481 Phil. 31

SECOND DIVISION

[G.R. No. 144440, September 01, 2004]

COMMISSIONER OF CUSTOMS, PETITIONER, VS. PHILIPPINE PHOSPHATE FERTILIZER CORPORATION, RESPONDENT.

D E C I S I O N

TINGA, J.:

The financial planners of the State are often confounded by the precarious balance between the need to provide a conducive investment climate and the need to enhance revenue collections. In the present *Petition for Review*, the Court is called upon to interpret the provisions of a law designed to benefit investors with tax exemptions. Tax exemptions are generally construed strictly against the taxpayer; yet, when the purported ambiguities in the law are more imagined than real, there should be no hesitation to rule for the taxpayer.

The factual backdrop of the case is uncomplicated.

Respondent Philippine Phosphate Fertilizer Corporation (Philphos) is a domestic corporation engaged in the manufacture and production of fertilizers for domestic and international distribution. Its base of operations is in the Leyte Industrial Development Estate, an export processing zone.[1] It is also registered with the Export Processing Zone Authority (EPZA), now known as the Philippine Export Zone Authority (PEZA). [2]

The manufacture of fertilizers required Philphos to purchase fuel and petroleum products for its machineries. These fuel supplies are considered indispensable by Philphos, as they are used to run the machines and equipment and in the transformation of raw materials into fertilizer.[3] The fuel supplies are secured domestically from local distributors, in this case, Petron Corporation (Petron), which imports the same and pays the corresponding customs duties to the Bureau of Customs; and, the *ad valorem* and specific taxes to the Bureau of Internal Revenue. When the fuel and petroleum products are delivered at Philphos's manufacturing plant inside the Leyte Industrial Development Estate, Philphos is billed by Petron the corresponding customs duties imposed on these products. Effectively thus, Philphos reimburses Petron for the customs duties on the purchased fuels and petroleum products which are passed on by the Petron as part of the selling price.[4]

Under this arrangement, Philphos made several purchases from Petron of fuels and other petroleum products used directly or indirectly in the manufacture of fertilizers for the period of October 1991 until June 1992.[5] During the period in question, Philphos indirectly paid as customs duties, the amount of Twenty Million One Hundred Forty Nine Thousand Four Hundred Seventy Three Pesos and Seventy

Seven Centavos (₱20,149,473.77).[6]

In a letter to the Bureau of Customs, dated 18 September 1992, Philphos sought the refund of customs duties it had paid for the period covering the months of October to December 1991, and January to June, 1992.[7] It pointed out that Philphos, being an enterprise registered with the export processing zone, is entitled to tax incentives under Presidential Decree No. 66 (EPZA Law), referring specifically to Section 17 thereof which exempts from customs and internal revenue laws, supplies brought into the export processing zone. Consequently, Philphos argued that the customs duties billed by Petron on Philphos should be refunded.

The Bureau of Customs denied the claim for refund in a letter dated 4 January 1993.[8] Hence, a *Petition for Review* was filed with the Court of Tax Appeals (CTA), assailing the denial of the refund. The CTA ruled for Philphos in a *Decision*[9] dated 5 October 1995, ordering the issuance of a Tax Credit Certificate in the amount of Twenty Million One Hundred Forty Nine Thousand Four Hundred Seventy Three Pesos and Seventy Seven Centavos (₱20,149,473.77) in favor of Philphos. The matter was elevated by the Commissioner of Customs (Commissioner) to the Court of Appeals (CA), which eventually affirmed the CTA's *Decision in toto*.[10]

Both the CTA and the CA relied upon Section 17(1) of the EPZA Law to justify the conclusion that Philphos is entitled to the refund. Before this Court, the Commissioner argues that since the importation of the subject products, made by the seller Petron, had already been finally terminated, all future claims for refund are thus barred. It likewise insists that controlling in this case is Section 18(i) of the EPZA Law, under which claims for refunds similar to Philphos's are precluded. Finally, the Commissioner posits that since a refund on tax credit partakes the nature of an exemption, the grant thereof must be explicit.

There is no need to inquire into the factual basis for the amount sought to be refunded.[11] Petitioner does not dispute the amount, but only the legal basis for the exemption. Moreover, since the Court itself is not a trier of facts it will respect primarily the findings of the ultimate trier of facts, namely: the CA. In this case, however, there is coalescence in the findings of the two courts below.

The EPZA Law, promulgated in 1972, has since been superseded by Republic Act No. 7916, or "The Special Economic Zone Act of 1995." However, since the claim for exemption covers the years 1991 and 1992, or before the enactment of Republic Act No. 7916, the provisions of the EPZA Law are applicable in the present petition.

Consideration of the general philosophy and thrust of the EPZA Law cannot be evaded. The export processing zone is intended to be a viable commercial, industrial and investment area.[12] The enunciated policy of the EPZA Law is to encourage and promote foreign commerce as a means of making the Philippines a center of international trade; strengthening our export trade and foreign exchange position; hastening industrialization; reducing domestic unemployment; and accelerating the development of the country, by establishing export processing zones in strategic locations in the Philippines.[13]

As noted by the CTA, the basic policy in establishing export processing zones is to

attract enterprises, especially foreign investors, who will be manufacturing products primarily for export and be able to do so without their supplies and raw materials entering, and the export products leaving, the Philippine territory within the context of customs and revenue regulations.[14] From a macro-perspective though, export processing zones are not intended to solely benefit investors. These zones are scattered throughout the country in remote areas and have the patent benefit of creating employment opportunities within their localities. It is the presence of tangible tax benefits attached to these zones which make them viable as investment locations, areas which ordinarily would be overlooked.

The incentives offered to enterprises duly registered with the PEZA consist, among others, of tax exemptions. These benefits may, at first blush, place the government at a disadvantage as they preclude the collection of revenue. Still, the expectation is that the tax breaks ultimately redound to the benefit of the national economy, enticing as they do more enterprises to invest and do business within the zones; thus creating more employment opportunities and infusing more dynamism to the vibrant interplay of market forces.

Section 17 of the EPZA Law particularizes the tax benefits accorded to duly registered enterprises. It states:

> SEC. 17. *Tax Treatment of Merchandize in the Zone*. – (1) 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, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding**. (emphasis supplied)

The cited provision certainly covers petroleum supplies used, **directly or indirectly**, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. The supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances. It is clear that Section 17(1) considers such supplies exempt even if they are used **indirectly**, as they had been in this case.

Since Section 17(1) treats these supplies for tax purposes as beyond the ambit of customs laws and regulations, the arguments of the Commissioner invoking the provisions of the Tariff and Customs Code must fail. Particularly, his point that the importation of the petroleum products by Petron was deemed terminated under Section 1202[15] of the Tariff and Customs Code, and that the termination consequently barred any future claim for refund under Section 1603[16] of the same law is misplaced and inconsequential. Moreover, the cited provisions of the Tariff and Customs Code if related to Section 17(1) of the EPZA Law would significantly render the argument strained and, if upheld, obviate many of the benefits granted by Section 17(1), for the provision does not limit the tax exemption only to direct taxes. Following the Commissioner's interpretation, any duly registered enterprise sought to be held liable for the controverted custom's duty because the importer

had shifted the duty to the buyer would forever be precluded from challenging the duty, which it is not in the first place obliged to pay under the law. Hand in hand with its patent noxiousness to the spirit of the EPZA Law, the approach calls for the unwarranted application of the Tariff and Customs Code to investors and players in the zones, which under the EPZA Law are beyond the reach of domestic customs and tax laws, as well as regulations.

Neither would the prescriptive periods or procedural requirements provided under the Tariff and Customs Code serve as a bar for the claim for refund. The holding of the CTA on this point is illuminating:

> Contrary to the allegation of the Respondent that Section 17(1) does not provide for duty and tax exemption privilege, this Court disagrees. That 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 manner than to mean that merchandise or supplies brought into the zone are exempt from customs duties and taxes. The incentive given under Section 17(1) 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. More so, 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, examinations and other requirements attendant to the importation of goods into the country.[17]

Even our recent ruling in *Nestle Philippines, Inc. v. Court of Appeals*,[18] to the effect that the claim for refund of customs duties in protestable cases may be foreclosed by the failure to file a written protest, is not *apropos* in the case at bar because petitioner therein was not a duly registered enterprise under the EPZA Law and thus not entitled to the exemptions therein.[19]

This leads to another question well-worth resolving — what is the prescriptive period which a duly registered enterprise should observe in applying for a refund to which it is entitled under the EPZA Law? The EPZA Law itself is silent on the matter, and the prescriptive periods under the Tariff and Customs Code and other revenue laws are inapplicable, by specific mandate of Section 17(1) of the EPZA Law. This does not mean though that prescription will not lie, as the Civil Code provisions on *solutio indebiti*[20] may find application. The Civil Code is not a customs and internal revenue law. The Court has in the past sanctioned the application of the provisions on *solutio indebiti* in cases when taxes were collected thru error or mistake.[21] *Solutio indebiti* is a quasi-contract, thus the claim for refund must be commenced within six (6) years from date of payment pursuant to Article 1145(2) of the New Civil Code.[22] Clearly then, Philphos's right to refund has not yet prescribed.