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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HAWAIIAN-PHILIPPINE COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 3650

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

4/3/89

D E C I S I O N

This is a claim for refund/tax credit of the amount of P156,133.00 representing petitioner's erroneously paid 5% compensating tax pursuant to Section 292 (now Section 243) of the Tax Code.

Petitioner is a domestic corporation organized and existing under the laws of the Philippines. It is a sugar central and is engaged in the manufacture of sugar.

For its milling operations, petitioner imported the final shipment of one (1) lot sugar cane crushing mills and associated equipment, which was covered by Bill of Lading Nos. 4 and 5 of Asia Express, Ltd., both dated June 11, 1981, Commercial

Invoice No. 1931 dated May 27, 1981 issued by Walkers, Ltd., CB Release Certificate No. 8112969 dated July 6, 1981 and computation of customs duties, compensating taxes and other charges. (Exh. A, A-1, A-2, A-3, B, B-1, C, C-1, D and D-1.)

The said imported articles arrived at the Port of Manila via the vessel "Asian Pearl" on June 21, 1981. (Exhs. D, D-2, E and E-1.)

Subsequently, in a letter dated March 22, 1983, the Ministry of Finance certified that the sugar centrals managed by Jardine Davies, Inc., including petitioner, are "exempt from the payment of 5% compensating tax and 5% customs duty under Presidential Decree No. 1395". (Exhs. I and I-1 and Annex H, Petition for Review.)

In a letter dated June 15, 1983 and filed with the Commissioner of Internal Revenue's Office on June 22, 1983, petitioner requested for the refund or tax credit of the erroneously paid compensating tax amounting to P156,133.00. (Annex I, Petition for Review.)

Since respondent has not yet granted petitioner's request for refund or tax credit, this appeal was filed to interrupt the running of the prescriptive period for the refund or tax credit of the said amount.

This appeal, as well as the claim for refund or tax credit, have been filed within two years from the date of payment of the tax sought to be refunded or credited in accordance with Section 292 and 295 (now Sections 243 and 246) of the Tax Code.

Respondent Commissioner of Internal Revenue has not submitted any evidence to the contrary. Instead, respondent submitted the case on the basis of the records and the pleadings.

The only issue to be determined in this case is whether or not petitioner's importation of one (1) lot sugar cane crushing mills and associated equipment for use in its sugar milling operations is exempt under Presidential Decree No. 1710 from payment of compensating tax and customs and tariff duties.

Presidential Decree No. 791, as amended by Presidential Decree No. 1710, promulgated on August 13, 1980 provides as follows:

> "Section 1. Any person, partnership, company or corporation who or which is now engaged or shall engage in the business of manufacturing, milling, processing or refining of sugar shall be <u>exempted from the payment of</u>

> 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 the approval of this Decree until June 30, 1985."
>
> "Section 2. The exemption under this Decree shall cover only the importation of plant machinery, spare parts and other equipment, including road building equipment, sugarcane transport, agricultural tractors and implements thereof, directly and actually needed and to be used exclusively in the development of the factory site and in the production, manufacture, milling, processing or refining of sugar by the grantee of the exemption under this Decree, if shipping documents covering the importation are in the name of tax-exempt firms to whom the goods shall be delivered by the customs authorities." (Emphasis ours.)

Since petitioner is a sugar central engaged in the business of manufacturing, milling, processing or refining of sugar; and petitioner imported the machinery and spare parts within the prescribed period which is August 13, 1980 to July 30, 1985; and that the importation consisted of plant machinery, spare parts and other equipment directly and actually needed and to be used exclusively in the development of the factory site in the production, manufacturing, milling, procoessing or refining of sugar; and that the shipping documents covering the importation are in the name of the tax-exempt firm, then we hold that petitioner is exempt under Presidential Decree No. 791, as amended by Presidential Decree No. 1710.

Even the Ministry of Finance, in a ruling stated that "your request from exemption from the payment of 5% duty and 5% tax may be authorized pursuant to Memorandum No. 10-83 dated January 28, 1983." (Exhs. H, I and I-1.)

WHEREFORE, the claim for refund/tax credit of petitioner Hawaiian-Philippine Company of 5% compensating tax in the amount of P156,133.00 is hereby granted.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 3, 1989.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding 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

AMANTE FILLER
Presiding Judge