Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

PHILIPPINE WALLBOARD CORPORATION,
Petitioner,

- versus -

C.T.A. NO. 2[illegible]36

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal interposed by petitioner Philippine Wallboard Corporation praying that the decision of respondent Commissioner of Customs dated July 31, 1968 be reversed and set aside, and that the total amount of ₱ 2,960.00 paid as customs duty, compensating tax and special import tax on an importation consisting of seven (7) cases of wallboard machinery and equipment be refunded to it, with interest from October 12, 1960.

It appears that petitioner, a domestic corporation, is the consignee of two shipments of imported merchandise which arrived on different dates at the port of Cebu. The first shipment, covered by Invoices Nos. A652/60 and A714/60 of Defibrator Aktiebolag, Sweden, with C & F value of $200,534.95 and declared under Import Entry No. 1431-C as consisting of 163 packages containing wallboard machinery and equipment arrived on board the S.S. "CEYLON" on May 1, 1960. On this shipment, petitioner paid under Official Receipt No. 505797-J dated May 6, 1960, the sums of ₱10,419.00, ₱10,073.00 and ₱41,096.00, as compensating tax, customs duty and special import tax, respectively, plus fees and other charges. The second shipment, with C & F value of $7,945.73, and described in Import Entry No. 2871-C as 7 cases containing also wallboard machinery and equipment, arrived on board the MV "BURMA" on July 4, 1960. To secure release and delivery of this latter importation, petitioner paid, under Official Receipt No. 509074-J dated October 11, 1960, the amounts of ₱498.00, ₱2,034.00 and ₱428.00, representing customs duty, special import tax and compensating tax, plus wharfage and storage fees in the sums of ₱13.00 and ₱25.88, respectively.

On October 21, 1960, petitioner filed a protest with the Collector of Customs of Cebu (Customs protest No. 873) requesting that the compensating tax, customs duty and special import tax paid on the seven (7) cases of wallboard machinery and equipment under Import Entry No. 2871-C be refunded to it for the reason that the latter was merely a short-shipment of the first importation under Import Entry No. 1431-C which arrived per the S.S. "CEYLON" on May 1, 1960, and on which the corresponding duties, taxes and other charges had already been paid per Official Receipt No. 505797-J.

After proper hearing, the Collector of the Port of Cebu rendered his decision on November 23, 1960, denying petitioner's protest on the ground, among others, that the first shipment, consisting of 163 packages of wallboard machinery and equipment, was processed, examined and verified and that when the same was delivered to petitioner, it was complete without any short-shipment. On appeal to the Commissioner of Customs, the latter affirmed said decision of the

Collector. Hence, the present appeal.

The sole issue raised in this appeal is whether or not petitioner is entitled to the refund of the duties and taxes paid on the second shipment.

We are fully in agreement with the decision of respondent in sustaining that of the Collector of Customs of Cebu denying the protest of petitioner. Pertinent portions of said decision read as follows:

> This Office is in agreement with the Collector of Customs. From the documents presented, namely the consular invoice, the packing list and all other pertinent papers including the Import Declaration made by the importer through his broker there was no showing whatsoever that there would be a short-shipment. Neither was there any short landed certificate. In other words, the 163 packages of wallboard machinery and equipment declared were upon examination found to be correct in kind and quantity hence, the assessment, collection of duties and taxes were properly undertaken. Upon the payment of the duties and taxes due, the particular importation is deemed terminated. (Gooday Trading Corp. vs. Board of Tax Appeals, G. R. No. L-65741, July 31, 1954; 50 O.G. 4803, Oct. 1954).
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> The second shipment which consisted of seven (7) cases additional wallboard machinery allegedly short-shipped of the first is an independent, separate importation. The duties and taxes collected on the first shipment of 163 packages correspond to that shipment alone. Hence, the second shipment had to be assessed its corresponding duties and taxes and the same was released only upon the payment of such duties and taxes. The actions taken by the Collector of Customs in both cases were well taken.
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> The protestant company presented evidence, namely the letter dated May 31, 1960 of the foreign supplier to the Bank of the Philippine Islands to the effect that the second shipment was short-shipped from the first and the testimony of its engineer that they learned about the short-shipment only sometime between May 13 and October 25, 1960. These, however, could not be favorably considered by this Office because these were brought to its attention after the first shipment had already been

> taken delivery of as complete and the said importation, for customs purposes, was already deemed terminated. (Page 2, Decision of respondent dated July 31, 1968; page 141, Customs rec.)

Even admitting the correctness of petitioner's claim that the seven cases containing wallboard machinery and equipment involved in the second shipment were actually part of the 163 cases covered by the first shipment and, therefore, there was an overpayment of the customs duties and taxes on the first shipment, the herein appeal is without merit. There is no question that the duties and taxes paid on the second shipment was legally and correctly paid. Accordingly, the protest of petitioner should have been directed not against payment of the duties and taxes on the second shipment but against the excess payment made on the first shipment.

The duties and taxes on the first shipment were paid on May 6, 1960. Under the law, petitioner should have filed its protest against the excess payment within thirty days from the date of payment.[1] (See Sec. 2308, Tariff & Customs Code.) Its failure to file the necessary protest within the statutory period of thirty days from the date of payment, makes such payment incontestable and bars recovery. (See Victorias Milling v. Auditor General, G. R. No. L-17414, Nov. 30, 1962.)

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[1] Payment appears to have been made on May 6, 1960, and petitioner claims to have discovered the alleged shortshipment between May 13 and October 25, 1960.

There is another flaw in petitioner's appeal. Petitioner seeks to recover in this appeal not only customs duties but also compensating tax, a national internal revenue tax imposed by Section 190 of the National Internal Revenue Code. The recovery of national internal revenue taxes erroneously or illegally collected is governed by the National Internal Revenue Code and not by the Tariff and Customs Code, and the proper party respondent in an appeal to this Court in cases of refunds of such taxes is the Commissioner of Internal Revenue and not the Commissioner of Customs.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby affirmed. No costs.

SO ORDERED.

Quezon City, September 30, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge