REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BINALBAGAN-ISABELA
SUGAR COMPANY, INC.,
Petitioner,

versus

C.T.A. CASE NO. 2093

COMMISSIONER OF INTERNAL
REVENUE and SECRETARY OF
FINANCE,
Respondents.

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D E C I S I O N

This is a petition to review the decision of respondent denying petitioner's claim for tax credit in the amount of ₱20,309.00, representing compensating tax paid on its importation of machineries, equipment and spare parts.

Petitioner is a corporation engaged in the manufacture of raw centrifugal sugar and molasses at Binalbagan, Negros Occidental. On February 4, 1964, petitioner applied for tax exemption under Republic Act No. 3127, as amended, otherwise known as the Basic Industries Law, which authorized the exemption of basic industries from payment, among others, of compensating tax in connection with the importations of machineries, equipment and spare parts necessary in the operation of its industry. The Board of Industries approved petitioner's applications on June 14, 1965 and December 22, 1967, respectively, under Certificates of Tax Exemption

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Nos. 101 and 453, effective on February 4, 1964, the date of the filing of the applications for tax exemption. Petitioner received the notice of approval of Certificate of Tax Exemption No. 101 on June 16, 1965 and that of Certificate of Tax Exemption No. 453 on December 26, 1967.

Upon receipt of Certificate of Tax Exemption No. 101, petitioner filed a claim for tax credit for ₱114,697.00 on June 16, 1965, and upon receipt of Certificate of Tax Exemption No. 453 on December 26, 1967, petitioner filed a claim for tax credit for ₱28,927.00 on December 29, 1967.

In line with the recommendation of the Secretary of Finance, respondent Commissioner of Internal Revenue, in a letter dated March 17, 1970 which was received by petitioner on March 19, 1970, informed the latter that its claim for tax credit for ₱114,-697.00 and ₱28,927.00 had been approved in the sums of ₱11,500.00 and ₱8,618.00, respectively. Not satisfied with this ruling of the Commissioner, petitioner instituted the instant petition for review on April 18, 1970.

This appeal involves only the grant of ₱8,618.00 as tax credit in the claim for ₱28,927.00.

Respondent's position is that the payments aggregating ₱28,927.00 in question were paid from November 4, 1964 to December 16, 1966; that of this amount, ₱20,309.00

was paid before October 10, 1965 and the right to claim it had prescribed on December 29, 1967 when petitioner filed its claim because the two-year period for the filing of claims for refund or tax credit provided in Section 309 of the National Internal Revenue Code had already lapsed; that at any rate, under the same provision, judicial action for refund or tax credit should be filed within two years from the payment of the tax and hence the institution of the petition for review on April 18, 1970 is out of time.

Petitioner's position, on the other hand, is that it could not file a claim or sue for refund or tax credit until its application for a tax exemption under the Basic Industries Law had been approved by the Board of Industries with the issuance of Certificate of Tax Exemption No. 453. In other words, its right to make such a claim or file such a suit was dependent on the happening of a supervening event which was the approval of his application for tax exemption. (Central Azucarera Don Pedro v. Commissioner of Internal Revenue, C.T.A. Case No. 1768, November 8, 1967.) The two-year period provided in Section 309 of the Tax Code should therefore be counted, not from the payment of the tax, but from the happening of the supervening event as held in Commissioner of Internal Revenue

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v. Insular Lumber Co. and Court of Tax Appeals, G. R. No. L-24221, December 11, 1967; and in Commissioner of Internal Revenue v. Victorias Milling Co., G.R. No. L-24108, March 15, 1968.

We agree with petitioner that this is not a case of taxes illegally or erroneously collected but one for refund or claim of tax credit because of a supervening event and the two-year period in Section 309 aforesaid should be counted from the happening of the supervening event. Even on this assumption, however, his petition is out of time. While it is true that petitioner filed its claim for tax credit within two years from the happening of the supervening event and instituted this petition for review within 30 days from receipt of the partial denial of its claim, this petition was filed only on April 18, 1970, more than two years after the happening of the supervening event. It should be recalled that the certificate of tax exemption was issued on December 22, 1967 and received by petitioner on December 26, 1967. Petitioner should not have waited for the decision of respondent on its claim for tax credit but should have appealed to this Court before the lapse of the statutory two years for the filing of judicial action for refund or tax credit. Said the Supreme Court in the Victorias Milling Co. case:

> . . . the intention is clear that refunds of internal revenue taxes are generally governed by Sections 306 and 309 of the Tax Code. Since in those cases the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in Section 306 should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund. And the claim for refund should be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period.
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> In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified. (Italics supplied)

WHEREFORE, this petition is hereby dismissed for having been filed out of time and hence, the Court has no jurisdiction to take cognizance thereof.

SO ORDERED.

Quezon City, December 17, 1971.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge

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