REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DOW CHEMICAL PACIFIC, LIMITED,
Petitioner,

- versus - C.T.A. CASE NO. 4425

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

1/17

R E S O L U T I O N

Petitioner moves the Court "to reconsider and vacate its resolution dated January 17, 1992 dismissing this case" (Motion For Reconsideration, p. 3; CTA Records, p. 74).

This case involves a claim for refund or tax credit of P636,623.00 in allegedly overpaid value-added tax (VAT) on imported "Dursban F", a raw material used in the manufacture of pesticides. It appears that, due to its pursuit of an early and administrative settlement of this case, petitioner, had, several times during the course of the instant proceedings, requested for and been allowed by the Court, postponements of hearings of the case. However, on October 31, 1991, the Court denied petitioner's latest motion for postponement, and

358

ordered this case dismissed "for failure of petitioner's counsel to appear and prosecute (the same)" (Resolution dated November 4, 1991; CTA Records, p. 61). On December 10, 1991, petitioner filed with Us its motion, dated December 9, 1991, seeking reconsideration of Our November 4, 1991 resolution.

On January 17, 1992, during the scheduled hearing of petitioner's December 9, 1991 motion, the Court, after lifting its October 31, 1991 order of dismissal, once again dismissed the instant case, this time upon motion to that effect by petitioner's counsel. It is this second dismissal of the case by the Court which is the subject of petitioner's instant motion for reconsideration filed on February 12, 1992.

Preliminarily, the Court notes that its questioned order was made upon oral motion to dismiss the case made by petitioner's counsel in open Court, as evidenced by the following portions of the transcript of stenographic notes of the January 17, 1992 hearing of this case, as quoted below:

"JUDGE ROAQUIN:
What is your move?

ATTY. DIDULO:
<u>Well inasmuch (sic) as the respondent has already approved our claim for refund, we just move for the dismissal of the case.</u>

JUDGE ROAQUIN:
If that is the reason, the case is hereby dismissed.

JUDGE ACOSTA:
But indicate there that the cause for the dismissal is the approval made by the Commissioner of Internal Revenue not for failure to prosecute.

JUDGE ROAQUIN:
And so you are moving for the withdrawal of the case? After we have lifted already the dismissal of this case, you are now withdrawing the case?

ATTY. DIDULO:
<u>I will file a written withdrawal, motion for withdrawal of the case.</u>

JUDGE ROAQUIN:
Yes, you are moving for withdrawal of the case. On motion of counsel for petitioner, the case is hereby withdrawn and the case is terminated and closed."
(T.S.N., January 17, 1992, pp. 9-10).

The Court, therefore, finds it highly unusual, if a bit strange, that same counsel now comes before it seeking reconsideration of said dismissal order. Be that as it may, however, the Court finds it necessary to make a full discussion on the merits of the issues brought before it in the instant motion.

It appears from the transcript of stenographic notes taken during the January 17, 1992 hearing of this case that petitioner received a letter dated August 2, 1990 from respondent granting the claim for refund subject of the instant action (T.S.N. of January 17, 1992, p. 2). However, no actual refund has yet been granted to petitioner (Ibid., p. 4), as respondent, when it granted the claim for refund, merely forwarded the same to the Bureau of Customs with a favorable recommendation and instructions to verify whether the tax to be refunded was remitted to the government (Id., pp. 3 and 5). The Court dismissed the instant action on the ground that respondent has already granted petitioner's claim for refund.

In the instant motion for reconsideration, petitioner argues thus:

> "4. In the scheduled hearing on January 17, 1992, the Honorable Court dismissed the case on the following grounds:
>
> a) Since the subject claim for refund was already approved by the Respondent, the Petitioner has lost its cause of action against the former, and
>
> b) The proper procedure to be followed is for the Petitioner to work for the issuance of the refund from the Bureau of Customs. If the Bureau of Customs denies the claim for refund, Petitioner can appeal the decision by filing a Petition for Review with the Honorable Court.
>
> The value added tax (sic) paid under Section 103(c) of the Tax Code, as amended, is an internal revenue tax, and under Section 230 of the same Code, Petitioner has only two years from date of payment of the tax within which to file its claim for refund. The agreement between the Respondent and the Bureau of Customs wherein the Respondent empowered the Bureau of Customs to issue refunds on erroneously paid taxes on imported products will

facilitate the processing of the claims for refund but it does not deviate the fact that the Respondent is still the principal party in this case.

With the dismissal of the Petitioner's claim for refund, we are faced with the dilemma in the event when the Bureau of Customs will deny the claim and the two-year prescriptive period had already lapsed. The Petitioner is now faced with the real possibility that it could not elevate the denial by the Bureau of Customs of its claim to this Honorable Court, thus foreclosing any judicial and administrative remedies available, to the prejudice of the Petitioner." (Motion For Reconsideration, pp. 2-3; CTA Records, pp. 73-74)

Relevant to the subject matter of the instant motion are the pronouncements of the Court of Appeals in the case of <u>Procter & Gamble Philippines Manufacturing Corp. v. Commissioner of Customs, et. al.</u> (C.A.- G.R. No. 24495-SP, May 7, 1991), to wit:

"The respondent court, in construing paragraph 2 of Section 1708 (of the Revised Tariff and Customs Code, as amended), should have read, relate and consult (sic) said paragraph with section 6 of the National Internal Revenue Code of 1977, which provides that 'for the collection of the national internal revenue on imported articles, the Commissioner of Customs and his subordinates xxx are constituted (as) agents of the Commissioner of Internal Revenue'. Those words/phrases 'constituted as agents of the Commissioner of Internal Revenue' are meaningful. The word 'agents' or simply 'agent', ordinarily means a person empowered to act for another, or one who acts or is empowered to act for another, the like of a representative of a government agency, or a deputy of a public official to whom cetain authority has been delegated by his superior. <u>Gregorio Araneta, Inc. vs. Paterno</u>, 91 Phil., 804, says that an agent is one who accepts another's representation to perform in his name certain acts of more or less transcendency. In brief, an agent is a person who performs an action or brings about a certain result, for and in behalf of another. Thus, since by express mandate of Section 6 of the National Internal Revenue Code, the 'Commissioner of Customs and his subordinates', are constituted as 'agents' of the 'Commissioner of Internal Revenue in the collection of the national internal revenue on imported articles' the Commissioner of Customs and his subordinates should be deemed as forming a necessary part and component of the Bureau of Internal Revenue and act for and in behalf of the Commissioner of Internal Revenue, as required in Section 306 of the tax Code, governing 'Recovery of tax erroneously or illegally collected', in relation to section 309, paragraph 3, last sentence of the same Code, providing that 'xxx No credit or refund of taxes or penalties shall be allowed unless the tax payer (sic) files in writing with the Commissioner, a claim for credit or refund xxx.' In this issue, another written claim for refund addressed to the Commissioner of Internal Revenue would be a surplusage, time-wasting, productive of red tape, and resulting in needless delay in getting routine business done.

The petition for Review filed with the respondent court impleading the Commissioner of Customs, without additionally impleading the Commissioner of Internal Revenue, is deemed sufficient. Since the Commissioner of Customs is expressly constituted by statute as the agent of the Commissioner of Internal Revenue, the former can be sued without need of joining the latter in accordance with section 3, Rule 3, Revised Rules of Court. xxx." (Underscoring supplied)

The Court believes that, although the Procter & Gamble decision of the Court of Appeals involves the reverse of the situation in the instant case (that is, it involves a situation when only the Commissioner of Customs, and not the Commissioner of

Internal Revenue, was impleaded as party to a case involving a claim of refund of allegedly erroneously paid taxes imposed on imported items), the principles laid down in the portions thereof quoted above, are applicable.

The Court emphasizes that the questioned dismissal order was not made on the basis of lack of jurisdiction, for, as has been held in numerous decided case, "the jurisdiction of the court once acquired, is exclusive, and continues until the end of the litigation or until the case is finally terminated. (Lat v. Philippine Long Distance Telephone Company, Inc., 67 SCRA 425, 434 [1975] citing cases; Evangelista v. Court of Agrarian Relations, 109 SCRA 957 [1960]). More importantly, since, as enunciated by the Court of Appeals in the Procter & Gamble case, the Commissioner of Customs and his subordinates are considered as agents of respondent with respect to the collection of internal revenue of imported goods, then the former are not indispensable parties whose non-joinder causes the Court to lose jurisdiction over the case at bar.

Petitioner cannot rely on the threat of possible rejection of its claim for refund by the Customs authorities, to convince the Court of the need to reconsider its decision in the case. Since, as enunciated by the Court of Appeals in the Procter &

Gamble case, the Commissioner of Customs and his subordinates are considered as agents of respondent with respect to the collection of internal revenue of imported goods, such relationship protects petitioner herein from the anticipated possible dilemma it discusses in its instant motion. For, in an agency, it is a basic rule that "the agent must act within the scope of his authority" (Art. 1881, Civil Code of the Philippines). The Court notes that in the case at bar, respondent only authorized the Bureau of Customs to "issue the tax refund for value added tax payments after it has verified the actual receipt of payment of taxes by the government in compliance with the requirements of the Commission on Audit" (Motion For Reconsideration, p. 1; CTA Records, p. 72). Therefore, the Customs authorities, being mere agents of respondent in the instant case, cannot, as petitioner fears, deny its claim for refund.

At most, the Bureau of Customs may refuse to pay the tax refund if it finds the Commission on Audit requirement on actual receipt of payment of the questioned VAT by the government not complied with. But even then, respondent's approval of the claim for refund would still stand, and there is nothing more for petitioner "to elevate" to this Court. For, although the actual letter from respondent to petitioner, informing it of the grant of the claim was not submitted to the Court nor annexed to the instant motion, the Court finds on the basis of petitioner's own motion for reconsideration that said grant is unconditional, rather than with a suspensive or resolutory condition attached to it. The prerequisite showing of actual receipt of the VAT to be refunded is not one which is required of petitioner to meet, and which if not complied with would cancel, rescind or suspend the grant of refund. In fact, such condition is an internal government policy which is addressed to the Customs authorities. Therefore, if non-payment of the refund occurs due to non-compliance with the Commission on Audit requirement, all that petitioner has to do is to file a case for mandamus against the Customs authorities before the proper court, to compel them to make the required remittance of the VAT in question (which they collected in the first place) to the government. After all, it is the ministerial duty of the Bureau of Customs to remit to the national government all internal revenue taxes, among other things, which it collects from imported items.

Clearly, therefore, petitioner's rights will not be jeopardized if the case at bar is dismissed.

ACCORDINGLY, the Court, acting on petitioner's motion for reconsideration which it finds without merit, resolves to deny the same. The Court hereby

365-A

lets its order, made in open court on January 17, 1992 and confirmed in its resolution dated January 21, 1992, dismissing the instant action on the ground that petitioner's "claim for tax refund (subject matter of its petition for review) has already been granted by the Commissioner of Internal Revenue", stand undisturbed.

SO ORDERED.

Quezon City, Metro Manila, July 17, 1992.

STELLA SADIVAS-FARRALES
Acting Associate Judge

ERNESTO D. ACOSTA
Presiding Judge