REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOKYO SHIPPING CO. LTD.,
represented by Soriamont
Steamship Agencies, Inc.,
Petitioner,

- versus - C.T.A. CASE NO. 3260

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

9/15/83

D E C I S I O N

An action to enforce a claim for refund or tax credit of amounts representing prepayments of income and common carrier's taxes pursuant to the pertinent provisions of the Tax Code based on gross receipts expected from a venture which unexpectedly failed to materialize.

As it appears 1) petitioner foreign corporation represented in the Philippines by the Soriamont Steamship Agencies, Inc. owns and operates tramper vessel M/V "Gardenia" then scheduled to call at the Port of Iloilo, Philippines on the early part of December, 1980 to load some 16,500 metric tons of raw sugar; 2) on an expected gross receipts to be derived from the charter petitioner filed the required revenue returns for income as well as common carrier's taxes for the month of December, 1980 (Exhs. "A" and "B") and paid the respective sums of ₱59,523.75 (Exhs. "A-1", "A-2" and "A-3") and ₱47,619.00 (Exhs. "B-1", "B-2" and "B-3") on December 23, 1980; 3) the tramper vessel M/V "Gardenia" did arrive on December 24, 1980 but found none of the merchandise of raw sugar available and ready for loading and eventually sailed on January 10, 1981 for Japan without any cargo laden on board (Exhs. "E" and "F") as such no receipts whatever were realized from the chartered undertaking, hence, making the prepayments of the taxes nugatory; and thus 4) precipitated petitioner's filing a written claim for refund or tax credit therefor in the total sum of ₱107,142.75 with respondent Commissioner of Internal Revenue on March 20, 1981; and subsequently 5) instituted the instant petition with this Court on May 14, 1981.

Viewing the action with insouciant skepticism respondent interposed the usual token of defenses that 1) taxes are presumed to have been collected in accordance with law; 2) the burden of proof rests upon petitioner to show entitlement to the refund sought; and 3) compliance with the requisites prescribed under Sections 292 and 295 both of the Tax Code of 1977, as amended, relative to the recovery of erroneously or illegally collected taxes.

It has been shown in this case that 1) the petitioner has complied with the mentioned statutory requirement by having filed a written claim for refund within the two-year period from date of payment; 2) the respondent has not issued any deficiency assessment nor disputed the correctness of the tax returns and the corresponding amounts of prepaid income and percentage taxes; and 3) the chartered vessel sailed out of the Philippine port with absolutely no cargo laden on board as cleared and certified by the Customs authorities; nonetheless 4) respondent's apparent bit of reluctance in validating the legal merit of the claim, by and large, is tacked upon the "examiner who is investigating petitioner's claim for refund which is the subject matter of this case has not yet submitted his report. Whether or not respondent will present his evidence will depend on the said report of the examiner." (Respondent's Manifestation and Motion dated September 7, 1982). Be that as it may the case was submitted for decision by respondent on the basis of the pleadings and records and by petitioner on the evidence presented by counsel <u>sans</u> the respective memorandum.

An examination of the records satisfies us that the case presents no dispute as to relatively simple material facts. The circumstances obtaining amply justify petitioner's righteous indignation to a more expeditious action. Respondent has offered no reason nor made effort to submit any controverting documents to bash that patina of legitimacy over the claim. But as might well be, towards the end of some two and a half years of seeming impotent anguish over the pendency, the respondent Commissioner of Internal Revenue would furnish the satisfaction of ultimate solution by manifesting that "it is now his turn to present evidence, however, the Appellate Division of the BIR has already recommended the approval of petitioner's claim for refund subject matter of this petition. The examiner who examined this case has also recommended the refund of petitioner's claim. Without prejudice to withdrawing this case after the final approval of petitioner's claim the Court ordered the resetting to September 7, 1983." (Minutes of June 9, 1983 Session of the Court). We need not fashion any further issue into an apparently settled legal situation as far be it from a comedy of errors it would be too much of a stretch to hold and deny the refund of the amount of prepaid income and common carrier's taxes for which petitioner could no longer be made accountable. It may be necessary to repeat what this Court held and what so plainly apply to the case at bar, that -

> "But as should be expected the action could be maintained on the basis of the pleadings, admission and affidavit of the parties which neither provokes any unsettling questions nor involves material factual issue genuinely in dispute. The administrative machinery or process employed on the right to claim seems to have moved barely at idling speed. To be relatively quiescent for some four (4) years on a claim of such a simple nature and not so considerable a stake which no longer incites controversy nor excites a queasy sense of expectation, creates but an unwarranted bureacratic inertia of inaction. Readily, a legal conclusion can be safely reached. Petitioner or any similarly circumstanced taxpayer for that matter deserves a measure of fair dealing in a more expeditious and competently responsive action." (Commonwealth Pacific Consultants, Ltd. v. Commissioner of Internal Revenue, CTA Case No. 2953, May 15, 1982).

WHEREFORE, we are persuaded to extend the relief sought by the petitioner to the refund of income and percentage tax prepayments in the total sum of ₱107,142.75 as a matter of law which respondent is hereby ordered to pay without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, September 15, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge