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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

NATIONAL POWER CORPORATION,
Petitioner,

- versus -

August 9, 1961

C.T.A. CASE NO. 553

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

DECISION

This is an appeal from the decision of respondent denying petitioner National Power Corporation's claim for the refund of the sum of ₱2,582.96 paid as advance sales tax on five cases containing diamond drill bits, non-coring diamond bits, reaming shells and parts for drilling machine.

On March 30 and April 1, 3, 6 and 20, 1955, five cases containing diamond drill bits, non-coring diamond bits, reaming shells and parts for drilling machine, consigned to the Philippine Engineers' Syndicate, Inc. by Svenska Diamantbergbornings AB, Sweden, arrived at the Manila International Airport. Advance sales tax, customs duties and surcharge totalling ₱6,749.57 were assessed upon these shipments. But, as they were not covered by a bank release certificate, they were subjected to seizure proceedings. Subsequently, they were released to the Philippine Engineers' Syndicate, Inc. when it filed a surety bond in the amount of ₱34,990.91 and paid, on May 5, 1955, the amount of ₱6,749.57 as advance sales tax, customs duties and surcharge.

After due hearing, the Collector of Customs for the Port of Manila determined that the Philippine Engineers' Syndicate, Inc. was only an agent of the National Power Corporation, the real importer thereof, which, under Section 2 of Republic Act No. 358, is exempt:

> "x x x from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."

Consequently, the surety bond filed for the release of the shipments was cancelled and the sum of ₱4,156.66 paid as customs duties and surcharge was refunded to petitioner National Power Corporation.

Acting upon the suggestion of the Bureau of Customs, petitioner, in a letter dated January 13, 1958 to the Collector of Internal Revenue, claimed for the refund of ₱2,582.96 previously paid as advance sales tax on the shipments in question, alleging that it is exempt from all taxes in pursuance of Section 2 of Republic Act No. 358. Respondent denied the claim for refund in his letter dated May 27, 1958, which was received by petitioner on June 11, 1958, for the reason that said claim was filed beyond the two-year period prescribed in Section 306 of the Revenue Code. Hence, the present appeal, which was interposed on July 11, 1958, against which respondent countered with a motion to dismiss the case on the ground that this

Court has no jurisdiction to entertain the petition for review, the same having been filed beyond the two-year period prescribed in Section 306 of the Revenue Code. This Court, in a resolution dated September 8, 1958, denied respondent's motion.

The issues raised in this case are:

1. Whether or not the instant action for refund has prescribed in pursuance of Section 306 of the Tax Code; and

2. Whether or not petitioner National Power Corporation has the right to claim for the refund of the amount of ₱2,582.96 representing advance sales tax paid by the Philippine Engineers' Syndicate, Inc.

The first issue has been raised in respondent's "Motion to Dismiss" which was denied by this Court in a resolution dated September 8, 1958. As our resolution dealt on the question quite exhaustively and disposed it adversely to respondent, we deem it repetitious, if not unnecessary, to discuss it further.

We come now to the issue of whether or not petitioner National Power Corporation can claim for the refund of the amount of ₱2,582.96 representing advance sales tax paid by the Philippine Engineers' Syndicate, Inc.

Respondent Commissioner of Internal Revenue contends that petitioner has no cause of action, it being not the real party in interest to claim the refund, for the reason that the Philippine Engineers' Syndicate, Inc.

has paid the duties, tax and surcharge in question.

We find no merit in respondent's contention. The fact that it was the Philippine Engineers' Syndicate, Inc. which paid the duties, tax, and surcharge in question is not conclusive that petitioner is not the real party in interest. Exhibits "A" and "B" negate the contention of respondent.

Let us examine the documentary exhibits ("A" & "B"). The Philippine Engineers' Syndicate, Inc. entered into a contract with the National Power Corporation whereby the former undertook:

> "(a) To procure the necessary equipment, tools, materials, appliances, and supplies which are necessary for the efficient and economical performance of the work, <u>in its capacity as agent of the NATIONAL POWER</u>." (Exh. A-1, BIR rec. p. 62, emphasis supplied.)

and

> "(a) On purchases made abroad full payment for all costs incurred by CONTRACTOR, including packing, processing, insurance against marine, and war risk and transit hazards to the site of the project, and transportation to the port of entry in the Philippines, x x x. CONTRACTOR shall be reimbursed by NATIONAL POWER for interest on funds advanced by CONTRACTOR for payment of the costs incurred on items enumerated above. x x x." (Exh. A, BIR rec. p. 58.)

But upon completion of the work, the Philippine Engineers' Syndicate, Inc. was required -

> "(c) x x x to account for, and return to, NATIONAL POWER all equipment which shall first be completely overhauled then, dismantled, and stored, and all construction materials, supplies, and spare parts which remain unused." (Exh. A-1, BIR rec. p. 62.)

Apparently, in accordance with the terms of the contract quoted above, the Philippine Engineers' Syndicate, Inc., as agent for the National Power Corporation, entered into an agreement (Exh. B, CTA rec. pp. 73-82) with Svenska Diamantbergbornings AB of Sweden, whereby the latter, among others, agreed:

> "To supply two outfits, each one consisting of one rotary core drill complete with electric motor and/or compressed air motor drill rods, drill bits etc. and one cementation unit comprising pumps, concrete mixing tank, electric motors and/or compressed air motors." (Exh. B-1, CTA rec. p. 74.)

The shipments in question upon which the tax was assessed and paid contained the same articles which Svenska Diamantbergbornings agreed to supply to the Philippine Engineers' Syndicate, Inc., as agent of the National Power Corporation (see t.s.n. pp. 16-19).

From the above findings, it appears clear and convincing that the Philippine Engineers' Syndicate, Inc. acted merely as an agent of petitioner in effecting the importations in question. In this connection, it must also be noted that the Syndicate and petitioner, the latter as the intended consignee, were represented by a common counsel.

Moreover, it is inconceivable for petitioner, knowing that it is entitled to exemption "from all taxes, duties, fees, imposts,charges, and restrictions", to allow the Philippine Engineers' Syndicate, Inc. to effect the importations in question in the latter's capacity as sole and independent importer. For, were the syndicate allowed to so import, duties, taxes, and other charges incident thereto would eventually be borne by petitioner.

If the act of an unauthorized agent is the act of the principal (Galasiano vs. Austria, 51 OG 2874) and if the principal is primarily liable for the authorized acts of his agent (Gutierrez Hermanos vs. Oria Hermanos, 19 Phil. 104; Finianos vs. Bastida, 56, Phil. 817; Pajota vs. Jante, G. R. No. L-6014, February 8, 1955; Salonga vs. Warner Barnes & Co., G. R. No. L-2246; January 31, 1951), there is no reason why the principal, like petitioner, should not be treated as a real party in interest in a transaction arising from an authorized act of its agent. Hence, we hold that petitioner is a real party in interest in the case at bar.

Having ruled that petitioner National Power Corporation is a real party in interest in the case at bar, it is entitled to the refund of ₱2,582.96 for the reason that, under Section 2 of Republic Act No. 358, it is exempt from the payment of all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

WHEREFORE, the decision appealed from is reversed, and the Commissioner of Internal Revenue is hereby ordered to refund to petitioner National Power Corporation the amount of ₱2,582.96. Without pronouncement as to costs.

SO ORDERED.

Manila, August 9, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge