REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

STONEHILL STEEL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 204

THE COMMISSIONER OF CUSTOMS,
Respondent.

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May 7/56

R E S O L U T I O N

Petitioner, a domestic corporation, is engaged in the manufacture of nails. It was granted exemption from the payment of all internal revenue taxes as a "new and necessary industry" under Republic Act No. 35. From March 11, 1950 to June 22, 1953, it imported nailwire which it used in the manufacture of nails. On these importations of nailwire, it paid customs duties in the aggregate amount of ₱95,941.51, as exemption from internal revenue taxes did not include exemption from customs duties. However, on June 20, 1953, Republic Act No. 901, revising and amending Republic Act No. 35, was approved and took effect on the same date. Instead of the exemption from <u>all internal revenue taxes</u>, as provided in Republic Act No. 35, Republic Act No. 901 exempts new and necessary industries from <u>all taxes</u>.

Recovery of the sum of ₱95,941.51 is now sought by petitioner, pursuant to Section 4 of Republic Act No. 901, which provides:

> "Sec. 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."

and to the opinion of the Secretary of Justice to the effect that exemption from all taxes carries with it exemption from customs duties. (See Opinion No. 160, Aug. 13, 1953.) The claim for refund was denied by the Collector of Customs of Manila in a letter to petitioner under date of October 26, 1953. The decision of the Collector of Customs was sustained by the Commissioner of Customs in his letter of September 29, 1955. The ground for the denial of the claim for refund was clearly stated in the letter of the Commissioner of Customs, to wit:

> "While it is true that Section 4 of Republic Act No. 901 provides for the retroactivity of the approval of the Secretary of Finance on the application for exemption to the date of the filing thereof, the application referred to is that filed under Sections 5 and 6 of the very same Act and not to the one filed under Republic Act No. 35. (See: 'Lu Do & Lu Yu Corporation vs. The Commissioner of Customs', B.T.A. Case No. 176.)"

This case is now before this Court on appeal by petitioner from the decision of respondent Commissioner of Customs. The petition for review was filed on October 28, 1955. The answer of respondent contains 8 special and affirmative defenses, to wit:

> 1. That the certificate of exemption given by the Secretary of Finance to the petitioner on June 30, 1955, is subject to the conditions set forth in the letter of said Secretary dated June 30, 1955 which specifically states that exemption of cus-

toms duties is effective only from June 20, 1953 (Annex C-2 of Petition for Review);

2. That petitioner is estopped to claim réfund for customs duties paid before June 20, 1953, because it has accepted the said certificate of exemption subject to the aforecited condition;

3. That there is nothing in Republic Act No. 901 nor in Opinion No. 160, Series of 1953, of the Honorable Secretary of Justice which authorizes exemption from customs duties on importations prior to June 20, 1953;

4. That the petitioner's claim for refund has no basis both in law and in fact;

5. That this Honorable Court has no jurisdiction to entertain the petitioner's claim for refund for the reason that same has not been filed pursuant to the provisions of the Revised Administrative Code particularly Sections 1370-1373 thereof;

6. That this Honorable Court has no jurisdiction to review decisions of the respondent Collector of Customs;

7. That the decision of Collector of Customs Isaac Sayoc dated October 26, 1953 (p. 3, Petition for Review) has become final, it appearing that petitioner appealed from said decision only on September 20, 1955 (Annex "G", of Petition for Review), or about 2 years after the decision of the Collector of Customs; hence, on this ground alone this Honorable Court lacks jurisdiction to entertain the present petition;

8. That respondent invokes the prescription under Section 306 of the National Internal Revenue Code, it appearing that petitioner is claiming for refund of customs duties paid since March 11, 1950, which is well beyond the two-year prescriptive period as provided in said law.

We shall confine ourselves to a consideration of the jurisdictional questions posed by respondent, as follows:

1. That this Court has no jurisdiction to review a decision of the Collector of Customs (par. 6, Answer);

2. That petitioner's claim for refund of the customs duties has already prescribed under section 306 of the National Internal Revenue Code, it appearing that the same was filed after two years from the date of payment of the said customs duties (par. 6, Answer); and

3. That this Court has no jurisdiction to entertain petitioner's claim for refund of the customs duties on the ground that the same was not filed in accordance with the provisions of sections 1370 to 1373, and 1380 of the Revised Administrative Code (pars. 5 and 7, Answer).

On the first affirmative defense, we note that the petition for review has been amended by making the Commissioner of Customs as the party-respondent instead of the Collector of Customs, and considering further that the respondent has withdrawn this particular defense (see his memorandum of March 14, 1956, pp. 48-49, Records), it is no longer necessary to pass upon the same.

The second affirmative defense does not also deserve much consideration. Section 306 of the National Internal Revenue Code, which is relied upon by the respondent, 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."

Section 306 of the Revenue Code is applicable only to national internal revenue taxes imposed by said Code and which are enumerated in Section 18 thereof. A customs duty is certainly not a national internal revenue tax. Accordingly, the provisions of Section 306 of the Revenue Code relating to the period within which a claim for refund of an internal revenue tax must be filed with the Collector of Internal Revenue and within which to institute judicial proceedings, in case the claim is denied, are not applicable to claims for refund of customs duties. Claims for refund of customs duties are governed by the Customs Law.

We now come to the third jurisdictional defense of the respondent. Respondent states that the petitioner, in filing its claim for refund, did not comply with the provisions of Sections 1370 to 1373, and 1380 of the Revised Administrative Code, which are mandatory in character. It is contended that petitioner's failure to comply with the said provisions of law is fatal to its claim for refund, and consequently this Court cannot acquire jurisdiction over the same.

On the other hand, the petitioner contends that Sections 1370 to 1373, and 1380 of the Revised Administrative Code are clearly intended only for those cases wherein a customs officer determines the customs liability of any party and when the party affected by his decision contests the same. It argues that the said provisions of the Revised Administrative Code are not applicable to its claim for refund inasmuch as it admits that at the time when its liability for customs duties was determined payment was made in accordance with law. The petitioner did not file any protest or take exception to the same because it had no intention to have the assessment and collection of the customs duties reviewed. However, the petitioner claims that the customs duties should now be refunded in view of Republic Act No. 901 which was passed by Congress only after the determination and payment of the customs duties in question, or more particularly on June 20, 1953.

In Plywood Industries, Inc. vs. Commissioner of Customs, C.T.A. No. 72, November 25, 1955, petitioner also sought to recover customs duties paid prior to the approval of Republic Act No. 901. The claim for refund was denied, among others, for failure of petitioner to comply with the requisites provided in Sections 1370-1373 of the Revised Administrative Code.

> "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 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 Leong Co. v. Fabros, 58 Phil. 354.)
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> "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 that it is entitled to it (Interisland Express Co. v. Collector of Customs, 27 Phil. 396)."

Petitioner in this case is in a worse position than Plywood Industries, Inc. In this case, petitioner did not appeal from the decision of the Collector of Customs to the Commissioner of Customs within 15 days from the date of receipt of notice of the decision of the Collector. (Sec. 1380, Rev. Adm. Code.) The claim for refund was denied by the Collector in a letter dated October 26, 1953. The appeal to the Commissioner was made in a letter of petitioner dated September 19, 1955 (not September 19, 1953, as stated in par. 11 of the Petition for Review) and received in the Bureau of Customs on September 20, 1955. (See Annex "G" of the Petition for Review.) Obviously, the decision of the Collector of Customs dated October 26, 1953 denying petitioner's claim for refund had long become final and unappealable when the appeal to the Commissioner was filed. (See Sy Man v. Jacinto, G.R. No. L-5612, Oct. 31, 1953.) That the Commissioner took cognizance of the appeal and decided the case on the merits is of no moment.

But it is insisted that Sections 1370 to 1373, and 1380 of the Revised Administrative Code are not applicable to the case under consideration. Petitioner seeks to justify its right to the refund solely under Section 4 of Republic Act No. 901.

We have studied with care Section 4 of Republic Act No. 901 and found nothing therein from which any implication may be drawn authorizing the refund of customs duties paid prior to the effectivity of said Act. That section has already been construed by this Court as not exempting new and necessary industries from the payment of customs duties prior to the effectivity of said Act. (Plywood Industries, Inc. v. Commissioner of Customs, supra.) However, granting that the law intended to grant such exemption, yet there is nothing in that section authorizing the refund of customs duties already paid.

It is a well settled rule that taxes erroneously or illegally paid cannot be recovered except in pursuance of a specific provision of law permitting refund thereof. This is specially so in cases of tax exemptions which are retroactive in effect, otherwise the general law governing refunds of such taxes shall be deemed applicable. An example of such law is Republic Act No. 227. Said Act exempts from the payment of income and other taxes the amounts collected by a taxpayer for damages suffered during the war. This Act was approved and took effect on June 5, 1948, and exempted from taxation amounts collected prior to its effectivity. It specifically provides that "any such tax heretofore collected thereon shall be credited, if such credit is requested, within one year from the approval of this Act." Without this provision, many of the taxes paid on war damage payments received by taxpayers prior to the effectivity of Republic Act No. 227 would have been barred by the statute of limitation provided in Section 306 of the National Internal Revenue Code. No similar provision is contained in Section 4 or in any other section of Republic Act No. 901. We are, therefore, constrained to hold that Section 4 of Republic Act No. 901 does not authorize the refund of customs duties paid prior to its effectivity, even granting that it does exempt new and necessary industries from the payment of customs duties on articles imported prior to its approval. Authority for such refund must be sought from other sources and we have found none.

During the hearing of this case, a manifestation was made by counsel for petitioner to the effect that no cash refund is desired by petitioner and that it would be satisfied with a tax credit. In other words, petitioner would want the sum of ₱95,941.51 applied to its future dutiable importations. In a memorandum of counsel for petitioner filed on April 3, 1956, the claim for tax credit is sought to be justified on the ground that the State is a juridical person (Art. 44, New Civil Code) and, as such, is subject to the general provisions of the Civil Code which regulate not only "the relationships between the different individuals in the State amongst themselves but also the relationships between the State and the persons residing within its territorial limits;" and that a tax is an obligation within the meaning of Article 1157 which may be extinguished by compensation under Article 1231. From this the conclusion is drawn that the customs duties paid by petitioner may be credited by the Collector of Customs in favor of the former and applied in payment of customs duties on future dutiable importations. This is a very novel theory but too shallow to merit serious consideration. No law or authority can be cited in support of the view that a tax is an ordinary obligation within the meaning of Article 1157 of the New Civil Code and governed by the law on compensation under the said Code.

We are, therefore, of the opinion that this Court has no jurisdiction over this case, and, therefore, the herein petition for review filed on October 28, 1955 is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, May 7, 1956.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I hereby certify that Presiding Judge Mariano Nable voted for and concurred in this resolution.

AUGUSTO M. LUCIANO
Associate Judge