REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILEX MINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE No. 2100

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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R E S O L U T I O N

This refers to a claim for refund of the sum of ₱114,538.36, representing alleged overpaid ad valorem tax on gold mined from petitioner's mining claims covering the period from July 14, 1961 to July 19, 1967. Before filing an answer to the petition for review, respondent filed a motion to dismiss the appeal on the ground that this Court has no jurisdiction over the case because the same was instituted beyond two year from the dates of payment, the last payment having been made on July 19, 1967, while the petition for review was filed on April 29, 1970.

From the records, it appears that petitioner, a mining corporation, extracted gold from its mining claims and shipped the same abroad. On the gold mined and shipped abroad, petitioner paid the ad valorem tax imposed by Section 243 of the National Internal Revenue Code, in relation to Section 246 of the same Code, on the basis of the fair market value of said mineral plus the amount it received under the Gold Subsidy Act (Rep. Act No. 4859). Subsequently, respondent rendered a ruling to the effect that the ad valorem tax on gold should be based solely on its fair market value without taking into consideration the subsidy received from the Government under the Gold Subsidy Act. Accordingly, on December 28, 1967, petitioner filed with respondent a claim for refund of the said ad valorem tax on gold it had theretofore paid, without specifying the amount allegedly overpaid. This was followed by another letter dated January 19, 1968, allegedly received by respondent on January 23, 1968, wherein the amount of the overpayment in the sum of ₱114,538.38 was mentioned. In answer to the last letter, respondent in his letter dated February 9, 1968, stated that appropriate action would be taken on the claim of petitioner upon receipt of the report of the Director, Revenue Region No. VIII.

On October 25, 1969, petitioner, through its accountants, requested respondent to render an early decision on its claim for refund. This was followed by another letter dated April 10, 1970, wherein petitioner reiterated its request for an early disposition of the case, and if no action was taken by respondent on the case within ten days from the date of receipt of said letter, it would be construed as a denial of its claim for refund. No decision having been rendered by respondent, petitioner has appealed to this Court.

As earlier stated, respondent has filed a motion to dismiss the appeal alleging lack of jurisdiction on the part of this Court to entertain the appeal. There is no dispute that between the last date of payment of the filed more than two years had elapsed. Under Section 306 of the Revenue Code, judicial action for recovery of any national internal revenue tax may be instituted only within two years from the date of payment, while under Section 11 of Republic Act No. 1125, in relation to Section 7 of said Act, in any case involving refund of an internal revenue tax, the taxpayer may appeal to the Court of Tax Appeals only within thirty days from the date of receipt of the decision of the Commissioner of Internal Revenue denying the claim for refund. These laws have been interpreted to mean that any case involving refund of an internal revenue tax may be appealed to this Court within thirty days from receipt of the decision of the Commissioner of Internal Revenue but in no case beyond two years from the date of payment. And no decision of the Commissioner is required to entitle the taxpayer to appeal to this Court. (See Gibbs v. Coll., 107 Phil. 232; Coll. v. Convention of Phil. Baptist Churches, G.R. No. L-11807, Jan. 28, 1961; Coll. v. Manila Hume Pipe, G.R. No. L-11494, Jan. 28, 1961; Koppel v. Coll., G.R. No.L-10550, Sept. 16, 1961.) However, petitioner contends that the law applicable to this case is Article 1145(2) of the Civil Code, in relation to Articles 2154 and 2155,which provides that an action to enforce a right arising under a quasi-contract must be commenced within six years, citing Gonzalo Puyat & Sons, Inc. v. City Treasurer of Manila, G. R. No. L-17447, April 30, 1963 and Olizon v. Central Bank, G. R. No. L-16524, June 30, 1964. Petitioner has obviously misinterpreted the opinion of the Supreme Court in those cases.

It will be noted that both cases (Gonzalo Puyat & Sons and Olizon, supra) did not involve national internal revenue taxes. The case of Gonzalo Puyat & Sons involved a municipal license tax imposed under a taxing ordinance of the City of Manila, while the Olizon case involved an excise tax on foreign exchange imposed by Republic Act No. 601, in both of which cases the taxing laws do not provide for a prescriptive period for recovery by the taxpayer in case of erroneous or illegal payment. The instant case, on the other hand, involves a national internal revenue tax imposed by the National Internal Revenue Code which specifically provides for the period within which judicial action may be instituted by a taxpayer in case of erroneous or illegal payment. (See Sec. 306, Revenue Code; Secs. 7 and 11, Rep. Act No. 1125.) The doctrine laid down in the Gonzalo Puyat & Sons and Olizon cases can not, therefore, be held to apply to cases involving national internal revenue taxes, like the ad valorem tax on gold imposed by Section 243 of the Revenue Code.

In a case involving recovery of an amount paid as special excise tax under Republic Act No. 601, it was held that as the law "contains no provision regarding the period within which a taxpayer must bring his action to recover an excise tax erroneously or illegally collected," the right to recover such tax arises by virtue of Article 2155 in relation to Article 2154 of the Civil Code, referring to obligations in the nature of _solutio indebiti_ which are classified as quasi-contracts. (Belman Cia. v. Central Bank, 108 Phil. 478/May 30, 1960/, as amended by resolution dated July 14, 1960.) It is to be noted that Article 1145(2) of the Civil Code was applied in the Belman case for the reason that _Republic Act No. 601 contains no provision regarding the period within which a taxpayer must bring his action to recover an excise tax erroneously or illegally collected_. The decision in the Belman case was followed in the Gonzalo Puyat & Sons and Olizon cases, _supra_. Nowhere in the last two cases may be found any indication that the doctrine therein enunciated may be applied to other taxes where the law imposing them contains provisions fixing a prescriptive period for recovery of such taxes in case of erroneous or illegal payment.

" For the foregoing considerations, the herein appeal is hereby dismissed for lack of jurisdiction. Without pronouncement as to costs.

SO ORDERED. "

Quezon City, September 28, 1970.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge