REPUBLIC OF THE PHILIPINES
COURT OF TAX APPEALS
QUEZON CITY

BOGO-MEDELLIN MILLING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4106

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

5/28

D E C I S I O N

This case involves a claim for refund/tax credit of the amount of P64,648.00 which represents compensating tax allegedly paid by the petitioner on its importation of plant machinery, spare parts and equipment for the year 1985.

Petitioner, a domestic corporation, is a sugar central engaged in manufacturing, milling, processing and refining sugar. While respondent is the duly designated and qualified Commissioner of Internal Revenue.

For the period January to May 1985, petitioner, for use of its sugar milling operations, imported one (1) case parts for English electrical diesel generator set, one (1) box parts for w.s. sugarmill centrifugal, 3 cases cane carrier chain and paid the corresponding tax due on said importation in the amount of P64,648.00 as shown by Bureau of Customs Official Receipts No. 557651 dated January 4, 1985, 553497 dated January 29, 1985, 582620 dated February 12, 1985, 582421 dated April 9, 1985, 55800 dated March 12, 1985, 613548 dated May 24, 1985, 557652 dated January 4, 1985 and 553472 datedj January 28, 1985 (Exhibits B, D, H, L, O, Q, T and V).

In a letter dated March 13, 1986, petitioner filed a claim for refund (Annex "B") of the amount of P64,648.00 allegedly on the ground that it was exempt from payment of the compensating tax under Fiscal Incentives Review Board (FIRB) Resolution No. 53-85 dated October 1, 1985, providing that the tax and duty exemption privileges of sugar millers granted under Presidential Decree No. 791, as amended, and withdrawn by Presidential Decree No. 1955, are restored: Provided, that such privileges shall extend only to imported articles which arrived in the Philippines on or before June 30, 1985.

Without waiting for respondent's resolution on its claim for tax refund abovestated, petitioner filed the present petition on September 25, 1986.

The sole issue is whether petitioner is exempt from payment of compensating tax on the subject importation pursuant to Presidential Decree No. 791 as amended by Presidential Decree No. 1710.

Petitioner is subject to the compensating tax on its importation for the period January to May 1985 of 1 case parts for English electrical diesel generator set, 1 box parts of w.s. sugarmill centrifugal 3 cases cane carrier chain and 1 box parts for w.s. sugarmill centrifugal.

There is no dispute that P.D. No. 791, effective September 3, 1975 exempted sugar mills from payment of compensating tax, among others, in respect to importation of plant machinery, spare parts, and other equipment. As stated in the decree, the exemption lasts June 30, 1980. Section 1 of the said decree reads:

> "Section 1. Any person, partnership, company as 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."

Respondent, however, contends that the subject importation was made in 1985 beyond the original period of the tax-free importation privilege of P.D. 791. On the other hand, petitioner argues that P.D. 1710, promulgated on August 13, 1980, which amended P.D. 791, restored the tax exemption privilege accorded to importations of sugar mills machinery, spare parts and equipment. Reproduced below is the pertinent provision of P.D. 1710:

> "Sec. 1. Any person, partnership, company or corporation who or which now engages 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." (Underlining ours.)

Respondent insists that reliance upon P.D. 1710 is misplaced. It points out that subsequent to the promulgation of P.D. 1710 on August 13, 1980, P.D. 1955 was promulgated, withdrawing, subject to certain conditions, the duty and tax privileges granted to private business enterprises and/or persons engaged in any economic activity, and for other purposes. (Underlining ours.) Thus, Section 1, P.D. 1955 states:

"Section 1. The provisions of any special or general law to the contrary notwithstanding, all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imports and other charges therefore granted to private business enterprises and/or persons engaged in any economic activity are hereby withdrawn, 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 Nos. 1449, 1776, 1776-A and 1786;

"(b) The copper mining industry in accordance with the provisions of LOA2416;

"(c) Those covered by international agreements to which the Philippines is a signatory;

"(d) Those covered by the non-impairment clause of the constitution;

"(e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance."

Respondent invites attention to the exempting provisions of Section 1 P.D. 1955. He notes that beneficiaries of the tax exemption privilege under P.D. 791 and P.D. 1710 are not among those enumerated in said Section 1 of P.D. 1955. He contends that pursuant to P.D. 1955, the tax-free importation privilege granted under P.D. 791 and P.D. 1710 was withdrawn, as early as 15 October 1984, when P.D. 1955 was promulgated and which therefore came to effect. (Underlining ours.)

On the other hand, petitioner places heavy stress on Fiscal Incentives Review Board (FIRB) Resolution No. 53-83 dated October 1, 1985, providing for the restoration of petitioner's tax and duty exemption privileges under P.D. 791 and that such privileges shall extend only to imported articles which arrived in the Philippines on or before 30 June 1985. Petitioner points to the fact that the records of the case show that during the period January to May 1985, petitioner imported plant machinery, spare parts and equipments and paid compensating tax totalling P64,648.00. The details of said importation are as follows:

Description of Goods	Official Receipt No.	Date	Amount
1 Case parts for English electrical diesel generator set	553497 557651	01/29/85 01/04/85	P 7,600.00
1 box parts for w.s. sugar mill centrifugal	582620	02/12/85	9,121.00

1 box parts for w.s. sugarmill centrifugal	582921	04/09/85	18,241.00
3 cases cane carrier chain	613548	05/24/85	22,068.00
1 box parts for w.s. sugarmill centrifugal	553472 557652	01/28/85 01/04/85	7,618.00
T O T A L			P64,648.00

(Exhibits A, B, B-1, C, C-1, C-2, D, D-1, D-2, E, F, G, G-1, G-2, H, H-1, H-2, I, J, K, K-1, K-2, L, L-1, L-2, M. N, O, O-1, P, Q, Q-1, Q-2, R, S, T, T-1, U, U-1, V, V-1, W, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, and JJ, pp. 51-102, CTA recs.) Petitioner's theory is that since the importation was made well within the period provided for by P.D. 791 as amended by P.D. 1710 in relation to FIRB Resolution No. 53-85.

It does appear that Fiscal Incentives Review Board Resolution No. 53-85 restores the beneficial effects of P.D. 791 which were withdrawn by P.D. 1710. Recently, however, in the case of National Power Corporation vs. Province of Albay, et. al., G.R. No. 87479 decided on 04 June, 1990, the Supreme Court had occasion to rule on the power or authority of the Fiscal Incentives Review Board, through resolution to grant or extend pursuant to P.D. 776 tax and duty exemption privileges of the grantee. The Supreme Court speaking through Justice Sarmiento had this to say:

> "It is to be pointed out that under P.D. 776, the power of the FIRB was merely to "recommend to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or the tax exemption grants, except those granted by the Constitution. "It has no authority to impose taxes or revoke existing ones, which after all, under the Constitution, only the legislature may accomplish. The question therefore is whether or not the various tax exemptions granted by virtue of FIRB Resolutions Nos. 10-86, and 17-87 are valid and constitutional."
>
> "We shall deal with FIRB No. 17-87 later, but with respect to FIRB Resolutions Nos. 10-85 and 1-86 , we sustain the provincial government of Albay."

In the above cited case, the Fiscal Incentive Review Board, under its charter, Presidential Decree No. 776, had been empowered merely to "recommend" tax exemptions. By itself, it could not have validly prescribed exemptions or restore taxability.

Applying the above-quoted ruling to the case at bar, it would seem as it is fact, that as of October 15, 1984, when P.D. 1955 was promulgated, petitioner Bogo - Medellin Milling Co., Inc. had ceased to enjoy tax exemption privileges.

In other words P.D. 1955 had the effect of cutting short the effectivity of P.D. 791, as amended by P.D. 1710.

Petitioner has thus failed to show that it is entitled to the refund for which it had prayed. Most emphatically, it has been consistently stressed that claims for refund being in the nature of tax exemptions "must be strictly construed against the one claiming the exemption because 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" (Commissioner of Internal Revenue vs. P.J. Kiener Company, Ltd., 65 SCRA 143).

WHEREFORE, the claim for refund/tax credit by petitioner Bogo-Midellin Milling Co., Inc. is hereby **DENIED**.

With costs against petitioner.

SO ORDERED.

Quezon City, ·ro Manila, May 28, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
Associate Judge

CERTIFICATION

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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals