CENTRAL AZUCARERA
DON PEDRO,
Petitioner,

versus   Nov. 8/67   CTA CASE NO. 1768

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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DECISION

This is a petition to review the decision of respondent denying petitioner's claim for tax credit of the sum of ₱48,302.00, representing compensating tax paid on its importation of certain machinery, spare parts and/or equipment.

Petitioner, a domestic corporation with a sugar central in Nasugbu, Batangas, is engaged in the manufacture of sugar, alcohol and yeast out of sugar cane. On May 22, 1963, it filed with the Board of Industries an application for tax exemption under Republic Act No. 3127, which authorized the exemption of basic industries from the payment of certain taxes, including compensating tax, in respect to importations of machinery, spare parts and/or equipment to be used in the industry (Pars. 1 & 2, Petition for Review, admitted in par. 1, Answer).

On various importations made by petitioner in

1963 and 1964, the aggregate amount of ₱294,705.00 was assessed, collected and paid under protest as compensating tax pursuant to Section 190 of the Revenue Code (Exh. B, pp. 1-99, BIR rec.). Included in the said amount is the sum of ₱48,302.00 which was paid on May 29, 1963 (Exh. A, p. 27, CTA rec.; p. 87, BIR rec.) on the following importation:

29 Bxs) 1 crte) 1 case)	- One (1) Battery consisting of 5 fully automatic Western state centrifugal, complete and spare parts with installation materials.

In a letter dated July 21, 1965, and received by respondent on July 22, 1965, petitioner claimed a tax credit for the compensating taxes paid under protest on its importations of machineries, spare parts and/or equipment; informed respondent of the pendency of its application with the Board of Industries; and undertook to submit the tax exemption certificate upon the approval of its application (Exh. 1, p. 212, BIR rec.).

On October 5, 1965, petitioner was found by the Board of Industries to be a basic industry under Section 2, paragraphs B and S of Republic Act No. 3127 (p. 30, CTA rec.), in view of which a certificate of tax exemption was issued in its favor on October 5, 1965, entitling it to exemption from the payment of special import tax, compensating tax, foreign exchange margin fees and tariff duties directly payable by it in respect to the importation of machinery, spare parts and/or equipment found to be directly and actually needed and will be used exclusively by the said industry (Exh. B-2, p. 94, BIR rec.). Under Section 7 of the said law, the exemption retroacts as of the date of the filing of the application.

Petitioner, in a letter dated October 30, 1965, informed respondent that its application for tax exemption had been approved and claimed tax credit for the sum of ₱294,705.00, paid as compensating tax on its importations (Par. 8, Petition for Review, admitted in par. 1, Answer). In a letter dated May 12, 1966, and received by petitioner on May 23, 1966 (Par. 9, Pet. for Review, admitted in par. 1, Answer), respondent allowed a tax credit of only ₱246,403.00, disallowing the sum of ₱48,302.00. The basis for the disallowance is that the claim for tax credit for said sum had already prescribed under Section 309 of the Revenue Code, since the claim was filed only on July 22, 1965, or more than 2 years from May 29, 1963, the date of payment (Exh. H, p. 249, BIR rec.). On June 8, 1966, petitioner instituted the instant petition for review, questioning the legality of the denial of its claim for tax credit.

The issues raised are purely legal, to wit:

> 1. Whether or not the right of petitioner to claim tax credit for the sum of ₱48,302.00 has already prescribed; and
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> 2. Whether or not the right of petitioner to enforce its claim by judicial action has prescribed.

The provisions of the Revenue Code relied upon by respondent to support his stand denying the claim for tax credit provide:

> 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 Commissioner 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.
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> SEC. 309. Authority of Commissioner to make compromises and to refund taxes.—
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> The authority of the Commissioner of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty.

Respondent argues that the claim for tax credit and the suit to enforce the same were filed beyond the two-year prescriptive period of sections 306 and 309 of the Tax Code, the claim having been filed only on July 22, 1965 and the suit instituted on June 8, 1966, while the tax was paid on May 29, 1963. Petitioner, on the other hand, maintains that Sections 306 and 309 aforesaid do not apply to the case at bar and in support thereof cites the case of Muller & Phipps (Manila) Ltd. v. Collector of Internal Revenue (G.R. No. L-10694, March 20, 1958). In the Muller & Phipps case, supra, Muller & Phipps imported in 1951 and 1952 Kolynos essence, powdered soap, and calcium carbonate for the manufacture of Kolynos and paid the advance sales tax thereon upon their withdrawal from customs custody. Because of lack of packaging materials, petitioner was not able to use all of said raw materials so that it shipped back to its supplier in the United States the unused materials to prevent their deterioration. Petitioner filed a claim for refund with the Collector of Internal Revenue of the amount paid as advance sales tax on the re-exported goods. The Collector denied the claim for refund and upon appeal to this Court, we dismissed the case for lack of jurisdiction on the ground that the suit to enforce the claim was filed beyond the 2-year period prescribed in Section 306 of the Revenue Code, counted from the date of the payment of the taxes. Upon appeal, the Supreme Court, reversing our decision, held:

> "We think it plain that the provisions of section 306 do not apply to appellant's case. By its terms, the two-year limit established by said section applies only to actions to recover (1) 'any---tax alleged to have been erroneously or illegally assessed or collected', or (2) 'any penalty---collected without authority', or (3) 'any sum---wrongfully collected'. In such cases, as held by us in the case of P. J. Kiener & Co. Ltd. vs. David (G. R. No. L-5163, April 22, 1953) and the recent one of College of Oral and Dental Surgery vs. Court of Tax Appeals (G. R. No. L-10446, January 28, 1958), the taxpayer must file action within 2 years from payment of the tax, and need not wait for a decision of the Collector on his claim for refund before taking the matter to court. x x x
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> "But the case of appellant Muller & Phipps (Manila) Ltd., is entirely different. Here, the original action of the Collector in assessing advance sales tax on the imported raw materials is not challenged. Appellant admits that the taxes so assessed, collected and paid in 1951 and 1952 were legitimately due, and were not wrongfully or erroneously collected. The taxpayer's position is that, by reason of supervening circumstances (i.e., the reexportation of part of the imported materials), it subsequently became entitled to a partial refund of the taxes previously paid. Therefore, until the Collector rejected that claim for refund, the taxpayer had no cause of action. Before such rejection, there was no ruling or action of the Collector that the taxpayer could contest or submit to a review; wherefore, no prescriptive period could begin to run until and unless the Collector

> refused to make a refund. Thus, the prescriptive period of two years from payment, fixed by sec. 306 of the Tax Code, can not apply to the present case.
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> "Since Republic Act No. 1125, sec. 7, conferred upon the Court of Tax Appeals exclusive jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases involving refunds of internal revenue taxes, the law applicable to appellant's case is sec. 11 of said Act No. 1125:"

We are in accord with petitioner that the doctrine in the Muller and Phipps is applicable to the case at bar. The compensating tax paid by petitioner on the importation in question was not wrongfully or erroneously collected. Petitioner was not exempt from the payment of compensating tax at the time of the release of the articles from customs custody because it is not enough for petitioner to be engaged in the basic industries enumerated in Republic Act No. 3127 to be entitled to the tax exemption in question. Under said law petitioner can claim exemption only if petitioner files an application therefor and if the Board of Industries approves the application and issues a certificate of exemption in petitioner's favor after it has conducted the necessary investigation and it finds that the statutory requirements have been met. These are supervening circumstances comparable to the reexportation in the Muller and Phipps case. By the same token that Section 306 is not applicable to the Muller and Phipps case, the same provision of law is not applicable to the present case.

In line with the doctrine in the Muller and Phipps case, the law applicable to the present case as regards the time to file the suit for refund is Section 11 of Republic Act No. 1125 and not Section 306 of the Revenue Code. In this respect, it appears that when respondent denied the claim for tax credit in his letter dated May 12, 1966, which was received by petitioner on May 23, 1966, the right to enforce the claim by judicial action accrued. Since the petition for review was filed on June 8, 1966, or only 16 days from receipt of the decision denying the claim for tax credit, the same was seasonably filed.

We find no merit in respondent's pretension that petitioner's failure to file his claim for refund within two years from the date of payment of the tax in accordance with section 309 of the Revenue Code is fatal. In the Muller and Phipps case, the Supreme Court held that the prescriptive period for the filing of the suit for refund of tax payments provided in section 306 of the Revenue Code in cases of illegality or error in the collection is not applicable to cases where refund is based on supervening circumstances.

Since section 309 also governs taxes erroneously or illegally received, by parity of reasoning the prescriptive period in said section cannot be applied to cases involving claims for refund or tax credit due to supervening circumstances as the case at bar. To our mind, the prescriptive period for the filing of claims for refund or tax credit in supervening circumstances should be counted from the happening of the supervening circumstances which in the present case should be from the issuance of the certificate of tax exemption for it is only then when the right to a tax credit or refund attaches or accrues. Before that event the taxpayer cannot file any claim for refund or tax credit because he has no right to it. The record shows that the Board of Industries approved the application in its meeting of September 20, 1965, the corresponding certificate of tax exemption was issued by the Board only on October 5, 1965, and the claim for refund was filed 29 days later, that is, November 3, 1965.

Lastly, respondent contends that the doctrine in the case of North Camarines Lumber Co. v. David (51 O. G. 47 1960) should be applied to the case at bar. Suffice it to say in this respect that the doctrine in said case has been superseded by the ruling in the Muller and Phipps case, supra.

WHEREFORE, the decision appealed from is hereby reversed and respondent is ordered to allow petitioner a tax credit in the amount of ₱48,302.00, representing payment of compensating tax. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 8, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge