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VISAYAN ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 974

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

VISAYAN ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 1008

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

Petitioner Visayan Electric Co. seeks to recover the respective sums of ₱9,129.46 and ₱5,552.00, allegedly collected as compensating taxes on electrical equipments it purchased abroad. As these two cases involve the same legal issue, they will be disposed of in a single decision.

The facts are stipulated by the parties.

<u>C.T.A. Case No. 974</u>.- During the period from January 26, 1956 to December 5, 1957, petitioner purchased from abroad electrical equipments, consisting of electric transformers, watthour meters and sockets, capacitors, incandescent lamps, and wires, clamps and joints, on which compensating taxes aggregating ₱9,129.46 were paid. The payments were effected on the dates of entries of the equipments, the last having been made on December 5, 1957.

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On May 27, 1960, petitioner protested the collection and requested for the refund of the ₱9,129.46, which protest and claim for refund were denied by respondent. Hence, the petition to review the denial, which was filed before this Court on November 21, 1960.

C.T.A. Case No. 1008.- On May 4, 1960, petitioner imported electric transformers on which compensating tax amounting to ₱5,552.00 was paid. Its protest against the collection and claim for refund of the amount paid therefor having been denied, petitioner instituted the appeal on February 10, 1961.

The basis of petitioner's claim for refund is the exemption provision of Section 8 of its franchise, Act No. 3499, which reads:

> "The grantee shall pay the same taxes as are now or may hereafter be required by law from other persons, on its real estate, buildings, plant, machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of each municipality in which it is supplying electricity to the public under this franchise, a tax equal to two per centum of the gross earnings for electric current sold under this franchise. Said percentage shall be due and payable quarterly and shall be in lieu of all taxes of any kind levied, established or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."

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It is urged on behalf of petitioner that the afore-quoted franchisal provision exempts it from paying taxes, for the reason that transformers are specifically mentioned therein as exempt.

It has been held in Panay Electric Co. vs. Collector, G. R. No. L-6753, July 30, 1955, where the tax exemption provision relied upon is exactly the same as the one at bar, that compensating tax is not upon the privilege of using public streets and other places in a way different from the way they are used by the public in general; that the exemption provision refers to those rights and privileges which are not enjoyed by the public in general, but only by the grantee of the franchise, and does not embrace the common right or privilege of every citizen to make purchases anywhere; that the tax is levied upon articles purchased abroad but used in the Philippines; and that the purpose of this tax is to place purchasers of goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who buy goods directly outside the Philippines. We quote from that case:

> "x x x it is enough to point out that the protested tax is not one upon installations, that is to say, upon the privilege of using public streets and other public places in a way different from the way they are used by the public in general. The protested tax is a compensating tax levied upon articles purchased abroad but used in the Philippines. x x x
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> "x x x the rights and privileges which the above provision exempts from taxation refer to those which are not enjoyed by the public in general, but only by the grantee

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of a franchise. They therefore do not include the common right or privilege of every citizen to make purchases anywhere.

"In this connection, we must not lose sight of the purpose for which the compensating tax has been instituted. x x x

'The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchased goods directly from without the Philippines. Under the present tax law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people.'

"If petitioner had purchased the equipment in question in the Philippines there would be no question that it would have to bear the burden of the sales tax because the same would have to be added to the purchase price by the dealer and petitioner might not escape the burden by invoking the exemptions granted in its franchise. There would appear to be no good reason why petitioner should be allowed to elude that burden by exempting it from paying compensating tax when it purchases equipment abroad. x x x"

Consequently, we hold that petitioner is not exempt from the payment of the compensating tax provided for in Section 190 of the Tax Code.

Moreover, the action of petitioner to recover the amounts aggregating ₱9,129.46 is already barred by prescription, it appearing that the instant action for refund was begun beyond two years from the dates of payments of the taxes.

WHEREFORE, the decisions denying the claims for refund are hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, October 5, 1961.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
concurs in a separate opinion.

Republic of the Philippines
COURT OF TAX APPEALS
MAÑILA

VISAYAN ELECTRIC COMPANY,
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- versus - C.T.A. CASE NO. 974

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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CONCURRING OPINION

I concur. I should like, however, to make some observations on the period within which taxpayers may appeal to this Court in cases involving refund of internal revenue taxes.

Section 306 of the Revenue Code requires that a taxpayer who believes that he has erroneously or illegally paid an internal revenue tax must file with the Commissioner of Internal Revenue a written claim for refund within two years after payment and must institute court action for recovery thereof within the same period, whether or not the Commissioner renders a decision on the claim for refund. On the other hand, Section 7 of Republic Act No. 1125 provides that the Court of Tax Appeals shall have exclusive appellate jurisdiction to review by appeal decisions of the Commissioner in all matters involving, among others, claims for refund of internal revenue taxes, and Section 11 of said Act requires that the appeal from the decision of the Commissioner must be filed with said Court within 30 days from the date of receipt of such decision.

The Supreme Court expressed the opinion that Section 306 of the Revenue Code requiring the institution of court action for recovery of an internal revenue tax within two years from the date of payment, with or without a decision of the Commissioner, is inconsistent with Section 11 of Republic Act No. 1125. Said the Supreme Court:

> "While we cannot feign innocence of the existence of visible inconsistency in the provision of Section 306 of the National Internal Revenue Code, as construed by this Court -- requiring the institution of court proceeding for the recovery of taxes erroneously or illegally collected within 2 years from payment thereof, <u>irrespective of the action</u> taken by the Collector of Internal Revenue on the claim for refund of the same, which the taxpayer must first undertake -- and Section 11 of Republic Act No. 1125 specifically providing that actions should be brought to the Court of Tax Appeals within 30 days from receipt of the <u>decision</u> of the Collector of Internal Revenue, considering <u>firstly</u> that both mandatory provisions must be construed strictly, and <u>secondly</u> that for purposes of the case at bar no further discussion would be necessary, we leave the proper dissertation on the same to some other opportune time. We feel free, however, to state that although to courts belong the prerogative and power of construction and interpretation and while we do not shirk from that duty bestowed on Us by law, the legislative branch of the Government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation.

(See also Rufino Lopez & Sons, Inc. v. Court of Tax Appeals, 58 O. G. No. 10, p. 3065, and Sampaguita Shoe and Slipper Factory v. Commissioner of Customs, et al., G. R. No. L-10825, prom. January 14, 1958)." (College of Oral and Dental Surgery v. Court of Tax Appeals, G. R. No. L-10446, Jan. 28, 1958.)

Notwithstanding the "visible inconsistency" of Section 306 of the Revenue Code with Section 11 of Republic Act No. 1125, it has been held that the old law (Sec. 306, Revenue Code) must prevail over the new law (Sec. 11, R. A. No. 1125). (Coll. of Int. Rev. v. C.T.A., G. R. No. L-11494, Jan. 28, 1961.) It may be pointed out, however, that in the case of Section 305 of the Revenue Code, it has been held that insofar as it is inconsistent with Section 11 of Republic Act No. 1125, it is deemed to have been modified by the latter.

"It therefore appears from the above that when in the opinion of the court the collection of the tax by the Collector of Internal Revenue may jeopardize the interest of the taxpayer it may, at any stage of the proceeding, suspend the collection and require the taxpayer either to deposit the amount claimed or file a surety bond for not more than double the amount with the court. <u>This section (referring to Sec. 11, R. A. No. 1125) must be deemed to have modified section 305 of the National Internal Revenue Code</u> in view of the repealing clause contained in said Act to the effect that 'Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed' (Section 21)." (Coll. of Int. Rev. v. Avelino, G. R. No. L-9202, Nov. 19, 1956; underscoring supplied.)

"We agree with petitioner that Section 305 of the National Internal Revenue Code precludes the use of injunction to restrain the collection of taxes, but as

> this Court has already pronounced, in view of the existence of the provisions of Section 11 of Republic Act No. 1125 allowing the Tax Court to issue said writ of injunction subject to certain limitations, the former (Sec. 305) must be deemed to have been modified by the later enactment - Republic Act No. 1125 (Collector of Internal Revenue v. Avelino, G. R. No. L-9202, Nov. 19, 1956)." (Coll. of Int. Rev. v. Aznar, G. R. No. L-10370, Jan. 31, 1958; underscoring supplied.)

As the law now stands, Section 305 of the Revenue Code, to the extent that it is in conflict with Section 11 of Republic Act No. 1125 has been modified by the latter in view of the repealing clause (Sec. 21) of Republic Act No. 1125. On the other hand, Section 306 of the Revenue Code, notwithstanding its inconsistency with Section 11 of Republic Act No. 1125 and the repealing clause of said Act, has not been modified by the new law. Is it necessary in the case of Section 306 that "the legislative branch of the Government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation?" The apparent inconsistency in the above doctrines is not easily understandable. However, since it is now apparently settled that a taxpayer must institute his "appeal" to this Court, with or without a decision of the Commissioner of Internal Revenue on his claim for refund, within two years from the date of payment of the tax sought to be refunded as provided in Section 306 of the Revenue Code, instead of the thirty-day period provided in Section 11 of Republic Act No. 1125, I am now prepared to fully concur in the majority opinion.

In these cases, the claims for refund were filed within two years from the dates of payment. Decisions were rendered by respondent denying the claims for refund. The appeal in each case was admittedly filed with this Court within thirty days from the date of receipt of the decision of respondent, no question having been raised in regard thereto, in accordance with Section 11 of Republic Act No. 1125, but beyond the two-year period required by Section 306 of the Revenue Code. Therefore, following the doctrine laid down in Collector of Internal Revenue v. Court of Tax Appeals, G. R. No. L-11494, January 28, 1961, petitioner came too late to this Court.

R. M. Umali
ROMAN M. UMALI
Associate Judge

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