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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS SYNTHETIC FIBER CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 3411

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

11/16/92

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

D E C I S I O N

Petitioner, Filipinas Synthetic Fiber Corporation, is a domestic corporation registered with the Board of Investment (herein after referred to as the Board) as a preferred pioneer enterprise. (Exh. "A".) It seeks to avail a tax credit for alleged erroneously paid and collected percentage, advance sales and compensating taxes for the year 1980.

Petitioner declared that on the basis of a 100% tax exemption granted by the Board pursuant to the provision of Section 8(a) of Republic Act No. 5186

(Investment Incentives Act), as amended, it is deemed to be exempt from all internal revenue taxes excluding the income tax. Section 8(a), as amended, provides for the 100% exemption from all taxes under the National Internal Revenue Code, except income tax, for the first five (5) years of the grant.

In a letter dated April 8, 1981, filed on April 10, 1981, petitioner applied with the Board for a tax credit on percentage, advance sales and compensating taxes paid for the year 1980 totalling P10,077,032.00. (Exh. "C".) A similar request, dated April 30, 1981, this time for a refund, was filed on May 8, 1981 with the Bureau of Internal Revenue (BIR).

On June 5, 1981, petitioner filed a letter dated June 1, 1981, in addition to the previous request of P10,077,032.00, for the additional refund of P7,071,140.00 (Exh. "E"). This later request for refund pertains to the additional advance sales and compensating taxes paid for 1980 amounting to P6,779,367.00 and P291,773.00, respectively. To recapitulate, petitioner seeks the refund (actually a tax credit) of P17,148,172.00, computed as follows:

Taxes paid for 1980	Letter dtd. 4/8/81 Exh. "C"	Letter dtd. 6/1/81 Exh. "E"	Total Tax Credit Claimed
Percentage tax	P 3,889,048		P 3,889,048
Advance sales tax	5,929,134	P6,779,367	12,708,501
Compensating tax	258,850	291,773	550,623
T O T A L	P10,077,032	P7,071,140	P17,148,172

On January 11, 1982, petitioner, thru its auditing firm, requested anew for the refund of P10,077,032.00 with the BIR (Exh. "F"). Without waiting for respondent's decision petitioner brought the matter up to this Court by filing a petition for review praying for the refund of P10,077,032.00 in order to toll the two year prescriptive period within which to file a suit for the recovery of erroneously paid tax.

Prior to the filing of an answer, petitioner filed on January 15, 1982 an amended petition in order to reflect the additional P7,071,140.00 claimed as tax credit (not refund) per its request of June 1, 1981. Thus, as a whole petitioner prays for the issuance of a tax credit in the amount of P17,148,172.00 (not P17,148,272.00 as alleged in the amended petition).

Petitioner relies on the tax exemptions, except the income tax, granted to it by the BOI per its letters dated October 10, 1980 (Exh. "B") and March

30, 1981 (Exh. "B-1"). In the October 10, 1980 letter, the Board resolved to extend the period of the incentives granted to petitioner subject to the following conditions, namely:

> a. That you will acquire full ownership of Lakeview Industrial Corporation, under conditions satisfactory to the BOI;
>
> b. That you commit to expand to a world-sized unit, as may be mutually agreed with the BOI; and
>
> c. That you agree to offer equity in your expanded company to the textile millers, under terms and conditions to be mutually agreed with the BOI.

In a letter dated March 30, 1981, the Board issued a certification attesting that petitioner has complied with the conditions for the extension of the incentives for a period of five (5) years beginning January 1, 1980.

Respondent, in his answer, contends that the burden of proof in an action for refund is on the taxpayer to show that it is entitled to the refund sought. This is especially so when the basis for claiming a refund stands on a tax exemption privilege. Failure to overcome this burden would be fatal to the claim for refund. It is an elementary rule that taxes are presumed to have been paid and collected in accordance with law.

Respondent adds that assuming petitioner was granted an extension of its 100% tax exemption privileges, except the income tax, the reckoning period should start on March 30, 1981, the date when the BOI confirmed petitioner's compliance with the conditions set in its letter of October 10, 1980, and not on January 1, 1980. Thus, petitioner will not be entitled to a tax credit for tax payments prior to March 30, 1981.

If at all petitioner would be granted a tax credit (not a refund), as provided in Sec. 3(j), R.A. 5186, the advance sales tax payments, from January 3 to January 14, 1980, totalling P485,248.00, itemized as follows:

	Official Receipt No.	Date	Amount
1.	0056311	1-14-80	P 186,207.00
2.	2512700	1-11-80	228,053.00
3.	0072474	1-4-80	3,898.00
4.	0032672	1-7-80	24,066.00
5.	0032474	1-3-80	33,058.00
6.	0032670	1-7-80	9,966.00
	T O T A L		P 485,248.00

have already prescribed since the amended petition was filed only on January 15, 1982, beyond the two-year prescriptive period within which to file a suit for the recovery of an erroneously paid tax.

After petitioner has presented its evidence in support of its case, respondent submitted the case based on the pleadings and the BIR records sans any memorandum.

During the trial, petitioner's counsel manifested in open court that respondent had already granted a partial refund in favor of petitioner. However, it was only on September 8, 1992, after this case has already been submitted for decision, did petitioner formally filed a written manifestation stating that the amount of P6,779,367.00 has already been granted by respondent in the form of a tax credit issued on November 6, 1987. (See Tax Credit Certificate No. 00194, Annex "A", Manifestation of Petitioner dated September 7, 1992.) Thereafter, on November 5, 1992, petitioner filed a supplemental manifestation stating that a partial tax credit of P6,779,367.00, pertaining to the 5% advance sales tax payments, out of the total P12,708,501.00 claimed has already been awarded by the issuance of a Tax Credit Certificate No. 00914.

The sole issue to be resolved is whether or not petitioner is entitled to the remaining tax credit for erroneously paid percentage, advance sales and compensating taxes amounting to P10,368,805.00.

The incentives granted to petitioner as a preferred pioneer enterprise was extended for a five-year term beginning January 1, 1980, as shown in the letters, dated October 10, 1980 and March 31, 1981, issued by the Board in favor of petitioner. Perhaps it is hardly necessary to stress what has already been decided by this Court involving the same parties and issue in C.T.A. Case No. 3420 promulgated on August 7, 1992. We find no room for ambiguity arising from the tenor of the Board's letters of October 10, 1980 and March 30, 1981. The point is that the tax exemption privileges of petitioner should be reckoned on January 1, 1980 and not March 30, 1981 as emphasized by respondent.

On the contention that the claim for tax credit of advance sales tax payments made on January 3 to January 14, 1980, amounting to P485,248.00, has already prescribed on the ground that the amended petition was filed only on January 15, 1982, the Court cannot strip itself of the fact that jurisdiction has been acquired from the time the original petition for review, stating a cause of action, was filed.

The filing of an amended petition, in order to conform to the evidence, merely changes the allegation stated in the original petition without necessarily altering petitioner's cause of action. "Where the original declaration states a cause of action, but does it imperfectly, and afterward an amended declaration is filed, correcting the defect, the plea of the statute of limitations will relate to the filing of the original declaration." (**Pangasinan Transportation Co. v. Phil. Farming Co. Ltd.,** 81 Phil. 273.) Thus, the amount of P485,248.00, representing advance sales taxes paid from January 3, 1980 to January 14, 1980, had not yet prescribed.

Based on the foregoing, We hold that petitioner is entitled to the remaining tax credit in the sum of P10,368,805.00. Petitioner was able to substantiate its claim by presenting documentary evidence such as Central Bank Confirmation Receipts, BIR Revenue Tax Receipts, Central Bank Official Receipts, Customs Official Receipts and Schedule of Payments for Percentage, Advance Sales and Compensating Taxes for the year 1980. The Court has prepared in tabular form the following schedules showing petitioner's entitlement to the tax credit claimed.

FILIPINAS SYNTHETIC FIBER CORPORATION
SCHEDULE OF PERCENTAGE TAXES PAID
AND TAX CREDIT DUE
For the year ending December 31, 1980

Exhs.	Particulars	Date	Percentage Tax Paid
	First Quarter:		
D-1	Confirmation Receipt No. 4095826)		
D-1-a	Revenue Tax Receipt No. 4487989)	04/21/80	P2,561,226
D-3	Tax Debit Certificate No. 072	03/06/80	53,160
	Second Quarter:		
D-2	Tax Debit Certificate No. 0223	07/17/80	459,806
	Third Quarter:		
D-4	Tax Debit Certificate No. 0297	10/20/80	451,851
D-5	Confirmation Receipt No. 5156943)		
D-5-a	Revenue Tax Receipt No. 4958510)	10/20/80	3,198
	Tax Debit Certificate No. 0108 (BIR Folder IV, p. 453)	04/01/80	359,807
	TOTAL AMOUNT CREDITABLE		P3,889,048

FILIPINAS SYNTHETIC FIBER CORPORATION
SCHEDULE OF ADVANCE SALES TAXES PAID
AND TAX CREDIT DUE
For the year ending December 31, 1980

Exhs.	Particulars	O.R. No.	Date	Advance Sales Tax Paid	5% AST PD 1352 (100% Exempt)	Amount Returnable (Difference)
	Pure Terephthalic Acid					
D-6-a	BIR Folder IV, p.537	915052	02/07/80	P 515,389	P 271,258	P 244,131
D-6-b	BIR Folder IV, p.539	0084408	02/11/80	85,503	45,001	40,502
D-6-c	BIR Folder IV, p.537	890253	02/26/80	386,580	203,463	183,117
	BIR Folder IV, p.537	889518	02/04/80	200,471	105,511	94,960

	Dimethyl Terephthalate					
D-6-e	BIR Folder IV, p.536	0027684	02/28/80	294,483	154,991	139,492
D-6-f		942276	06/16/80	396,569	208,721	187,848
D-6-g		964065	06/30/80	156,842	82,548	74,294
D-6-h		963968	06/23/80	235,210	123,795	111,415
D-6-i		969269	08/08/80	179,905)		
D-6-i-1		255203	08/19/80	6,957)	99,395	87,467
D-6-j		223797	07/24/80	194,335)		
D-6-j-1		250910	08/07/80	7,515)	107,367	94,483
D-6-k		208910	06/30/80	368,568	193,983	174,585
D-6-l		221942	07/07/80	379,235	199,598	179,637
D-6-m		223796	07/24/80	361,534)		
D-6-m-1		254831	08/14/80	13,982)	199,743	175,773
D-6-n		223222	07/18/80	366,053)		
D-6-n-1		250911	08/07/80	14,157)	202,239	177,971
D-6-o		992895	09/10/80	187,010	99,473	87,537
D-6-p		969270	08/08/80	194,887)		
D-6-p-1		255202	08/19/80	7,537)	107,673	94,751
D-6-q		972710	08/26/80	352,207	187,344	164,863
D-6-r		944456	08/28/80	352,207	187,344	164,863
D-6-s		925477	09/04/80	359,672	191,315	168,357
D-6-t		925613	09/10/80	143,933	76,560	67,373
D-6-u	BIR Folder IV, p.536	185187	06/30/80	222,697	117,209	105,488
D-6-v		925362	09/01/80	215,846	114,812	101,034
D-6-w		256126	08/27/80	347,832)		
D-6-w-1		277230	09/15/80	11,928)	191,315	168,357
D-6-x	BIR Folder IV, p.536	0055963	10/17/80	347,998	179,208	145,159
D-6-y		320560	10/29/80	341,637	188,750	152,887
	BIR Folder IV, p.536	0055763	10/02/80	341,301	188,564	152,737
D-6-aa		277993	09/23/80	354,220	188,415	165,805
D-6-bb		1010106	12/12/80	324,965	179,538	145,427
D-6-cc	BIR Folder IV, p.537	1032650	12/01/80	190,360	105,171	85,189
	Monoethylene Glycol					
D-6-dd	BIR Folder IV, p.527	2513249	04/18/80	333,926)		
D-6-dd-1	- do -	132585	05/06/80	7,599)	179,750	161,775
D-6-ee		142853	04/25/80	355,186	186,940	168,246
D-6-ff	BIR Folder IV, p.527	132974	07/18/80	318,814	176,140	142,674
D-6-gg	- do -	132816	06/13/80	450,968	237,352	213,616
D-6-hh		186237	06/18/80	395,747	208,288	187,459
D-6-ii	BIR Folder IV, p.527	133029	07/30/80	332,888	183,916	148,972
D-6-jj		256533	08/29/80	343,705	182,822	160,883
D-6-kk		0056311	01/14/80	325,219)		
D-6-kk-1		100672	02/21/80	28,575)	186,207	167,587
D-6-ll	BIR Folder IV, p.527	2512700	01/11/80	410,495)		
D-6-ll-1	- do -	2512782	01/24/80	22,805)	228,053	205,247
D-6-mm	- do -	296283	12/18/80	250,455	138,373	112,082

	Oiling Agents & Catalysts					
D-6-nn		0032671	01/07/80	7,017	3,898	3,119
D-6-oo		142963	04/25/80	50,196)		
D-6-oo-1		181917	05/12/80	1,302)	26,419	25,079
D-6-pp		143726	05/02/80	168,748)		
	BIR Folder IV, p.539	181845	05/12/80	481)	89,068	80,161
D-6-qq		185958	06/16/80	64,798	34,104	30,694
D-6-rr		222703	07/15/80	103,053	54,239	48,814
D-6-ss		222520	07/11/80	12,291	6,469	5,822
D-6-tt		222521	07/11/80	18,475	9,724	8,751
D-6-uu	BIR Folder IV, p.539	287792	10/10/80	32,887	18,165	14,722
D-6-vv		322141	11/18/80	44,814	24,759	20,055
D-6-ww		0032672	01/07/80	43,318	24,066	19,252
D-6-xx		0032474	01/03/80	59,505	33,058	26,447
D-6-yy		0032670	01/07/80	17,938)		
	BIR Folder IV, p.539	0083188	01/28/80	990)	9,966	8,963
D-6-zz		349081	12/08/80	67,489)		
	BIR Folder IV, p.539	369270	01/12/81	3,010)	37,287	33,212
	PARTIAL TAX CREDIT GRANTED (TCC # 00194)				P6,779,367	
	TOTAL AMOUNT STILL CREDITABLE					P5,929,134

FILIPINAS SYNTHETIC FIBER CORPORATION
SCHEDULE OF COMPENSATING TAXES PAID
AND TAX CREDIT DUE
For the year ending December 31, 1980

Exhs.	O.R. No.	Date	Compensating Tax Paid	Without BOI Exemption	5% CT PD 1352 (100% Exempt)	Difference
D-7-A	105625	03/13/80	P 966)			
D-7-B	0056689	01/16/80	17,749)	-	P 9,861	P 8,874
D-7-C	902944	02/07/80	3,583	1,037	1,340	1,206
D-7-D	144765	04/10/80	25,155	7,448	9,415	8,473
D-7-e	896009	02/14/80	19,613	11,120	4,470	4,023
D-7-f	913808	02/28/80	1,537	415	591	532
D-7-g	928161	05/19/80	4,164	-	2,191	1,973
D-7-h	917089	02/28/80	29,796	-	15,682	14,114
D-7-i	921483	04/01/80	16,070	593	8,146	7,331
D-7-j	256319	09/03/80	49,249	import duty		
D-7-j-1	276121	09/04/80	24,838	-	13,072	11,766
D-7-k	917238	03/20/80	16,827	10,567	3,295	2,965

D-7-l	141260	04/15/80	20,264	-	10,665	9,599
D-7-m	928101	04/21/80	5,038	-	2,652	2,386
D-7-n	945135	05/09/80	7,581	-	3,990	3,591
D-7-o	992152	09/05/80	16,224	-	8,539	7,685
D-7-p	944051	05/22/80	3,007	-	1,583	1,425
D-7-q	953894	05/28/80	25,395	15,650	5,129	4,616
D-7-r	926831	05/23/80	9,983	523	4,979	4,481
D-7-s	944056	05/23/80	4,256	-	2,240	2,016
D-7-t	922872	05/26/80	12,063	1,933	5,332	4,798
D-7-u	184278	06/02/80	14,130	4,465	5,087	4,578
D-7-v	968194	07/14/80	22,838	3,676	10,085	9,077
D-7-w	942370	07/11/80	9,537	600	4,704	4,233
D-7-x	969470	08/22/80	4,880	-	2,696	2,184
D-7-y	250647	08/06/80	35,777	-	19,766	16,011
D-7-z	944314	08/18/80	16,055	3,948	6,689	5,418
D-7-aa	993354	09/24/80	7,585	435	3,763	3,386
D-7-bb	276520	09/09/80	25,015	-	13,166	11,849
D-7-cc	277256	09/15/80	29,895	-	15,734	14,161
D-7-dd	289830	10/22/80	51,102	-	26,896	24,206
D-7-ee	926763	05/19/80	1,264	310	502	452
D-7-ff	944292	08/14/80	12,938	473	6,887	5,578
D-7-gg	1011910	11/19/80	10,533	-	5,544	4,989
D-7-hh	1024155	11/04/80	15,823	5,721	5,317	4,785
D-7-ii	321159	11/07/80	20,683	-	10,886	9,797
D-7-jj	1011926	11/21/80	14,796	2,071	6,697	6,028
D-7-kk	1032693	12/04/80	15,319	93	8,014	7,212
D-7-ll	255413	08/21/80	24,137)	-	13,335	11,503
D-7-ll-1	255676	08/22/80	1,739	import duty		
D-7-ll-2	276201	09/04/80	1,200)			
D-7-mm	917092	02/29/80	9029	83	4,709	4,237
D-7-nn	973818	10/15/80	12,868	10	6,768	6,090
D-7-oo	917077	02/26/80	2,656	78	1,356	1,222
TOTAL					P291,773	P258,850

TOTAL AMOUNT CREDITABLE (P291,773 + P258,850) P550,623

	TAX CREDIT GRANTED
Percentage tax	P 3,889,048.00
Advance sales tax	5,929,134.00
Compensating tax	550,623.00
TOTAL TAX CREDIT DUE	P10,368,805.00

WHEREFORE, the instant petition for review is hereby **GRANTED.** Respondent, Commissioner of Internal Revenue, is ordered to issue in favor of petitioner, Filipinas Synthetic Fiber Corporation, a tax credit certificate in the amount of P10,368,805.00, representing erroneously paid percentage, advance sales and compensating taxes for the year 1980.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 16, 1992.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals