SILVER SWAN MANUFACTURING
CO., INC.,
Petitioner,

- versus - C.T.A. CASE No. 1760

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

RESOLUTION

A motion was filed by the respondent on August 8, 1966, seeking to dismiss the instant petition for review on the ground that it was filed beyond the two-year period prescribed in Section 306 of the National Internal Revenue Code.

As alleged in the petition for review, petitioner paid on August 13, 1960 and September 26, 1960 the sums of ₱349.00 and ₱571.00, respectively, as advance sales tax on 183 pieces of portable radio transistors which arrived in Manila on board the S/S "SEIYO MARU" sometime in August, 1960. On November 2, 1960, it filed with the respondent a claim for refund of the sum of ₱959.00 alleged to have been erroneously paid. The claim for refund was denied by the respondent in his letter dated March 24, 1966. Upon receipt thereof on April 25, 1966, petitioner filed the instant petition on May 23, 1966.

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In support of his motion, respondent argues that the petition for review is actually an action for refund and the same was filed only after the lapse of almost six years from the date of payment. On the other hand, in its opposition, petitioner maintains that its petition for review was filed within the thirty-day period prescribed in Section 11 of Republic Act No. 1125.

On the basis of the facts as admitted, we agree with petitioner that its petition for review was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125. However, in view of the positive requirement of Section 306 of the Revenue Code, it should have filed the said petition or action for refund within two (2) years after payment of the tax and should not have waited for the decision of respondent on its claim for refund (see Section 306, National Internal Revenue Code; Muller & Phipps (Manila), Ltd. v. Coll. of Int. Rev., L-10694, March 20, 1958; Gibbs v. Coll., L-13453, February 29, 1960; Guagua Electric Light Plant Co., Inc. v. Coll., L-14421, April 29, 1961; Koppel (Phil.) Inc. v. Coll., L-10550, September 19, 1961).

In this case, petitioner filed its petition for review or suit for refund only on May 23, 1966, after

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the lapse of almost six years from the dates of payment of the tax in August and September, 1960. Consequently, this Court has no jurisdiction to take cognizance of the same. (See U. S. T. Cooperative v. The Com. of Int. Rev., CTA No. 1720, December 12, 1966, and cases cited therein.)

IN VIEW OF THE FOREGOING, the petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, January 16, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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