Library

PHILIPPINE ACETYLENE CO., INC.,
Petitioner,

- versus -

Nov. 7/64

C.T.A. CASES
NOS. 1331, 1354
1361, 1393
1409, 1424

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

D E C I S I O N

This relates to six (6) petitions for review (CTA Cases Nos. 1331, 1354, 1361, 1393, 1409, 1424), filed by the petitioner, for the refund of the sums of ₱27.00, ₱224.00, ₱192.00, ₱389.00, ₱354.00 and ₱501.00, respectively, as alleged overpayment of internal revenue taxes on articles imported by petitioner in 1961. Since the issues involved in these cases are identical, the parties agreed to have them tried, heard and decided jointly.

At various times in 1961, petitioner, a corporation duly organized and existing under and by virtue of the laws of the Philippines, imported from the United States and/or Japan LPG gas floor lamp and parts and engine parts, internal combustion engine parts, double mantles, (CTA Case No. 1331), 120 pieces of butane gas cylinders, (CTA Case No. 1354), ten cartons gas burners, (CTA 1361), one 11,000 gallon storage tank with one box fittings, (CTA Case No. 1393), 230 pieces of butane gas cylinders, 1000 pieces of caps of acetylene cylinders (CTA Case No. 1409), and one box of machine parts for a Westinghouse electric motor (CTA Case No. 1424).

In computing the internal revenue taxes on the above imported articles, respondent converted their landed costs in dollars to Philippine peso at the prevailing free market rate of exchange of ₱3.60 to $1.00 (in CTA Cases Nos. 1331, 1394 and 1361) and ₱2.30 to $1.00 and ₱3.45 to $1.00 (in CTA Cases Nos. 1393, 1409 and 1424). Petitioner paid the taxes on the basis of respondent's computation. Later on, believing that the internal revenue taxes should be computed at the exchange rate of ₱2.00 to $1.00 as provided in Republic Act No. 265 (Central Bank Act), it filed petitions for review, claiming the refund of the respective sums of ₱27.00, ₱224.00, ₱192.00, ₱389.-00, ₱354.00 and ₱501.00, as alleged overpayments. Petitioner alleges, in the petitions for review, that it filed, with respondent Commissioner on April 5, 1962, written requests for refund of the alleged overpaid amounts.

The issues are as follows:

(1) Whether or not petitioner has a cause of action against respondent; and

(2) Whether the par value established in Republic Act No. 265 or the prevailing free market rate of exchange should be used in computing the internal revenue taxes on said importations.

As afore-stated, petitioner alleges that it filed claims for refund of the overpaid amounts on April 5, 1962. We have carefully scrutinized the evidence on record and found no proof of the existence of written claims for refund. We are, therefore, constrained to conclude that petitioner has not filed any claim for refund of the alleged overpayments.

It is well settled that, under Sections 306 and 309 of the Tax Code, the filing of a written claim for refund with the Commissioner of Internal Revenue is mandatory and non-compliance thereto bars recovery (Johnston Lumber Co., Inc. vs. Court of Tax Appeals, G.R. No. L-9292, April 23, 1957, 53 OG 5226, cited in Cebu Portland Cement Co. v. Com. of Int. Rev., CTA Case No. 345, July 20, 1962 and Ormis Electric Service Co., Inc. v. Com. of Int. Rev., CTA Case No. 635, Oct. 31, 1960; Andres R. Vda de Aguinaldo vs. Com. of Internal Revenue, G.R. No. L-19927, February 26, 1965).

There having been no claims for refund filed by petitioner with the Commissioner of Internal Revenue on April 5, 1962, the present actions for recovery of the alleged overpaid internal revenue taxes must perforce fail.

Consequently, we are of the opinion and so hold that the petitions for review in the above-entitled cases should be dismissed for lack of cause of action.

In view of the fore-going conclusions, the disposition of the other issue becomes unnecessary.

WHEREFORE, the petitions for review in the above-entitled cases should be, as they are hereby, dismissed. With costs against petitioner.

SO ORDERED.

Quezon City, November 7, 1965.

ALEJANDRO B. AFURONG
Associate Judge

WE CONCUR:

TEOFILO D. REYES, SR.
Presiding Judge

ROMAN M. UMALI
Associate Judge