REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILAM MINING, INC.,
Petitioner

versus

CTA CASE NO. 1639

BENJAMIN N. TABIOS,
Commissioner, Bureau of
Internal Revenue,
Respondent.

Feb. 15/66

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

D E C I S I O N

This is an action for refund of ₱862.22 alleged to have been erroneously paid by petitioner to respondent as 7% sales tax under Section 186 of the Tax Code on crushed stones removed from its quarry and sold to its customers. This case was submitted for decision on the basis of the pleadings and of the stipulation of facts entered into in open court by the parties.

Petitioner, a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, operates a rock quarry in Cardona, Rizal owned by Talim Quarry Co., Inc. by virtue of a "Mining Property Operating Agreement" dated October 1, 1948 (Petition, par. 1; Answer, par. 1). Pursuant to respondent's assessment, petitioner paid to the former the sum of ₱862.22 as 7% sales tax on its gross selling price of crushed stones removed from its quarry and sold for ₱12,317.44 to its customers. The sales tax was paid under

Official Receipt No. B-1198502, dated November 20, 1961 (Petition, par. 2; Answer, par. 1; Annex "A," Petitioner's Memo., p. 21, CTA records).

In a letter dated December 26, 1962 (pp. 2-3, BIR records), petitioner requested the refund of said amount, claiming that the crushed stones are mineral products which, under Sec. 188 (c) of the Tax Code are not subject to the percentage tax imposed by Section 186 of the same Code. This request was denied for lack of merit by respondent in a letter to petitioner, dated April 5, 1965 (pp. 10-11, BIR records; Petition, par. 6; Answer, par. 1). Not satisfied with said decision, the present petition for review was filed on May 31, 1965.

There are two issues raised by the parties, to wit: (1) whether or not the action for refund of the sum of ₱862.22 has already prescribed; and (b) whether or not the crushed stones in question are mineral products and, therefore, not subject to 7% sales tax under the provisions of Section 186, in relation to Section 188 (c) of the Tax Code.

With respect to the first issue, respondent contends that the instant action is already barred for the reason that the present petition for review was filed beyond the 2-year period counted from the date of payment of the tax in question, contrary to the provision of Section 306 of the Tax Code. It is urged by respondent that the positive requirement of Section 306 of the Revenue Code must be complied with in conjunction with the provision of Section 11 of Republic Act No. 1125. In short, it is argued that the codal and statutory provisions mentioned above are complementary to each other and must be construed together in resolving the issue of jurisdiction.

Respondent's contention is well taken. The question at issue is not of first impression. In previous cases (Kiener Co. Ltd. vs. S. David, G.R. No. L-5157, April 22, 1953, 49 O.G. 1852; Johnston Lumber Co., Inc. vs. Court of Tax Appeals, G.R. No. L-9292, April 22, 1957, 53 O.G. 5226; Gibbs vs. Collector of Internal Revenue, G.R. No. L-13453, February 29, 1960; Collector of Internal Revenue vs. Court of Tax Appeals and Home Pipe & Asbestos Co., Inc. G.R. No. L-11494, January 28, 1961; Gusgus Electric Light Plant Co., Inc. vs. Collector of Internal Revenue & Court of Tax Appeals, G.R. L-14421, April 29, 1961; and Koppel (Philippines) Inc. vs. Collector of Internal Revenue, G.R. No. L-10550, September 19, 1961), the Supreme Court has consistently held that where the tax has been paid, and a claim for refund has been made, the claimant may, or indeed should, within the statutory period of two years proceed with his suit in court without waiting for the Collector's decision. The two-year period required for the filing of an action in court under the provisions of Section 306 of the National Internal Revenue Code is mandatory and not discretionary upon the taxpayer.

In the case of Gibbs vs. Collector of Internal Revenue, supra, the Supreme Court, in resolving a similar issue, held:

> Under the above ruling, it is clear that Section 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. 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. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.

Again, in Koppel (Philippines) Inc. vs. Collector of Internal Revenue, supra, the same court, reiterating the doctrine in the case of Kiener Co. Ltd. vs. S. David, supra, also held:

> . . .It is clearly ruled in the Kiener case that the petitioner should not have folded his arms and wait for

> the decision, knowing, that the "time for bringing an action for a refund of income tax, fixed by statute, is not extended by the delay of the Collector of Internal Revenue in giving notice of the rejection of such claim (U. S. v. Michel, 282 U.S. 656, 51 S. Ct. 284)" (II Arañas, N.I.R. Code p. 719). There was an assessment; the petitioner paid; the petitioner asked for refund; it was denied; a motion for reconsideration was presented and no resolution was forthcoming from the respondent Collector. <u>Aware of the provisions of the law, it was the duty of the petitioner to have urged the respondent for his decision and wake him up from his lethargy or file his action within the time prescribed by law.</u> While it is true that there was a ruling couched in general terms, by the Secretary of Finance on the matter, which was really controversial, because the same was later revoked by another Secretary of Finance, said pronouncement, however, was not a decision by the respondent Collector on the specific controversy relative to the refund of the deficiency tax in question. <u>The court should not give a premium to a litigant who sleeps on his rights.</u> . . . (Underlining supplied)

It appearing in evidence that the sales tax sought to be recovered was paid on November 20, 1961 (Annex "A," Petitioner's Memorandum), the deadline for bringing the suit to recover said tax under Section 306 of the Tax Code was November 20, 1963. The instant petition for review having been filed only on March 31, 1965, it is therefore late by one year, four months and eleven days. Obviously, the present action for refund is already barred by prescription and this Court has no jurisdiction over this case.

Having arrived at the foregoing conclusion, we consider it unnecessary to pass upon the second issue.

DECISION -
CTA CASE NO. 1639

WHEREFORE, the petition for review is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Quezon City, February 25, 1966.

ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

ROMAN M. UMALI
Acting Presiding Judge