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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
R. C.

January 4, 1966

VICTORIAS MILLING CO., INC.,
Petitioner,

-versus- C.T.A. CASE No. 1176

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x- - - - - - - - - - - - - - -x

D E C I S I O N

This is a petition for the review of a decision of respondent Commissioner of Internal Revenue denying petitioner's claim for refund of the amount of ₱2,817.08, representing 50% of the specific tax collected on the oils and fuels purchased by it and used in its agricultural operations from June 18, 1952 to December 31, 1955.

The facts are not controverted. The parties have submitted the case for decision based solely on their "Stipulation of Facts" (pp. 38-40, CTA rec.; hereinafter referred to as STIFACTS).

The petitioner is a corporation organized and existing under the laws of the Philippines, with principal office in Victorias, Occidental Negros (Par. 1, Stifacts). It is the owner of several haciendas in the Province of Occidental Negros, wherein it plants, cultivates, and produces sugar cane, which it later mills and refines at its central in Victorias, Negros Occidental (Par. 2, Stifacts).

During the period covering June 18, 1952 to June 18, 1957, petitioner purchased from Caltex (Philippines) Inc., a corporation engaged in the importation, refining, distribution and sale of petroleum products in the Philippines, 202,680 liters of refined and manufactured mineral oils and motor fuels on which the specific tax prescribed in Section 142 of the Tax Code in the total sum of ₱12,464.53 was paid by Caltex (Philippines) Inc. and passed on to the petitioner. The said 202,680 liters of refined and manufactured mineral oils and motor fuels were all actually used and consumed by the petitioner during the said period in its agricultural operations. (Par. 3, Stifacts)

On December 26, 1957, the petitioner filed with the respondent a claim for refund of ₱6,232.26, representing 50% of the specific tax of ₱12,464.53 imposed and collected on the 202,680 liters of oils and fuels purchased by it and used in its agricultural operations, pursuant to Section 142 of the Tax Code, as amended by Republic Act No. 755 (approved on June 18, 1952), which authorizes the refund of 50% of the specific tax on refined and manufactured mineral oils and fuels used in agriculture and aviation during the five years from June 18, 1952. (Par. 4, Stifacts)

On September 12, 1961, the petitioner received a letter from the respondent, dated August 31, 1961, advising the petitioner that its claim for refund of

₱6,232.26 was approved in the reduced sum of ₱3,415.18, which amount represents the 50% of the specific tax on the oils used by it from January 1, 1956 to June 18, 1957. The petitioner was subsequently informed that the refund of the balance of ₱2,817.08, representing the 50% of the specific tax on the oils used by it from June 18, 1952 to December 31, 1955, was disallowed because the right to recover the same had already prescribed as the claim for its refund was not filed within the two-year period prescribed in Section 309 of the Tax Code. (Par. 5, Stifacts)

On October 3, 1961, the petitioner filed with the respondent its request for reconsideration of the decision disallowing the refund of the said sum of ₱2,817.08. (Par. 6, Stifacts) However, on February 8, 1962, the petitioner received respondent's reply, dated November 2, 1961, denying petitioner's request for reconsideration. (Par. 7, Stifacts) Hence, on February 14, 1962, the petitioner filed with this Court the instant "Petition for Review."

The issue in this case is whether or not the right of the petitioner which was granted by Section 142 of the Tax Code, as amended by Republic Act No. 755, to claim for and file an action forrefund of the amount of ₱2,817.08 which represents 50% of the specific tax on the oils used by it in agriculture from June 18, 1952 to December 31, 1955, has already prescribed.

The petitioner contends that its right of action to claim for refund has not yet prescribed and that Sections 306 and 309 of the Tax Code relied upon by the respondent in denying the claim for refund, and which prescribe the two-year period within which to file a claim for refund and the corresponding court action are not applicable to its case. In support of its contention, the petitioner cited the decision of the Supreme Court in the case of Muller & Phipps (Manila), Ltd., vs. The Collector of Internal Revenue, 55 OG 7931. On the other hand, the respondent claims that Sections 306 and 309 of the Tax Code apply to petitioner's claim for refund, and inasmuch as it was filed after the two-year period, said claim for refund has already prescribed. The respondent argues that "the ruling in the Muller & Phipps case has been superseded, almost immediately, by subsequent decisions x x x." (Memorandum for Respondent, p. 5)

The pertinent provisions of Sections 306 and 309 of the Tax Code read 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; x x x. 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."

"Sec. 309. Authority of Commissioner to make compromises and to refund taxes.- The Commissioner of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.

x x x x x

"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."

We find the contention of the petitioner meritorious. Note that both Sections 306 and 309 refer to the refund of national internal revenue taxes erroneously paid or illegally collected. In the case at bar, the petitioner and the respondent never claimed, nor even hinted, that the specific tax of ₱2,817.08 was erroneously paid or illegally collected. Petitioner's claim for refund is based solely on the fact that the oils upon which the specific tax was collected were actually used by it in agriculture during the five-year period from June 18, 1952 to June 18, 1957, so that it is entitled to a refund of 50% of the specific tax pursuant to Republic Act No. 755 which amended Section 142 of the Tax Code.

In the case of Muller & Phipps (Manila), Ltd. vs. The Collector of Internal Revenue, supra, which also involved the recovery of an internal revenue tax (advance sales tax) which was not erroneously paid nor illegally collected, as in the present case, the Supreme Court said:

> "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. The reason is that the inaction of the Collector upon the taxpayer's claim for refund of the taxes paid, constitutes or may be construed as a reaffirmation of the original action taken by him, which the taxpayer claims to be erroneous or wrongful; and such original action can be subjected to court review, without awaiting its affirmance by the Collector.
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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.

"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:

> 'Sec. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
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> 'No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy,

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it in agriculture during the period from June 18, 1952 to December 31, 1955.

SO ORDERED.

Quezon City, January 4, 1965.

AUGUSTO M. LUCIANO
Acting Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

> distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.'"

Contrary to the claim of the respondent, this Court is not aware of any subsequent decision of the Supreme Court which superseded the above rulings. And applying said rulings in the case of Muller & Phipps to the case at bar, we believe and so hold that Sections 306 and 309 do not apply to petitioner's action for refund and that said action for refund has not yet prescribed inasmuch as the appeal was filed with this Court within the thirty-day period prescribed in Section 11 of Republic Act No. 1125.

WHEREFORE, in view of the foregoing considerations, the respondent is hereby ordered to refund to the petitioner the amount of ₱2,817.08, representing the 50% of the specific tax paid on the oils used by