REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DYNO WESFARMERS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5388

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 09 1998

x - x

DECISION

This is a judicial claim for the refund of the sum of ₱ 299,024.84, which is alleged to have been erroneously collected by the respondent based on an assessment for deficiency value-added taxes ("VAT", for brevity) covering the months of May and June for the year 1989.

Petitioner, formerly known as Nobel Philippines, Inc. ("NPI", for short), is a corporation duly organized and existing under and by virtue of Philippine laws with office and plant address at Brgy. Bontis, Bacong, Negros Oriental. It is a Board of Investments ("BOI", for short) - registered enterprise pursuant to Republic Act No. 5186 and as such, has been granted a pioneer status with tax exemption privileges (Exhibit "F").

The present controversy all started when petitioner, then known as NPI, received a notice of assessment, dated September 9, 1992, demanding the payment of the aforesaid amount (Exhibit "A").

On March 10, 1994, petitioner paid the amount under protest (Exhibits "B" and "C"). Subsequently, on June 21, 1994, it filed a claim for refund with respondent's Revenue Region No. 8, Makati, Metro Manila (Exhibit "D"). Two years thereafter, it filed the instant petition for review on June 21, 1996. Hence, this appeal.

Petitioner contends that the subject notice of assessment which allegedly covered its sales in May and June of 1989, was issued beyond the period allowed by Section 203 of the Tax Code. It avers positively that:

> 7. Under the above-quoted provision (Section 203) of the Tax Code, the period wherein the BIR may issue the assessment is limited to three(3) years after the last day of filing or actual date of filing of the tax return, whichever is later. The petitioner's VAT return was filed on 20 July 1989, which was also the last day for filing VAT returns for the quarter ending 30 June 1989. The assessment dated 09 September 1992 was therefore issued beyond the prescriptive period allowed by the Tax Code. (Petition, pp. 2-3)

In the alternative, petitioner assails as erroneous the VAT rate (9%) used in assessing the alleged deficiency taxes as it disregarded the effective VAT rate (8% from May 10-26,1989 and 9% thereafter) granted to it as a BOI-registered enterprise.

In her Answer, respondent repleads her oft-repeated *pro forma* line of special and affirmative defenses, i.e., the assessment was issued in accordance with law and regulations; that all presumptions are in favor of the correctness of tax assessments; that petitioner's claim for refund is still under investigation; that the petitioner has the burden of showing that the taxes paid were erroneously collected; and that a claim for refund is construed strictly against the claimant since it is in the nature of a tax exemption.

In their memorandum, petitioner basically reiterated its earlier disquisition in its petition for review while respondent introduced a new twist in her opposition to the subject claim by stating that the case at bar has already prescribed because it was filed after the expiry of the prescriptive period of two years from the date of payment of the tax as provided under Section 230 of the Tax Code.

The issues thus confronting this Court are limited to the following, namely:

1. Whether or not the subject claim has already prescribed pursuant to Section 230 of the Tax Code; and if in the negative,

2. Whether or not the questioned assessment was issued beyond the prescriptive period of three (3) years as provided under Section 203 of the Tax Code; and if, in the negative,

3. Whether or not the VAT rate used by the respondent in the subject assessment was erroneous.

After a careful review of the background facts, the evidence, the applicable provisions of law and the respective positions taken by both parties, this Court is in agreement with respondent's arguments on the prescribed nature of the instant case.

Section 230 of the Tax Code pertinently provides in this wise:

> **SEC. 230.** ***Recovery of tax erroneously or illegally collected.*** - x x x
>
> 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.

It is undisputed that the amount of ₱299,024.84 being claimed for refund was paid on March 10, 1994 (Exhibit "B") and the filing of the instant petition for review made on June 21, 1996. Evidently, more than two years has already elapsed from the time this case was filed when reckoned from the date of payment of the tax, now subject of the claim for refund. Based on the aforequoted provision of law, it is crystal clear that no suit or proceeding may be initiated after the lapse of two years from the date of payment of any tax, regardless of any supervening event. *A priori*, this Court is simply barred from entertaining petitioner's claim.

Prescindingly, this Court resolves not to discuss anymore the other issues at bar as they are deemed moot and academic on account of Our findings above.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals