REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MICHAEL SHIPPING, INC.,
Petitioner,

versus

CTA CASE NO. 1738

June 20/68

8/31/68

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from several decisions of respondent Commissioner of Internal Revenue denying petitioner's requests for refund or tax credit of ₱2,092.00 representing various payments of compensating taxes on tax-exempt importations from February 1965 to February 1966, inclusive, of spare parts and accessories to be used in the repair and maintenance of petitioner's vessels.

Petitioner is a duly registered domestic corporation engaged in coastwise or interisland shipping with principal office at San Jose St., Cebu City. It operates a fleet of 22 registered vessels consisting of LCTs, Lighters and Barges which were used in the carriage of bulk and/or packed products. For the repair and maintenance of said vessels, petitioner imported various spare parts and accessories in 1965 and 1966. The compensating taxes due thereon amounting to ₱2,092.00 were paid under protest (see Respondent's Memorandum and Amended Petition for Review, pp. 55-56 and 88, CTA rec.).

On June 7, June 8 and November 5, 1965, petitioner filed with respondent claims for tax credit of ₱400.00, ₱50.00 and ₱401.00, representing compensating taxes paid on imported spare parts and accessories of vessels, based on Section 190 of the National Internal Revenue Code, as amended by Republic Act No. 3176, the pertinent portion of which reads as follows:

> SEC. 190. Compensating tax.— On the commodities, goods, wares or merchandise purchased or received by persons residing or doing business in the Philippines, there shall be paid a compensating tax on the total value thereof, including freight, postage, insurance, commission and similar charges, equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares or merchandise from the customhouse or the post office, except as follows:
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> x x x x
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> (d) Articles to be used by the importer himself as passenger and/or cargo vessel whether coastwise or oceangoing, including engines and spare parts of said vessel; x x x.

Respondent, however, rejected and denied the said three (3) claims of petitioner for tax credit in his letter-decision to petitioner dated August 10, 1965, August 10, 1965 and November 17, 1965 (Exhibits 2, 4 and 6, pp. 18, 22 and 41, BIR rec.).

Petitioner likewise filed claims with respondent requesting tax credit of ₱571.00, ₱417.00 and ₱253.00, representing compensating taxes paid on imported spare parts and accessories of vessels, as evidenced by petitioner's letters dated December 22, 1965, January 28, 1966 and February 22, 1966 (pp. 50-52, CTA rec.). The records, however, failed to show that the said requests for tax credit were denied by respondent.

On February 28, 1966, petitioner filed with this Court its petition for review praying, among others, the refund or tax credit of ₱417.00, ₱50.00, ₱400.00, ₱401.00 and ₱571.00, or a total of ₱1,839.00. This amount was increased to ₱2,092.00 in the amended petition for review filed with this Court by petitioner on April 19, 1966. On August 1, 1966, respondent filed with this Court his answer thereto alleging, among others, that "this Honorable Court has no jurisdiction to take cognizance of the case as the herein petition for review was filed beyond 30 days from receipt of respondent's decision denying the claims for refund."

The issues submitted to this Court for resolution are the following:

1. Whether or not the Court has jurisdiction to entertain the appeal of petitioner under Section 11 of Republic Act No. 1125, in relation to Section 306 of the National Internal Revenue Code; and

2. Whether or not petitioner is legally entitled to the refund or tax credit of the compensating taxes paid by it on the imported spare parts and accessories of vessel to be used in the repair and maintenance thereof.

First Issue -

The claims of petitioner for refund or tax credit of ₱400.00, ₱50.00 and ₱401.00 were rejected and denied by respondent in his letter-decision to petitioner which were sent by mail on September 20, 1965, September 19, 1965 and December 6, 1965 as indicated by the notation appearing at the upper right-hand corner of said letters marked as Exhibits 2, 4 and 6 (pp. 18, 22 and 41, BIR rec.). It can be presumed, therefore, that in the ordinary course of business, the said letters of denial were received by petitioner on September 25, 1965, September 24, 1965 and December 11, 1965, respectively (Section 8, Rule 13, Rules of Court). Even if the said letters of denial were delayed in the mails, still they would have reached the petitioner at least a month after their mailing. Considering, however, that the instant petition for review was filed with this Court on February 28, 1966 only, it is evidently clear that the said petition was filed beyond the 30-day period prescribed by Section 11 of Republic Act No. 1125 which reads as follows:

> SEC. 11. Who may appeal; effect of appeal.—Any person . . . adversely affected by a decision or ruling of the Commissioner of Internal Revenue . . . may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling.

Accordingly, we hold that this Court has no jurisdiction to take cognizance of petitioner's appeal from the decision of respondent denying petitioner's claims for refund of ₱400.00, ₱50.00 and ₱401.00, in line with the decisions of our Supreme Court which held:

> . . . Section 306 of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery. We can, therefore, conclude that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by Section 306 of the National Internal Revenue Code and that appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected

> within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125. We see no conflict between the aforementioned sections of said laws. (Johnston Lumber Co., Inc. v. Court of Tax Appeals and the Collector of Internal Revenue, G.R. No. L-9292, April 23, 1957; 101 Phil. 56-57; underscoring supplied).
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> . . . In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute. (Gibbs v. Collector of Internal Revenue, G.R. No. L-13453, February 29, 1960; underscoring supplied.)

Second Issue -

This Court has already decided on December 19, 1966 in the cases entitled "Michael Shipping, Inc. v. Commissioner of Internal Revenue," CTA

Case Nos. 1391 and 1648, that the importations made by petitioner of spare parts and accessories to be used by it in the repair and maintenance of its vessels are exempt from the compensating tax under Section 190 of the Revenue Code, as amended by Section 1, Republic Act No. 3176.

Having resolved the legal question at issue, it devolves upon petitioner to prove by competent and satisfactory evidence that it is entitled to tax credit or refund of ₱571.00, ₱417.00 and ₱253.00, representing compensating taxes paid by it on imported spare parts and accessories to be used in the repair and maintenance of its vessels.

In the hearing of this case, petitioner proved that it imported from Japan two (2) cases of spare parts for Marine Diesel Engine with a consular invoice value of US$1,827.00 for which it paid compensating tax of ₱571.00 under Official Receipt No. 630398-J dated December 10, 1965 (Exhs. I, I-1, I-2 and I-2-A, pp. 101-104, CTA rec.). Petitioner also imported from the said country seven (7) bundles of hot rolled mild steel flat bars with a consular invoice value of US$678.25 for which it paid compensating tax of ₱417.00 under Validating Receipt No. 121983 dated February 16, 1965 (Exhs. H, H-1, H-2 and H-2-A, pp. 97-100, CTA rec.). Petitioner likewise imported from

Japan twelve (12) bales of "Bridgetone" oil hose with a commercial invoice value of US$1,190.52 for which it paid compensating tax of ₱253.00 under Official Receipt No. 7951217 dated February 16, 1966 (Exhs. J, J-1, J-2 and J-2-A, pp. 105-107, CTA rec.). (The imported articles mentioned above were used or intended to be used by petitioner in the repair and maintenance of its vessels. Consequently, petitioner is entitled to a tax credit or refund of compensating taxes) in the amounts of ₱571.00, ₱417.00 and ₱253.00, or a total of ₱1,241.00.

WHEREFORE, the decisions of respondent denying petitioner's claims for tax credit or refund of ₱400.00, ₱50.00 and ₱401.00 as compensating taxes are not appealable to this Court because it has no jurisdiction to entertain the petition for review which was filed beyond the 30-day period prescribed by Section 11 of Republic Act No. 1125. With respect to the compensating taxes mentioned in the preceding paragraph with a total of ₱1,241.00, we find that petitioner is entitled to a tax credit thereof. Accordingly, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the amount of ₱1,241.00 or to grant the latter a tax credit for said amount.

DECISION -
CTA CASE NO. 1738

SO ORDERED.

Quezon City, August 31, 1968.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge