REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN CARLOS MILLING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4107

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

D E C I S I O N

This case involves a claim for refund/tax credit of the amount of P7,892.00 which represents the alleged compensating tax erroneously paid by the petitioner on its importation of sugar mill spare parts for its Niigata Generator for the year 1984.

Petitioner, a domestic corporation duly organized and existing under and by virtue of Philippine laws, is a sugar central engaged in the business of manufacturing, milling, processing and refining sugar.

Its affairs, including the procurement of goods, wares, merchandise materials and supplies, were and are being managed by Jardine Davies, Inc.

pursuant to a management contract (Exhibit A, pp. 33-40, CTA rec.).

Sometime in November, 1984, petitioner imported one case of stc spare parts for its Niigata diesel generator, used in its sugar milling operations, and paid the corresponding compensating tax due on the said imported parts in the amount of P7,892.00 as evidenced by Bureau of Customs Official Receipt No. 558272 dated November 12, 1984 (Exhibits B and B-1, p. 41, CTA rec.). The spare parts were released under Central Bank Release Certificate No. 843624 dated November 12, 1984 upon payment of import duties, compensating tax and other fees (Exh. C, p. 42, CTA rec.).

In a letter dated March 6, 1986, petitioner filed a claim for refund of alleged erroneously paid compensating tax amounting to P7,892.00 on the ground that although its tax and duty exemption privileges under Presidential Decree No. 791 was withdrawn by Presidential Decree No. 1955, the same privileges were however restored by the Fiscal and Incentives Review Board in a Resolution No. 53-85 dated October 1, 1985 which We quote:

REPUBLIKA NG PILIPINAS
MINISTRI NG PANANALAPI
MAYNILA

October 1, 1985

FISCAL INCENTIVES REVIEW BOARD

RESOLUTION NO. 53-85

BE IT RESOLVED AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of sugar millers granted under PD 791, as amended, and withdrawn by PD No. 1955, are hereby restored: Provided, That such privileges shall extend only to imported articles which arrived in the Philippines on or before 30 June 1985.

The provisions of Fiscal Incentives Review Board Resolution No. 2-85, insofar as they affect sugar millers, are hereby amended accordingly.

(Sgd.) CESAR E.A. VIRATA
Minister of Finance
Chairman-FIRB

SUBJECT: Sugar Millers

Without waiting for respondent's decision, petitioner filed this present petition on September 25, 1986 well within the two-year prescriptive period provided in Section 292 (now Section 230) of the National Internal Revenue Code.

The sole issue presented is whether petitioner is exempt from the payment of compensating tax on the imported spare parts of its Niigata diesel generator to be used in its sugar milling operations pursuant to Presidential Decree No. 791 as amended by Presidential Decree No. 1710.

There is no dispute that P.D. No. 791 exempted sugar millers from the payment of compensating tax, among others, with respect to the importation of plant machinery, spare parts, and other equipment. As stated in the decree, which took effect on September 3, 1975, the compensating tax exemption privilege is good until June 30, 1980. The pertinent provision reads as follows:

> "Section 1. Any person, partnership, company or corporation who or which now engaged or shall engage in the business of manufacturing, milling, processing or refining of sugar shall be exempted from the payment of special import tax, compensating tax and customs and tariff duties in respect to importation of plant machinery, spare parts and other equipment effective upon approval of this Decree until June 30, 1980."

P.D. No. 791 was later amended by P.D. No. 1710, promulgated on August 13, 1980, extending the period of the exemption privilege up to June 30, 1985. Section 1 of P.D. No. 1710 provides:

> "Section 1. Section 1 of Presidential Decree No. 791 is hereby amended to read as follows:
>
> > Section 1. Any person, partnership, company or corporation who or which now engaged or shall engage in the business of manufacturing, milling, processing or refining of sugar, shall be exempted from the payment of special import

> tax, compensating tax and customs and tariff duties in respect to the importation of plant machinery, spare parts and other equipment effective upon approval of this Decree until June 30, 1985." (Emphasis Ours.)

However, on October 10, 1984, P.D. No. 1955 was promulgated withdrawing, subject to certain conditions, the duty and tax exemption privileges granted to private business enterprises and/or persons engaged in any economic activity, effective on October 15, 1984, except those enjoyed by the following:

> "(a) Those registered by the Board of Investments under Presidential Decree No. 1789, as amended by Batas Pambansa Blg. 391, and those registered by the Export Processing Zone Authority under Presidential Decree No. 66, as amended by Presidential Decree Nos. 1449, 1776, 1776-A and 1786;
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> (b) The copper mining industry in accordance with the provisions of LOI 1416;
>
> (c) Those covered by international agreements to which the Philippines is a signatory;
>
> (d) Those covered by the non-impairment clause of the Constitution; and
>
> (e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance." (Sec. 1, P.D. No. 1955)

Petitioner admits that its tax and duty exemption privileges granted under P.D. No. 791, as amended, has been withdrawn by P.D. No. 1955 (Petitioner's Memorandum, p. 71, CTA rec.). In fact, FIRB Resolution No. 53-85 clearly states that: "the tax and duty exemption privileges of sugar millers granted under P.D. No. 791, as amended, and withdrawn by P.D. No. 1955, are hereby restored" x x x." (Underlining Ours, supra.) There is no question therefore that P.D. No. 1955 has indeed revoked the tax exemption privileges of petitioner.

Petitioner, however, claims that its exemption from the payment of compensating tax on the importation of spare parts under P.D. No. 791, as amended, was restored by virtue of FIRB Resolution No. 53-85 dated October 1, 1985, provided, the imported articles arrived in the Philippines on or before June 30, 1985. In this case petitioner's imported spare parts arrived in the Philippines prior to June 30, 1985 and in fact were released on November 12, 1984.

Respondent contends that petitioner's tax exemption under P.D. No. 791, as amended, was withdrawn by P.D. No. 1955 it appearing that it is not one of those enumerated under the exception clause therein provided.

There is no question that P.D. No. 1955 has withdrawn the tax exemption privileges of petitioner under P.D. No. 791, as amended by P.D. 1710. But petitioner places heavy stress on the FIRB Resolution No. 53-83, dated October 1, 1985, which restored its previous tax exemption until June 30, 1985.

In the recent case of National Power Corporation vs. Province of Albay, et al., 186 SCRA 198, the Supreme Court ruled on the power or authority of the Fiscal Incentives Review Board, under P.D. 776, to grant or extend tax and duty exemption privileges of the grantee. The power of the FIRB was merely to recommend to the President of the Philippines what subsidies or tax exemption grants should be withdrawn, modified, revoked or suspended. The Supreme Court added that "the FIRB has no authority to impose taxes or revoke existing ones, which, after all, under the Constitution, only the legislature may accomplish."

In this connection, suffice it to state, the FIRB Resolution No. 53-85 could not have validly restored the tax exemption privilege of petitioner when that same privilege has already been withdrawn by P.D. No. 1955 as early as October 15, 1984 (effectivity date). By itself, it could not have validly prescribed exemptions or restore taxability. (NAPOCOR v. Province of Albay, et al., supra.)

By and large, exemption statutes are construed strictly against persons claiming exemption and liberally in favor of the Government. Thus, claims for refund are strictly construed against the claimant since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue v. Guerrero, 21 SCRA 180.)

The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (Government of the Philippines v. Monte de Piedad, 35 Phil. 42; Commissioner of Internal Revenue v. P.J. Kiener Company, Ltd., 65 SCRA 142; Western Minolco Corporation v. Commissioner of Internal Revenue, 124 SCRA 121.) Petitioner failed in this respect.

WHEREFORE, the petition for review is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 8, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ERNESTO D. ACOSTA
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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals