issue as in the instant case. The case referred to is CTA case No. 4661 decided also in favor of the petitioner on <u>May 31, 1993</u> which case is captioned as "**Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of**

Customs." These two latest decisions, have established that petitioner has sufficient legal basis to ask for a refund/tax credit of the ad valorem taxes and specific taxes.

In determining whether petitioner is entitled to the refund of the remaining amounts, the Court deletes again or disallows the total amount of P1,138,665.12 corresponding to period from January to December 1988. More than two (2) years have lapsed from their dates of payment up to the date the petition was filed with this Court. Hence, right to claim a refund/tax credit of said amount has prescribed. The provision of the Tax Code, regarding this mandatory requirement is too clear. It provides that:

> "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.
>
> <u>In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> 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. (Underscoring supplied)."

WHEREFORE, in view of all the foregoing, the refund/tax credit claim of petitioner in the amount of P5,094,458.22 as ad valorem taxes paid for the period from January 1989 to June 1990, is hereby **DISMISSED** for lack of jurisdiction. The claim of P1,138,665.12 as petitioner's ad valorem taxes for the year 1988 is **DENIED** for having prescribed. The Court **GRANTS** to petitioner, and hereby orders the Commissioner of Internal Revenue to issue a tax credit or refund in the amounts of P1,628,504.48 as its ad valorem taxes for the period from July 1990 to December 1990, and P867,417.00 as payments of similar taxes for the period from January 1991 to May 1991.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals