REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIBERTY MOTORS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

C.T.A. CASES NOS. 1284, 1285, 1286, 1287, 1288 and 1289

July 17/72

R E S O L U T I O N

Respondent has filed a motion to dismiss the instant petitions for review on the ground that this Court has no jurisdiction to take cognizance thereof.

It appears that petitioner, a domestic corporation, imported from abroad, on different dates in 1961, component parts for local assembly of Willy's jeep trucks. It was required to pay, as it did pay, on said importations the 15% margin fee imposed by Republic Act No. 2609. A formal protest was filed with the Collector of Customs of Manila against the collection of said margin fee for the reason that it was not an element or part of the exchange. At the same time and without waiting for the decision of the Collector of Customs on his protest, petitioner filed written claims for refund of the excess advance sales tax which it allegedly paid as a result of the inclusion of the margin fee in the landed cost of said articles. The claims for refund were denied by respondent in a letter dated September 13, 1962 and received by petitioner on

October 8, 1962. Hence, the appeals.

Respondent filed his answers to the petitions for review praying for dismissal thereof in each of which the following grounds are alleged:

> "1. That this Honorable Court has no jurisdiction to entertain the instant case for the reason that it involves the erroneous imposition of the dollar margin fee which fall within the jurisdiction of the Bureau of Customs;
>
> "2. That the respondent cannot act on petitioner's request for the refund of the sales tax without the decision of the Commissioner of Customs as regards the correct imposition of the dollar margin fee, which decision is absent in this case;
>
> "3. That assuming *arguendo* that respondent has jurisdiction to act on petitioner's request for refund of the advance sales tax, yet the said tax can not be refunded to petitioner for the reason that in the computation of the landed cost of the imported goods, the dollar margin fee is taken into account as one of the charges; there is, therefore, no erroneous or excess payment of advance sales tax."

Petitioner filed several motions to defer the hearing of these cases in the expectation that the Collector of Customs would render a decision on its protest against the legality of the collection of said margin fee. No decision having been rendered by the Collector of Customs on the matter despite the lapse of about ten years, respondent filed a motion to dismiss on February 10, 1972.

There is no question that the right of petitioner to the refund of the various sums allegedly overpaid as advance sales tax depends upon the correctness or validity of the collection of the margin fee in question. Since no decision has as yet been rendered by the Collector of Customs on the matter, this Court has no jurisdiction over the herein appeals. In a case involving refund of alleged overpayment of compensating tax resulting from the imposition and collection by the Bureau of Customs of the special import tax levied under Republic Act No. 1394, which posed a similar issue, this Court stated:

> "Petitioner filed protests against the levy and collection by the Collector of Customs of Manila of the special import tax in question, but it does not appear that the question has been finally resolved by the customs authorities.
>
> "The question in regard to the exemption of petitioner from or liability for the special import tax is a matter falling within the jurisdiction of the Bureau of Customs and not of the Bureau of Internal Revenue. Until and after the question in regard to the special import tax is resolved, the legality or correctness of the compensating tax collected on said merchandise cannot be determined." (Caltex v. Commissioner of Int. Rev., C.T.A. No. 966, August 31, 1962, affd. in G.R. No. L-20462, June 30, 1965, 14 SCRA 599.)

It is true that a claim for refund of a national internal revenue tax allegedly erroneously or illegally paid must be filed within two years from the date of payment and, if denied, an appeal must be filed with this Court within 30 days from the date of receipt of the decision denying the claim but in no case beyond two years from the date of payment. (Gibbs v. Collector, 107 Phil.

232.) However, where the right to the refund arises by reason of circumstances occurring after payment, the two-year period provided in Section 306 of the National Internal Revenue Code is to be counted not from the date of payment but from the date the taxpayer became entitled to the refund. (Commissioner v. National Power Corporation, G.R. No. L-18874, Jan. 30, 1970, citing Commissioner v. Insular Lumber Co., G.R. No. L-24221, Dec. 11, 1967, 21 SCRA 1237; Commissioner v. Victorias Milling, 22 SCRA 12.) Consequently, petitioner need have no fear that its right to the refund would be lost with the lapse of two years after payment. In fact, its right of action has not yet accrued by reason of the failure of customs authorities to act on its protest.

In this connection, we should like to make a passing mention about the unexplained delay by customs authorities in deciding the protest of herein petitioner. We find no plausible reason for the Collector of Customs in arbitrarily withholding action on said protest for a period of ten years. It is believed that the matter needs inquiry by those in authority to prevent recurrence of a similar anomaly.

IN VIEW OF THE FOREGOING, the appeals of petitioner in the above-entitled cases are hereby dismissed, without prejudice.

Let a copy of this resolution be furnished the Commissioner of Customs and the Secretary of Finance for whatever action they may deem proper to take in the premises.

SO ORDERED.

Quezon City, July 17, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge