REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ACETYLENE COMPANY,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

C.T.A. CASES Nos. 931 & 1019

D E C I S I O N

These are appeals from the decisions of the respondent denying petitioner's claims for refund of sales tax in the aggregate amount of ₱908.63 (₱668.90 in C.T.A. No. 931 and ₱239.73 in C.T.A. No. 1019). Since these cases were jointly heard and they involve similar facts and the same issue, the appeals are herein decided together.

Petitioner is a domestic corporation engaged in the manufacture and sale of oxygen and acetylene gases. On several occasions enumerated hereunder, petitioner paid the seven per cent (7%) sales tax on its sales of oxygen and acetylene gases to the National Power Corporation, pursuant to Section 186 of the National Internal Revenue Code.

The breakdown of the tax paid by petitioner follows:

C.T.A. No. 931

Amount	Date Paid	Official Receipt No.
₱533.57	9-18-58	187004
75.22	6-13-60	A-1089337
37.94	6-16-60	A-1623726

(49)

17.33	7-11-60	A-1090082
4.84	7-15-60	A-2017272
₱668.90		

C.T.A. No. 1019

₱ 11.78	8-15-60	A-2124015
43.85	8- 8-60	A-1091023
16.85	9-12-60	A-1091901
5.50	9-14-60	A-2247392
13.08	10-11-60	A-2261368
13.78	10-13-60	A-1092662
40.96	11-11-60	A-1093407
26.82	11-18-60	A-2274633
47.42	12-13-60	A-2216918
6.15	12-20-60	A-2443927
13.54	1-19-61	A-204619
₱239.73		

AGGREGATE AMOUNT - ₱908.63.

Subsequently, petitioner claimed the refund of the said tax on the ground that the National Power Corporation is exempt from sales tax. The claims for refund were denied by respondent on the ground that the exemption granted to the National Power Corporation under the provisions of Republic Act No. 358 refers only to direct taxes and does not extend to indirect taxes. Similarly, all the requests for reconsideration were denied. Hence, these appeals.

The common issue to be resolved in these cases is whether or not the Philippine Acetylene Company is exempt from the payment of sales tax on its sales of oxygen and acetylene gases to the National Power Corporation.

In relation to C.T.A. No. 931, the question of

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prescription of petitioner's right to institute a suit for the recovery of the amount of ₱533.57 was also raised.

Petitioner contends that under the provision of Republic Act No. 358, as amended by Republic Act No. 987, the National Power Corporation is exempt from the payment of "all taxes," and therefore, the sales of oxygen and acetylene gases to the said corporation are also exempt from the payment of sales tax.

The pertinent provision of the said law provides as follows:

> "SEC. 2. To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."

The issue is not new. In similar cases involving the same parties, this Court consistently held:

> "We find the contention of the petitioner without merit. To our mind, under the above quoted provision of Section 2, Republic Act No. 358, the National Power Corporation is exempt from the payment of only those taxes directly payable by it. As correctly stated by the Executive Secretary in his letter dated February 26, 1955 to the General Manager of the National Power Corporation, 'the exemption granted by Republic Act No. 358 applies only to direct taxes but does not extend to indirect taxes. x x x that doctrine of tax immunity is not applicable where the tax is an indirect tax collectible from the manufacturer, producer or importer.'

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"The case at bar involves the assessment and payment of sales tax prescribed by Section 186 of the Tax Code. It is a direct tax on sales of articles or goods 'to be paid by the manufacturer or producer' - the original seller - like the petitioner herein, and not by the buyer. Therefore, petitioner Philippine Acetylene Company, the manufacturer or producer of the oxygen and acetylene gases sold to the National Power Corporation, cannot claim exemption from the payment of sales tax simply because its buyer - the National Power Corporation - is exempt from the payment of all taxes. Exemptions from taxation are highly disfavored in law and cannot be permitted to exist upon a vague implication. (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466.)

"It is the universal and established rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken. (Government vs. Monte de Piedad, 36 Phil. 42.) Exemption from taxation must be shown indubitably to exist. The presumption is always against any surrender of the taxing power. (Molina vs. Rafferty, 37 Phil. 545.) In the present case, the petitioner succeeded in showing to our satisfaction that the National Power Corporation is exempt from the payment of all taxes, except real property tax, but it failed to prove that it is exempt from the payment of the sales tax assessed on the sales of oxygen and acetylene gases to the National Power Corporation." (Philippine Acetylene Company v. The Commissioner of Internal Revenue, C.T.A. No. 898, Mar. 2, 1962 and Philippine Acetylene Company laban kay Komisyonado Ng Rentas Internas, H.P.B. Blg. 708, Pasiya ng Ika 17 ng Setyembre, 1965.)

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We see no plausible reason to depart from the above-mentioned ruling.

With respect to the amount of ₱533.57 paid by petitioner on September 18, 1958, it appears that the suit for refund of the amount was incorporated only in the Amended and Supplemental Petition for Review filed with this Court on October 18, 1960. Applying the well established rule that an amendment which introduces a new or different cause of action, making a new or different demand, is equivalent to a fresh suit, upon a new cause of action, and the statute of limitations continues to run until the amendment is filed (See Ruymann & Farris v. Dir. of Lands, etc., 34 Phil. 428, citing 25 Cyc., 1308, and cases cited.), we find that the action was instituted thirty-one (31) days beyond the period provided by law which reads as follows:

> "Recovery of tax erroneously or illegally collected.- x x x. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty." (Sec. 306, National Internal Revenue Code).

The taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within two (2) years after the payment of the tax is a bar to the recovery of the same,

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irrespective of whether or not a claim for refund of such taxes filed with the Collector of Internal Revenue is still pending action by the latter. (College of Oral & Dental Surgery v. Coll., G.R. No. L-10446, Jan. 28, 1958; Gibbs v. Coll., G.R. No. L-13453, Feb. 29, 1960 and Ishar Singh v. Commissioner of Internal Revenue, C.T.A. No. 1167, July 30, 1965). The action for recovery of the sum of ₱533.57 therefore, has already prescribed.

WHEREFORE, the above-entitled cases should be, as they are hereby dismissed. With costs against petitioner.

SO ORDERED.

Quezon City, October 12, 1965.

TEOFILO D. REYES, Sr.
Presiding Judge

WE CONCUR:

ROMAN M. UMALI
Associate Judge

ALEJANDRO B. AFURONG
Associate Judge

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