REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

RIZAL CEMENT CO., INC.,
Plaintiff,

- versus -

MANILA
CIVIL CASE NO. 23419

COLLECTOR OF INTERNAL REVENUE,
Defendant.

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

R E S O L U T I O N

This is in connection with the motion to dismiss for lack of jurisdiction filed by the defendant Collector of Internal Revenue on July 23, 1954, before the Court of First Instance of Manila, of the complaint of the plaintiff Rizal Cement Co., Inc. filed before the same court on July 17, 1954, which motion to dismiss was left unacted upon by said Court prior to the remand of the case to our Court in an order of the Honorable Judge Fidel Ibañez dated August 25, 1954.

It appears that the plaintiff Rizal Cement Co., Inc. is a domestic corporation engaged in the [illegible], production and sale of cement with principal offices in the City of Manila.

On or about July 21, 1952, the defendant Collector of Internal Revenue levied upon, assessed against and collected from the plaintiff the sum of ₱92,150.91 allegedly representing sales tax of 7% on the gross sales of cement produced by the plaintiff.

The plaintiff subsequently filed a formal claim for refund of the sales tax in question on the ground that the same was illegally assessed and collected.

Pending the resolution by the defendant Collector of Internal Revenue of said claim for refund, plaintiff filed on July 17, 1954, before the Court of First Instance of Manila the present complaint against the Collector of Internal Revenue for the refund of the amount paid. Undoubtedly, this was done by the plaintiff, so as not to be barred by the statute of limitation provided for in section 306 of the National Internal Revenue Code which limits the right of the taxpayer to file a suit or proceeding in court for the refund of taxes paid to two (2) years from the date of payment. Since the taxes in question were paid on or about July 21, 1952, the plaintiff had up to July 21, 1954 to file the suit for the recovery of the same. In other words, the plaintiff filed its action for refund before the Court of First Instance of Manila, approximately four (4) days before the deadline.

The defendant Collector of Internal Revenue contends that inasmuch as section 22 of Republic Act No. 1125, which was approved on June 16, 1954, specifically confers upon the Court of Tax Appeals "exclusive jurisdiction to review cases involving refunds of internal revenue taxes" it follows that the Court of First Instance of Manila where plaintiff's complaint was filed one month after the creation of the Court of Tax Appeals did not have jurisdiction to entertain the case and much less to remand the same to our Court under section 22 of the aforesaid Republic Act since it was not a pending case before the Court of First Instance of Manila at the time of the approval of said Act. On the other hand, plaintiff contends that since it was pressed for time so as to meet the two year prescriptive period provided for in section 306 of the National Internal Revenue Code and since at the time the said period was about to expire, the Court of Tax Appeals was not yet formally organized and ready to transact official business, it had no other alternative but to file its case for refund before the Court of First Instance of Manila.

Upon the remand of the above-entitled case to our Court by the Court of First Instance of Manila, we required the parties, motu proprio, to file their respective memorandum on the question of jurisdiction which we believed to be a prejudicial question that should first be resolved before setting the case for trial on the merits.

The only question to be decided in this incident is whether, under the facts above-stated, the present case can be considered as one pending before the Court of First Instance of Manila at the time Republic Act No. 1125 was approved on June 16, 1954, and therefore included among those cases which could be remanded to our Court for final disposition pursuant to section 22 of the aforesaid Republic Act.

We have not overlooked the fact that the Court of Tax Appeals was created not only to serve the interest of the different tax collection agencies of the Government but also to afford taxpayers their day in court. There are some of these taxpayers — and the transition when the jurisdiction over tax, customs and assessment cases was transferred from the different Courts of First Instance to the Court of Tax Appeals with the approval of Republic Act No.1125. In many instances during that period of transition, taxpayers did not know where to file their cases particularly those pressed by prescriptive periods. Thus, with respect to the application of the 30-day period within which an appeal may be brought to this Court from the decisions rendered by the Collector of Internal Revenue, Commissioner of Customs, and the Provincial and City Boards of Assessment Appeals, before the approval of Republic Act No. 1125 on June 16, 1954, this Court has adopted a liberal interpretation by holding thus:

> "Considering the fact that on June 16, 1954, and for two or three weeks thereafter, this Court was not yet organized and functioning as to legally hear and dispose of tax cases filed before it, and in order to afford all the chances to taxpayers to have their cases judicially decided on the merits, the Court, by unanimous vote of all its members, decided to modify the above quoted <u>obiter</u> <u>dictum</u> in the sense that the counting of the 30-day period within which to appeal should begin not from June 16, 1954, when Republic Act No. 1125 was approved, but from July 21, 1954, when this Court after being duly organized as a Judicial Body with the appointment of two of its Judges and its clerical force adopted in the interim the Rules and Regulations of the defunct Board of Tax Appeals for the guidance of party litigants." (C.T.A. Case No. 107, Ipekdjian Merchandising Co., Inc. vs. Collector of Internal Revenue.)

It will be noted in the present case that at the time the plaintiff filed its complaint on July 17, 1954, before the Court of First Instance of Manila, for the recovery of the taxes paid, the Court of Tax Appeals was not yet open for business altho the law creating it was approved on June 16, 1954. As will be noted in our resolution in the Ipekdjian case, the Court of Tax Appeals was formally organized and ready to do business and accept cases for filing on July 21, 1954. As a matter of fact, the first case was filed on that date. The plaintiff on the other hand was pressed for time, it appearing that the two-year period of prescription provided for in section 306 of the National Internal Revenue Code would expire on July 21, 1954, the very same day when this Court was ready to accept cases for filing. Thus, with these circumstances in mind, it would be much too unreasonable on our part to require plaintiff to perfect its appeal before us on or before July 21, 1954, when at that time our Court was not yet in a position to accept cases for filing. On the other hand, it appearing that the plaintiff has not slept on its rights and has availed itself of the only remaining remedy by filing its complaint before the Court of First Instance of Manila on July 17, 1954, so as to meet the deadline, it would be, in our opinion, unfair on our part to throw the case out of Court on a mere technicality and under circumstances which were brought about through no fault of the plaintiff.

WHEREFORE, considering the circumstances of this case, let the complaint filed by the plaintiff before the Court of First Instance of Manila on July

17, 1954, be given its due course as if it were a case filed originally before our Court.

The motion to dismiss filed by the defendant Collector of Internal Revenue before the Court of First Instance of Manila on July 23, 1954 is, therefore, denied.

SO ORDERED.

Manila, Philippines, January 4, 1956.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge