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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIEBERMANN OVERSEA TRADING
(PHILS.), INC., MANILA,
Petitioner,

- versus - C.T.A. CASE NO. 3373

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

3/25/88

D E C I S I O N

Suit brought by petitioner Liebermann Oversea Trading (Phils.), Inc., for recovery of the sum of P171,774.69 representing alleged erroneously paid 6% broker's tax under Section 208 of the 1977 National Internal Revenue Code, after no action was seasonably taken by respondent Commissioner of Internal Revenue on petitioner's administrative claim for refund.

On May 21, 1985, because of petitioner's failure to prosecute its claim, this case, upon motion of respondent, was dismissed by the Court.

To quote the resolution of the Court of May 21, 1985:

> Considering the failure of petitioner's counsel to appear at the hearing on May 7, 1985, despite proper notice thereof, after postponement of hearing for no less than twelve (12) times majority of which were at the behest of petitioner's counsel, and this case has been pending since September 15, 1981, this Court, upon motion of respondent, hereby orders the dismissal of the above-entitled case for lack of interest on the part of petitioner to prosecute its appeal.

However, in a resolution dated October 17, 1985, the Court, upon showing of petitioner's counsel's indisposition on the scheduled date of hearing, lifted the above resolution and set the case for hearing with no further postponement.

During the hearing of this case on December 17, 1985, petitioner, as well as respondent, merely submitted the case for decision on the basis of the pleadings. No evidence or proof whatsoever was presented by petitioner to prove its entitlement to the subject claim for refund. Neither was there any record of the Bureau of Internal Revenue relating to the case forwarded to this Court. While both parties were granted ample time to submit their respective memorandums, no memorandum was filed by either party.

On the basis of the pleadings:

1. Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Metrobank Plaza, Buendia Avenue Extension, Makati, Metro Manila, while respondent is the government official in charge of the administration and enforcement of all national internal revenue laws and rules and regulations issued relative thereto, with office at the BIR Bldg., East Triangle, Diliman, Quezon City, Metro Manila where he may be duly served with summons in connection with this case.

2. For the quarters ending September 30, 1979 to December 31, 1980, petitioner has been erroneously paying the 6% broker's tax under Section 208 of the Old Tax Code as follows:

Quarter Ended	Percentage Returns	Taxes Paid
September 30, 1979	Annex "A" hereof	P22,532.00
December 31, 1979	Annex "B" hereof	38,942.90
March 31 1980	Annex "C" hereof	16,599.29
June 30, 1980	Annex "D" hereof	23,632.64

September 30, 1980	Annex "E" hereof	32,133.90
December 31, 1980	Annex "F" hereof	37,933.96
		P171,774.69

As evidenced by the following evidence of payment:

Quarter Ended		
September 30, 1979	Confirmation Receipt No. A 3007058 dated 10-19-79	Annex "A-1" hereof
December 31, 1979	Confirmation Receipt No. A 3054330 dated 1-21-80	Annex "B-1" hereof
March 31, 1979	Confirmation Receipt No. A 4095610 dated 4-21-80	Annex "C-1" hereof
June 30, 1980	Confirmation Receipt No. A 5125830 dated 7-21-80	Annex "D-1" hereof
September 30, 1980	Confirmation Receipt No. A 5157111 dated 10-20-80	Annex "E-1" hereof
December 31, 1980	Confirmation Receipt No. A 5810096 dated 1-20-81	Annex "F-1" hereof

While respondent admits under paragraph 2 of his answer that petitioner paid broker's tax for the quarters ending September 30, 1979 to December 31, 1980, respondent specifically denies the allegation that said payments were erroneously made, the same being a mere conclusion of law, and false.

3. Petitioner is not liable to pay the 6% Broker's tax because it is not a broker, accordingly in a letter dated April 1, 1981, petitioner thr ugh counsel, filed its written claim for refund.

Respondent admits under paragraph 3 of his answer that petitioner filed a written claim for refund dated April 1, 1981 but he specifically denies the allegation that petitioner is not liable to pay the 6% broker's tax because it is not a broker, the same being a mere conclusion of law on the part of petitioner and false.

4. To date, respondent Commissioner of Internal Revenue has not acted upon the petitioner's claim for refund to which reason petitioner is constrained to file the instant petition with this Honorable Court which will prescribe on October 19, 1981.

Again respondent denies this allegation, the same being a mere conclusion on the part of petitioner, the truth being that petitioner's claim for refund is under investigation which has not yet been finished and completed.

And by way of special and affirmative defenses, respondent avers that:

In claims for refund of taxes, the burden rests on petitioner to show proof that it is entitled to the refund being claimed;

It is incumbent upon petitioner to show that it has complied with thé provisions of Sections 292 and 295 of the National Internal Revenue Code of 1977; and

Assuming that petitioner has paid the taxes in question, the same are presumed to have been paid in accordance with law and therefore, no amount thereof is refundable.

As stated earlier, this case was submitted for judgment on the basis of the pleadings without petitioner offering any proof as to the truth of its own allegations which, as may be seen above, were in effect specifically denied by respondent, and without any Bureau of Internal Revenue records bearing on the case forwarded to this Court. No contract of sale or contract of purchase was presented for examination or analysis and study by the Court. While xerox copies of returns and revenue tax receipts were attached as annexes to the petition for review, the same were not compared with the originals, identified, marked as exhibits and presented to the Court. No evidence or proof whatsoever was offered by petitioner in support of its allegation or claim that it is entitled to the refund of the amount of P171,774.69 as erroneously paid commercial broker's tax under Section 208 of the 1977 National Internal Revenue Code.

It is thus clear beyond doubt that there is no ground or basis upon which this Court can issue judgment ordering respondent to refund herein petitioner the amount involved in its claim. As correctly contended by respondent, and deemed admitted by petitioner, in claims for refund of taxes, the burden rests on petitioner to show proof that it is entitled to the refund being claimed; it is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the National Internal Revenue Code of 1977;

and assuming that petitioner has paid the taxes in question, the same are presumed to have been paid in accordance with law and therefore, no amount thereof is refundable. Petitioner having failed to sustain the burden placed upon it by presenting proof that it is entitled to the refund of the amount involved herein, this Court could not look with approval to the grant of the refund.

And more so when it is considered that a refund of taxes undoubtedly partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resin, Inc. vs. Auditor General, L-17888, Oct. 29, 1968, 25 SCRA 754.) Claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95.) As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, Sept. 12, 1967, 21 SCRA 180: "From 1906, in Catholic Church vs. Hastings to 1966, in Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, it has been the constant and uniform holding that exemptions from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris. (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, Oct. 28, 1966, 18 SCRA 488; Phil. Acetylene vs. Commissioner of Internal Revenue, L-19707, Aug. 17, 1967, 20 SCRA 1056; Commissioner of Internal Revenue vs. Guerrero, L-20942, Sept. 22, 1967, 21 SCRA 180; Manila Electric Co. vs. Vera, L-29987, Oct. 22, 1975, 67 SCRA 351.)

WHEREFORE, finding the petition for review without merit, the same is dismissed and the refund/credit sought is hereby denied, at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 25, 1988.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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 among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals