

ATLAS FERTILIZER CORPORATION, PETITIONER, VS. COMMISSION OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-26686. October 30, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These two (2) cases are appeals by way of certiorari from the decision dated August 24, 1966 of the Court of Tax Appeals granting Atlas Fertilizer Corporation a tax credit in the sum of P81,899.00 which may be applied by said corporation in payment of its outstanding and/or future liability for internal revenue taxes.

For the material facts, We could very well quote from the decision of the Court of Tax Appeals, the following:

"Petitioner Atlas Fertilizer Corporation was formerly a department of Atlas Mining & Development Corporation. The latter was granted by the Secretary of Finance a certificate of tax exemption under Republic Act No. 901 as a new and necessary industry for engaging in the manufacture of fertilizer, namely, sulphuric acid, phosphoric acid, superphosphate, triple superphosphate and gypsum. The tax exemption privileges of Atlas Consolidated Mining and Development Corporation were later transferred to the petitioner under the written authority of the Department of Finance dated November 27, 1957. During the period from June 26, 1961 to October 24, 1962, petitioner imported raw materials, equipment, spare parts, containers and other supplies on which it paid one-half or 50% of the compensating taxes due thereon (Exhs. 1 and G, pp. 98-100, BIR rec.).

"While petitioner was still enjoying partial tax exemption of 50% as a new and necessary industry under Republic Act No. 901, Republic Act No. 3050, which took effect on June 17, 1961, granted tax exemption to any person, partnership, company or corporation engaged or which shall engage in the manufacture of fertilizer of whatever nature from the payment, among others, of compensating taxes on their importation of capital goods, equipment, spare parts, raw materials, supplies containers and fuel. To implement said Republic Act No. 3050, the Department of Finance issued Department Order No. 105, dated September 15, 1961, which provides, among others, as follows:

"Any x x x corporation x x x which shall engage in the manufacture of fertilizer and desiring to enjoy the privileges granted under the provisions of Republic Act No. 3050 may file its application therefore with the Secretary of Finance.

"Fertilizer manufacturer x x x which are granted tax exemption under Republic Act No. 901 should likewise file applications for tax exemption under Republic Act No. 3050, indicating therein, among other things, that the applicant waives the benefits of tax exemption authorized under Republic Act No. 3127.

"In compliance with the above regulation, petitioner filed on January 25, 1962 with the Department of Finance an application for tax exemption under the provisions of Republic Act No. 3050, which application was approved by the Secretary of Finance on February 19, 1962. The tax exemption granted by the said official to petitioner was made retroactive commencing on June 17, 1961, the date of the effectivity of Republic Act No. 3050 (pp. 93-94,

BIR rec.).

"On the basis of the tax exemption granted by the Secretary of Finance under Republic Act No. 3050, petitioner filed with respondent on June 21, 1963 a claim for tax credit of the compensating taxes amounting to P83,629.00 which petitioner allegedly paid to the Bureau of Customs on petitioner's importations of tax exempt goods, equipment, materials and supplies during the period from June 26, 1961 to October 24, 1962 (pp. 88-90, BIR rec.). On June 22, 1963, the day after petitioner had filed its claim for tax credit with respondent, petitioner filed a petition for review with this Court seeking an order to compel respondent to issue the corresponding letter of tax credit.

"During the pendency of this case, petitioner's claim for tax credit of P83,629.00 filed with respondent was referred on June 26, 1963 to the Regional Director of Manila, BIR Regional District No. 3, for investigation, report and recommendation. On July 15, 1963, the case was assigned to Revenue Examiner Benjamin Fernandez. Shortly thereafter, the Manila Regional Office (District No. 3) was divided into two (2) districts - North Manila and South Manila (District Nos. 5 and 6). As a consequence thereof and the confusion which ensued as a result of the sorting and transfer of revenue dockets and records, allocation and assignment of personnel, and the division and transfer of supplies, equipment and furniture, the papers bearing on the tax credit claim of petitioner were misplaced. It was only on January 25, 1965 when the investigating examiner submitted his report and recommended therein that petitioner be granted a tax credit of P76,935.00, instead of P83,629.00 as claimed, because the importations and payment of the compensating taxes under Item Nos. 1, 17, 35, 50, 58, 61, 62, 64, 65, 67 and 68 were not supported with import entry declarations and receipts of tax payment."

After hearing, the Court of Tax Appeals rendered its decision on August 24, 1966 from which both parties have appealed to this Court.

In his appeal, the Commissioner of Internal Revenue (Commissioner for short) assigns the following errors:

I

"THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER NEED NOT PROVE THAT THE RAW MATERIALS, EQUIPMENT, SPARE PARTS, CONTAINERS AND OTHER SUPPLIES IT IMPORTED WERE USED BY IT IN THE MANUFACTURE OF FERTILIZER TO BE ENTITLED TO TAX EXEMPTION UNDER REPUBLIC ACT NO. 3050.

II

"THE COURT OF TAX APPEALS ERRED IN HOLDING THAT IT IS INCUMBENT UPON RESPONDENT TO PROVE THAT THE IMPORTATIONS IN QUESTION WERE NOT USED BY THE PETITIONER IN THE MANUFACTURE OF FERTILIZER NOTWITHSTANDING THE FACT THAT THERE WAS ABSOLUTELY NO EVIDENCE INTRODUCED BY PETITIONER SHOWING THAT THE SAID IMPORTATIONS WERE USED BY IT IN THE MANUFACTURE OF FERTILIZER.

III

"THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER NEED NOT PROVE THAT IT HAD PREVIOUSLY SECURED A SPECIFIC AUTHORITY FROM THE SECRETARY OF FINANCE TO IMPORT THE GOODS IN QUESTION AS A PREREQUISITE FOR THE ENJOYMENT OF ITS RIGHT TO TAX EXEMPTION UNDER REPUBLIC ACT NO. 3050.

IV

"THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER HAS "IN EFFECT ABANDONED AND GIVEN UP ITS PARTIAL EXEMPTION PRIVILEGE UNDER REPUBLIC ACT NO.

901". BY SEEKING TO APPLY ITS TAX EXEMPTION UNDER REPUBLIC ACT NO. 3050.

V

"THE COURT OF TAX APPEALS ERRED IN ORDERING RESPONDENT TO GRANT PETITIONER A TAX CREDIT OF P81,899.00 IN SPITE OF THE FACT THAT PETITIONER IS NOT ENTITLED THERETO."

On the other hand, Atlas Fertilizer Corporation (AFC for short), as appellant has also assigned the following errors:

I

"THE COURT OF TAX APPEALS ERRED IN DENYING THE AWARD OF INTEREST TO THE PETITIONER ON THE AMOUNT OF P81,899.00 FOUND TO BE DUE AS TAX CREDIT IN FAVOR OF PETITIONER.

II

"THE COURT OF TAX APPEALS ERRED IN CONCLUDING THAT PETITIONER FILED ITS CLAIM FOR TAX CREDIT QUITE LATE OR ALMOST TWO YEARS FROM THE FIRST PAYMENT OF THE COMPENSATING TAX AND EIGHT MONTHS FROM THE LAST PAYMENT THEREOF.

III

"THE COURT OF TAX APPEALS ERRED IN CONCLUDING THAT THE DELAY IN PROCESSING THE CLAIM FOR TAX CREDIT WAS NOT PREMEDITATED AND INTENTIONAL BUT CAUSED BY CIRCUMSTANCES BEYOND THE CONTROL OF RESPONDENT.

IV

"THE COURT OF TAX APPEALS ERRED IN APPLYING THE EXISTING DOCTRINE THAT INTEREST ON REFUND (OR TAX CREDIT) IS AWARDED ONLY WHERE COLLECTION OF THE TAXES WAS ATTENDED WITH ARBITRARINESS.

V

"THE COURT OF TAX APPEALS ERRED IN NOT APPLYING THE APPLICABLE PROVISIONS OF THE NEW CIVIL CODE, NAMELY, ARTICLES 2154, 2155 AND 2209, GOVERNING THE RETURN OF PAYMENTS BY REASON OF MISTAKE AND THE AWARD OF INTEREST WHEN THE OBLIGOR INCURS DELAY."

Appeal by the Commissioner

The pertinent section upon which AFC based its claim for exemption reads:

"Sec. 1. Notwithstanding any provisions of law to the contrary, subject to the conditions hereinafter provided, any person, partnership, company or corporation engaged or which shall engage in the manufacture of fertilizer of whatever nature shall be entitled to exemption until December 31, 1965 from the payment of special import tax, margin fee on foreign exchange, sales and compensating taxes and customs duties payable by such person, partnership, company or corporation, in respect to the importation of capital goods, equipment, spare parts, raw materials, supplies, containers and fuel by any of those engaged in the above industry, x x x." [1]

Anent the first and second assignment of errors, the Commissioner points out that it is well settled that exemptions are strictly construed and are never presumed. And the burden of proof is on the claimant to establish clearly his right to exemption. Being an essential and indispensable requisite for the enjoyment of its tax

exemption, the fact that the AFC used the goods for the manufacture of fertilizer must be shown by it.

In refutation to the above contention, AFC claims that since the Secretary of Finance, on February 19, 1962, approved its application for tax exemption under R.A. 3050, it may be assumed that among the matters considered by the Secretary of Finance in processing the claim for exemption was the fact of actual use for the manufacture of fertilizer by AFC of the importations made. It is, therefore, the position of AFC that the certificate of exemption granted by the Secretary of Finance was sufficient proof that it used the imported articles in the manufacture of fertilizer.

That the burden of proof is on the claimant to establish his right to exemption cannot be gainsaid. In the instant case, however, We feel that AFC need not adduce further evidence to show that it is entitled to exemption. It is to be observed that there is no dispute that AFC is engaged in the manufacture of fertilizer, as the very name of AFC suggests the nature of its business. It is also pertinent to state that when R.A. 3050 took effect, AFC was already enjoying partial exemption under R.A. 901 as a new and necessary industry engaged in the manufacture of fertilizer. Furthermore, when the Secretary of Finance, on February 19, 1962, approved AFC's application for tax exemption under R.A. 3050, We believe that he already considered that the importations were needed by AFC for the manufacture of fertilizer. This may be inferred from the fact that before the Secretary of Finance approves an application, he requires applicants to submit an application which "shall be in the form prescribed by the Secretary of Finance and contain detailed and complete information called for in such form. It shall contain a complete list of raw materials, supplies, containers, and fuel needed and for the exclusive use in the manufacture of fertilizer. There shall be attached to the application a firm quotation of the complete machinery equipment, and spare parts thereof needed by and for the exclusive use of the applicant in the manufacture of fertilizer. The application shall be sworn to before a notary public and filed in quadruplicate."^[2]

Likewise, since it is presumed that official duty has been regularly performed^[3] it can be assumed that the Secretary of Finance in approving the application, was satisfied that those importations were not only needed for exclusive use in the manufacture of fertilizer but that they were actually used therefor, for otherwise, the Secretary would have not approved the application.

We, therefore, agree with the position of AFC that the certificate of exemption granted by the Secretary of Finance on February 19, 1962 was sufficient proof that it used the importations in question in the manufacture of fertilizer. This is bolstered by the fact that the certificate of exemption was granted after the imported goods have already arrived.

The Commissioner also argues that AFC failed to secure first an authority from the Secretary of Finance to import the goods which AFC wanted to be exempt from tax before said goods were actually imported. According to the Commissioner, such an authority is a prerequisite for the enjoyment of tax exemption, since in the letter of the Secretary of Finance dated February 19, 1962 granting AFC tax exemption under R.A. 3050, the Secretary stated:

"As a bonafide fertilizer manufacturer under the provisions of the aforesaid Act, you are entitled to exemption from the payment of the special import tax, margin fee on foreign exchange, sales and compensating taxes, and customs duties directly payable by you in respect to the importation of capital goods, equipment, spare parts, raw materials, supplies, containers and fuel which this office may specifically authorize until December 31, 1965 unless sooner terminated for failure to comply with the requirements of the law and existing regulations."

Indeed, it would be illogical for the AFC to produce the required specific authority to import because when the tax exemption was granted on February 19, 1962, sixty-one (61) of the imported goods have already arrived, and the AFC has paid the corresponding compensating taxes pursuant to R.A. 901 granting manufacturer of fertilizer partial exemption from payment of compensating taxes. With respect to the seven (7) importation which arrived

after the grant of exemption, it should be noted that AFC was able to withdraw them from customs custody. We must not lose sight of the fact that before goods may be withdrawn from customs custody, it is necessary that "a true or photostat copy of the letter-grant authorizing the tax-free importation of the articles applied to be withdrawn from customs custody" be presented, pursuant to paragraph 1(e) of the implementing rules and regulations which is Department Order No. 105-A[4] issued by the Secretary of Finance. Since AFC has successfully withdrawn all the seven (7) imported articles from customs custody, after payment of the compensating taxes, it may be inferred that AFC has complied with the above provision of Department Order No. 105-A -- to produce AFC's authority to import.

On the fourth issue, the Commissioner contends that respondent court erred in ruling that AFC, by seeking to avail of its exemption under R.A. No. 3050, has in effect abandoned and given up its partial exemption privilege under R.A. No. 901. According to the Commissioner, AFC could not have abandoned or given up its exemption under R.A. No. 901 because it has already applied the same to the importations involved herein, and that one cannot abandon or give up what he has already taken advantage of. Furthermore, tax exemptions under R.A. 901 and R.A. 3050 cannot be enjoyed simultaneously.

The Commissioner's contention is without merit. Department Order No. 105 issued by the Secretary of Finance expressly directed fertilizer manufacturers enjoying benefits under R.A. No. 901 to likewise apply for the benefits of R.A. No. 3050. Said Department Order No. 105 provides:

"Fertilizer manufacturers who or which are granted tax exemption under R.A. No. 901 should likewise file applications for tax exemption under R.A. No. 3050. x x x."

In compliance with said directive, AFC filed its application for total exemption under R.A. No. 3050 which was granted by the Secretary of Finance. The Commissioner's argument that AFC enjoyed simultaneous exemption under R.A. No. 901 and R.A. No. 3050, is without factual basis. R.A. No. 901 grants partial exemption while R.A. 3050 grants total exemption. Once a manufacturer of fertilizer chose to come under R.A. 3050, his partial exemption under R.A. 901 ceased. In effect, he enjoyed only one exemption benefit, the full exemption under R.A. No. 3050. As correctly ruled by the respondent court, when AFC availed of the total exemption under R.A. No. 3050, it has in effect given up the partial exemption which it was enjoying under R.A. No. 901.

Appeal by AFC

The assignment of errors of AFC may be synthesized to the sole issue as to whether or not the Government is liable for the payment of interest on refunds (on tax credit) of taxes erroneously or illegally paid to it on the ground that the commissioner is guilty of unjust and unreasonable delay in performing an obligation of the Government.

AFC points out that the Commissioner received the claim for tax credit on June 21, 1963 but it was only on January 11, 1965 or more than eighteen (18) months later that a BIR examiner came to the premises of the taxpayer to investigate the claim. In other words, the Commissioner did not act on the claim of AFC and this inaction is the essence of the delay incurred by the Commissioner in the performance of an obligation which entitled AFC to reparation in the form of interest payment.

On the alleged delay, the Commissioner in his brief explained the following:

"The records of this case show that petitioner's claim for tax credit was received by the Records Control Section of the Bureau of Internal Revenue on June 21, 1963 (Memorandum for Petitioner, CTA Case No. 1410, p. 2, p. 121 CTA rec.; par. 5 of Answer, CTA Case No. 1410, p. 14 CTA rec.) and was received by the Appellate Division of the said Bureau which processes claims of that nature on June 25, 1963. The following day, or on June 26, 1963, the said claim was indorsed to then BIR Regional District No. 3, Manila, for

investigation and report and, on the same date, petitioner was duly notified of the said indorsement. (Exh D, p. 101, CTA rec.)

"However, shortly after the claim for tax credit was referred to Regional District No. 3 for investigation and report, the said district was divided into two districts to become Regional District Nos. 5 and 6.

"As a consequence of the division, revenue dockets and records then handled by Region No. 3 had to be sorted and apportioned between the two new districts. Office supplies, equipment and furniture were likewise divided and transferred and personnel had to be allocated and assigned to each of the new districts. Unfortunately, in the process, the papers bearing on petitioner's claim for tax credit was misplaced.

"This was discovered when the report previously requested on the said claim was called up in a memorandum of the Deputy Commissioner dated Nov. 23, 1964. As the fieldmen of the Bureau of Internal Revenue are grounded during the month of December of each year; the investigation could not be immediately undertaken after the said call-up but had to wait until January. On January 27, 1965, the desired report contained in an indorsement dated January 25, 1965 was submitted (Exh. 1, supra)."

Finding the above explanation meritorious, We agree with respondent court that the delay in processing the claim of AFC for tax credit was neither premeditated nor intentional. The Commissioner did not sit on the claim of AFC. If there was any delay, it was due to the splitting into two (2) districts of Regional District No. 3 where the claim was filed, as a result of which the documents requesting for refund was misplaced. But the more important consideration is the well settled rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest.[5] Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.[6] Such circumstance is not present in the case at bar as the payment of compensating taxes in question was made freely and voluntarily and conformably with the partial exemption granted by Republic Act No. 901.

WHEREFORE, judgment is hereby rendered affirming the decision of the Court of Tax Appeals. Without special pronouncement as to cost.

SO ORDERED.

Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, Acting C.J., concurs in the result.

Makasiar, J., I reserve my vote.

De Castro, J., was designated to sit with the First Division under Special Order No. 225.

[1] Section 1, R.A. 3050.

[2] Paragraph 3, Department Order No. 105.

[3] Section 5(m), Rule 131, Rules of Court.

[4] Department Order No. 105-A is the implementing rules and regulations relative to Section 1 of Republic Act No. 3050.

[5] Collector of Internal Revenue vs. Binalbagan Estate, Inc., 13 SCRA 10; Collector of Internal Revenue vs. Fisher, 1 SCRA 113; Collector of Internal Revenue vs. Sweeney, 106 Phil. 65.

[6] Collector of Internal Revenue vs. Binalbagan Estate, Inc., supra; Collector of Internal Revenue vs. Prieto, 3

SCRA 101; Commissioner of Internal Revenue vs. Asturias Sugar Central, Inc., 3 SCRA 727; Ormoc Sugar Co., Inc. vs. Treasurer of Ormoc City, 22 SCRA 607; Victorias Milling Company, Inc. vs. Commissioner of Internal Revenue, 19 SCRA 430; American Rubber Co. vs. Commissioner of Internal Revenue, 39 SCRA 174.

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