REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LU DO & LU YM CORPORATION,
Petitioner,

- versus -

C.T.A.
CASE NO. 692

MELECIO R. DOMINGO, as
Commissioner of Internal
Revenue,
Respondent.

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DECISION

The petitioner is seeking the refund of the sum of ₱15,397.50, representing alleged "special import, compensating, sales and/or advance sales taxes" paid by it from September 5, 1957 to September 11, 1958, on cotton bags and paper bag liners imported by it. No reply having been received by petitioner from the respondent on its written claims for refund, it filed the instant "Petition for Review" in compliance with Section 306 of the National Internal Revenue Code which requires that court action for recovery of internal revenue taxes erroneously or illegally paid must be instituted within two years from the date of payment.

It is alleged that petitioner is engaged in the manufacture of corn starch, corn gluten feed and corn oil, a new and necessary industry. As such, it has been granted tax exemption by the Secretary of Finance, pursuant to Republic Act No. 35, as revised and amended by Republic Act No. 901. The ex-

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emption covers all taxes directly payable by any person, association or corporation "in respect to said industry." (Sec. 2, Rep. Act No. 35; Sec. 1, Rep. Act No. 901.) The cotton bags and paper bag liners on which taxes in the amount of ₱15,397.50 was paid were exclusively used in the manufacture of corn starch, corn gluten feed and corn oil. Accordingly, it is claimed that the said sum of ₱15,397.50 was illegally collected by respondent and that it is entitled to the refund thereof.

In answer to the "Petition for Review," respondent alleges that this Court has no jurisdiction over the case. Assuming that it has jurisdiction, the cotton bags and paper bag liners imported by petitioner and used by it in the manufacture of corn starch, corn gluten feed and corn oil are not exempt from the advance sales tax, and therefore petitioner is not entitled to the refund.

Before considering the issues raised by the parties, it is pertinent to note that the claim for refund covers, according to the "Petition for Review," the sum of ₱15,397.50, representing alleged "special import, compensating, sales and/or advance sales taxes under Sections 183(b) and 190 of the National Internal Revenue Code." This is not exactly correct. The special import tax is a tax imposed by Republic Act No. 1394[1] and is collected by the Bureau of Cus-

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[1] Sec. 4 of Rep. Act No. 1394 provides: "The special import tax shall be paid by the importer to the Bureau of Customs in accordance with regulations to be promulgated by the Department of Finance and prior to the release of the imported goods, articles or products from customs custody."

toms and not by the Bureau of Internal Revenue. Therefore, the claim for refund of such tax must be addressed to the Collector of Customs of the port where the tax was collected, as provided in the Customs Law. Not having complied with the requirements for the filing of the claim for refund of the special import tax, this Court has no jurisdiction to pass upon the legality of the collection of said tax by the Bureau of Customs.

It appears from the official receipts submitted in evidence that of the sum of ₱15,397.50, the sum of ₱7,002.70 represents the advance sales tax, and the sum of ₱8,394.80 represents the special import tax. We will, therefore, consider the issues raised by the parties solely in relation to the sum of ₱7,002.70 collected by respondent from petitioner, through the Bureau of Customs, as advance sales tax.

Respondent questions the jurisdiction of this Court over the case. It is alleged that since respondent has not rendered a decision on petitioner's claim for refund, petitioner has no right to appeal under Section 7(1) of Republic Act No. 1125. This question has already been resolved adversely against respondent. (See Collector v. Sweeney, G. R. No. L-12178, August 21, 1959; Gibbs v. Collector, G. R. No. L-13453, February 29, 1960; and the observations made by this Court in Lu Do & Lu Ym v. Domingo, C.T.A. No. 680, August 31, 1960.)

With respect to the legality of the collection of the advance sales tax, it is now settled that petitioner cannot import free from tax raw materials, except sulphur in a limited quantity, for use in the manufacture of corn starch, corn gluten feed and corn oil, because the certificate of exemption issued to it by the Secretary of Finance expressly so provides. The power of the Secretary of Finance to determine the scope and extent of the tax exemption privileges of new and necessary industries is recognized in Section 11 of Republic Act No. 901. The certificate of exemption granted to petitioner providing for the limitations upon importation of raw materials for use in its industry was accepted by petitioner without protest. Having imported the raw materials in question in violation of its license to operate as a new and necessary industry, petitioner can not be heard to complain against the imposition of the corresponding tax on such importation. Petitioner's remedy is to seek modification of the conditions imposed in its certificate of exemption. (Commissioner of Internal Revenue v. Philippine Corn Products, G. R. No. L-13701, May 31, 1960; Lu Do & Lu Ym v. Collector, C.T.A. No. 516, August 5, 1960.)

But it is contended that, assuming that the Secretary of Finance has power to limit the exemption privileges of petitioner, the power has been exercised with respect to raw materials and not to supplies and equipment. Cotton bags and paper bag liners are, according to petitioner, supplies and equipment. This issue has also been resolved in Commissioner v. Philippine Corn Products, supra, wherein it was held:

> "Respondent Company additionally claims that if the empty cotton bags do not come within the exempted raw materials, they, however, fall under the category of equipment covered by Exemption No. 3 of the letter of the Secretary of Finance. We do not think so.
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> "Equipment has been defined as 'materials or articles used inequipping as for an expedition; the articles comprised in an outfit, as furnishings, or apparatus; equippage; as laboratory equipment. x x x In industry, physical facilities available for production, including buildings, machineries, tools, etc.' (4) 'whatever is needed in equipping the articles comprised in an outfit; equippage'; (5) 'synonymous with furnishings'. (6) Taken together with 'machinery', as used in Exemption No. 3, the equipment referred to therein must relate to furnishings or equippage necessary for the operation of the industry. Empty cotton bags actually used in the packing or preparation for the market of the finished products can hardly be considered as falling within the group."

FOR THE FOREGOING CONSIDERATIONS, this Court is of the opinion that (1) it has no jurisdiction to pass upon the legality of the collection of the special import tax, the claim for refund thereof not having been filed with the proper authorities; (2) it has jurisdiction over the herein "Petition for Review" relating to the advance sales tax in the sum of ₱7,002.70 notwithstanding that respondent has not rendered a decision on petitioner's claim for refund; and (3) petitioner is not exempt from taxes in respect to the cotton bags and paper bag liners in question, said articles having been imported in violation of the terms of its license to operate as a new and necessary industry.

The claim for refund of the advance sales tax has to be, as the same is hereby, denied. With costs against petitioner.

SO ORDERED.

Manila, September 30, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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