REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PLYWOOD INDUSTRIES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 72

COMMISSIONER OF CUSTOMS,
Respondent.

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Nov. 25, 1955

DECISION

This is an appeal from the decision of the Commissioner of Customs denying petitioner's claim for refund of customs duties paid on two shipments of machinery and spare parts imported from Japan and declared under Customs Entry Nos. 81588 (1951) and 5915 (1952).

The petitioner, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines for the purpose of engaging in the manufacture and sale of plywood. Its articles of incorporation was registered on February 12, 1951. On November 3, 1951, it applied with the Department of Finance for exemption from the payment of all internal revenue taxes as a new and necessary industry under Republic Act No. 35, which application was approved on December 27, 1951. Pursuant to the provisions of Republic Act 901, it was thereby entitled to the exemption from the payment of all taxes.

On December 28, 1951, a shipment of 22 cases containing 400 KW Turbo-Generator Plant, Complete, arrived from Japan per S.S. "India Mail." This merchandise was declared and cleared from customs under Consumption Entry No. 81588 (Exh. 1) with Ramon Roces Inc. as declared importer, upon payment of the corresponding taxes and duties due thereon. On January 17, 1952, a shipment of 34 cases containing 400 KW Turbo-Generator Plant, Complete, per S.S. "Igadi" arrived from Japan. This merchandise was likewise cleared from Customs under Consumption Entry No. 5915 (Exh. 2) with Ramon Roces Inc. as declared importer, upon payment of the duties and taxes due thereon.

The letters of credit to finance the importation of the above-mentioned machineries were alleged to have been drawn on February 10, 1951 by the Sta. Clara Lumber Co., upon the National City Bank of New York, for the aggregate sum of ₱101,269.00 for drafts that might be drawn against it by the foreign supplier Miyako Shoji of Tokyo, Japan (Exh. O, Petitioner; Exh. 7, Respondent). Although in both shipments, the ultimate consignee as declared in the Bill of Lading (Exhs. A and D) was Sta. Clara Lumber Co., Inc., the total customs duties paid in the amount of ₱11,846.70 and the receipts therefor were issued, as to the first in the name of "Ramon Roces, Inc. (Plywood Industries, Inc.)," and as to the second shipment, in the name of "Ramon Roces, Inc. (Sta. Clara Lumber)." (Exhs. 8 and 9).

On June 20, 1953, Republic Act No. 901 was approved, which widened the scope of the exemption provided for in Republic Act No. 35, so as to exempt "new and necessary industries" from the payment of "all taxes."

On January 19, 1954, the petitioner applied for a refund of the customs duties paid on the aforementioned shipments of machineries and spare parts imported (Exh. K, Petitioner) on the following grounds: (1) Republic Act No. 901 granted an exemption from the payment of "all taxes" which includes exemption from customs duties; and (2) that the claim for refund is made by petitioner, in that although the name of Sta. Clara Lumber Co., and Ramon Roces, Inc. appear in the Original Entry and Importers Declaration and that the credit of Sta. Clara Lumber Co. was used, the real party interested in the importation and which actually paid the customs duties was the petitioner, Plywood Industries, Inc.

The petition for refund of customs duties was denied by the Collector of Customs on the ground that the importations in question arrived before June 20, 1953, the date of the effectivity of Republic Act No. 901 (Annex L, of the Petition). A motion for reconsideration was filed with the Commissioner of Customs which petition was likewise denied on December 20, 1954 (Annexes M & O). Hence, the petitioner brought this petition for review.

The issues raised in this case may be summarized

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1. Whether the petitioner, Plywood Industries, Inc., is the real party in interest to claim the refund of duties in the instant case; and

2. Granting the petitioner is the real party in interest, whether the petitioner is entitled to a refund of the customs duties allegedly paid on the shipments involved herein.

The rule is that every action must be prosecuted in the name of the real party in interest. (Sec. 2, Rule 3, Rules of Court). After a careful analysis of the facts, we find that the petitioner is not the real party in interest.

Firstly, it is to be noted that letters of credit for the said shipments were opened with the National City Bank of New York by Sta. Clara Lumber Co., a sister company of, and allegedly acting for and in behalf of the petitioner. However, we should note that Sta. Clara Lumber Co. could not have acted as agent of petitioner when opening the letter of credit inasmuch as the Plywood Industries, Inc. was still inexistent at the time and was not registered with the Securities and Exchange Commission until February 12, 1951, or two days after the opening of the above-mentioned letters of credit for the importations. Secondly, the bills of lading (Exh. A, D, Petitioner) for both shipments do not indicate that Plywood Industries, Inc. was the ultimate consignee. Thirdly, the import entries for the shiments were declared and signed by Ramon Roces, Inc. and not by the petitioner and the corresponding receipts for customs duties paid were issued in the name of Ramon Roces, Inc. Moreover, the customs releases of the merchandise were made out in the name of Ramon Roces, Inc. and not in the name of Plywood Industries, Inc. (Exhs. B & E). The mere fact that the machineries involved were installed in the factory of Plywood Industries, Inc. at Gingoog, Misamis Oriental, does not change the fact that the Plywood Industries, Inc. was not the importer. And fourthly, if any import license was issued, as we believe there was, it could have been issued only under the name of Ramon Roces, Inc., as authorized licensee. We should bear in mind that at the time the importation was made, Republic Act 650 was in force and said Act required that all importations should be duly licensed and the transfer of import licenses was then expressly prohibited by section 8 thereof. Hence, the petitioner, Plywood Industries, Inc., could not have made use of the import license of Ramon Roces, Inc., and if it did, it was in patent violation of section 8 of Republic Act 650. Stated otherwise, Ramon Roces, Inc. as the duly authorized holder of the import license could be the only ligitimate importer at the time of the importation. For this Court to consider Plywood Industries, Inc. as the real party in interest in this petition for review would be to sanction a prohibited act, i.e. the transfer of an import license. Since the duties were paid by Ramon Roces, Inc. as importer, it is the proper party to claim for the refund of such impost, if it is so entitled to the same, as the real party in interest and not the petitioner.

> "A party is entitled to maintain an action as real party in interest <u>if he has the legal right to the demand</u> and the defendant will be protected in a payment to or recovery by, him." (American Express Co. vs. Natividad, 46 Phil. 207; Salonga vs. Warner Barnes, L-2246, January 31, 1951; underscoring supplied.)

> "The test to determine whether a tax is payable by one engaged in the new and necessary industry is the following: Is the tax directly payable by the person, partnership, company of corporation engaged in the new and necessary industry in respect to said industry? x x x x x (Marcelo Steel Corporation vs. Araneta, C.T.A. Case No. 48, May 16, 1955.)

We are, therefore, of the opinion that the Plywood Industries, Inc. could not be considered the importer, much less the party in interest, and therefore, not the proper party to ask for the refund.

Granting, <u>arguendo</u>, that the Plywood Industries, Inc. is the real party in interest, the next issue is whether the petitioner is entitled to the refund under Republic Act 901. We have stated that the petitioner applied for exemption from the payment of internal revenue taxes on November 3, 1951 (Exh. G, Petitioner; Exh. 3, Respondent) under the provisions of Republic

Act No. 35 and Executive Order No. 433, which application was approved on December 27, 1951 (Exh. M, Petitioner).

On June 20, 1952, Republic Act No. 901 was passed which provided inter alia the following rules regarding exemptions:

> "Section 1. x x x x That those who or which were declared engaged in new and necessary industry under the provisions of Repbblic Act numbered thirty-five and still enjoying exemption thereunder from all internal revenue taxes for a period of four years, shall automatically be entitled to exemption under this Act, but in no case shall the total number of years of their exemption, both under Republic Act numbered thirty-five and this Act, be for more than ten years. x x x x x x ."

> "Section 4. The benefits of exemption of new and necessary industries from the payment of all taxes under this Act shall, upon the approval of the application for exemption by the Secretary of Finance, retroact as of the date of the filing of the application for exemption."

Republic Act No. 901 admittedly gives a broader scope of exemption by extending the same to "all taxes", whereas Republic Act No. 35 is limited only to the exemption from "internal revenue taxes." The petitioner claims that under Republic Act No. 901 it is exempted from the payment of customs duties. It further contends that since section 4 of Republic Act No. 901, cited above, provides for the retroactivity of the benefits of exemption to the date of the filing of the application for exemption, the petitioner is entitled to a refund of the customs duties it paid under Republic Act No. 35, way back in 1952. Without necessarily declaring that the exemption from "all taxes" carries with it the exemption from customs duties, the resolution of which question is not necessary at this time, we find that petitioner's claim in this case is without merit. We believe that the phrase "retroact as of the date of the filing of the application for exemption" in said section 4 should be applied in connection with the words "under this Act" which necessarily refers to Republic Act No. 901 and not Republic Act No. 35.

> Mr. CEA: x x x x x How, my question is: Will the retroactive effect of this law cover the two year period, during which that industry has been paying taxes to the government"
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> MR. ROY: No, it will not. It will only coer the period after the passage of this law. It will not cover the period before the passage of the present bill. (House Congressional Records Vol. 48, 2nd Congress, 4th Regular Session, April 14, 1953, pp. 47-48; underscoring supplied).

We believe Congress did accept this interpretation of the law that the retroactive proviso of Republic Act No. 901 shall not be applied to those exempt industries which had applied for exemption under Republic Act 35 but only to those industries filing applications for exemption under Republic Act 901, in which case the exemption provided in the latter Act shall cover only the period

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after the passage of the Act. Moreover, since the amounts paid were legally imposed at the time of the importation of the merchandise involved, unless there is a clear and explicit rule providing for their refund, we believe that we can not sanction the refund of the same.

> "x x x x x the validity of revenue laws had been upheld as against the contention that their retroactive operation rendered them invalid. But they should be construed to apply only to future cases, unless they are made by clear and explicit language to embrace past transactions. Presumption against retrospective effect is resistless except against an intention imperatively clear." (33 C.J. 288)

> "By general provisions in the statutes, the Commissioner is authorized to refund and pay back taxes unjustly assessed or excessive in amount or in any manner wrongfully collected, but he cannot refund a tax which has been legally imposed." (33 C.J. 360; underscoring supplied).

Besides that, it is a rule that amendatory acts shall have no effect on transactions and events already completed prior to the approval of the amendatory act unless the legislature has so expressed otherwise.

> "In determining the effect of an amendatory act on transactions and events completed prior to its enactment, it is necessary to distinguish between provisions added to the original act by the amendment, and the provisions of the original act repealed by the amendment and the provisions of the original act re-enacted thereby. In accordance with the rule applicable to original acts, it is presumed that provisions added by the amendment that affect substantive rights will not be construed to apply to transactions and events completed prior to its enactment, unless the legislature has expressed its intent to that effect or such

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> intent is clearly implied by the language of the enactment or by the circumstances surrounding its enactment." (1 Sutherland, Statutory Construction, 3rd Ed. pp. 434-436, underscoring supplied.)

Granting, arguendo, that under Republic Act 901 the petitioner is entitled to a refund of duties, nonetheless we entertain serious doubt as to the right of petitioner to a refund because it has failed to follow the procedure provided for in sections 1370-73, inclusive, of the Revised Administrative Code, which outline the steps required to be observed in pursuing a claim for refund of duties. We believe that unless those steps are duly taken in accordance with the afore-cited provisions, a refund of duties cannot be made since the procedure outlined therein is an exclusive remedy. (Man Shung Loong Co. v. Fabros, 58 Phil. 354.)

The law is very clear and specific that the party who wishes to have the action of the Collector reviewed must first file a protest with such collector limiting such protest to the "subject matter of a single adjustment" and indicating "with reasonable precision the grounds for his claim for refund." (Section 1372, Revised Administrative Code.) The failure to do so makes the action taken by the Collector final and conclusive. In the instant case, the Plywood Industries, Inc. did not lodge the proper protest and such default on its part is fatal to its claim for refund, granting

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that it is entitled to it (Interisland Express Co. v. Collector of Customs, 27 Phil. 396).

IN VIEW OF THE FOREGOING, we find the herein Petition For Review without merit, and the same should be, as it is hereby, dismissed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, November 28, 1955.

ROMAN M. UMALI
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge