REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHEMPHIL MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3891

COMMISSIONER OF INTERNAL REVENUE and COLLECTOR OF CUSTOMS,
Respondents.

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D E C I S I O N

The case at bar, involving an action for refund of alleged excess customs duties and advance sales tax on imported goods, poses a jurisdictional question prejudicial to the issue on the merits.

The question stems from the very facts alleged in the petition for review of petitioner, thus:

> 1. Petitioner is a corporation duly organized and existing under Philippine laws, with principal office at Chemphil Building, 851 Pasay Road, Legaspi Village, Makati, Metro Manila. Respondent Commissioner of Internal Revenue is the government official in charge of the administration and enforcement of all national internal revenue tax laws and of the rules and regulations relative thereto, with office address at the Bureau of Internal Revenue, Diliman, Quezon City, Philippines, where he may be served with summons and other processess in connection

with this case. Respondent Collector of Customs is the government official in charge of the administration and enforcement of tariff and customs laws with office address at the Bureau of Customs, Port Area, Manila. Both respondents may likewise be served with summons through the Solicitor General, 134 Amorsolo Street, Legaspi Village, Makati, Metro Manila.

2. On January 21, 1983, petitioner imported 411.3MT of Glacial Acetic Acid.

3. Upon arrival of the importation in the Philippines, the Bureau of Internal Revenue compelled petitioner to declare said importation in the import entry for duty and tax assessment purposes on the basis of the published home consumption value which was higher than the true and correct value of the importation as indicated in the commercial invoice and Japanese economic journals certified as correct by the Philippine Ambassador to Japan, notwithstanding the absence of any reasonable doubt as to the correctness of said documents.

4. As a result of the action of the Bureau of Customs, petitioner was compelled to pay, under protest, excess duties and taxes on the importation in the total amount of P847,150 paid under Official Receipt No. 1018142 dated January 31, 1983.

5. Petitioner filed within the reglementary period provided under the Tariff and Customs Code, a formal protest with the Bureau of Customs for the refund or credit of the excess taxes and duties paid. The trial of the protest, docketed as Manila Protest No. 795, was terminated and the case has been submitted for decision.

> 6. It is probable that the decision will not be rendered within the two-year prescriptive period provided for under the National Internal Revenue Code which will expire on January 21, 1985.

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In assailing the jurisdiction of this Court in their motion to dismiss, respondents stress that: (1) the Commissioner of Customs, who should be the proper party in a suit involving refund of customs duties, has not yet rendered a decision which can be the subject of review by the Court pursuant to Section 7(2) of Republic Act No. 1125, thus:

> "The law presupposes a previous decision rendered by the Commissioner of Customs before the Court of Tax Appeals can exercise appellate jurisdiction over a particular case. In the case at bar, however, there is as yet no decision to speak of since the corresponding formal protest is still pending with the Collector of Customs whose decision in turn is further reviewable by the Commissioner of Customs. And it is only after the Commissioner of Customs shall have reviewed the decision of the Collector may petitioner go up by way of a petition for review to this Honorable Court."

(2) petitioner has "inexplicably failed to exhaust the administrative remedies" available under the law; and (3) "the two-year prescriptive period relied upon by petitioner within which to file the corresponding claim for refund to the CTA does not apply in cases involving

customs duties but only to tax collections of the BIR under the National Internal Revenue Code." (See Respondents' Motion To Dismiss, pp. 30-34, CTA rec.) Moreover, respondent Commissioner's counsel argued in open court that no claim for refund of the alleged excess advance sales tax was filed with the Bureau of Internal Revenue pursuant to Section 292 of the National Internal Revenue Code.

However, petitioner contends that a final decision is not always necessary for this Court to exercise jurisdiction in claims for refund or credit of erroneously paid taxes, citing the case of Gibbs vs. Collector of Internal Revenue, 107 Phil. 232; that the two-year prescriptive period applies in this case (Manifestation & Opposition to Motion to Dismiss dated June 10, 1985, pp. 42-46, CTA rec.); and that under Section 1708 of the Tariff and Customs Code, there is no need to file a claim for refund with the Bureau of Internal Revenue pursuant to Section 292 of the Revenue Code as regards the internal revenue tax collected by the Bureau of Customs. (Opposition to Motion to Dismiss dated November 28, 1985, pp. 68-74, CTA rec.)

We sustain respondents' view.

It is clear from the facts that petitioner's appeal suffers from fatal jurisdictional defects.

As regards the customs duty, no decision has as yet been rendered by the Commissioner of Customs pursuant to Section 2313 of the Tariff and Customs Code. Under Section 2402 of the same code and, " most importantly, Sections 7(2) and 11 of Republic Act No. 1125, which define the jurisdiction of this Court in customs cases, only decisions or rulings of the Commissioner of Customs are appealable to this Court. Without the decision of the Commissioner of Customs, the appeal would be premature and cannot be taken cognizance of by the Court. (See American International Dairy Co., Inc. vs. Vera & Geotina, CTA Case No. 1975, June 30, 1972; Procter & Gamble PMC vs. Commissioner of Customs, CTA Case No. 2155 (Resolution) April 15, 1971, citing Southwest Agricultural Marketing Corporation vs. The Secretary of Finance, et al., G.R. No. L-24797, October 8, 1968 & Negros Navigation Co., Inc. vs. Commissioner of Customs, G.R. No. L-18629, May 31, 1963; Cinema Audio, Inc. vs. Acting Commissioner of Customs, CTA

Case No. 2806, January 16, 1978; Allied Brokerage Corporation vs. Commissioner of Customs and Court of Tax Appeals, G.R. L-27641, August 31, 1971, 40 SCRA 555.) Moreover, the absence of a decision by the Collector of Customs on the protest as required in Section 2312 of the Tariff and Customs Code and, consequently, of an appeal to the Commissioner of Customs under Section 2313 of the same code, further underscores the failure to exhaust administrative remedies and evinces lack of cause of action.

As regards the advance sales tax, which is an internal revenue tax, no claim for refund has been filed with the Commissioner of Internal Revenue as required by Section 292[1] of the National Internal Revenue Code (the law pertinent to this case). Consequently, this Court has likewise no jurisdiction to pass upon the petition for refund in regard to said tax. (See Wise & Company vs. Commissioner of Customs, CTA Case No. 2717, December 29, 1977; see also resolution dated January 15, 1979, certiorari

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[1]Formerly Section 306; now Section 243 of the (1986) National Internal Revenue Code.

denied in G.R. No. L-51242, March 7, 1980; NCR Corporation (Phils.) vs. Commissioner of Customs, CTA Case No. 2599, February 28, 1978, /See also resolution dated July 9, 1979/; National Dental Supply, Inc. vs. Commissioner of Customs, CTA Case No. 2757, May 16, 1979 & CTA Case No. 2826, June 30, 1980; Campos Rueda Corporation vs. Commissioner of Customs, CTA Case No. 2829, July 28, 1980; Olympia Business Machines Co. (Phil.), Inc. vs. Commissioner of Customs, CTA Case No. 2756, August 25, 1980; Jardine Davies, Inc. vs. Commissioner of Customs, CTA Case No. 2634, October 16, 1980; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981; Norberto J. Quisumbing vs. Commissioner of Customs, CTA Case No. 2843, December 23, 1981; Campos Rueda Corporation vs. Hon. Commissioner of Customs, CTA Case No. 2828, August 15, 1984, certiorari denied in G.R. L-68995, February 11, 1985; Campos Rueda Corporation vs. Commissioner of Customs, CTA Case No. 2830, March 19, 1985; Lovsted & Co., Inc. vs. Commissioner of Customs, CTA Cases Nos. 3177 & 3178, July 30, 1985.) As ruled in Lovsted & Co., Inc.:

> We note however that with regard to the claims for refund of the amounts of ₱37.00 and ₱93.00 in CTA Case No. 3177 and CTA Case No. 3178, respectively, as additional advance sales tax paid by petitioner on the appraisal of the subject shipments, the same can not be passed upon by the Court in view of the fact that nothing in the records show that petitioner had filed its written claims for refund thereof with the Commissioner of Internal Revenue within two years from dates of payment and that the latter was made a party to these cases. Further, the action for recovery must be instituted in court also within two years after payment. Without satisfying these jurisdictional requirements provided in Section 306 (now Section 292) of the National Internal Revenue Code, which in the instant cases are lacking, the same is fatal to the claims of petitioner for the refund of the overpaid advance sales tax on the importations in question.

Such rule on the necessity of filing a claim for refund with respect to internal revenue taxes (advance sales tax and compensating tax) collected by the Bureau of Customs on imported goods has been consistently maintained in said cited cases notwithstanding the enactment of Section 1708 of the Tariff and Customs Code. For as stated by this Court in NCR Corporation (Phil.) vs. Commissioner of Customs, CTA Case No. 2599, (Resolution), July 9, 1979:

> The Court is cognizant of the provisions of Section 1708 of the Tariff and

Customs Code, as amended by P.D. No. 34. It is clear therein that when, as a result of the refund of the customs duties on the importation, there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner of Customs who shall cause the said excess taxes to be paid, refunded or credited in favor of the importer, with advice only to the Commissioner of Internal Revenue. However, the wordings of said law is not clear to justify the interpretation that the Commissioner of Internal Revenue has no more power to determine the legality of a claim for refund of internal revenue taxes, such as the advance sales tax and/or compensating tax collectible on imported articles, and thus claims for refund of such taxes, which should be filed with his office as required under Section 306 and 309 of the Internal Revenue Code, are no longer necessary. For one thing, said Section 1708 of the Tariff and Customs Code does not even state that the refund of internal revenue taxes by the Bureau of Customs which necessarily result from the refund of customs duties is final and binding, thus obviating and negating any possibility on the part of the Commissioner of Internal Revenue to question or re-examine such refund of the revenue tax. And another, which is most important, said Section 1708 does not provide for the procedure to be followed in a situation where the claim for refund involving customs duties and internal revenue taxes is denied by the Commissioner of Customs and the importer/taxpayer would want to dispute the denial by appeal to the Court of Tax Appeals.

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> The interpretation and argument of petitioner that there is no need to file a final claim for refund with the Commissioner of Internal Revenue or to implead the latter as party defendant would certainly sanction an implied partial repeal or amendment of Sections 306 and 309 of the National Internal Revenue Code and will also affect the procedural aspect of Republic Act No. 1125. This should not be the proper interpretation because, as we have said, Section 1708 of the Tariff and Customs Code is not clear and unambiguous in this respect. Repeal by implication is not favored unless it is manifested that the legislature so intended a repeal. (Comm. of Customs vs. Esso Standard Eastern, Inc., 66 SCRA 113.) Statutes must be so construed to harmonize all apparent conflicts and give effect to all the provisions of the laws whenever possible. (Lechoco vs. Civil Aeronautics Boards, 43 SCRA 261.) And since all statutes relating to the same subject matter are to be construed with reference to each other, so that effect may be given to all the provisions of each (Madrigal vs. Rafferty, 38 Phil. 414, 51 Am. Jur. 363) the provisions (2nd paragraph) of Section 1708 of the Tariff and Customs Code, as amended by P.D. 34, should be interpreted and harmonized with Section 306 (now Section 292) of the National Internal Revenue Code.

Indeed, petitioner's postulation that its petition for review was filed to comply with the statutory requirement of filing a suit or proceeding for recovery of erroneously paid tax within the two-year prescriptive period and that, as held in Gibbs vs. Collector, et al., 107 Phil. 232, it is not necessary

to wait for the decision of the Collector, would have been tenable as far as the advance sales tax here is concerned had there been a written claim for refund, which is a mandatory requirement,[2] filed with the Commissioner of Internal Revenue pursuant to Section 292 (formerly 306) of the National Internal Revenue Code. For precisely, said rule advanced by petitioner is applicable only to internal revenue taxes and not to customs duties and charges which are governed by the Tariff and Customs Code. This Court's pronouncement in Procter & Gamble PMC vs. Commissioner of Customs (CTA Case No. 2155 /Resolution_7, April 15, 1971) clearly states:

> Section 7 of Republic Act 1125 provides that the Court of Tax Appeals shall exercise exclusive jurisdiction to review by appeal decisions of the Commissioner of Customs. Section 11 of the same law provides that any

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[2]A written claim for refund filed with the Commissioner of Internal Revenue within two years from the date of payment is mandatory and a condition precedent to the prosecution of a suit or proceeding for the recovery of erroneously or illegally paid taxes. Non-compliance therewith bars the action and subjects the claim to dismissal for lack of cause of action. (Republic vs. Limaco & De Guzman Commercial Co., Inc., L-13081, August 31, 1962, 5 SCRA 990; Gonzales vs. Court of Tax Appeals, L-14533, May 26, 1965, 14 SCRA 79.

person, association or corporation adversely affected by a decision or ruling of the Commissioner of Customs may file an appeal to the Court of Tax Appeals. It is clear from these provisions that only decisions of the Commissioner of Customs can be appealed to the Court of Tax Appeals and since no decision has as yet been rendered by the Commissioner of Customs on petitioner's request for refund, this petition is premature and should be dismissed (Southwest Agricultural Marketing Corporation v. The Secretary of Finance et al., G.R. No. L-24797, October 8, 1968; Negros Navigation Co., Inc. v. Comm. of Customs, G.R. No. L-18629, May 31, 1963.)

There is no merit in petitioner's pretension that its appeal should be entertained by us because it is filed to comply with the two-year period provided by law within which to file an action for "recovery of duties and surcharges illegally or erroneously collected." The law referred to by petitioner is obviously Section 306 of the National Internal Revenue Code which provides as follows:

> 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.

But this provision applies only to national internal revenue taxes as specifically stated therein, and not to customs duties and surcharges which are governed by the Tariff and Customs Code, not by the National Internal Revenue Code. Thus, says the Supreme Court on this point:

> . . . That there is no decision or ruling by the Collector of Customs or Commissioner of Customs on the requests of appellant for refund, is abundantly clear from the very allegations in the petition. Pursuant, therefore, to the above ruling of this Court, the presentation of the Petition for Review with the CTA was premature, for as things stood then, there was nothing to review.
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> We cannot, by mere analogy, apply the interpretation given to Sec. 306 of the Internal Rev. Code to Sec. 7, par. 2 of Republic Act 1125. Not only was the petition directed against the Customs officials, but it also appears that Sec. 306 has no counterpart in the Tariff and Customs Code. There is no statutory grant for importers claiming refund of duties to go directly to the CTA, without waiting the decision of the Collector of Customs or Commissioner of Customs. For one thing, the Collector or Commissioner may order the refund of the taxes in question,

> in which event a review would not be necessary. (Ace Publications, Inc. v. The Commissioner of Customs and the Collector of Customs, G.R. No. L-18808, May 29, 1964.)
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> Needless to say this Court has no jurisdiction to entertain the present petition. Having reached this conclusion we find it unnecessary to dwell on the other issue posed by the motion to dismiss.

In fine, the interpretation laid down in this case is that, to satisfy the jurisdictional requirements of law, the procedure prescribed by the Tariff and Customs Code on protests (Sections 2308-2314 & 2402) in relation to Sections 7(2) & 11 of Republic Act No. 1125 should be followed as regards the customs duty; while the procedure prescribed by the National Internal Revenue Code for recovery of erroneously paid tax (Section 292 /now 243_7) should be complied with as regards the advance sales tax or compensating tax as the case may be. The procedure applicable to one cannot be applied to the other or both in the absence of a clear statutory provision or legal authority to the contrary. Non-compliance with the mandatory procedural requirements, as in the case at bar, would render fatally defective the appeal and would thereby result to its dismissal.

WHEREFORE, petitioner's petition for review is hereby dismissed for lack of jurisdiction and cause of action. Without costs.

SO ORDERED.

Quezon City, Metro Manila, November 27, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge