REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

-versus -

C.T.A. CASE NO. 4994

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
AUG 04 1995

x - x

D E C I S I O N

This is a petition for review instituted by Petitioner from the denial by Respondent of its claim for refund amounting to a total of P3,485,362.72 representing customs duties paid on petroleum products delivered to it by Petrophil Corporation (PETRON) for the period June 1991 to September 1991.

It appears from the records of the case that petitioner, Philippine Phosphate Fertilizer Corporation (Philphos, for short) is a domestic corporation registered with the Export Processing Zone Authority (EPZA). It is engaged in the business of manufacturing fertilizers for domestic and international distribution. As manufacturer, it procured its fuel oil and other oil products locally. For the period from June to September 1991, it purchased from Petron Corporation (Petron, for brevity) petroleum products which customs duties passed on to it is the subject of the instant case for refund.

The documents presented by petitioner show that during the said period, Petron delivered to petitioner the following quantity of petroleum products with corresponding customs duties billed to Philphos:

Month	(Diesel/Fuel Oil) Quantity (bbls.)	Customs Duties
June 1991	P 9,188.90	P 795,942.52
July 1991	10,472.65	907,140.94
Aug 1991	10,480.22	907,796.66
Sept 1991	10,095.62	874,482.60
Total	P40,238.39 bbls.	P3,485,362.72

In a letter dated April 5, 1993, duly stamped received by the Office of the Commissioner on April 6, 1993, petitioner, through counsel, filed a formal claim for refund with the respondent Commissioner of Customs for the amount of P3,485,362.72. In a letter dated April 29, 1993, the Deputy Commissioner of Customs denied the said claim for lack of merit. The same was received by petitioner through counsel on May 6, 1993. Hence, the instant appeal on May 28, 1993 by way of a petition for review.

In support of its claim for refund, petitioner cited the provisions of the following laws:

(1) Section 17(a) of P.D. 66 which exempt from duties and taxes "both foreign and domestic merchandise, raw materials and supplies" delivered to an export processing zone enterprise. In support thereof, petitioner cited opinion of the Secretary of Justice and the Secretary of Finance;

(2) Section 7 of Letter of Instruction No. 942 of October 16, 1979 which considers deliveries of products to export processing zone enterprise as export sale and products constructively exported, so that tax credit and duty drawback can be availed of.

(3) Section 17 of E.O. 226, otherwise known as the Omnibus Investments Code which considers deliveries of merchandise inside the

zone as "export sale".

Respondent for his part admitted and denied certain facts and by way of special and affirmative defenses, alleges that:

(1) The court has no jurisdiction to pass upon the case for refund in the absence of a decision of the Commissioner of Customs on a protest denied by the Collector of Customs (Section 7[2] of R.A. 1125; Secs. 2309 and 2402, Tariff and Customs Code of the Philippines, as amended);

(2) Granting that the court has jurisdiction, the petitioner's claim for refund has no factual and legal basis because the oil products it purchased from Petron were not imported by petitioner and therefore, no customs duties were paid and collected thereon;

(3) It has no legal basis because the cited provision of Section 17 of P.D. 66, EPZA Law, is not applicable. If at all, it should be Section 18(i) of the same law which requires that the supplies or materials used form part of the finished product exported;

(4) Claim for tax exemption should be strictly construed against the taxpayer.

The issues raised to the court for resolution are as follows:

(1) Whether or not the court has jurisdiction to entertain the claim for refund inasmuch as the same did not emanate from a decision of the Commissioner of Customs denying a protest filed by the petitioner;

(2) Granting the court has jurisdiction, whether or not there is a sufficient legal basis to grant the refund.

On the issue of jurisdiction, this court believes that the respondent has completely misconstrued the provisions of Sections 2308 and 2309 of the Tariff and Customs Code. For easy reference, said provisions of law are quoted hereunder:

> "SEC. 2308. *Protest and Payment upon Protest in Civil Matters.* - When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within

> fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301. (Underscoring supplied.)
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> "SEC. 2309 - *Protest Exclusive Remedy in Protestable Case.* - In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven thereof."

A reading of the said provisions of law clearly shows that the requirement of a prior protest as an exclusive remedy in protestable cases applies only to a situation "whereby liability for duties, taxes, fees and other charges are determined". This necessarily refers to a situation where a particular shipment has arrived and there is a dispute between the importer and the Collector as to the correct determination of duties, taxes, fees and other charges. That is why, the law requires the importer to file a protest "at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter." Obviously, the said provisions of law do not apply to a situation whereby there is no dispute as to the correctness of the duties and taxes paid but the claim for refund arises by reason of the happening of supervening event such as when the raw material imported was utilized in the production of finished product subsequently exported as in the case of duty drawback provided for under Section 106 of the same Tariff and Customs Code, as well as those arising under special laws such as the Export Processing Law and the various Investment Incentive Acts.

The correct applicable provision of law that determines the jurisdiction of the Court of Tax Appeals is the law creating the court itself. Under Section 7 of Republic Act No. 1125, the enabling act creating the Court of Tax Appeals, particularly subsection (2), quoted hereunder:

> "(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under

> the Customs Law or other law or part of law administered by the Bureau of Customs;"

The jurisdiction of this court covers "other matters arising under the customs law or other law or part of the law administered by the Bureau of Customs". To mention a few, "other matters" not enumerated under said subsection includes "abatements and refunds", under Part 6, Sections 1701 to 1708 of the Tariff and Customs Code and duty drawbacks under Section 106 of the same Code. Other laws administered by the Bureau of Customs which this court has jurisdiction certainly covers importation and exportation of goods under special laws like the EPZA Law and the various Investment Incentive Acts. We could not see how respondent could narrowly interpret to limit the jurisdiction of this court to protestable cases when all the laws mentioned above do not impose such a requirement.

In fact, in the comment/opposition to petitioner's formal offer filed with this court on August 11, 1994, respondent in the fifth paragraph stated that "the law allows a more expedient and equitable manner of effecting incentives called the drawback scheme which respondent and/or importer/supplier Petron should have taken advantage of". This statement is an admission on the part of the Commissioner that the instant case is not one of those which requires a prior protest but may be considered by the respondent under a drawback scheme. In fact, this court agrees with the respondent that the claim falls under the drawback scheme and should have been considered by the respondent Commissioner under said process. The records show petitioner filed a claim for refund with the Commissioner of Customs citing a special law, Export Processing Act, and attaching supporting papers which are all Bureau of Customs forms peculiar to claimant filing under the drawback scheme. Instead of outrightly denying the claim for lack of merit, the same should have been referred by the Commissioner to the Drawback Unit for appropriate action. Under the circumstances, petitioner, upon receipt of the denial has no other alternative but to appeal to this court.

On the second issue, this court has considered similar legal issues raised by the parties in CTA

Case No. 4661, promulgated on May 31, 1991. In the said case, this court sustained the views taken by the petitioner that it is entitled to claim for refund pursuant to Section 17 of P.D. 66, as amended, Letter of Instruction No. 942 and Executive Order No. 226, otherwise known as the Omnibus Investment Code. We quote hereunder the discussion of this court in the aforecited case:

> "We quote hereunder the pertinent provisions of Section 17(1) and Section 18(i) of Presidential Decree No. 66 as amended by P.D. No. 1449:
>
> "P.D. No. 66
> Nov. 20, 1972
>
> Creating the Export Processing Zone
> Authority And Revising
> Republic Act No. 5490
>
> xxx xxx xxx
>
> "Sec. 17. *Tax Treatment of Merchandise in the Zone.* - (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, 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, cleaned, 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 local tax ordinances, the provisions of law to the contrary notwithstanding.

"(2) Merchandise purchased by a registered zone enterprise from the customs territory, if paid for in the United States dollar or in any convertible foreign currency and subsequently brought into the zone, shall be considered as exported, and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.

"Sec. 18. *Additional Incentive*. - A zone registered enterprise shall also enjoy the following incentives and benefits xxx:

"(i) Tax credit. Every registered zone enterprise shall enjoy tax credit equivalent to sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof: Provided, that the tax credit shall accrue to the registered zone enterprise only after the final product has in fact been exported xxx"

"Before going into the specific interpretation of the above provisions of law, we believe a narration of the background, objectives and policies will assist this Court in arriving at a better construction of the aforequoted provisions of law.

"The Export Processing Zone was an original creation of Republic Act No. 5490 on June 21, 1969. It created a foreign trade zone in the Port of Mariveles and has declared the following policy as reason for its creation:

"R.A. No. 5490

An Act Making Mariveles, Province of Bataan, a Port of Entry by Amending Section Seven Hundred one of the Tariff and Customs Code of the Philippines. As Amended, Providing For the Establishment, Operation and Maintenance of a Foreign Trade Zone Therein; Creating a Foreign Trade Zone Authority; And Authorizing The Appropriation of the Necessary Funds Therefor.

"Section 1. *Declaration of Policy.* - It is hereby to be the policy of the government to stimulate, expedite, encourage and promote foreign commerce as a means of making the Philippines a vital center of international trade, of strengthening our foreign exchange position, of hastening industrialization, of overcoming domestic unemployment, of accelerating the development of the country and of insuring the economic security of all the people as provided in the Constitution.

"To attain said objectives, the law amended section 701 of the Tariff and Customs Code and provides as follows:

"Sec. 701. *Collection Districts and Ports of Entry Thereof.* -

xxx xxx xxx

"There is hereby established in the Mariveles Port a foreign trade zone herein referred to as the Zone. Foreign and domestic merchandise of every description except such as is prohibited by law, may, without being , subject to the customs and internal revenue laws and regulations of the Philippines, except as otherwise provided in this Act, be brought into the Zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed or sent into customs territory of the Philippines therefrom, in the original package or otherwise, under the following terms and conditions:

"Republic Act No. 5490 failed to mention as an incentive the grant of tax credit for raw materials utilized in the manufacture of finished products exported. This law was substantially amended by Presidential Decree No. 66 on November 20, 1972, renaming the foreign trade zone as an export processing zone. Thus the latter law expanded the operation of the zone by authorizing the opening of more export processing zone in other parts of the country. The same policies and objectives were likewise recited in this latter law. The presidential decree expanded the incentives that a zone enterprise may enjoy under the law. It provides the incentive under Section 17(1)(2) aforequoted which is similar to the incentive provided under Section 701 of the Tariff and Customs Code as amended by said Republic Act No. 5490.

"Subsequently, Presidential Decree No. 1449 was issued on June 11, 1978 introducing several amendments to Presidential Decree No. 66. Among others, it amended Section 18 by adding new paragraphs one of which is the aforequoted Section 18(i) which grants tax credit to every registered zone enterprise equivalent to the sales, compensating and specific taxes and duties on supplies & raw materials used in the manufacture of products exported and forming part thereof. P.D. 1449 did not touch on Section 17 of P.D. 66.

"However, on October 16, 1979, Letter of Instruction No. 942 was issued by the President which provides among others that:

xxx xxx xxx

"7. Sales and delivery of products to bonded warehouse of export-oriented manufacturers and to export processing zone enterprises can be considered as "export sales" and products constructively exported, so that tax credit and duty drawback can be availed of immediately, without awaiting for actual exportation of the finished products abroad. For this purposes, the requirement that the exporter has in fact exported shall include constructive exportation as above defined."

"Lately, the EPZA law was again amended by Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987. Section 17(1) & (2) aforequoted was retained with a little modification of the latter subsection. The requirement on the foreign exchange payment for merchandise was deleted. Thus, the provision reads as follows:

"E.O. No. 226

The Omnibus Investment Code of 1987

"ART. 77. *Tax Treatment of Merchandise in the Zone.* - (1) Except as otherwise provided in this Code, foreign and domestic merchandise, 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, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provision of law to the contrary notwithstanding.

> "(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter shall be entitled to the benefits allowed by law for such transaction.

"The aforequoted provisions of law and other incentives for export processing zone enterprise are all incorporated under Book VI of the said Executive Order. In the incorporation the previous Section 18(i) of P.D. 66 as amended by P.D. 1449 was not reproduced under this Book but was merely referred by Article 78 as one the additional incentives, an EPZA registered enterprise may be entitled under Article 39. The incentives referred to under Article 39 are those that are normally enjoyed by BOI registered enterprises.

"We can see that from the above presentation of the laws involved, the provision of Section 17(1) is maintained as a principal incentive or source of incentives. It has never been deleted from the provision of the EPZA law. Unlike Section 18(i) which may have been inserted by P.D. 1449 as an additional incentive thinking that it will serve as an additional attraction to zone enterprises.

"A close analysis of the said Section 17(1)(2) will show that it allows foreign or domestic merchandise, raw materials and supplies, except those prohibited by law to be brought into the zone for sale, storage, repacking, processing, manufacturing, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity and shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances. This privilege will be enjoyed notwithstanding the provision of other law to the contrary.

"Contrary to the allegation of the Respondent that Section 17(1) does not provide for duty and tax exemption privilege, this Court disagrees. The phrase "shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding" cannot be interpreted in any other manner than to mean that merchandise or supplies brought into the zone are exempt from customs duties and taxes. The incentive given under Section 17(1) is broader than a mere tax exemption. The phrase is so broad to include not only the exemption from customs duties and taxes but everything required in the enforcement of the customs and internal revenue laws save on the exceptions and conditions specified in the EPZA law itself. Considering that the customs and internal revenue laws are primarily enacted to impose duties and taxes, the phrase cannot be interpreted to exclude these impositions. More so, the phrase will also include exemption from other rules and regulations which are normally followed in the discharge of importation such as the filing of import entries, examination and appraisal of goods by customs authorities and other requirements attendant to the importation of goods into the country.

"In fact, contrary to the allegation of Respondent, said Section 17(1) is cited by the Export Processing Zone Authority as source of tax exemption privileges in the issuance of its implementing rules and regulations. Thus Section 1 of Rule IV of the "Amended Rules and Regulations to Implement Presidential Decree No. 66, as Further Amended by Executive Order No. 226 Otherwise Known as the Omnibus Investments Code of 1987" mentions "exemption" citing paragraph 1, Article 77 (Sec. 17 under P.D. 66) of the Code. Likewise, Section 1(B) Rule VIII grants tax credit on domestic capital equipment, Section 3 of the same Rule grants exemption from Value Added Tax on local purchase, Section 1 of Rule IX on tax and duty exemption of the importation of capital equipment and Section 2 of said Rule IX allows the tax and duty free importation of construction materials, all cited Article 77(1) as source of legal basis. Unfortunately, the said implementing regulation fails to cover all possible situations that may occur in its implementation. One situation is the tax treatment of petroleum products supplied by local oil companies to an export processing zone registered enterprise. This as the subject of the dispute between the Petitioner and Respondent which this Court is called upon to interpret.

"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, cleaned, 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 may be 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, Dec. 29, 1959, 106 Phil 829) which states that supplies or materials shall include gasoline and other petroleum products for purposes of exemption from customs duties under Article 103 of Republic 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 privileges under Section 17(1) of P.D. 66.

"Regarding the allegation of the Respondent that Section 18(i) shall govern the situation and therefore the claim for refund of customs duties should be denied as the bunker oil used as fuel did not actually form part of the finished product exported. This Court believes that this section introduced by P.D. 1449 merely grants additional incentive to an EPZA registered enterprise and was not meant to supersede Section 17 of P.D. 66. This is clear as the heading clearly indicates that it is an "additional incentive". The grantee of the incentive may or may not avail itself of it. In fact, this Court would interpret that this incentive as a surplusage. Its provision was not intended to restrict the enjoyment of the privileges under Section 17, otherwise the amending law, P.D. 1449, should have stated so. On the contrary it was meant only as an incentive in addition to those already being enjoyed by an EPZA registered enterprise.

"This interpretation is strengthened by the enactment of E.O. 226 (The Omnibus Investments Code). The tax treatment of merchandise inside the zone was re-enacted under Article 77 of Book VI of the Code but not Section 18(i). Said Section 18(i) was deleted from book VI governing incentives of EPZA registered enterprise and was incorporated as one of the incentives of a BOI registered enterprise under Book I which an

EPZA registered enterprise may also enjoy as an additional incentive under Art. 78.

"Furthermore, under paragraph (2) of said Section 17, merchandise purchased by a registered zone enterprise from the customs territory, if paid for in foreign currency and subsequently brought into the zone shall be considered as exported and the exporter shall be entitled to the benefits allowed by law for such transaction. This provision was reiterated with modification under Letter of Instruction No. 942 issued on October 16, 1979 which provides as follows:

> "7. Sales and delivery of products to bonded warehouse of export-oriented manufacturers and to export processing zone enterprises can be considered as "export sales" and products constructively exported, so that tax credit and duty drawback can be availed of immediately, without awaiting for actual exportation of the finished products abroad. For this purposes, the requirement that the exporter has in fact exported shall include constructive exportation as above defined."

"Finally under paragraph (2) of E.O. 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 E.O. 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 article 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) & (f) of the Amended Rules and Regulations to Implement P.D. 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 enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises". (Article 79 E.O. 226.)

"In view of all the foregoing, this Court holds that bunker fuel oil and other oil products sold and delivered by local oil companies to an EPZA registered enterprise shall be exempted from customs duties and internal revenue taxes and if said duties and taxes were passed on by the supplier to the EPZA registered enterprise duty drawback and tax credit shall be granted to the latter pursuant to the provisions of Section 17(1)(2) of P.D. 66 as amended under Article 77(1)(2) of E.O. 226."

We have examined thoroughly the various exhibits presented by the petitioner to substantiate its claim for refund or duty drawback. The following documents were presented to prove its claim:

(1) Certifications from Petron Corporation to show that Petron paid the duties on the petroleum products to the Bureau of Customs for the period and passed on the same to Philphos (Exhibits "B", "C", "D" and "E");

(2) Certificate of manufacture and delivery of manufactured or partly manufactured articles showing that Petron had delivered to petitioner various petroleum products for the period of June to September 1991 (Exhibits "B-1" to "E-1");

(3) Computations of duty drawback for months of June to September 1991 to establish the amount of duties paid corresponding to the volume of petroleum products delivered during the month (Exhs. "B-3" to "E-3");

(4) Copies of import entries and customs official receipts to show that the crude oil utilized in the manufacture of the petroleum

products delivered by Petron to Philphos was imported by the former and the fact that the corresponding duties and taxes were paid to the Bureau of Customs (Exhs. "B-4" to "E-7").

On the other hand, respondent did not present any evidence to substantiate his allegation or to disprove what petitioner has so far presented. Neither did respondent file a memorandum to further support his contentions.

In summary, we find that petitioner has legally and substantially proven its claim for refund in contrast to the respondent who did not even bother to present contrary evidences which will disprove the petitioner's facts and figures. However, only the amount of P3,450,509.09 equivalent to ninety-nine (99%) percent of the total customs duties passed on to petitioner may be refunded to petitioner considering that this claim for refund is filed and all the supporting documents submitted were in compliance with the requirements for a grant of duty drawback pursuant to Section 106(c) of the Tariff and Customs Code.

WHEREFORE, respondent Commissioner of Customs is hereby ordered to refund to the petitioner the

amount of P3,450,509.09, representing ninety-nine (99%) percent of the customs duties paid for the period from June 1991 to September 1991.

No pronouncement as to cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals