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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION CARBIDE PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3804

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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8/26

D E C I S I O N

Suit filed by petitioner Union Carbide Philippines, Inc., for tax credit of P988,459.00 representing the difference between the advance sales tax paid and the specific tax due on the various imported chemicals considered as solvents under Section 153(f) of the applicable National Internal Revenue Code, after respondent Commissioner of Internal Revenue denied petitioner's claim in his letter of April 6, 1984.

The antecedent facts as alleged in the petition for review and admitted by respondent are:

1. Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines, with principal office at 11th-12th Floors, Cibeles Building, Ayala Avenue, Makati, Metro Manila; while respondent is the government official in charge of the administration of all national internal revenue laws and rules and regulations issued relative thereto, with office at the BIR Building, East Triangle, Diliman, Quezon City, Metro Manila, where he may be duly served with summons in connection with this case.

2. On February 2, 1980, respondent Commissioner issued a ruling declaring the chemicals enumerated therein subject to specific tax at the rate of P0.61 per liter of volume capacity pursuant to Section 153(f) of the Tax Code, as amended by Executive Order No. 672, because said articles generally used as solvents and are petrochemicals.

3. In a letter dated March 1, 1982, petitioner filed a claim for refund of the excess of advance sales tax which were paid on various shipments of the chemicals covered by the above-mentioned BIR ruling.

4. In a letter dated October 1, 1982, the respondent Commissioner partially granted said refund/tax credit in the amount of P660,497.00.

5. In a letter dated April 6, 1984 and received by herein petitioner on May 22, 1984, the respondent Commissioner denied the remaining portion of the claim for the reason that since the tax was shifted by petitioner to the purchaser, in effect the tax was paid by the buyers of the solvents and therefore petitioner is not the proper party to file the refund. It was found further that the rest of the importation which was a small portion thereof was used as raw materials in the manufacture of finished products by herein petitioner.

Hence, the instant petition for review filed on June 22, 1984.

As special and affirmative defense, among others, respondent alleges that this Court acquired no jurisdiction over this case. Admittedly, petitioner received the letter dated April 6, 1984 of respondent denying the claim for the refund of the balance of P988,459.00 on May 22, 1984. The records show that the petition for review was filed on June 22, 1984 or a period of thirty-one days, clearly beyond the reglementary thirty-day period to appeal.

The only issue now which respondent would like to present is whether or not this Court has acquired jurisdiction to entertain petitioner's appeal.

Respondent's submission that this Court has no jurisdiction to entertain the instant case is meritorious.

The rule has been established that as regards the period within which to appeal to the Court of Tax Appeals, the taxpayer must perfect his appeal within thirty (30) days from the date of his receipt of the decision of the Commissioner of Internal Revenue denying his claim for refund, pursuant to Section 11 of Republic Act No. 1125, but in no case beyond two (2) years from the date of payment, in accordance with Section 292 (now Section 243) of the National Internal Revenue Code. **(Collector of Internal Revenue vs. Sweeney, et al.,** 106 Phil. 59; **Gibbs vs. Collector of Internal**

Revenue, 107 Phil. 232; **Commissioner of Internal Revenue vs. National Power Corporation**, L-18874, January 30, 1970, 31 SCRA 112.) To quote the provisions of the law applicable:

Sections 7 and 11 of Republic Act No. 1125 provide:

> "SEC. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
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> "(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue;
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> "xxx xxx xxx."
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> "SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
>
> "xxx xxx xxx."
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> (Underscoring supplied)

Section 243 (formerly Section 292) of the National Internal Revenue states:

"SEC. 243. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

"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 regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

As correctly pointed out by respondent, in the case at bar, the letter-decision of respondent Commissioner of Internal Revenue contained in his letter dated April 6, 1984 denying the claim for refund of the balance of P988,459.00 was admittedly received by petitioner on May 22, 1984. The petition for review was filed on June 22, 1984 or a period of thirty-one (31) days, beyond the reglementary period to appeal as provided for under the aforequoted Section 11 of Republic Act No. 1125.

Settled is the rule that the failure of a taxpayer to interpose an appeal to the Court of Tax Appeals the decision or ruling of the Commissioner of Internal Revenue within the thirty-day period provided for in Section 11 of Republic Act No. 1125 deprives said court of jurisdiction to entertain said appeal. (**Commissioner of Internal Revenue vs. Western Pacific Corporation**, L-18804, May 27, 1965, 14 SCRA 105; **Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue**, L-23501, May 16, 1967, 20 SCRA 50; **Surigao Electric Co., Inc. vs. Court of Tax Appeals**, L-25289, June 28, 1974, 57 SCRA 253.) The statutory period of thirty days for appeal being jurisdictional, the Court of Tax Appeals may *motu proprio* dismiss the case if it is shown that the appeal was filed out of time. (**Ker & Co. vs. Collector of Internal Revenue**, L-12396, January 31, 1962, 4 SCRA 160.)

Furthermore, petitioner's petition for review praying for the refund/tax credit of the amount of

P988,459.00 representing the difference between the advance sales tax paid and the specific tax on the various imported chemicals considered as solvents was filed with this Court beyond two (2) years from date of payment of the advance sales tax. Petitioner's right to the refund or tax credit has thus prescribed pursuant to Section 243, *supra*, of the National Internal Revenue Code.

Again, as rightly stated by respondent, records show that the advance sales tax allegedly claimed in excess were paid in 1980 and 1981 (par. 3; Annex B, petition for review). Although the claim for refund was filed on March 1, 1982 (par. 3, petition for review) well within the two-year period, however, the suit to recover the tax was filed only on June 22, 1984, more than two years from the date of payment of the tax in 1980 and 1981.

The rule on this point is stated by the Supreme Court in this wise, to wit:

> "x x x We have repeatedly held that the claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If, however, the Collector takes time in deciding the

> claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector." (**Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., et al.**, G.R. No. L-24104, January 3, 1968)

WHEREFORE, the petition for review filed in the above-entitled case is hereby dismissed for lack of jurisdiction, at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 26, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Amante Filler

AMANTE FILLER
Presiding Judge
Court of Tax Appeals