REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DOLE PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF CUSTOMS and the BUREAU OF CUSTOMS,
Respondents.

CTA CASE NO. 8409

Members:

Del Rosario, *Chairperson*
Uy, *and*
Mindaro-Grulla, *JJ.*

Promulgated:

DEC 18 2013 11:23 am

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DECISION

DEL ROSARIO, P.J.:

This case involves a petition for review of the decision of respondent Commissioner of Customs dated November 25, 2011, dismissing the appeal of petitioner for failure to perfect the appeal within the reglementary period, pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by Section 9 of RA No. 9282. Petitioner sought for the refund and/or issuance of a tax credit certificate in the amount of Php6,444,827.45, allegedly representing payment of customs duties on petroleum products purchased from Petron covering the period September 2007 to March 2008.[1]

THE PARTIES

Petitioner Dole Philippines Inc., a corporation duly organized and existing under Philippine laws, is engaged in the manufacture of high quality fresh fruits, fresh vegetables and fresh cut flowers with growing line of quality packaged goods. Its factory and office is located at 9504 Polomonok, Sarangani Economic Development Zone, South Cotabato.[2]

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[1] CTA Docket, p. 303.
[2] The Parties, Petition; CTA Docket, p. 9.

Respondent Commissioner of Customs (Commissioner) heads the Bureau of Customs, while respondent Bureau of Customs is the government agency responsible for the collection of duties and taxes from importation, with office address at Port Area, South Harbor, Manila.[3]

THE FACTS

On March 27, 2009, petitioner filed a claim for refund with the District Collector, Port of Manila, Bureau of Customs requesting for a tax refund in the amount of Php6,444,827.45 allegedly representing customs duties on petroleum products which it purchased from Petron Corporation covering the period September 2007 to March 2008 pursuant to the provisions of Section 18 of Presidential Decree (PD) No. 66, as amended, in relation to *Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation*.[4]

On November 18, 2010, the Officer-in-Charge of the Port of Manila ("POM") denied petitioner's claim for refund through a Memorandum, the dispositive portion of which reads:

> "Accordingly, in light of the foregoing premises, this Office opines that the request for refund of DOLE Philippines, Inc., in the amount of Six Million Four Hundred Forty Four Thousand Eight Hundred Twenty Seven Pesos and Forty Five Centavos (Php6,444,827.45) cannot favorably be acted upon since claimant miserably failed to establish that the instant claim represents the proportionate amount of the customs duties and taxes paid by Petron Corporation on the importation of Arab Light and/or Arab Superlight, which was actually used in the manufacture of the Bunker Fuel Oil (BFO) petroleum product which was subsequently delivered to DOLE PHILIPPINES, INC."[5]

On December 9, 2010, petitioner filed an appeal letter with the Commissioner,[6] copy furnished the Port of Manila (POM) District Collector ("District Collector") and the Tax Credit Committee.[7]

In a 1st Indorsement dated December 12, 2010, respondent Commissioner forwarded petitioner's December 9, 2010 letter to the District Collector, to quote:

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[3] The Parties, Petition; CTA Docket, p. 10.
[4] G.R. No. 144440, September 1, 2004; Statement of Facts, Petition; Relevant Antecedents, Answer/Comment; Exhibit "E"; CTA Docket, pp. 10, 94 and 376-377.
[5] Par. 1, Facts, Pre-Trial Order; Exhibit "F"; CTA Docket, pp. 304, 378-384.
[6] Then Commissioner Angelito Alvarez.
[7] Par. 2, Facts, Pre-Trial Order; Exhibit "G"; CTA Docket, pp. 304,385-386.

"Respectfully forwarded to the District Collector of Customs, Port of Manila, the within letter dated December 9, 2010 of Atty. Gil A. Valera, appealing to the Tax Credit Committee the Decision/s of the District Collector, Port of Manila, denying the request for refund of the following:

1. Philippine Associated Smelting and Refining Corporation (PASAR)
2. ST Microelectronics
3. Toshiba Storage Device
4. Dole Philippines, Inc.

With the directive to submit to the Committee within five (5) days from receipt hereof the entire docket of the claim/s and the written comment/opposition of that Port on the instant appeal taking into consideration the time limit imposed by RA 9485 otherwise known as the Anti-Red Tape Act of 2007 within which this Office may act on the issues raised before it.

For your immediate action."[8]

Sometime in January 2011, Atty. Liza Sebastian - Chief of the Tax Credit Committee Secretariat - advised the petitioner that there is an appeal fee to be paid.[9] Thus, on January 18, 2011, petitioner paid Three Thousand Pesos (Php3,000.00) to the Bureau of Customs ("BOC") as evidenced by BOC O.R. No. 01815230910.[10]

Meanwhile, in an Indorsement[11] dated February 11, 2011, Chief Accountant Alfredo A. Palma of the Accounting Division, Financial Management Office, returned to the Head of the Tax Credit Secretariat the documents bearing the request of petitioner with the verification that the amount of Php6,444,827.45 being claim is correct based on the attached documents and computations. Records also disclosed that certain Emilio L. Jacinto, Chief Accountant, Revenue Accounting Division of the Bureau of Customs, made a computation[12] of petitioner's claim and validated the amount of Php6,444,826.55, as the amount for refund.

In a letter[13] dated March 2, 2011, petitioner through its representative wrote Atty. Vener Baquiran, member of TCC Secretariat and Chief of Staff of DepCom Revenue Collection Monitoring Group of the Bureau of

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[8] Par. 3, Facts, Pre-Trial Order; Exhibit "H"; CTA Docket, pp. 304-305, 387.
[9] Par. 8, Statement of Facts, Petition; CTA Docket, p. 12.
[10] Par. 4, Facts, Pre-Trial Order; Exhibit "I"; CTA Docket, pp. 305, 388.
[11] Exhibit "K"; CTA Docket, p. 395.
[12] Exhibit "L-1"; CTA Docket, p. 397.
[13] Exhibit "J"; CTA Docket, p. 394.

Customs, complaining that its refund application has not been acted upon with dispatch; hence, it was appealing for the signature of the TCC Secretariat Disposition Form. Petitioner made another follow-up with the Bureau of Customs in its letter[14] dated June 15, 2011.

In a letter dated September 22, 2011, petitioner wrote Commissioner Ruffy Biazon asking that it be treated similarly like Pan Century Surfactants Inc.,[15] whose application for refund was granted on September 15, 2011 in a decision[16] issued by former Commissioner Alvarez.

On November 25, 2011, respondent Commissioner[17] denied petitioner's claim for refund, to quote:

> "DISCUSSION:
> The pivotal issue to be resolved in the instant case is whether or not the appeal was perfected.
>
> We rule in the negative.
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> RECOMMENDATION:
> DISMISS the appeal for non-perfection thereof."[18]

The assailed decision dismissed the appeal of petitioner for failure to perfect the appeal within the reglementary period. Respondent Commissioner stated in the assailed decision that petitioner was not able to file a Notice of Appeal with the Office of the District Collector pursuant to Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), as amended, as petitioner merely filed a letter of appeal before his office, copy furnished the Office of the District Collector; thus, technically speaking, no Notice of Appeal was filed before the Office of the Collector. Allegedly, by not filing a Notice of Appeal, the running of the reglementary period of fifteen (15) days from notice of the Decision of the Collector within which to file an appeal was not tolled. Respondent Commissioner further made as an issue the non-payment of appeal fee of Php3,000.00 within the reglementary period, which allegedly is mandated by Section 3301 to 3304 of the TCCP, as implemented by Customs Administrative Order No. 2-2001 to bolster the denial of the appeal.

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[14] Exhibit "M"; CTA Docket, pp. 405-406.
[15] Exhibit "P"; CTA Docket, pp. 417-418.
[16] Exhibit "O"; CTA Docket, pp. 408-416.
[17] Commissioner Rozzano Rufino Biazon.
[18] Par. 6, Facts, Pre-Trial Order; Exhibit "Q"; CTA Docket, p. 306, 34-37.

On January 3, 2012, petitioner filed, pursuant to Section 11, of Republic Act No. 1125, as amended, the instant Petition[19] before this Court praying for the following:

> 1. The Decision of the Commissioner of Customs and the Bureau of Customs be reversed for violating petitioner's rights to substantive due process and equal protection clause of the 1987 Philippine Constitution as well as the Tariff and Customs Code of the Philippines, Civil Code of the Philippines and applicable Supreme Court Decisions; and
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> 2. The duty refund claim of the petitioner amounting to Php6,444,827.45 be approved by this Court and an Order be made to the BOC TCC Secretariat headed by the Commissioner of Customs to prepare and issue a TCC for the same amount.[20]

Within the extended period,[21] respondents filed their Answer/Comment through registered mail on February 21, 2012, which was received by this Court on February 28, 2012. Respondents argue that petitioner's appeal to respondent Commissioner was not perfected within the reglementary period; that the timely payment of docket fees is a condition precedent to the perfection of petitioner's appeal within the reglementary period pursuant to Sections 2308, 3301 and 3303 of the Customs Code and Customs Administrative Order (CAO) No. 02-2001; that petitioner's failure to timely pay the docket fee warranted the dismissal of the appeal; and that petitioner cannot hide behind his alleged ignorance of the requirement of the payment of the docket fee since ignorance of the law excuses no one from compliance therewith. Respondents also object to petitioner's claim that their right to equal protection of law was violated. Allegedly, petitioner's situation is different from that of Pan Century Surfactants since the latter has paid the docket fee within the reglementary period, while petitioner admitted having not paid the docket fee within the reglementary period.

The Pre-trial Conference was held on March 30, 2012. During the said hearing, the parties were granted a period of twenty-days within which to file a joint stipulation of facts and issues for the approval of the Court.[22] On May 15, 2012, the parties filed through registered mail their Joint Stipulation of Facts, Issues, Exhibits and Witnesses,[23] which was received

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[19] CTA Docket, pp. 8-27.
[20] CTA Docket, p. 26.
[21] CTA Docket, p. 91
[22] CTA Docket, pp. 142, 144.
[23] CTA Docket, pp. 208-215.

by this Court on May 25, 2012. On May 31, 2012, this Court approved the joint stipulation of facts and issues, and terminated the pre-trial stage.[24]

During trial, petitioner presented both its testimonial and documentary evidence. Petitioner offered its documentary exhibits on August 1, 2012,[25] and the same were admitted in the Resolution dated September 25, 2012.[26] Respondents, on the other hand, filed their Manifestation[27] on June 5, 2013 stating that they will no longer be presenting any evidence, which Manifestation was noted in the Resolution dated June 10, 2013.[28]

With the filing of petitioner's Memorandum[29] on June 26, 2013 and that of respondents on August 12, 2013,[30] the instant petition for review was deemed submitted for decision in the Resolution[31] dated August 23, 2013.

Hence, the Court's instant decision.

THE ISSUES

The parties raised the following issues[32] for the resolution of the Court, to wit:

"1. Whether petitioner's claim for refund is a "Protest" within the meaning of Section 2308 and 2313 of the Tariff and Customs Code of the Philippines ("TCCP")?

2. Whether the dismissal of petitioner's claim for refund of non-perfection violates petitioner's rights to substantive due process and equal protection?

3. Whether petitioner's appeal was perfected within the reglementary period?

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[24] CTA Docket, pp. 296-297.
[25] CTA Docket, pp. 364-369.
[26] CTA Docket, pp. 463-464.
[27] CTA Docket, pp. 611-616.
[28] CTA Docket, p. 619.
[29] CTA Docket, pp. 620-625.
[30] CTA Docket, pp. 633-648.
[31] CTA Docket, p. 650.
[32] CTA Docket, p. 306.

4. Whether respondent Commissioner acted within the scope of his authority when he dismissed petitioner's appeal solely for non-perfection?"

THE RULING OF THE COURT

A duly-registered enterprise under Republic Act No. 7916, or "The Special Economic Zone Act of 1995" enjoys fiscal incentives pursuant to Section 23 thereof, which provides:

> "SECTION 23.Fiscal Incentives. — Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987." *(Emphasis supplied)*

Among the notable fiscal incentives under Presidential Decree (PD) No. 66 and Executive Order (EO) No. 226 is exemption of merchandise in the zone under certain conditions from the application of Customs laws. Section 17 of PD 66 and Article 77 of EO 226 respectively provides:

Presidential Decree 66

> "Section 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."

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Executive Order 226

> "Article 77. Tax Treatment of Merchandise in the Zone.
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> (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**

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> **not be subject to customs and internal revenue laws and regulations** nor to local tax ordinances, the provisions of law to the contrary notwithstanding."

In ***Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation***[33] *(Philphos)*, the Supreme Court, in recognition of the fiscal incentive, particularly, found in Sec. 17(1) of PD 66, allowed Philphos, a duly registered EPZA enterprise, the refund of the amount of customs duties, forming part of the amount billed by Petron for purchases of fuels and other petroleum products made by Philphos, used directly or indirectly by the latter in the manufacture of fertilizers. Pertinent part of the decision in the Philphos case reads:

> "**The cited provision** *(referring to Section 17(1) of PD 66)* **certainly covers petroleum supplies used, directly or indirectly, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. The supplies are not subject to customs and internal revenue laws and regulations**, nor to local tax ordinances. It is clear that Section 17(1) considers such supplies exempt even if they are used indirectly, as they had been in this case.
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> **Since Section 17(1) treats these supplies for tax purposes as beyond the ambit of customs laws and regulations, the arguments of the Commissioner invoking the provisions of the Tariff and Customs Code must fail.** Particularly, his point that the importation of the petroleum products by Petron was deemed terminated under Section 1202 of the Tariff and Customs Code, and that the termination consequently barred any future claim for refund under Section 1603 of the same law is misplaced and inconsequential. Moreover, the cited provisions of the Tariff and Customs Code if related to Section 17(1) of the EPZA Law would significantly render the argument strained and, if upheld, obviate many of the benefits granted by Section 17(1), for the provision does not limit the tax exemption only to direct taxes. Following the Commissioner's interpretation, any duly registered enterprise sought to be held liable for the controverted custom's duty because the importer had shifted the duty to the buyer would forever be precluded from challenging the duty, which it is not in the first place obliged to pay under the law. Hand in hand with its patent noxiousness to the spirit of the EPZA Law, the approach calls for the unwarranted application of the Tariff and Customs Code to investors and players in the zones, which under the EPZA Law are beyond the reach of domestic customs and tax laws, as well as regulations.
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> **Neither would the prescriptive periods or procedural requirements provided under the Tariff and Customs Code serve as a bar for the claim for refund**. The holding of the CTA on this point is illuminating:

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[33] G.R. No. 144440, September 1, 2004.

> Contrary to the allegation of the Respondent that Section 17(1) does not provide for duty and tax exemption privilege, this Court disagrees. That 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, examinations and other requirements attendant to the importation of goods into the country.

Even our recent ruling in *Nestle Philippines, Inc. v. Court of Appeals*, to the effect that the claim for refund of customs duties in protestable cases may be foreclosed by the failure to file a written protest, is not apropos in the case at bar because petitioner therein was not a duly registered enterprise under the EPZA Law and thus not entitled to the exemptions therein.

This leads to another question well-worth resolving — **what is the prescriptive period which a duly registered enterprise should observe in applying for a refund to which it is entitled under the EPZA Law? The EPZA Law itself is silent on the matter, and the prescriptive periods under the Tariff and Customs Code and other revenue laws are inapplicable, by specific mandate of Section 17(1) of the EPZA Law**. This does not mean though that prescription will not lie, as the Civil Code provisions on *solutio indebiti* may find application. **The Civil Code is not a customs and internal revenue law. The Court has in the past sanctioned the application of the provisions on *solutio indebiti* in cases when taxes were collected thru error or mistake. *Solutio indebiti* is a quasi-contract, thus the claim for refund must be commenced within six (6) years from date of payment pursuant to Article 1145(2) of the New Civil Code**. Clearly then, Philphos's right to refund has not yet prescribed." *(Emphasis supplied)*

Pursuant to the foregoing jurisprudence, passed-on customs duties on purchases of supplies, like petroleum supplies, brought into the ECOZONE and used, directly or indirectly by a duly-registered PEZA enterprise may be refunded. The claim for refund for that matter must be filed within six (6) years from the date of payment pursuant to Article 1145(2) of the New Civil Code. Neither would the prescriptive periods or procedural requirements provided under the Tariff and Customs Code serve as a bar for the claim for refund.

In the case at bench, records disclosed that for the period of September 2007 to March 2008, petitioner purchased fuel and petroleum products from Petron to run its machineries and equipments used for the manufacture of high quality fresh fruits, fresh vegetables, fresh cut flowers and quality packages foods; and that on March 27, 2009, petitioner filed a claim for refund in the amount of P6,444,827.45 representing duties paid for fuel and petroleum products it purchased from Petron covering the periods September 2007 to March 2008.[34] Undoubtedly, petitioner's administrative claim for refund on March 27, 2009 is well within the prescriptive period of six (6) years reckoned from the date of payment, *i.e., the date the purchases were made from September 2007 to March 2008,* pursuant to Article 1145(2) of the New Civil Code.

As the OIC of the Port of Manila made a decision approving the recommendation of his subordinates to deny petitioner's claim as stated in the Memorandum dated November 18, 2010, petitioner aptly elevated its claim with the respondent Commissioner within the 6-year period as well on December 9, 2010 considering that it is only the decision of the Commissioner, and not that of the Collector, which may be the subject of judicial review before the CTA following Section 7(a) (4) of Republic Act (RA) No. 1125, as amended by RA 9282.

Respondent Commissioner, however, denied the appeal based on technical grounds, *i.e., petitioner failed to perfect the appeal within the reglementary period of fifteen (15) days from notice of the Decision of the Collector as petitioner was not able to file a Notice of Appeal with the Office of the District Collector pursuant to Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), and to pay the appeal fee of Php3,000.00 within the reglementary period, which is allegedly mandated by Sections 3301 to 3304 of the TCCP, as implemented by Customs Administrative Order No. 2-2001.*

Apparently, respondent Commissioner's denial of the claim on mere technicalities is erroneous as neither the prescriptive periods nor procedural requirements provided under the Customs laws serve as a bar for claim for refund of duties passed-on to a duly-registered PEZA enterprise pursuant to the pronouncement in *Philphos*.

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[34] Exhibit "F"; CTA Docket, p. 378.

Considering that the present claim involves customs duties passed-on by its supplier Petron Corporation for petitioner's purchases of petroleum products, which is a form of an indirect tax, and consistent with existing jurisprudence,[35] the party to which the economic burden of the tax is shifted is entitled to claim for refund of tax where the law clearly grants the said party an exemption from both direct and indirect taxes. More importantly, since the PEZA law clearly provides for tax exemption anent the supplies brought into the zone, *i.e., the merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description 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*, the claim for refund of petitioner deserves consideration by respondent Commissioner.

In view of the foregoing discussion, this Court holds that respondent Commissioner erroneously denied the claim. Petitioner's appeal before respondent Commissioner should perforce be given due course.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. The decision of respondent Commissioner of Customs dated November 25, 2011, which dismissed petitioner's appeal, is **SET ASIDE**. The subject claim for refund is hereby **REMANDED** to the Office of the Commissioner of Customs. Respondent Commissioner of Customs is hereby **DIRECTED** to make a determination of petitioner's entitlement to its claimed customs duties and determine the specific amount to which petitioner is entitled to, if any.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[35] Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 198759, July 1, 2013.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice