VICTORIAS MILLING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2299

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

11/18/83

D E C I S I O N

This refers to petitioner's claim for judicial refund in the total sum of ₱11,311.00, representing 7% compensating taxes paid by it for the period from August 7, 1969 to July 7, 1971 in connection with its importations from the United States of closing materials used in its sugar containers.

The instant case has been submitted for decision based on the pleadings and the records of the Bureau of Internal Revenue, without the parties filing their respective memorandum.

It appears that petitioner Victorias Milling Co., Inc. is a corporation organized and existing under the laws of the Philippines with offices at the Cities of Manila and Iloilo and the Municipalities of Makati, Rizal and Victorias, Occidental Negros (Petition, p. 1; Answer, p. 25, CTA rec.); and that it is engaged in the business of manufacturing raw or centrifugal and refined sugar, and for this purpose, owns and operates a sugar mill or central in the Municipality of Victorias, Occidental Negros, and a sugar refining factory in the same Municipality. (Par. 2, Petition, p. 1, CTA rec.; Admitted in par. 1, Answer, p. 25, CTA rec.) In connection with its business, petitioner imports from the United States ready-made sugar bags and/or appropriate materials for closing sugar bags and used as containers of its raw or centrifugal as well as its refined sugar. (Par. 3, p. 1, Petition, CTA rec.; admitted in par. 1, Answer, p. 25, CTA rec.)

On August 7, 1969 and December 25, 1969, petitioner's importation of the aforesaid articles or closing materials for the containers of its refined sugar arrived in the Philippines at the Port of Iloilo, and the corresponding 7% compensating taxes in the amounts of ₱2,181.00 and ₱582.00, or in the total sum of ₱2,763.00 which were collected and paid under Official Receipts Nos. 5245754 and 4448069 dated August 8, 1969 and February 11, 1970, respectively.

Petitioner, on May 12, 1971, protested the said payment of compensating tax before the

Commissioner of Internal Revenue, and at the same time sought the refund thereof claiming that its importation of closing materials for the containers of its refined sugar is already subject to tax under Section 189 of the National Internal Revenue Code, and, accordingly, should be exempt from payment of compensating tax under the provision of Section 190(b) of the same Code. (p. 8, BIR rec.; see also Examiner's Working Papers, p. 71, BIR rec.)

Again, on May 20, 1970, January 28, 1971 and July 7, 1971, other petitioner's shipment involving the same article arrived in the Philippines from the United States, and 7% compensating taxes were again collected and paid by petitioner in the amounts of ₱855.00, ₱1,431.00 and ₱6,262.00 under Official Receipts Nos. 4449406, 492639, and 0800733 dated July 2, 1970, February 2, 1971 and July 7, 1971 respectively, and which payments amounted in the total sum of ₱8,548.00.

Petitioner again protested the payment of 7% compensating taxes before the Commissioner of Internal Revenue in its letter dated July 26, 1971, (pp. 10-11, BIR rec.; Examiner's Working Papers, p. 71, BIR rec.) and claiming for the payment's refund in a letter dated May 12, 1971. In sum, the grand total claimed by petitioner as refundable amount, representing 7% compensating tax paid by it amounted to ₱11,311.00. It is also worthwhile to note that the market price quotations of sugars are always presumed to include its customary containers, and as such, petitioner has paid 2% manufacturer's tax not only on the value of the sugar but also on the containers thereof imposed under Section 189 of the Tax Code. (Par. 4, Petitioner; admitted in par. 1, Answer, pp. 1 and 25, CTA rec.) It appearing, however, that respondent has not acted upon on petitioner's claim for refund or tax credit, and sensing that the two-year period provided in Section 306 of the Tax Code within which to file a claim for refund is about to expire, petitioner was constrained to take its appeal to this Court on August 9, 1971. (Petition, p. 1, CTA rec.)

As special and affirmative defenses in his answer to the petition for review, respondent alleged, among others, thus -

> "5. That until and unless the Bureau of Customs decides petitioner's alleged formal protest and claim for refund against the alleged collection of compensating taxes on the importation of materials for sugar container, the present action would be premature because the charges collected by the Bureau of Customs were the basis of the compensating tax collected, hence, petitioner has no cause of action;

"6. That this Honorable Court cannot exercise jurisdiction over the present action which is premature for petitioner's failure to exhaust administrative remedies;

"7. That the amounts paid by petitioner as compensating tax on the importation involved herein, were collected in accordance with law;

"8. That the respondent is not liable for interest in cases of refund.

The real issues presented for resolution of this Court are:

1. Whether or not petitioner is entitled to the refund of the 7% compensating taxes paid by it on its importations of closing materials of sugar containers amounting to ₱11,311.00; and

2. If in the affirmative, whether or not petitioner is entitled to an interest on the amount paid by it.

As regards the first issue, there seems to be no controversy between the parties as to the computation of the 7% compensating tax paid and claimed by petitioner as refundable in the total amount of ₱11,311.00. A close scrutiny of the records point out the fact that petitioner's importation of the aforementioned closing materials imported for use in the manufacture of its centrifugal and refined sugar were never disposed of or sold by the petitioner to the public. On contrary, the evidence presented show that the said imported closing materials were exclusively and actually used by petitioner in the manufacture of said centrifugal and refined sugar. This finding is borne out by the records of investigation conducted by respondent's Supervising Revenue Examiner Jacinto S. Cruz dated May 24, 1976. (pp. 74-75, BIR rec.)

We are fully convinced of the position of petitioner that it should not be held liable for compensating tax on its importation of aforesaid articles. Petitioner has already paid the manufacturer's tax under Section 189 equivalent to two percent (2%), such tax to be based on the actual selling price or market value of the articles manufactured at the time the same leave the factory or mill warehouse. Therefore, petitioner should be exempted from the payment of compensating tax under Section 190(b) of the Tax Code, which provides as follows:

> Sec. 190. <u>Compensating tax</u>.- On the commodities, goods, wares or merchandise purchased or received by persons residing or doing business in the Philippines there shall be paid a compensating tax on the total value thereof including freight, postage, insurance, commission and similar charges, equivalent to the percentage

> taxes imposed under this title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the removal of said commodities, goods, wares or merchandise from the customhouse or the post office, except as follows:
>
> xxx xxx xxx
>
> (b) Commodities, goods, wares or merchandise purchased or received by merchants, importers and manufacturers <u>who are subject</u> to tax under sections onehundred eighty-four, one hundred eighty-five, and one hundred eighty-six or <u>one hundred eighty-nine</u> of this Title, where such importations are to be sold, resold, bartered or exchange <u>or are to be used in the manufacture or preparation of articles for sale, barter, or exchange and are to form part thereof</u>; (<u>Underlining supplied</u>.)

Furthermore, the records will show that respondent have been previously granting petitioner's claim for refund or tax credit wherein the same question of the compensating tax and the same factual and legal issues as in this case are involved. (p. 79, BIR rec.) These very actuations of respondent surely indicates that petitioner's right to claim for refund or tax credit is legal and valid. Furthermore, even during the pendency of the instant case before this Court, or to be exact, on May 24, 1976, Supervising Examiner Jacinto S. Cruz have prepared a memorandum report and addressed to the Chief, Appellate Division of the Bureau, recommending that the said amount of ₱11,311.00 be refunded to, or a tax credit issued in favor of, the herein petitioner. However, the said recommendation was not acted upon by herein respondent. Pertinent portion of said memorandum (p. 74, BIR rec.) is hereby quoted below:

> "Based on the facts established above-mentioned Victorias Milling Co., Inc., is entitled to a refund of the 7% compensating tax amounting to ₱11,311.00 paid by them to the customs authority in Iloilo City on the importation of the closing materials used in the manufacture of refined sugar which is specifically exempted from payment thereof under Section 190 of the Tax Code, which states:
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> > Provided, however, that merchants, importers and manufacturers who are subject to tax under Sections 184, 185, 186 or 189 of this title, shall not be required to pay the tax herein imposed where such commodities, goods, wares or merchandise purchased or received by them from without the Philippines to be sold, resold, bartered or exchanged or are to be used in the manufacture or preparation of articles for sale, barter, or exchanged and are to form part thereof.
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> In view of the foregoing, it is respectfully recommended that the amount of ₱11,311.00 representing the 7% compensating tax paid by Victorias Milling Co., Inc. on their importation of closing material that formed part of the finished product, be refunded to subject taxpayer."

Foremost to sustain petitioner's position that it is entitled to a refund of the compensating tax paid by it in the amount of ₱11,311.00 is the principle laid down in a decision in the case of Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., and the Court of Tax Appeals, G.R. No. L-21171, January 31, 1967, 19 SCRA 247, 252-254, wherein the Supreme Court held, thus -

> "Among other arguments, the Company resists the collection of the sales tax demanded by the Revenue Commissioner on the ground that Section 183(d) of the Internal Revenue Code exempts therefrom:
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> xxx xxx xxx
>
> (d) Articles subject to tax under section one hundred eighty-nine of this code;"
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> and section 189 levies upon operators of sugar centrals, like the Company, herein, a tax of 2% on the money value (selling price or market value) of all sugar manufactured by them.
>
> SEC. 189. - Percentage upon proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava mills and desiccated coconut factories. - Proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava and desiccated coconut factories shall pay a tax equivalent to two per centum of the value in money of all the rope, sugar, coconut oil, cassava flour or starch, and desiccated coconut

manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: x x x" (Italics supplied).

To this argument, the Commissioner, in turn, retorts that the 2% tax of Section 189 applies only to sugar, but does not mention the containers thereof, which should separately pay the percentage tax under sections 183(b) and 186.

We find the stand of the Commissioner to be untenable, for it does not take into account two undeniable facts: (a) that there is no evidence to the effect that the containers or sacks are separately charged against the sugar buyers and, as a consequence, the domestic buyers of the sugar pay only one price for both sugar and container; and (b) that the buyer takes away with him the sugar and its container. On this basis, the price paid by the customer either includes both the price of the sugar and that of the container[1], or else it represents the price of the sugar alone. If it be the first (the price paid is for both sugar and sack), then the value of the sacks is already subjected to the 2% tax imposed by section 189, and the sugar company has paid the same; hence, it may no longer be separately taxed (Section 188/d/, Tax Code).

If, on the other hand, the price paid by the buyer is for the sugar alone, then obviously the container is merely given away gratis, and not sold. In which case, there is no sale of the container that can be subjected to the percentage sales tax."

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[1]The Court of Tax Appeals took judicial notice of this fact, as a practice of respondent sugar company.

Respondent urged that petitioner's cause of action is premature, since its claim for refund against the Collector of Customs has not yet been decided, and therefore this Court has no jurisdiction over the instant case. We find this contention without merit. It is to be noted that subject matter involved in this case is the refund of the compensating tax paid, the claim for refund of which has been filed by petitioner with the Bureau of Internal Revenue. Even assuming that petitioner had filed its claim for refund with the Bureau of Customs and not before the Bureau of Internal Revenue, the former being an agent of the latter, and the claim for refund having been filed before two year period is about to expire, pursuant to Section 306 of the Tax Code, without respondent having rendered a decision to its claim for refund, petitioner's appeal to this Court is in order; otherwise, the right to file the claim for refund shall have prescribed. (Koppel (Philippines), Inc., vs. Collector of Internal Revenue, G.R. No. L-10550, Sept. 19, 1961, 3 SCRA 17.)

Coming now to the second issue, we are of the opinion and so hold that the awarding of an interest on the refundable amount claimed by petitioner is without legal justification. It is well settled that in the absence of arbitrariness on its part in the assessment and collection of the tax the Government cannot be held liable for interest in the event it losses in a tax litigation. (Michael Shipping, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1909, December 14, 1970.)

And in another case, Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo, No. L-12127, May 25, 1959, 105 Phil. 1319, the Supreme Court also held:

> "However, the Court a quo erred in ordering the payment of interest on the amount to be refunded. <u>In the absence of a statutory provision clearly or expressly directing or authorizing such payment, and none has been cited</u>, the National Government cannot be required to pay interests." (Underlining supplied)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Victorias Milling Co., Inc., the sum of ₱11,311.00, representing 7% compensating taxes paid by it for the period from August 7, 1969 to July 7, 1971. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 18, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge