FEATI INDUSTRIES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 775

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the respondent Commissioner of Internal Revenue denying a claim for the refund of the sum of ₱8,731.10 which was allegedly erroneously paid as sales tax on the purchases of certain machineries made by the petitioner from the National Shipyards and Steel Corporation.

It appears that the petitioner is engaged in the manufacture of water meters, transformers, fans and blowers, motors, generators, brass faucets, pumps, pipes and fittings, valves and welders. Upon proper application, the Secretary of Finance determined that the petitioner is engaged in a new and necessary industry. Pursuant to the provisions of Republic Act No. 901, certificates of tax exemption were issued in petitioner's favor which entitled it to exemption from the payment of taxes directly payable by it in respect to the said new and necessary industry. In the accompanying letters of the Secretary of Finance, addressed to the petitioner herein, it is expressly stated, among other things, that the latter is exempt from the payment of the "compensating tax on machinery and equipment to be used exclusively in the new and necessary industry". (Par. 1, Partial Stipulation of Facts, pp. 17-40, CTA rec.; hereinafter cited as Stifacts.)

In the years 1956 and 1957, the petitioner bought certain machineries from the National Shipyards and Steel Corporation for use in its tax-exempt manufacturing business. Included in the gross selling price of the machineries was the 7% sales tax in the total amount of ₱8,731.10 which was fully paid by the petitioner as of February 7, 1958. (Par. 2, Stifacts.)

On September 8, 1958, the petitioner filed with the respondent its written claim for the refund of ₱8,731.10. (Par. 3, Stifacts.) However, after a long delay, this refund claim was finally denied by the respondent in a letter dated January 8, 1960. (Annex A, Petition for Review.) After filing a motion for reconsideration which was also denied by the respondent, the petitioner filed with this Court the instant petition for review on April 18, 1960.

After the issues were joined, the parties submitted a "Partial Stipulation of Facts" wherein they agreed, among other things, that the present action for refund is limited to the amount of ₱6,364.25, and not ₱8,731.10 as originally claimed, in view of the fact that the payment of the sum of ₱2,366.85 was "made beyond two years from the date of the filing of the claim for refund on September 8, 1958", and therefore already "affected by the prescriptive period". (Par. 3, Stifacts.)

The issues to be resolved in this case are as follows:

1. Whether or not the court action for the recovery of the amount of ₱6,364.25 is already barred by prescription; and

2. Whether or not the petitioner is exempt from the payment of the sales tax on its purchase of machineries for use in its tax-exempt industry.

Section 306 of the National Internal Revenue Code which is applicable to the present case, provides:

> "Sec. 306. 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 Collector of Internal Revenue; 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. (Underscoring supplied.)

The Supreme Court, speaking thru Mr. Justice Tuason, in interpreting and applying the above-quoted provisions of the Tax Code, stated:

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> "Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision. (P. J. Kiener Co., Ltd. vs. David, G.R. No. L-5163, April 22, 1953; 49 OG 1852.)

In a subsequent case, the Supreme Court, reiterating the above ruling said:

> "Indeed, it must be observed that under said provisions, the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter. (College of Oral & Dental Surgery vs.Court of Tax Appeals, G.R. No. L-10446, Jan. 28,1958; 54 OG 7055; see also Collector of Internal Revenue vs. Sweeney, G.R. No. L-12178, Aug. 21, 1959.)

In the case under consideration, it is an admitted fact that the sales taxes in question were fully paid as of February 7, 1958. (See par. 2, Stifacts.) The instant "Petition for Review" was filed with this Court only on April 18, 1960, or more than two years from the date of the payment of the sales taxes which the petitioner seeks to recover. Applying the above-quoted provisions of Section 306 of the Tax Code as interpreted and applied by the Supreme Court in several cases, we are of the opinion and so hold that the court action for the recovery of the sales taxes in the total amount of ₱6,364.25 alleged to have been erroneously paid is already barred by prescription, and therefore, should be dismissed.

The petitioner, however, contends that the last portion of Section 306 of the National Internal Revenue Code which provides that no suit or proceeding shall be begun after the expiration of two years from the payment of the tax was repealed by Section 11 of Republic Act No. 1125.

This contention is devoid of merit. The Supreme Court has already held that there is no conflict between Section 306 of the Tax Code and Section 11 of Republic Act No. 1125, (Johnston Lumber Co., Inc. vs. Court of Tax Appeals, G.R. No. L-9292, April 23, 1957; 53 OG 5226) and that the said provisions of law should be construed together. (Gibbs vs. Collector of Internal Revenue, G.R. No. L-13453, February 29, 1960.)

On this point, Mr. Justice Barrera, speaking for the Supreme Court said:

> "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

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> 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. (Gibbs vs. Collector of Internal Revenue, G.R. No. L-13453, February 29, 1960.)

From the view that we take of the present case, we deem it not necessary to decide the second issue.

WHEREFORE, in view of the foregoing considerations, the "Petition for Review" filed by the petitioner on April 18, 1960, is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, April 6, 1961.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Presiding Judge MARIANO NABLE did not take part.