REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SOTERO ESCARILLA,
Petitioner,

- versus -

THE COLLECTOR OF INTERNAL REVENUE, Respondent.

C.T.A. CASE NO. 271

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

June 28/56

RESOLUTION

Respondent has filed a motion to dismiss the petition for review on the grounds: (a) that there is another case pending between the same parties for the same cause (Section 1 [d], Rule 8, Rules of Court); and (b) that the filing of the petition for review in the above-entitled case amounts to splitting a single cause of action which is expressly prohibited in Section 3, Rule 2, Rules of Court.

The facts of the case are clearly and correctly stated by the respondent in his "Statement of the Case and Facts", as follows:

> "The herein petitioner purchased from the Supplus Property Commission under Invoice No. 8236, dated June 29, 1948, the contents of one fuel dump in Guiuan, Samar, consisting of 3,055 drums, more or less, of various oils, on which the petitioner paid the sum of ₱1,325.00 as compensating tax. After an investigation conducted by agents of the respondent, it was ascertained that the petitioner actually purchased some 4,957 drums of various oils and that the specific and compensating taxes due thereon amounted to ₱55,535.02 and, upon crediting the aforesaid payment of ₱1,325.00, there was a balance still due from the petitioner in the sum of ₱54,210.02. The corresponding demand was made upon the petitioner for the payment of the foresaid sum of ₱54,210.02 and after sometime the same was paid in two install-

ments, to wit: (1) ₱700.00 and (2) ₱53,510.02. The aforesaid sum of ₱53,510.02 was paid on May 11, 1954, under Official Receipt No. 1001206.

"Later, petitioner wrote a letter to the respondent claiming refund of the sum of ₱29,556.03, representing the alleged specific tax on the difference between 4,957 drums and 3,055 drums, or 1,902 drums, of various oils, based on the theory that he actually purchased only 3,055 drums of various oils. The said claim for refund was denied by the respondent. On April 21, 1955, petitioner instituted an action in this Court for the refund of the aforesaid sum of ₱29,556.03 in C. T. A. Case No. 115, entitled 'Sotero Escarilla vs. Collector of Internal Revenue'. The said C. T. A. Case No. 115 is still pending consideration before this Honorable Court.

x x x x

"On May 8, 1956, petitioner filed with the respondent a claim or request for the refund of the aforesaid sum of ₱53,510.02, representing the specific and compensating taxes paid on the various oils purchased by the petitioner from the Surplus Property Commission under Invoice No. 8236, dated June 29, 1948. On May 10, 1956, the petitioner filed with this Honorable Court an action for the refund of the aforesaid sum of ₱53,510.02, which is the subject matter of this motion to dismiss.

Sections 3 and 4, Rule 2, of the Rules of Court, provides -

"Sec. 3. - Splitting a cause of action, forbidden.-A single cause of action can not be split up into two or more parts so as to be made the subject of different complaints.

"Sec. 4. Effect of splitting.- If separate complaints are brought for different parts of a single cause of action, the filing of the first may be pleaded in abatement of the others, and a judgment upon the merits in either is available as a bar in the others."

Section 1 (d), Rule 8 of the Rules of Court ~~also provides~~ -

> "Section 1. Preliminary questions.—Defendant may, within the time for pleading, file a motion to dismiss the action on any of the following grounds:
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> x x x
>
> "(d) That there is another action pending between the same parties for the same cause."

The records of C. T. A. Case No. 115 and this case show: (a) that the parties in both cases are the same; (b) that the cause of action in both cases are the same, namely, petitioner's claim for refund of the amount alleged to have been illegally and erroneously collected by the respondent from the petitioner, the only difference being that in this case the claim is for ₱53,510.02, while in the other case petitioner seeks to recover only a portion of said amount, or ₱29,556.03; and (c) that the said cause of action arose out of one and the same transaction, that is, the purchase by petitioner of various oils in drums from the Surplus Property Commission under Invoice No. 8236 dated June 29, 1948, in Guiuan, Samar.

When the petition for review in C. T. A. Case No. 115 was filed on April 21, 1955, the petitioner could have very well then demanded for the refund of the whole amount of ₱53,556.02, subject matter of the present case, because said amount was already paid. For reasons known only to himself, petitioner sought the recovery of only a portion of the amount by praying that "respondent Collector be ordered to refund to the herein petitioner the sum of ₱29,556.03 representing overpaid taxes." Certainly, the demands for the refund of ₱29,556.03 in C. T. A. Case No. 115 and that of ₱53,556.02 refer to only one single cause of action between the same parties which, pursuant to the provisions of our Rules of Court, must be prosecuted and terminated in one proceeding to avoid multiplicity of suits, and thereby save the parties from the trouble and expense of court litigation.

We cannot accept the view of petitioner when he said that -

> "In the instant petition the action is for recovery of taxes illegally collected from petitioner. In the other case pending before this Honorable Court (C. T. A. Case No. 115) the action is to recover taxes overcollected from petitioner. The first involves legality of the tax. The second involves correctness of the assessment. Therefore, the cause of action in the two cases are distinct and separate and the filing of either may not be pleaded in abatement of the other. Furthermore, the instant case involves purely questions of law while Case No. 115 involves purely questions of fact, limited by stipulation of the parties to the kind and quantity of oil sold to petitioner."

There is no denying the fact that the parties, the issues, and the cause of action in both cases are the same as to fall squarely within the prohibition contained in Sections 3 and 4, Rule 2, and Section 1 (d), Rule 8, of the Rules of Court.

> "The singleness of a cause of action lies in the singleness of the corresponding delict or wrong. A

> cause of action may be either a breach of contract or tort. In general, a contract embraces only one cause of action because it may be violated only once, even where it contains several stipulations." (Sutherland, on Code Pleading, p. 143.)
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> "The principle contained in these two sections (Secs. 3 & 4, Rule 2) are not stated in our Code of Civil Procedure, but is recognized by both American and Philippine jurisprudence. It imports that when a cause of action is single, it can not be divided into several parts so as to be the subject of several complaints. As elsewhere stated, cause of action is the delict or wrong by which the rights of the plaintiff are violated by the defendant. Where there is only one delict or wrong, there is but a single cause of action regardless of the number of rights that may have been violated. *And the rule is that all such rights should be alleged in a single complaint, otherwise those that are not therein included cannot be the subject of subsequent complaints, for they are barred forever.*" (1 Moran, Comments on the Rules of Court, pp. 18-19, citing Santos v. Moir, 36 Phil., 350; Lavarro v. Labitoria, 54 Phil. 788; underscoring supplied.)

Assuming, *arguendo*, that the failure to demand the refund of the sum of ₱53,510.02, instead of ₱29,556.03 in C. T. A. Case No. 115, was due to inadvertence, mistake, or excusable neglect on the part of the petitioner, the proper remedy is not the filing of the present petition for review, but the filing of an amended or supplemental pleadings as may be warranted under the Rules of Court.

WHEREFORE, this case is hereby dismissed with costs against petitioner.

SO ORDERED.

Manila, June 28, 1956.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Judge AUGUSTO M. LUCIANO did not take part.