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REPUBLIC OF THE PHILIPPINE
COURT OF TAX APPEALS
QUEZON CITY

SMITH-KLINE & FRENCH
OVERSEAS CO., and SMITH-KLINE
& FRENCH INTERNATIONAL CO.,
Petitioners,

- versus - C.T.A. CASE NO. 3779

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

2/14/92

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D E C I S I O N

The instant case presents a fairly similar question as that presented in **Smith Kline & French Overseas Co., and Smith Kline & French International Co. v. The Commissioner of Internal Revenue,** CTA Case No. 3720, June 30, 1989. The issue raised is whether or not petitioners are entitled to the refund of alleged erroneously paid withholding tax at source on royalties due a non-resident foreign corporation not engaged in trade or business in the Philippines.

The material facts are undisputed.

Petitioner Smith Kline & French Overseas Co. (SK&FO) is a foreign corporation duly licensed to engage in business in the Philippines with established branch offices at Victoria Valley Boulevard, Cainta, Rizal. While petitioner Smith Kline & French International Co. (SK&FI) is a non-resident foreign corporation not engaged in trade or business in the Philippines with principal office at 1500 Spring Garden Street, Philadelphia, Pennsylvania, U.S.A.

For the year 1982, SK&FO accrued in favor of SK&FI royalties amounting to P2,691,008.00, computed at the rate of 5% and 3% on net sales of pharmaceutical and consumer products respectively. On various dates, petitioner SK&FO withheld 35% tax on said royalties equivalent to P941,853.00 pursuant to Section 24(b) (1) [now Sec. 25(b) (1)] in relation to Section 53(b) [now Sec. 50(a)] both of the National Internal Revenue Code.

As certified and verified by the Revenue Accounting Division of the Bureau of Internal Revenue, the following amounts with their corresponding confirmation receipts have been paid by taxpayer-SK&FO, to wit: [Exh. N]

C.R. NO.	DATE	AMOUNT	EXHIBIT
9910434	04-20-82	P 234,904.57	B-2
10047917	07-19-82	239,119.63	C-2
10742376	10-20-82	267,327.86	D-E
7489969	01-18-83	211,969.72	E-2
Total		P 953,321.78	

On April 22, 1983, SK&FO filed with the Ministry of Industry - Technology Transfer Board (TTB) a letter requesting approval and registration of the technological transfer agreement (hereinafter referred to as the Agreement) between SK&FO, as Philippine licensee, and SK&FI (USA), as licensor [Exh. J].

On August 2, 1983, the Technology Transfer Board qualifiedly approved with amendments the Agreement effective December 8, 1978 [Exh. K]. The Agreement was subject to amendment as a pre-registration condition for the issuance of a Certificate of Registration.

Thus, the contract was amended "to reflect in Art. III, Secs. 3.01 and 3.02 royalty rates of 3% of net sales on pharmaceutical products and 2% of net sales on consumer health products" [Exhs. K-1, M-1 and M-2]. In view of this amendment, petitioner SK&FO contends that there was an overpayment of royalty tax totalling P376,678.00, computed as follows: [Exh. G]

STATEMENT OF OVERPAYMENT OF ROYALTY DUE TO
SMITHKLINE INTERNATIONAL AND CORRESPONDING
WITHHOLDING TAX FOR THE YEAR ENDED DEC. 31, 1982

		ROYALTY				
		ORIGINAL		AS AMENDED		
	NET SALES	RATE	AMOUNT	RATE	AMOUNT	OVERPAYMENT
Pharmaceutical Products	P53,766,312	5%	P2,688,316	3%	P1,612,990	P1,075,326
Consumer Products	89,734	3%	2,692	2%	1,795	897
Total	P53,856,046		P2,691,008		P1,614,785	P1,076,223
Withholding Tax Rate			35%		35%	35%
Withholding Tax			P 941,853		P 565,175	P 376,678

In due time or on April 18, 1984, SK&FO through its auditing firm (SGV) filed with the Bureau of Internal Revenue a claim for refund of overpaid withholding tax for 1982 amounting to P376,678.00. Simultaneous with the filing of the refund claim petitioners filed the instant petition for review.

Respondent in his answer invoked the principle that claims for refund are strictly construed against the taxpayer. He added that the burden of proof lies on the taxpayer to show entitlement to the refund sought to be claimed.

As an affirmative defense respondent pointed out among others that it is incumbent upon petitioner-SK&FO to show that it has complied with the provisions of Sections 292 and 295 of the National Internal Revenue Code. He maintains that the amended royalty rates should be applied prospectively. The withholding taxes paid prior to the amendment was therefore legal. Moreover, the claim for refund was merely an afterthought following the grant by TTB of the reduced rate.

Respondent misses the point. The evidence presented by petitioners bolster their claim for refund. On April 18, 1984, petitioner filed its claim for refund simultaneous with the filing of the instant petition for review. Hence, the suit was filed within the two year prescriptive period from date of first payment (April 20, 1982).

During the trial, respondent waived his right to present any evidence. Instead he submitted the case based on the pleadings and the evidence offered by petitioner.

Upon the records presented and the relevant legal standards obtaining petitioner has proved entitlement to the refund claim. Petitioner has satisfactorily discharged its burden administratively and judicially.

In an earlier case involving the same parties **Smith-Kline & French Overseas Co. and Smith-Kline & French International Co. v. The Commissioner of**

Internal Revenue, supra., this Court had the occasion to rule:

> "x x x. After petitioners formally offered their evidence the respondent expediently submitted the case for decision on the basis of the pleadings sans the requisite BIR records probably "lost in the oblivion of forgotten lore." And, since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have submitted the truth of all the material and relevant allegations for the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted (**Bauermann v. Cases,** 10 Phil. 386; **Evangelista v. De la Rosa, et. al.,** 76 Phil. 115), respondent, as pointed out by petitioner may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidence presented, which was not disputed by respondent sufficiently establishes petitioner's right to the refund." (**Commonwealth Management and Service Corporation v. Commissioner of Internal Revenue,** CTA Case No. 3232, June 26, 1985).
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> All told, the basis of the claim is not short of specific support in terms of tractable data openly laid and fully disclosed, as such deserves the credence that should normally be accorded in the absence of contrary evidence of relevance and competence required to bash that patina of validity over the claim. And the records make it clear that the requisite statements or certifications of the tax withheld, paid and remitted upon which tacked the refundable amount claimed could readity furnish the legal basis for a definite resolve but appropriate action thereon appears dawdled in a limbo of lingering

> verification, which comes as an aggravated chutzpah, so to speak. Petitioner or any similarly circumstanced taxpayer for that matter deserves a measure of fair dealing in a more expeditious and competently responsive action."

In the case at bar, the same circumstance is obtaining as in the case above-mentioned. It must be stressed that petitioner-SK&FO was able to overcome its burden. Respondent presented no evidence to rebut the evidence adduced by petitioners.

As far as respondent's averment that the royalty rates should be applied prospectively, We see no merit to such contention. It appears clearly from the record that the Agreement should be amended as a pre-requisite for registration. The amendment therefor was a condition for registration. Since royalty rates were reduced by TTB from 5% to 3% for pharmaceutical products and from 3% to 2% for consumer products, the same should be made to apply on the effectivity date of the contract, that is, on December 8, 1978 [Exhs. M and O]. Having complied with this condition, the TTB issued the corresponding Certificate of Registration to petitioners on April 9, 1984. As specified in the Certificate the Royalty Agreement dated December 8, 1978 was approved for registration pursuant to the provisions of Section 5 of Presidential Decree No. 1520 [Exh. O]. For all intent and purposes the Royalty Agreement took effect on December 8, 1978. The Agreement having been approved with amendments particularly on the royalty rates then the same should be applied from its effectivity date. It must be remembered that the Agreement dated December 8, 1978 is the very contract that was approved subject however to the reduced royalty rates of 3% and 2%. We see no plausible reason why the amended rates should be applied only prospectively when the effectivity date of the Agreement which was approved was not changed at all but was in fact adopted.

WHEREFORE, finding petitioners' claim for refund to be in order, respondent is hereby ordered to refund in favor of petitioners Smith-Kline & French Overseas Co., and Smith-Kline & French International Co. the amount of P376,678.00 as overpaid withholding taxes for the year 1982. No costs.

SO ORDERED.

Quezon City, Metro Manila, February 14, 1992.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

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.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals