Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

June 28, 1965

REYNOLDS PHILIPPINE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 1003

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

X - - - - - - - - - - - - - - - - X

D E C I S I O N

Petitioner seeks the refund of the sums of ₱148.00 and ₱110.00 representing alleged overpayment of the advance sales tax collected on two (2) shipments of aluminum pig which it imported from abroad.

From the record, it can be gathered that petitioner Reynolds Philippine Corporation imported from abroad two shipments of aluminum pig, consisting of 392 and 292 bundles, which were duly declared and entered under Customs Entries No. 027565 and No. 022897, series of 1959, respectively. These goods were classified by the Bureau of Customs under paragraph 76.02 of the Tariff and Customs Code providing for 10% ad valorem duty, which was paid by petitioner under Customs Official Receipt No. 02977 dated February 12, 1959 in the sum of ₱1,697.00 for Entry No. 027565 and under Customs Official Receipt No. 03676 dated February 24, 1959 in the amount of ₱1,261.00 for Entry No. 022897. Believing that these importations should have been classified under paragraph 76.01 instead of under paragraph 76.02 of the Tariff and Customs Code, and therefore free of tariff duty, petitioner filed its protest with the Bureau of Customs against such erroneous classification and consequent imposition of the customs duty. No formal decision has as yet been rendered by the Collector of Customs of Manila, or the Commissioner of Customs, on petitioner's protest.

On March 23, 1960, petitioner filed with respondent Commissioner of Internal Revenue its written claim for refund of the alleged overpaid advance sales tax in the total sum of ₱258.00. And without waiting for respondent's decision on its claim for refund, petitioner filed with this Court on February 7, 1961 the instant petition for review.

The alleged overpayment of the advance sales tax in question was due to the imposition and collection by the Bureau of Customs of the customs duty on petitioner's importations and the consequent inclusion of said duty in the landed cost. Since petitioner claims that the shipments are exempt from customs duty, the same should not be included as part of the tax base for purposes of computing the advance sales tax. There seems to be no question that if the two shipments are exempt from customs duty, such duty does not form part of the landed cost and, consequently, petitioner made an overpayment of the advance sales tax which is refundable to it. The parties are in agreement on the computation of the advance sales tax paid by petitioner.

It appears that on July 10, 1961, after the filing of the petition for review, respondent requested petitioner to submit evidence that the corresponding customs duty paid on the imported aluminum pig had been refunded. This request was reiterated in a subsequent letter dated September 13, 1961. Because of failure of petitioner to comply with this request, and since the claim is based on the alleged erroneous classification of the imported article on which the advance sales tax was paid, respondent requested the Commissioner of Customs on October 13, 1961 (reiterated on May 17, 1962) to confirm the erroneous classification. In reply thereto, the then Acting Collector of Customs Teotimo A. Roja, in a letter dated June 8, 1962, informed respondent that the pertinent papers relative to the claim of petitioner were misplaced. He then asked for the necessary data in order to expedite action thereon. This was complied with by respondent on February 22, 1963.

As no confirmation was forthcoming from either the Commissioner of Customs or the Collector of Customs, respondent requested petitioner on November 6, 1963 to submit a certification from the Bureau of Customs of the alleged erroneous classification to enable him to take appropriate action on its claim for refund. In reply thereto, petitioner requested waiver of the said requirement (because of the failure of the Bureau of Customs to issue such certification in spite of repeated requests), and contended that even without said certification the imported aluminum pig falls under paragraph 76.01 of the Tariff and Customs Code.

On January 22, 1964 respondent advised petitioner that unless the required certification attesting that aluminum pig falls under paragraph 76.01 of the Tariff and Customs Code is submitted, its claim for refund would not be given due course. This advice was reiterated in a letter dated March 31, 1964, with a warning that non-compliance within ten days from receipt thereof would be considered as abandonement of its claim. Due to petitioner's failure to comply with this requirement, respondent denied on May 25, 1964 its claim for refund.

The evidence of record shows that when Customs Entries Nos. 027565 and 022897 covering the shipments of petitioner were transmitted to the Liquidation Division by the Appraisers Division, both of the Bureau of Customs, the aluminum pig involved therein was already re-classified from wrought to unwrought aluminum free of duty; that these entries were assessed and liquidated in the Liquidation Division on January 21, 1961 and forwarded to the Cash Division of the same Bureau with recommendation for refund of the customs duty paid thereon. As a matter of fact, the Chief Accountant of the Accounting Division of the Bureau of Customs made a certification to the effect that petitioner has already been credited with the amount of ₱1,687.00, the customs duty erroneously paid in Customs Entry No. 027565, under Customs Journal Voucher No. 70563 dated December 4, 1961. And in the hearing of this case before this Court on November 2, 1964, expert testimony was presented (and even admitted by respondent) that aluminum pig is unwrought aluminum.

From the above recitation of facts, it is clear that the only issue is whether or not petitioner is entitled to the refund of the sum of ₱258.00 representing overpaid advance sales tax on its two shipments of aluminum pig.

Respondent claims that no refund of the overpaid advance sales tax in question can be made by him unless there is a showing that a decision has been rendered by the Collector of Customs of Manila, thence by the Commissioner of Customs, on petitioner's formal protest on the alleged erroneous classification of its imported aluminum. He tries to justify his refusal on the thesis that since petitioner filed a formal protest with the Bureau of Customs regarding the erroneous classification of the importations, a formal decision on the issue of erroneous classification should be rendered by the Collector of Customs because, according to him, he is the proper official authorized by law to decide matters of this nature. In other words, even if the Bureau of Customs had already re-classified and exempted from customs duty the imported aluminum and, as a consequence thereof, had already refunded or credited to petitioner the tariff duty paid thereon, as certified to by the Chief Accountant of the said Bureau, respondent would not allow the refund of the overpaid advance sales tax unless the Collector of Customs and the Commissioner of Customs shall have rendered a decision on petitioner's protest.

It is very hard to understand just what exactly respondent means by "a formal decision on the issue of erroneous classification" or "a decision on the petitioner's protest" still to be rendered by the Collector of Customs of Manila and the Commissioner of Customs. He admits that aluminum pig is unwrought aluminum, free of tariff duty under paragraph 76.01 of the Tariff and Customs Code. As a matter of fact, when Customs Entries Nos. 027565 and 022897 covering petitioner's shipments were transmitted to the Liquidation Division by the Appraisers Division (both of the Bureau of Customs), the aluminum pig importations of petitioner were already re-classified from wrought to unwrought aluminum which is free of duty. These customs entries were already assessed and liquidated in the Liquidation Division on January 21, 1961 with the recommendation to the Cash Division (also of the Bureau of Customs) for the refund of the customs duty paid thereon. Lastly, the Accounting Division (again of the Bureau of Customs) had already credited to petitioner the amount of ₱1,697.00, the customs duty paid in Customs Entry No. 027565, under Customs Journal Voucher No. A-70563 dated December 4, 1961. And if petitioner has not yet been credited with the amount of ₱1,261.00 for Entry No. 022897, which covers the other shipment, it is probably because the Bureau of Customs has misplaced the pertinent papers relative to this claim. At any rate, the aluminum pig declared in Entry No. 027565 is in all respects the same aluminum pig declared in Entry No. 022897.

Placed in this situation, it becomes more difficult to see what else would prevent respondent from granting the refund of the advance sales tax claimed by petitioner. Much stress is laid on the proposition that no formal decision has as yet been rendered by the Collector of Customs and the Commissioner of Customs on petitioner's protest, but as can be seen from above, these public officials would not even bother themselves to answer repeated requests for confirmation of the erroneous classification of the imported aluminum pig. Again, emphasis is given on the fact that the certification to the effect that petitioner was already credited with the customs duty paid on one of its shipments was merely signed by the Chief of the Accounting Division, but as testified to by the Chief of the Liquidation Division, under the set-up of the Bureau of Customs, the Chief Accountant of the said Bureau is authorized to credit customs duties (t.s.n., p. 25.).

The right to claim for refund of internal revenue taxes erroneously or illegally assessed or collected is not imprescriptible. Under section 306 of the National Internal Revenue Code, a taxpayer is given only two years from payment thereof within which he can institute judicial action in this Court for their recovery.] (See Muller & Phipps v. Collector of Internal Revenue, G.R. No. L-10694, March 20,1958; P.J.Kiener & Co. Ltd., v. David, G.R. No. L-5163, April 22, 1953, 49 O.G. 1852; College of Oral and Dental Surgery v. Court of Tax Appeals, G.R.No. L-10446, 54 O.G. 7055; Collector of Internal Revenue v. Court of Tax Appeals, G.R.No.L-11494, January 28, 1961; Guagua Electric Light Plant Co. v. Collector of Internal Revenue, G.R.No. L-14421, April 29,1961.) The overpaid sales tax in question was paid on February 12, 1959 and February 24, 1959, and the instant petition for review for its recovery was filed with this Court on February 7, 1961. For this Court now to dismiss this case and make petitioner wait for the Collector of Customs of Manila and the Commissioner of Customs to render their formal decision on its protest, when nothing is forthcoming, would deprive it of its right to recover what is lawfully due it. Since the Bureau of Customs has already declared petitioner's aluminum pig shipments free of duty and for all intents and purposes had already refunded the customs duty paid thereon, respondent should not resort to minor technicalities that might bar petitioner of its right to the refund of the overpaid advance sales tax.] Clearly, therefore, respondent should refund to petitioner the sum of ₱258.00, representing the overpaid tax in question.

Anent petitioner's claim for interest on the amount refundable to it, suffice it to say that the collection of the advance sales tax in question by respondent was not attended with arbitrariness. As stated above, the overpayment was due to the imposition by the Bureau of Customs of the customs duty on petitioner's importations and not by respondent's arbitrary determination. (Collector of Internal Revenue v. Prieto, G. R. No. L-11976, Sept. 26, 1961; Commissioner of Internal Revenue v. Asturias Sugar Central, Inc., G. R. No. L-15013, Dec. 28, 1961; Collector of Internal Revenue v. Binalbagan Estate, Inc., G. R. No. L-12752, Jan. 30, 1965.)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Reynolds Philippine Corporation the total amount of ₱258.00 without interest. No costs.

SO ORDERED.

Quezon City, June 28, 1965.

R M Umali
ROMAN M. UMALI
Associate Judge

I CONCUR:

Teofilo D R
TEOFILO D. REYES, SR.
Presiding Judge