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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4993

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
JUL 16 1996

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DECISION

This case involves a claim for refund of ad valorem and specific taxes in the amount of P607,554.00 on its purchases of fuel oil and oil products from June to September 1991.

The facts are simple.

Philippine Phosphate Fertilizer Corp. (Philphos for brevity), is a domestic corporation registered with the Export Processing Zone Authority (EPZA). Mainly, it is engaged in the business of manufacturing fertilizers for domestic and international distribution. Its place of business is located at the Leyte Industrial Development Estate at Isabel, Leyte.

To maintain its operations, Philphos needs fuel and oil products which it buys from Petron Corporation (Petron). The latter imports said fuel and oil products and therefore, pays customs duties to the Bureau of Customs and ad valorem and specific taxes to the Bureau of Internal Revenue. In turn Petron bills Philphos for the payment of these duties and taxes every time the latter purchases fuel needs from the former.

Believing that it enjoys tax and non-tax incentives by virtue of its registration with EPZA, in a letter dated April 5, 1993, Philphos sought from the BIR the refund of P607,554.00 as ad valorem taxes it paid to Petron for the period June to September 1991.

Up to this date, the claim for refund remains unacted upon by the respondent, thus to toll the running of the prescriptive period petitioner filed this instant petition for review.

Respondent on the other hand alleged among other things that:

> Pursuant to Section 18 (i) of Presidential Degree No. 66, as added by Presidential Degree No. 1449, the tax credit to be given to a registered zone enterprise shall cover the sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacture or processing or production of its export products and forming part thereof. Here, the ad valorem and specific taxes sought to be refunded and/or tax credited were allegedly paid on petroleum products, fuel, oil and lubricants which do not form part of the export products manufactured by petitioner.
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> An indirect tax when added to the cost of goods sold is no longer a tax, but an additional cost which the purchaser has to pay to obtain the goods (Commissioner of Internal Revenue vs. American Rubber Co., 18 SCRA 842; Philippine Acetylene Co., vs. Comm. of Internal Revenue, 20 SCRA 1056);
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> In this case, petitioner merely paid the added cost of the petroleum products, fuel, oil and lubricants not the ad valorem and specific taxes because the entity or person subjects thereto is Petron Corporation, the manufacturer;
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> Section 17 (2) of Presidential Decree No. 66 and other laws relied upon by the herein petitioner do not, in any manner, clearly state that the petroleum product sold and delivered to the Export Processing Zone Authority registered enterprises such as the petitioner, are exempt from taxes;
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> The clarificatory Ruling issued by the Department of Finance (Formerly Ministry of Finance) on December 11, 1984, invoked by petitioner does not in any way provide for the refund of the alleged ad valorem taxes erroneously billed to Philippine Phosphate Fertilizer Corporation by Petron Corporation on its purchases of regular gasoline and diesel fuel covering the period from June to September 1991;
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> Respondent alleged among others that:
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> 1.) Petitioner, who has the burden of proving that it is entitled to tax refund has failed to establish any clear interest in or right over the alleged ad valorem taxes in the amount of P607,554.00;

> 2.) The claim for tax refund, being in the nature of an exemption from taxation, cannot be made to rest on vague implications and must be construed strictly against petitioner-claimant (Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710, 1991);
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> 3.) In an action for tax refund, the burden of proof is upon the taxpayer to show that the tax paid was erroneously or illegally collected, and failure to substantiate the same, as in this case, is fatal to the action for refund;
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> 4.) It is a well-established principle in taxation that taxes are presumed to have been paid and collected in accordance with law;
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> 5.) It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (3) in relation to Section 230 of the Tax Code.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund of the total amount of P607,554.00.

In so far as material to the resolution of the issue posed before Us, Section 17 of P.D. No. 66 is herein reproduced to wit:

> "**Section 17. Tax Treatment of Merchandise in the Zone.** - (i) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone, to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used, whether directly or indirectly, in such activity, revenue laws and regulations nor to local tax ordinances, the provisions of the law to the contrary notwithstanding". (underscoring supplied)

From the foregoing provision of law, it is evident that raw materials and supplies used, whether directly or indirectly in any activity involved in the manufacture of items produced in the Export Processing Zone are not subject to taxes and customs duties.

It can be seen from the above provision of law that Section 17 (i) is maintained as a principal incentives. It has never been deleted from the provision of the EPZA law. In contrast to the allegation of the Respondent that Section 17 (i) does not provide for duty and tax exemption privilege. The phrase "shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances the provisions of law to the contrary notwithstanding" cannot be interpreted in any other way than to mean that merchandise or supplies brought into the zone are exempt from customs duties and taxes. The incentive given under Section 17 (i) is broader than a mere tax exemption. The phrase is so broad to include not only the exemption from customs duties and taxes but everything required in the enforcement of the customs and internal revenue laws save on the exceptions and conditions specified in the EPZA law itself. Considering that the customs and internal revenue laws are primarily enacted to impose duties and taxes, the phrase cannot be interpreted to exclude these impositions. Moreover, the phrase will also include exemption from other rules and regulations which are normally followed in the discharge of importation such as the filing of import entries, examination and appraisal of goods by customs authorities and other requirements attendant to the importation of goods into the country.

Section 17 (i) covers domestic merchandise, raw materials, supplies, articles and wares of every description, except those prohibited by law, brought into the zone to be sold, stored broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed or used directly or indirectly in such activity shall not be subject to customs and internal revenue regulations. Oil products produced by local oil companies may be classified as domestic merchandise, raw materials or supplies as legally defined in the Supreme Court case of Commissioner of Customs vs. Caltex (Philippines), Inc., (G.R. no. L-13067, Dec. 29, 1959, 106 Phil. 829) which states that supplies or materials shall include gasoline and other petroleum products for purposes of exemption from customs duties under Article 103 of Republic Act No. 387. For what purpose, among others, these products may be brought into the zone for processing, manipulation, manufacture, mixed with foreign and domestic merchandise or used directly or indirectly in such activity. In the case at bar, the petroleum products delivered to petitioner is used in the processing of fertilizer for export.

This fact is further bolstered by the enactment of E.O. 226 (The Omnibus Investments Code). The tax treatment of merchandise inside the zone was re-enacted under Article 77 of Book VI of the Code but not Section 18 (i). Said Section 18 (i) was deleted from Book VI governing incentives of EPZA registered enterprise and was incorporated as one of the incentives of a BOI registered enterprise under Book I which an EPZA registered enterprise may also enjoy as an additional incentive under Art. 78.

Furthermore, under paragraph (2) of said Section 17, of P.D. 66 merchandise purchased by a registered zone enterprise from the customs territory, if paid for in foreign currency and subsequently brought into the zone shall be considered as exported and the exporter shall entitled to the benefits allowed by law for such transaction. This provision was reiterated with modification under Letter of Instruction No. 942 issued on October 16, 1979 which provides as follows:

> "7. <u>Sales and delivery of products</u> to banded warehouse of export-oriented manufacturers and <u>to export processing zone enterprises can be considered as "export sales"</u> and products constructively exported, so <u>that tax credit and duty drawback can be availed of immediately, without awaiting for actual exportation</u> of the finished products abroad. For this purposes, the requirement that the exporter has in fact exported shall included constructive exportation as above defined."

Considering that pursuant to the aforequoted provision of the LOI and E.O. 226, the mere act of selling and delivering products to an export processing zone enterprise are considered export sale without awaiting for actual exportation, the allegation that the article sold to an EPZA registered enterprise should form part of the finished product actually exported will hold no water.

In view of the foregoing, this Court holds that oil and fuel products sold and delivered by local oil companies to an EPZA registered enterprise shall be exempted from customs duties and internal revenue taxes and if said duties and internal laws were passed on by the supplier to the EPZA registered enterprise duty drawback and tax credit shall be granted to the latter pursuant to the provisions of Section 17 (i) (2) of P.D. 66 as amended under Article 77 (i) of E.O. 226.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund in favor of the petitioner the amount of P607,554.00 representing ad valorem and specific taxes for the period June 1991 to September 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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