REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOMAS B. TEMPROSA JR.,
Petitioner,

- versus -

C.T.A. CASE NO. 4854

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :

MAR 03 1995

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DECISION

Presented before this Court is a petition for review brought by petitioner for tax refund of alleged erroneous overpayment of ad valorem tax in the amount of P123,929.00 and value-added taxes of P12,485.00.

Petitioner Tomas B. Temprosa Jr. is a Filipino, of legal age and a lawyer by profession. In 1991, petitioner imported from the United States, a 1985 Dodge Caravan which was donated to him by his daughter and son in-law who are both residents of New Jersey, USA. This gift is covered by a Deed of Donation executed on October 30, 1990 in New York in favor of petitioner (Exhibit "B"). Prior to its importation, petitioner applied for importation with the Department of Trade and Industry under the "No-Dollar Imports of Motor Vehicles" and was subsequently given the authority by the Bureau of Import Services to import one (1) unit 1985 Dodge Caravan (Exhibit "C"). The Dodge Caravan vehicle was shipped from New York, USA, to the Philippines and arrived here on June 14, 1991 covered by a Bill of Lading which described the shipment as a 1985 Dodge Caravan (used) with a gross weight of 1769 kgs. (Exhibit "D"). Upon the shipment's arrival, petitioner filed with the Bureau of Customs an Import Entry and Internal Revenue Declaration, dated June 14, 1991 (Exhibit "E"), and the subject vehicle was consequently examined and appraised by Customs examiners to determine the amount of duties and other taxes that should be paid by the petitioner. Upon examination, the principal appraiser of the Bureau of Customs computed the following charges to be paid by the petitioner without imposing the ad valorem tax, thus:

Customs Duty -	P 83,574.00
Ad Valorem Tax -	- -
Value-Added Tax -	22,533.00
TOTAL AMOUNT TO BE PAID	P106,107.00

Respondent, through Regional Director Felicidad Viray, did not agree with the foregoing computation and instead issued an Authority to Release Imported Goods (Exhibit "G") upon the payment of internal revenue taxes listed therein in the total sum of P158,854.00, computed as follows:

Ad Valorem Tax -	P123,929.00
Value-Added Tax -	34,925.00
TOTAL INTERNAL REVENUE TAXES TO BE PAID	P158,854.00

Petitioner objected to the imposition of the ad valorem tax because he maintains that it is a ten-seater vehicle which falls outside the definition of an automobile therefore no longer subject to the ad valorem tax. However, in order to effect the release of the vehicle, petitioner, on June 26, 1991, paid under protest the following duties and taxes:

Customs Duty	P 83,574.00
50% Ad Valorem Tax -	124,259.00
Value-Added Tax -	35,018.00
T O T A L	P242,851.00

This payment is covered by a certificate of payment No. 146370 (Exhibit "H") and official receipt no. 34997672 (Exhibit "I").

In a letter dated July 3, 1991, petitioner filed a claim for refund in the amount of P123,929.00 representing the alleged erroneous payment of the 50% ad valorem tax and the alleged overpayment of value-added tax based on the following grounds:

1.) Subject motor vehicle is not subject to ad valorem tax in view of the finding of the Customs examiner that the same is a 10-seater vehicle;

2.) The actual condition of the motor vehicle was not used as basis of the

> computation of the tax. Absolute reliance on its red book value was made without taking into account that the motor vehicle is damaged in some of its portions as indicated in the survey report and record.

Respondent denied the claim for refund in a letter, dated June 15, 1992 (Exhibit "K"), and maintained that the Dodge Caravan imported by petitioner falls within the definition of an automobile as provided by Republic Act 1186 therefore subject to Section 149 of the Tax Code imposing an ad valorem tax on said importation. This denial prompted the petitioner to file this petition on October 7, 1992 with the prayer that respondent be ordered to refund the amount of P123,929.00 representing alleged overpayment of the ad valorem tax and P12,485.00 as overpayment of value-added tax.

Respondent in his answer presented the following special and Affirmative Defences:

> 4. Petitioner has failed to state any cause of action under Section 204 of the Tax Code, under which the Commissioner of Internal Revenue allegedly may credit or refund taxes erroneously or illegally received.
>
> In the instant case, petitioner begs the issue, as it has miserably failed to show on the face of the petition that the collection of the aforesaid tax liability in the amounts of P123,929.00 as erroneous overpayment of ad valorem tax and P12,485.00 as erroneous overpayment of value-added tax, plus interest due thereon, is illegal and erroneous as against the tax payer is (sic) they are in the nature of tax exemption.

5. In addition, well-settled is the doctrine that provisions on the tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption.

6. Besides, in an action for refund the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund.

7. The Honorable Court has no jurisdiction over the instant case as the Petition for Review was filed by petitioner after thirty (30) days from the receipt of denial of the claim for refund, hence, petitioner's judicial action for claim for refund had already prescribed.

The foregoing facts raises 2 basic issues, to wit:

1) Whether or not this Court has jurisdiction to take cognizance of this petition;

2) Assuming that this Court has jurisdiction, whether or not the 1985 Dodge Caravan imported by petitioner is subject to the 50% ad valorem tax.

With respect to the first issue, respondent asserts that the petitioner's appeal was filed beyond the 30-day period provided in Section 11 of Republic Act 1125 and, therefore, this Court cannot take cognizance of the same for lack of jurisdiction.

Petitioner in his Memorandum filed on February 23, 1994 asserts that the letter denying his claim for refund dated June 15, 1992 was received by the delivery unit of the Bureau of Post, NCR, Manila on September 8, 1992 and was received by him after September 8, 1992, hence this petition for review filed on October 7, 1992 was well within the 30-day period prescribed by Section 11 of Republic Act 1125. He even went further to allege that the date of receipt by the Bureau of Post of said letter is shown by Exhibit "L-4".

A careful examination of the records of the case raises a serious doubt as to the veracity of petitioner's allegations embodied in his Memorandum because a perusal of the evidence formally offered by petitioner and admitted by this Court on June 18, 1993, reveal that there is no such exhibit as "L-4". In fact Exhibit "L" has only one submarking identified as Exhibit "L-1" which refers to the entry under the column "Seating (Pass) on Exhibit "L" which reads "10" (page 32, CTA records). Neither can this Court locate any evidence which shows that the letter of denial was indeed received by petitioner after September 8, 1992 or the date when the Post Office received the same. Respondent, on the other hand, has confounded this cloud of doubt by her failure to submit her memorandum and by her waiver in the presentation of her evidence. Neither did counsel for respondent pursue a thorough examination during the hearings of this case with respect to the issue of lack of jurisdiction.

Be that as it may, it is well settled that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu. (Commissioner of Internal Revenue v. Villa, 22 SCRA 3).

Section 11 of Republic Act 1125 which is at the core of this particular controversy, provides in part as follows :

> Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or 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. (underscoring supplied)

The aforecited provision reckons the counting of the thirty-day period from the receipt of the decision or ruling of the Commissioner as the span of time given to the petitioner to file his appeal to this Court, otherwise the denial of the claim for refund becomes final. As applied to the instant case, the petition itself which was filed on October 7,1992 does not contain any allegation as to the date when the petitioner received the letter of the Deputy Commissioner denying his claim for refund. However, the petition gives details as to the date when the petitioner filed his claim for refund and the fact that the respondent denied the same in a letter, dated June 15, 1992 without giving us any information as to the timely filing of this appeal which is, to say the least, very critical.

It is a well-settled rule that the question as to whether or not a Court has jurisdiction over the subject matter of a case is determined from the allegations of the complaint, not the allegations in the answer (Multinational Village Homeowner's Association Inc. vs. Court of Appeals, 203 SCRA 104; Orosa Jr. vs. Court of Appeals, 193 SCRA 391; Notre Dame de Lourdes Hospital vs. Mallare-Philips, 197 SCRA 187). This rule also holds true with regard to petitions for review filed with this Court which is found in Section 2, Rule 5, of the Rules of the Court of Tax Appeals, hereunder quoted:

> The Petition for Review shall contain allegations showing jurisdiction in the Court, a concise statement of the ultimate facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the reversal of the respondent's decision. A copy of the decision appealed from shall be attached to the Petition for Review.

Nothing in the records of this case, particularly the petition for review and the evidence subsequently offered by the petitioner, gives us the raison d'etre as to why this Court should take cognizance of this appeal, taking into consideration the allegation of respondent that this action was filed beyond the thirty-day period prescribed by law.

In view of the foregoing, this petition is hereby dismissed for lack of jurisdiction without pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals