Sanborn

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

AMERICAN INTERNATIONAL DAIRY
COMPANY, INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 1975

MISAEL VERA in his capacity
as the COMMISSIONER OF INTERNAL
REVENUE and ROLANDO GEOTINA in
his capacity as COMMISSIONER OF
CUSTOMS,
Respondents.

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June 30/72

D E C I S I O N

This is a petition for review filed by petitioner on December 6, 1968 seeking the refund or tax credit of the sales tax and customs duty it allegedly paid on 50 pounds of coffee powder not released by the customs authorities and the alleged overpaid sales tax[1] and customs duty on certain raw materials imported for use in the manufacture of ice cream.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 84 Scout Borromeo, Quezon City. It appears that on October 21, 1966, petitioner imported from American Food Laboratories, Inc. of Glendale, California, U. S. A., flavoring and food products to be used in the manufacture of ice cream, including 50 pounds of coffee powder. On December 6, 1966, petitioner paid the following charges to wit:

[1] Obviously, the internal revenue tax referred to as "sales tax" should be "advance sales tax."

Customs duty . . . . ₱10,677.00
Internal revenue tax
(advance sales tax) 2,487.00

All the flavoring and food products were released to petitioner except the 50 pounds of coffee powder, the release of which was not authorized by the Bureau of Customs because such importation is prohibited by law.

It also appears that on October 17, 1966, petitioner opened a letter of credit with the Bank of America for $9,233.00 to cover the importation of cardboard containers. The corresponding invoice and packing list were issued by Searlight Incorporated. The importation consisting of 355 cartons of pulpboard containers (ice cream cartons) and one crate of machinery were then loaded on the vessel M/S Turandot covered by a bill of lading executed by Barber Lines on November 15, 1966. Said importation was covered by a consular invoice which indicate a total invoice value of $7,856.24.

Upon arrival of the cardboard container (packaging material) and machinery in the Philippines, petitioner paid on the basis of the aforesaid letter of credit the sums of ₱28,395.00, representing customs duties, ₱4,523.00, representing advance sales tax, ₱12.00, as wharfage fee, and ₱60.00, as surcharge, or a total amount of ₱32,990.00 under Official Receipt No. 242283, dated December 27, 1966. Subsequent to the release of the goods, petitioner received the shipping documents sometime in January 1967.

On March 18, 1967, petitioner wrote the Collector of Customs asking for the refund of ₱184.86 as duty collected and a _pro rata_ advance sales tax in the amount of ₱63.75 on the unreleased coffee powder. In the same letter, petitioner also [illegible] advance sales tax on the packaging materials and machinery on the ground that the shipping documents show a total cost of $7,856.24 as against $9,232.32 stated in the letter of credit. On November 26, 1968, petitioner wrote the Commissioner of Internal Revenue a similar letter asking for the refund of ₱63.75 representing advance sales tax on the coffee powder and the amount of ₱664.56 representing the alleged overpayment of advance sales tax on the packaging materials. Both these letters were not acted upon by respondents. Hence, the petition for review on December 6, 1968.

The main issues to be decided in this case are as follows:

> 1. Whether or not petitioner is entitled to the refund or tax credit of the amounts paid by it as sales tax and customs duty on the 50 pounds of coffee powder not released by the customs authorities; and
>
> 2. Whether or not petitioner is entitled to the refund or tax credit of the alleged overpayment of sales tax and customs duty on the packaging materials and machinery computed on the basis of the amount stated in the letter of credit for the importation of said items.

However, aside from these questions, respondents raised the issue of the jurisdiction of this Court "because (a) petitioner failed to exhaust administrative remedies before coming to Court; and (b) insofar as respondent Commissioner of Customs is concerned, he has not rendered any decision that may be the subject of review."

We shall first consider the jurisdictional issue raised by respondents.

The claims for refund involved herein consist of two different charges, namely advance sales tax and customs duty.

With respect to the advance sales tax, the same is governed by Section 306 of the National Internal Revenue Code. Under said section, a written claim for refund of the alleged overpayment must be filed with the Commissioner of Internal Revenue within two years from the date of payment, and if the latter fails to act on the claim, the taxpayer can bring a judicial action without waiting for the decision of the Commissioner also within two years. (Coll. v. Sweeney, 106 Phil. 59; 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; Comm. of Int. Rev. vs. Victorias Milling Co., No. L-24108, Jan. 3, 1968, 22 SCRA 12.) Of course, where the Commissioner renders a decision denying the claim of the taxpayer for refund, the taxpayer must appeal from the decision of the Commissioner within 30 days from the date of receipt of the decision, but in no case beyond two years from the date of payment. (Gibbs. v. Collector, supra.)

It is not disputed that petitioner voluntarily paid the advance sales on the importation which include the 50 pounds of coffee powder on December 6, 1966 and the advance sales tax on the packaging materials and machinery on December 27, 1966; that petitioner filed a claim for refund addressed to the Commissioner of Internal Revenue which was received by Revenue Region No. 6 on November 27, 1968; that no decision has been rendered by respondent on said claim for refund; and that petitioner filed its petition for review with this Court on December 6, 1968.

Obviously, petitioner did not fail to exhaust the administrative remedies afforded it by law by filing a claim for refund with the Bureau of Internal Revenue and appealing to this Court within the statutory requirement of two years when respondent failed to render a decision on its claim.

As regards the customs duties, it is the general rule that when a ruling or decision of the Collector is made whereby liability for duties, taxes and other charges or any other matter is determined, except the fixing of fines in seizure cases, the party adversely affected is required to file a protest with the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter. (Sec. 2308 Tariff and Customs Code.) The decision of the Collector of Customs is appealable to the Commissioner of Customs within 15 days from receipt thereof. (Sec. 2313, Tariff and Customs Code.)

In the case at bar, the customs duties assessed were paid voluntarily but because the 50 pounds of coffee powder was not released to petitioner and errors in the computation of the charges were discovered after payment, petitioner filed its claim for refund which may be considered as a protest. The claim, however, has not been acted upon by the Collector up to the present. Since the Collector of Customs has not rendered a decision on the claim of petitioner and no appeal has been filed with the Commissioner of Customs, it follows that no appeal can be filed with this Court. It has been consistently held that in matters involving customs duties, only decisions of the Commissioner of Customs are appealable to this Court. (Rufino Lopez v. C.T.A., 100 Phil. 850; Chan Kian v. C.T.A., 105 Phil. 904.) Without a decision of the Commissioner of Customs, this Court acquires no jurisdiction over cases arising under Customs Laws. (See Sampaguita Shoe & Slipper Factory v. Commissioner of Customs, 102 Phil. 850.)

In connection with the claim for refund of the advance sales tax, during the hearing before this Court, petitioner made a reservation of the right to make the proper computation of the refund claim in its memorandum (t.s.n. pp. 76 & 86). In relation to the 50 pounds of coffee powder, the amount originally claimed to be refunded as advance sales tax was ₱63.75. The correct amount appears to be ₱73.01. The increased amount is not disputed by respondent Commissioner of Internal Revenue. To support the computation, petitioner submitted a Liquidation Copy dated November 26, 1966. (Exh. "M", p. 90, CTA rec.) Likewise, petitioner submitted a photostat copy of the Liquidation Copy dated December 6, 1966 to support the computation in relation to the packaging materials and machinery. (Exhs. "N", "N-1", "N-2", "N-3" and "N-4".)

On the first issue which is whether or not petitioner is entitled to the refund or tax credit of the amounts paid by it as advance sales tax on the 50 pounds of coffee powder not released by the customs authorities, respondent Commissioner of Internal Revenue maintains that since the coffee powder could not be legally imported into the Philippines, because it is a banned item, the taxes paid are not refundable. This is untenable.

We are not unaware of the fact that Republic Act No. 2712 prohibits the importation of coffee powder, but nowhere in the law is there a provision which authorizes the imposition of advance sales tax and customs duties on goods which have not been actually imported into the Philippines.

Considering that the coffee powder in this case has not been released by the customs authorities and petitioner did not actually receive the goods, the imposition and collection of the advance sales tax have no legal basis. Along this line, it has been held that the specific tax collected on imported articles, which are subsequently re-shipped out of the Philippines, is refundable; with more reason the advance sales tax which has been paid and collected on articles attempted to be imported but were not actually delivered to the importer, for being a prohibited importation, should be refunded. (See Muller & Phipps (Manila) Ltd. vs. Coll. of Int. Rev., C.T.A. No. 212, Nov. 29, 1959.)

With respect to the advance sales tax on the packaging materials and machinery, it is alleged by respondent Commissioner of Internal Revenue that since petitioner voluntarily paid the charges on the basis of the amount stated in the letter of credit without waiting for the shipping documents, the amount overpaid is not refundable. In other words, respondent's theory is that petitioner is estopped from disputing the basis of the computation and is barred from claiming a refund of the excess payment.

While it is true that petitioner had voluntarily entered the packaging materials and machinery in the customs declaration on the basis of $9,232.32, the amount which was stated in the letter of credit and on the basis of which the corresponding tax was paid, the shipping documents covering the goods clearly show that the true import invoice value of the said shipment is only $7,856.24. Section 183(b) of the National Internal Revenue Code imposes the advance sales tax on imported articles for sale or for use by the importer in the manufacture of articles for sale, such tax to be based on the <u>import invoice value</u> of the imported articles, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus the corresponding mark-up. In this case, it has been proven that the import invoice value of the articles is $7,856.24 and not $9,232.32. When the advance sales tax was computed on the basis of $9,232.32 and the tax paid as thus computed, the result is an overpayment. That the payment was made voluntarily does not affect the right of the taxpayer to a refund of the overpayment. Sections 306 and 309 of the Revenue Code authorizing refund of national internal revenue taxes erroneously or illegally paid do not bar the right of the taxpayer to a refund in case of voluntary payment.

In view of the foregoing considerations, we find that petitioner erroneously paid advance sales tax on the 50 pounds of coffee powder and made an overpayment of said tax on the packaging materials, computed as follows:

Advance sales tax collected based on Letter of Credit for $9,232.32	₱ 4,523.00
Less:	
Advance sales tax computed on $7,856.24, invoice value of importation as stated in the consular invoice (Exh. "G".)	3,841.43
Total amount overpaid	₱ 681.57

WHEREFORE, the appeal with respect to respondent Commissioner of Customs is hereby dismissed for lack of jurisdiction. As regards the claim for refund of the advance sales tax, we find the claim for refund or tax credit of the sums of ₱73.01 and ₱681.57, or a total of ₱754.58, well taken, and, accordingly, respondent Commissioner of Internal Revenue is hereby ordered to refund or credit to petitioner the said amounts. Without pronouncement as to costs.

SO ORDERED.

Quezon City, June 30, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge