

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. NATIONAL POWER CORPORATION, RESPONDENT.

G.R. No. L-18874. January 30, 1970

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

An appeal from the decision of the Court of Tax Appeals, dated August 9, 1961, in CTA Case No. 553, reversing the decision rendered by the Commissioner of Internal Revenue on May 2, 1958, and ordering said Commissioner to refund to the National Power Corporation the amount of P2,582.96 representing advance sales tax paid on certain articles said corporation had imported in 1955.

Sometime 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 machines, consigned to the Philippine Engineers' Syndicate, Inc., sent by a Swedish supplier, arrived at the Manila International Airport. Advance sales tax, customs duties and surcharge in the aggregate amount of P6,749.57 were assessed upon these shipments, but as they were not covered by a bank release certificate they were subjected to seizure proceedings. Subsequently, the shipments were released to the Philippine Engineers' Syndicate, Inc., when it filed a surety bond in the sum of 734,990.91 and paid, on May 5, 1955, under protest, the sum of P6,749.57 as advance sales tax, customs duties and surcharge. Of the latter sum, P4,156.66 were for customs duties and P2,582.96 were for advance sales tax. The Philippine Engineers' Syndicate, Inc. made payments for the National Power Corporation which claim-ed to be the real importer of the shipments.

On July 14, 1955 the hearing on the seizure proceedings (Seizure Identification No. 2975) commenced. Incidentally, during the pendency of the seizure proceedings, the National Power Corporation filed with the Bureau of Customs, on September 17, 1955, a claim for the refund of the amount of P6,749.57 paid as customs duties and advance sales tax, for the reason that the National Power Corporation is exempt from the payment of taxes, duties, imposts, etc. as provided in Republic Act No. 358.

On October 15, 1957 a decision was rendered by the Collector of Customs of Manila finding that the Philippine Engineers' Syndicate, Inc. was an agent of the National Power Corporation, that the importations in question belonged to the National Power Corporation, and that the importations were free from all taxes, duties and imposts in accordance with Republic Act No. 358. Section 2 of said Republic Act 358 provides that "the National Power Corporation shall be exempt from the payment of ail taxes, except real property tax, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."

However, the Bureau of Customs actually refunded to the National Power Corporation only the amount of P4,156.66 paid as customs duties, for the reason that it did not have the authority of the Bureau of Internal Revenue to refund the amount of P2,582.96 paid as advance sales tax. The Bureau of Customs suggested that the claim for refund of the amount paid as sales tax be directed to the Bureau of Internal Revenue. Acting on this suggestion, the Gen-eral manager of the National Power Corporation, on January 13, 1958, wrote the

Commissioner of Internal Revenue requesting said official to authorize the Bureau or Customs to refund to the National Power Corporation the sum of P2,582.96 that had been paid as advance sales tax. In a letter dated May 21, 1958, and received by the National Power Corporation on June 11, 1958, the Commissioner of Internal Revenue, through its Regional Director, denied the request for refund or said taxes upon the ground that such request was not made within two years from the time said taxes were paid, as required in Section 306 of the National Internal Revenue Code.

On July 11, 1958, the National Power Corporation filed a petition for the review of the decision of the Commissioner of Internal Revenue before the Court of Tax Appeals, and said petition was docketed as CTA Case No. 553. On July 28, 1958, the Commissioner of Internal Revenue filed a motion to dismiss the case upon the ground that the Court of Tax Appeals had no jurisdiction to entertain said petition for review because the same had been filed beyond the two-year period prescribed in Section 306 of the National Internal Revenue Code. The National Power Corporation filed its opposition to the motion to dismiss. In a resolution, dated September 8, 1958, the Court of Tax Appeals denied the motion to dismiss. On October 14, 1958, the Commissioner of Internal Revenue filed his answer.

On February 24, 1960, the National Power Corporation submitted an amended petition for review, which was admitted by the Court of Tax Appeals on August 4, 1960 over the objection of the Commissioner of Internal Revenue. On August 26, 1960, the Commissioner of Internal Revenue filed his answer to the amended petition.

On August 9, 1961, after due hearing, the Court of Tax Appeals rendered a decision reversing the decision of the Commissioner of Internal Revenue, and ordering the refund to the National Power Corporation of the amount of P2,582.96.

Hence, this appeal of the Commissioner of Internal Revenue before this Court.

The Commissioner of Internal Revenue contends that the Court of Tax Appeals erred in holding that the action instituted by the National Power Corporation to recover advance sales tax had not prescribed; and that the Court of Tax Appeals, consequently, erred in holding that the National Power Corporation is entitled to refund.

The Commissioner of Internal Revenue maintains that inasmuch as the advance sales tax was paid on May 5, 1955 and that the National Power Corporation brought the action with the Court of Appeals on July 11, 1958, the action was already barred pursuant to the provisions of Section 306 of the National Internal Revenue Code, which reads:

"Section 306. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

In the case of *Gibbs vs. Collector of Internal Revenue*, G. R. No. L-13453, February 29, 1969; 107 Phil. 232, this Court, construing the provisions of Section 306 of the National Internal Revenue Code together with Section 11 of Republic Act No. 1125, held:

"In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days

from receipt of the collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the collector. This is so because of the positive requirement of Section 305 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute."^[1]

It is clear in the provisions of Section 306 of the National Internal Revenue Code that the suit for the recovery of taxes which must be filed within two years from the date of payment refers to taxes that have been erroneously or illegally assessed or collected. In applying the provisions of this section, therefore, it must be shown that the tax was erroneously or illegally collected, and that the tax was paid, or considered paid, as of a certain date in order to determine when the prescriptive period or two years had commenced to run.

This Court has ruled that when a tax was originally collected legally the running of the prescriptive period of two years provided for in Section 306 of the National Internal Revenue Code should commence not from the date the tax was paid but from the happening of the supervening cause which entitled the taxpayer to a refund; and the claim for refund with the Commissioner of Internal Revenue and the subsequent action before the Court of Tax Appeals regarding the refund should all be done within the said period of two years. Thus, in the case of Commissioner of Internal Revenue vs. Insular Lumber Co., etc., G. R. No. L-24221, December 11, 1967^[2], this Court said:

"In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of the occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified."

In the case now at bar, it is undisputed that the Bureau of Customs assessed the import duties and advance sales tax upon the imported articles that were consigned to the Philippine Engineers' Syndicate, Inc., and collected the import duties and the sales tax from that entity on the assumption that it was the importer and owner of the imported articles. The National Power Corporation claimed that it was, the importer of the articles, but the claim of the National Power Corporation was not granted by the Bureau of Customs because the question as to who was the real importer had to be decided first in the seizure proceedings that were instituted by said Bureau against the imported articles.

It is Our view, therefore, that when the sum of P2,582.96 was paid as advance sales tax on May 5, 1955 by the Philippine Engineers' Syndicate, Inc., along with the sum of P4,156.66 as customs duties, the collection of that amount as advance sales tax was correct and legal because the assessment was made on the basis, or on the assumption, that the importer of the articles that were taxed was the Philippine Engineers' Syndicate, Inc., and this entity did not enjoy any tax exemption privilege. Then a supervening circumstance happened. On October 15, 1957 a decision was rendered by the Collector of Customs in the seizure proceedings, and the Collector declared that the importation in question belonged to the National Power Corporation. The Collector of Customs further declared - and correctly too - that the importations were free from all taxes, duties and imposts. It can be said, therefore, that as of October 15, 1957 when the Collector of Customs declared that the real importer was the National Power Corporation, which was tax-exempt under Republic Act 358, the collection from the National Power Corporation of the customs duties and advance sales tax would be erroneous and illegal. Inasmuch as payments had already been made, under protest on May 5, 1955, then, it should be considered that as of October 15, 1957 the collection of the customs duties and advance sales tax became erroneous and illegal. In other words, the illegal, or the erroneous, collection of the tax took effect on October 15, 1957, and the right of the National Power Corporation to a refund of the tax accrued as of that date.

We agree with the observation of the Court of Tax Appeals that "the tax (advance sales tax) was originally collected /legally and the question of the illegality, of the payment of the tax became known only upon the rendition of the decision of the seizure case on October 15, 1957. Thus by reason of the supervening circumstance (i.e. the government's determination that the real importer of the goods was the National Power Corporation which was exempt from tax) petitioner (National Power Corporation) was entitled to the refund of the tax previously paid"[3]

The Collector of Customs refunded to the National Power Corporation the sum of P4,156.66 corresponding to customs duties thus illegally collected, but he did not refund the sum of P2,582.96 that was collected as advance sales tax, stating that only the Commissioner of Internal Revenue had the authority to order the refund of that amount. On January 13, 1958, the National Power Corporation requested the Commissioner of Internal Revenue to order the refund.

We have declared that as of October 15, 1957 when the Collector of Customs decided that the National Power Corporation was the real importer, the collection of the advance sales tax from the National Power Corporation had become illegal, and because the taxes had been paid previously the payment of the illegal tax should also be reckoned as of that date. It follows that when the National Power Corporation made a claim with the Commissioner of Internal Revenue for the refund of the amount paid as advance sales tax, on January 13, 1958, it had made the claim within the period of two years from the date of payment, as required in Section 3.06 of the National Internal Revenue Code. On June 11, 1958, the National Power Corporation received the letter of the Commissioner of Internal Revenue denying his request for refund, and so on July 11, 1958 the National Power Corporation began a suit in the Court of Tax Appeals; by way of an appeal from 'the denial of its claim by the Commissioner of Internal Revenue. The Power Corporation had thus brought the appeal to the Court of Tax Appeals within 30 days from the date of notice of the denial by the Commissioner of Internal Revenue. It is clear, therefore, that the National Power Corporation had made its claim for refund with the Commissioner of Internal Revenue, and it had begun suit in the Court of Tax Appeals, well within the period of two years from the time of payment of the disputed advance sales tax[4] and had thereby complied with the requirements provided for in both Section 306 of the National Internal Revenue Code and Section 11 of Republic Act 1125.

We find, therefore, that the Court of Tax Appeals did not err in holding that the action instituted by the National Power Corporation had not prescribed and that said Corporation is entitled to the refund of the advance sales tax that it sought to recover from the Commissioner of Internal Revenue, in the present case.

ACCORDINGLY, the decision appealed from is affirmed, without costs.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., took no part.

[1] See also: P. J. Kiener & Co., Ltd. vs. David, 92 Phil., 945; Johnston Lumber Co., Inc. vs. Court of Tax Appeals, 101 Phil., 654; College of Oral & Dental Surgery vs. Court of Tax Appeals, 102 Phil., 912; Gonzales vs. Court of Tax Appeals, G. R. Nos. L-14532 and L-14533, May 26, 1965.

[2] Vol. 21 SCRA 1237; See also Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., etc. 22 SCRA 12; Muller and Phipps (Manila) vs. The Collector of Internal Revenue, 103 Phil. 145, 149.

[3] In resolution of September 8, 1958 denying the "motion to dismiss" of the Commissioner of Internal Revenue

upon the ground of lack of jurisdiction, the appeal in the Court of Tax Appeals allegedly having been filed beyond the two-year period provided in Section 306 of the National Internal Revenue Code.

[4] From October 15, 1957 when the Collector of Customs declared the National Power Corporation the real importer and the erroneous collection and payment of the advance sales tax was established as of that date, to July 11, 1958 when suit was begun in the Court of Tax Appeals, only a period of about 9 months had elapsed.

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