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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INSULAR LUMBER COMPANY,
Petitioner

versus

CTA CASE NO. 1179

January 13, 1965

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal filed on February 17, 1962 by the petitioner, Insular Lumber Company, from the decision of the respondent Commissioner of Internal Revenue, dated January 16, 1962, and admittedly received by the petitioner on February 15, 1962, denying its claim for refund of the amount of ₱5,363.22, representing 25% of the specific tax paid on manufactured oils and fuels used in its logging and timber operations during the year 1958, as a duly licensed forest concessionaire.

The salient facts as agreed upon by the parties in their "Stipulation of Facts" (pp. 33-35, CTA rec.) are as follows:

> "1. Petitioner is a corporation organized and existing under the laws of the State of New York, U.S.A., duly licensed to do business in the Philippines, with principal office at Fabrica, Sagay, Negros Occidental; respondent is the duly qualified and acting Commissioner of Internal Revenue.

"2. Petitioner is a duly licensed forest concessionaire pursuant to a timber license issued by the Department of Agriculture and Natural Resources, and also operates in connection with its logging and timber operations a sawmill in Sagay, Negros Occidental pursuant to permits issued by the Bureau of Forestry.

"3. During the year 1958, petitioner purchased from Standard-Vacuum Oil Company, a corporation engaged in the importation, distribution and sale of petroleum products 292,274.76 liters of refined and manufactured mineral oils and fuels on which the specific tax prescribed in Section 142 of the National Internal Revenue Code in the total sum of ₱21,452.42 was previously imposed by respondent and collected from Standard-Vacuum oil Company, which specific tax was passed on by Standard-Vacuum Oil Company to petitioner, itemized as follows:

Product	Quantity		Rate of Specific tax	Specific Tax Paid
Lubricating oil	144,758.27	liters	₱0.07	₱10,133.08
Gas line regular	127,065.30	"	0.08	10,165.22
Gas line special	11,688.00	"	0.08	935.04
Kerosene Cock	8,383.12	"	0.02½	209.58
Kerosene White Rose	380.07	"	0.02½	9.50
	292,274.76			₱21,452.42

The 294,274.76 liters of refined and manufactured mineral oils were all actually used and consumed by petitioner in its logging and timber operations in 1958.

"4. On February 23, 1961, petitioner filed with respondent a claim for refund of ₱5,363.22, representing 25% of the specific tax of ₱21,452.42 imposed and collected on the 292,274.76 liters of oils and fuels so purchased by it and used in its logging and timber operations, based on Section 5 of Republic Act 1435 (approved June 14, 1956) which provides for refund of 25% of the specific tax on manufactured oils and fuels used by miners or forest concessionaires in their operations.

"5. On September 28, 1961, respondent denied petitioner's claim for refund of ₱5,363.22 because the right to recover the same has already prescribed.

> "6. On October 27, 1961, petitioner filed with respondent a letter, dated October 26, 1961, requesting a reconsideration of his decision disallowing the refund of the sum of ₱5,363.22 on the ground that the two-year prescriptive period in Section 309 of the National Internal Revenue Code is not applicable because the specific tax paid on the manufactured oils and other fuels purchased and used by petitioner as aforesaid was not 'illegally or erroneously received.'
>
> "7. On February 15, 1962, petitioner received respondent's reply, dated January 16, 1962, denying petitioner's request for reconsideration."

The only question raised in this appeal is whether or not the petitioner is entitled to the refund of the amount of ₱5,363.22 which represents 25% of the specific tax paid on manufactured oils and fuels used in its logging and timber operations in 1958, although the claim for refund of said amount was filed admittedly beyond the two-year period prescribed in Sections 306 and 309 of the Tax Code from the date of payment of the specific tax in question. In short, has petitioner's action for refund already prescribed?

Petitioner bases its claim for refund on Section 5 of Republic Act No. 1435, which provides in part as follows:

> "Sec. 5. The proceeds of the additional tax on manufactured oils shall accrue to the road and bridge funds of the political subdivision for whose benefit the tax is collected: Provided, however, That

> whenever any oils mentioned above are used by miners or forest concessionaries in their operations, twenty-five per centum of the specific tax paid thereon shall be refunded by the Commissioner of Internal Revenue upon submission of proof of actual use of oils and under similar conditions enumerated in subparagraphs one and two of sections one hereof, amending section one hundred forty-two of the Internal Revenue Code: x x x"

The petitioner contends that the two-year period prescribed in Sections 306 and 309 of the Tax Code within which to file a claim and initiate a court action for refund do not apply to this case because the amount sought to be refunded was not erroneously or illegally collected. And, citing the case of Muller & Phipps (Manila), Ltd., vs. Collector of Internal Revenue, G. R. No. L-10694, March 20, 1958, (55 OG 7931) petitioner asserts that the applicable statute of limitation is Section 11 of Republic Act No. 1125, which requires that the judicial action should be brought within thirty (30) days from receipt of respondent's decision denying petitioner's claim for refund.

On the other hand, the respondent maintains that, in this particular appeal, the requirements of Sections 306 and 309 of the Tax Code should be strictly complied with and that in order to entitle one to the recovery of any national internal revenue tax erroneously or illegally collected, the administrative claim for refund as well as the judicial action to enforce said claim must be filed within two (2) years from the date of payment of the tax in question. The respondent argues that "the ruling in the Muller & Phipps case has been superseded, almost immediately, by subsequent decisions x x x." (Memorandum for Respondent, p. 5.)

After a careful consideration of the contentions of the parties, we believe and so hold that the stand of the petitioner is in accord with the law and jurisprudence. Note that both Sections 306 and 309 of the Tax Code refer to the refund of national internal revenue taxes erroneously paid or illegally collected (Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1176, Jan. 4, 1965). In the instant case, the specific tax in question was not erroneously paid or illegally collected. However, by reason of circumstances which occurred subsequent to the payment or collection, i.e., the use of the manufactured oils and fuels by the petitioner, a duly licensed forest concessionaire, in its logging and timber operations, it became entitled, under Republic Act No. 1435, to a 25% refund of the specific tax paid thereon. Therefore, its cause of action for refund arose, not from the date of payment, but only upon the denial by respondent Commissioner of Internal Revenue of its claim for recovery of the specific tax in question.]

In the Muller & Phipps case, *supra*, where the taxpayer therein was similarly situated as the petitioner in the present case, the Supreme Court held:

> "We think it plain that the provisions of section 306 do not apply to appellant's case. By its terms, the two-year limit established by said section applies only to actions to recover (1) 'any—tax alleged to have been erroneously or illegally assessed or collected', or (2) 'any penalty—collected without authority', or (3) 'any sum—wrongfully collected'. x x x.
>
> "But the case of appellant Muller & Phipps (Manila) Ltd., is entirely different. Here, the original action of the Collector in assessing advance sales tax on the imported raw materials is not challenged. Appellant admits that the taxes so assessed, collected and paid in 1951 and 1952 were legitimately due, and were not wrongfully or erroneously collected. The taxpayer's position is that, by reason of supervening circumstances (i.e., the reexportation of part of the imported materials), it subsequently became entitled to a partial refund of the taxes previously paid. Therefore, until the Collector rejected that claim for refund, the taxpayer had no cause of action. Before such rejection, there was no ruling or action of the Collector that the taxpayer could contest or submit to a review; wherefore, no prescriptive period could begin to run until and unless the Collector refused to make a refund. Thus, the prescriptive period of two years from payment, fixed by sec. 306 of the Tax Code, can not apply to the present case.
>
> "Since Republic Act No. 1125, sec. 7, conferred upon the Court of Tax Appeals exclusive jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases

> involving refunds of internal revenue taxes, the law applicable to appellant's case is sec. 11 of said Act No. 1125:"

We are not aware of any subsequent decision of the Supreme Court which superseded the above ruling, as claimed by the respondent. And we find no valid reason to depart from said ruling. Consequently, we are of the opinion and so hold that Sections 306 and 309 of the Tax Code do not apply to petitioner's claim for refund and that the judicial action to enforce its right to the refund has not prescribed, considering that the present case was filed well within the 30-day period prescribed in Section 11 of Republic Act No. 1125.

WHEREFORE, the decision appealed from is reversed, and respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Insular Lumber Company the amount of ₱5,363.22, representing 25% of the specific tax paid on the manufactured oils and fuels used by it in its logging and timber operations during the year 1958. No costs.

SO ORDERED.

Quezon City, January 13, 1965.

(Sgd.) AUGUSTO M. LUCIANO
Acting Presiding Judge

I CONCUR:

R M Umali
ROMAN M. UMALI
Associate Judge