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FRABELLE FISHING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3481

COMMISSIONER OF CUSTOMS,
Respondent.

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8/15/83

D E C I S I O N

Petitioner comes on an issue questioning the legal basis of the respondent's denial of its claim for duty drawback under Section 106(a) of the Tariff and Customs Code, as amended, on the fuel used, quoted as follows:

> "On Fuel Used for the Propulsion of vessels. - On all fuel imported into the Philippines used for propulsion of vessels engaged in trade with foreign countries, or in coastwise trade, a refund or tax credit shall be allowed not exceeding ninety-nine (99%) per cent of the duty imposed by law upon such fuel, which shall be paid or credited under such rules and regulations as may be prescribed by the Commissioner of Customs with the approval of the Minister of Finance."

Petitioner corporation is duly engaged in deep-sea fishing business and uses diesel petroleum oil in the propulsion of its vessels. During the period from October, 1980 to August, 1981, it purchased from Petrophil corporation, a subsidiary of the Philippine National Oil Company, a total of 60,701 barrels of locally refined or processed diesel oil and paid an aggregate of ₱3,401,863.74, the imputed customs duties corresponding to the quantity of imported crude oil or 2,808,945.84 liters. On October 6, 1981, petitioner filed with the Collector of Customs a claim for duty drawback amounting to 99% of the said payment or ₱3,376,755.10 pursuant to Section 106(a), supra. The claim was denied by the Collector of Customs in a ruling dated November 26, 1981, which on a reconsideration by the petitioner, the denial was sustained by the respondent Commissioner of Customs on March 19, 1982, stressing, among other things, that the petitioner corporation purchased domestically produced oil on which no duties may be imposed and the word "refund" or "drawback" assumes that the claimant thereof is the person or entity obligated to pay and has actually paid the duties or tax under the law, which are circumstances not obtaining in the case.

Hence this petition.

By and large petitioner presents the proposition as reason of the appeal that the fuel contemplated in Section 106(a), supra, for purposes of drawback may be in whatever form and kind and regardless of whosoever the importer provided the ultimate user qualifies. "Thus it is not necessary for a valid duty drawback claim that the owner or operator of qualified vessels be the direct importer as he could be a mere purchaser of the imported fuel used for the propulsion of such vessels." (Yangco v. Insular Collector of Customs, 51 Phil. 348). Moreover, "there is no legal impediment to the implementation of Section 106(a) of the Tariff and Customs Code of 1978 with respect to vessels and watercrafts engaged in commercial deep-sea fishing." (Minister of Justice Opinion No. 176, S. of 1981).

The present case is one in which petitioner's vessels qualify for duty drawback having come within the purview of the ruling that, "vessels engaged in deep-sea fishing and which carry their catch to a port for sale are engaged in coastwise trade" (Commissioner of Customs v. Borres, et al., 100 Phil. 625) for purposes of Section 106(a), *supra*. But, equally determinative of the sense and extent of the coverage of the privilege which is implicit in the meaning and explicit in the terms of the aforesaid provision are the operative acts of importation, actual use and payment of the corresponding duties on the imported fuel upon which the right to a refund may be held or exercised. Basically prescribed in the implementing regulations, inter alia, is that claimant must show evidence of the "importation and payment of duty and such other particulars about the vessel and the loading and use of the fuel as they may deem necessary." (Par. V, Customs Administrative Order No. 235, dated February 10, 1959). Restated, "Drawback privilege under Section 106(a) is quite clear and needs no interpretation. The same may be availed of only if the fuel is imported and used in the propulsion of vessels. The identity and quantity must be established, duties thereon must be paid, and subsequent use of the same in the propulsion of vessels must be shown before the privilege of drawback under the section could be availed of." (2nd Indorsement dated March 3, 1981, Commissioner of Customs to the Minister of Finance). All that need be stated is any such claim for entitlement must prove compliance with the terms and conditions peremptorily required by law and rules lest the integrity of collection of lawful dues be placed in the quicksand of self-interest, so to speak.

The circumstances of the petitioner in the case at bar appear remote and removed from the activities normally involved or necessarily connected with the undertaking contemplated in Section 106(a) of the Tariff and Customs Code, supra. Thus:

First, petitioner is neither the importer nor the actual user of the imported crude oil and in no way obligated to pay the customs duties nor any other import liabilities on the importation thereupon a duty drawback is addressed and brought to bear. As disclosed in the records, the fuel needs of petitioner's vessels were of the locally processed diesel oil purchased from Petrophil corporation and/or Pilipinas Shell Petroleum corporation. For the period in question, petitioner allegedly consumed 60,701 barrels or 9,650,520 liters of diesel oil with a total billing of ₱3,410,863.74 purportedly representing due payments for customs duties on the equivalent quantity of crude oil or 2,809,945.84 liters. Be that as it may, a dearth of competent information, however, cast a pall of uncertainty over the specific purpose and nature of the said payment upon which proffered to be tacked petitioner Frabelle Fishing Corporation's refund claim to the extent of 99% thereof pursuant to the drawback provision of Section 106(a), supra. It is too much of a stretch to hold petitioner accountable much less answerable for the import liabilities on an importation it was not privy. It's payment for the locally purchased diesel oil does not operate automatically to prove its entitlement to a refund of customs duty. The rule seems settled that a "refund undoubtedly partakes of a nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language" (Resins, Inc. v. Auditor General, L-17888, October 29, 1968; Commissioner of Internal Revenue, v. Guerrero, 21 SCRA 180; Union Garments Co., Inc., v. Court of Tax Appeals, 45 SCRA 304; Republic Flour Mills, Inc., v. Commissioner of Internal Revenue, 31 SCRA 520), because the "law does not look with favor a tax exemption 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." (Reagan v. Commissioner of Internal Revenue, 30 SCRA 968; Ohio Life Insurance & Trust Co., v. Debolt, 60 Howard 416; Commissioner of Internal Revenue, v. P.J. Keiner Co., Ltd., 65 SCRA 153). We are not prepared to lend credence to a claim based upon vague implications (Asiatic Petroleum v. Llanes, 49 Phil. 466; Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 676; Wonder Mechanical Engineering Corporation v. Court of Tax Appeals, 64 SCRA

563), nor to confuse about what seems feasible with about what is legally tenable. (Marinduque Mining & Industrial Corporation v. Commissioner of Internal Revenue, CTA Case No. 3019, March 27, 1981). The subject payment conveys nothing more than an indication that the same could have the merit of being easily understood and readily applied sufficient to meet the effective price of the fuel sold. As characterized in an analoguous case, "It may indeed be that economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but this is all and the amount added because of the tax is paid to get the goods and for nothing else." (Philippine Acetylene Co. Inc., v. Commissioner of Internal Revenue, 20 SCRA 1056). Just so and aptly enough.

Second and connected with the question just discussed is that the domestic sale of the locally processed diesel petroleum product does not in itself create liabilities for customs duties or other import charges. For tax purposes, the transaction is governed by the provisions of the National Internal Revenue Code, among which, viz.: "Specific internal revenue taxes apply to things manufactured or produced in the Philippines for domestic sale or consumption (Sec. 134)" which "Specific taxes on domestic products shall be paid by the manufacturer, producer, owner or persons having possession or the same (Sec. 135)" and "On fuel oil, commercially known as diesel fuel oil, and all similar fuel oils x x x shall attach to this fuel oil as soon as it is in existence as such (Sec. 156)." The privilege petitioner seeks to enjoy comes as a random quirk and sharply at odds with the levies normally attributed to the instant transaction.

Third and even more disturbing is the fact that petitioner would prove its claim by simply drawing an inference over the circumstantial clout of "receipts and invoices" as thus encapsulates all the due payments of customs duties on its local purchases of diesel oil as ascertained and determined, by Petrophil and Pilipinas corporations. Such could be a maudlin rendition of a self-serving denouement which neither imparts plausibility nor serves much of a justification for petitioner's cause. The action denegates a responsibility primarily charge the Bureau of Customs, i.e., "The assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws." (Section 602(a), Tariff and Customs Code). And, is "tantamount to usurpation of an executive function." (MERALCO Securities Corporation v. Savellano, 117 SCRA 812). We cannot validly infuse cognizance on an "assessment and collection" effected thru an inofficuous panache, much less substitute and indulge in an amorphous and unworkable rule lest we suffer the cornerstone of effective collection to petrify at the cost of animating principles tinged with strong issues of public policy that taxes are the lifeblood of the government and their prompt and certain availability are an imperious need." (Commissioner of Internal Revenue v. Goodrich International Rubber Co. 22 SCRA 1256; Commissioner of Internal Revenue v. Pineda, 21 SCRA 105; Collector of Internal Revenue v. Yuseco, 2 SCRA 313; cited in Manila Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 2993, October 30, 1981).

The cited decision in the Yangco case (51 Phil. 348), offers neither a controlling nor an illuminating precedent. What petitioner Yangco purchased from the Asiatic Petroleum Co. was the imported liquid fuel itself for which it paid the customs duties subject of the claim for drawback. We do not reach the same situation in the case at bar. Petitioner Frabelle Fishing Corporation bought the diesel oil from the local refineries upon which no duties may be imposed and logically, no assessment, much less collection, can be made upon which a refund can validly apply and effectively operate. Accordingly, petition must have to focus on a different expectation, not what it expects by way of entitlement but what it is entitled to expect from a claim in gross error without factual and legal basis.

WHEREFORE, finding the petition to be without merit, the same is hereby dismissed and the refund sought denied, with costs.

SO ORDERED.

Quezon City, Metro Manila, August 15, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge