

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. VICTORIAS MILLING CO., INC., AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-24108. January 03, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Specific tax on manufactured oils and other fuels used in agriculture during the five years from June 18, 1952 shall be refunded by the Commissioner of Internal Revenue to the extent of 50%.^[1]

Accordingly, on December 23, 1957 Victorias Milling Co., Inc., filed a claim for the refund of the sum of P12,464.53 representing 50% of the specific tax paid on the manufactured oils and fuels used in its agricultural operation for the period from June 18, 1952 to June 18, 1957. The Commissioner of Internal Revenue granted refund in the sum of P3,415.18 representing the tax paid for the period from January 1, 1956 to June 18, 1957 but denied the claim in the amount of P2,817.08 which corresponds to the tax paid during the period from June 18, 1952 to December 31, 1955 for the reason that the same was filed after the two-year period provided for in Section 306 of the Tax Code had elapsed.

Subsequently, Victorias Milling Co., Inc. appealed to the Court of Tax Appeals contending that the aforesaid Section 306 does not apply to its claim in the light of Our ruling in *Muller & Phipps (Manila) Ltd. v. Collector of Internal Revenue*, 103 Phil. 145. The Court of Tax Appeals took the taxpayer's view and rendered the following judgment on January 4, 1965:

"WHEREFORE, in view of the foregoing considerations, the respondent is hereby ordered to refund to the petitioner the amount of P2,817.08 representing the 50% of the specific tax paid on the oils used by it in agriculture during the period from June 18, 1952 to December 31, 1955."

From said judgment, the Commissioner of Internal Revenue has appealed, maintaining that Section 306 of the Tax Code applies to the instant claim for refund. On the other hand, Victorias Milling Co., Inc. insists that since the tax sought to be refunded was not originally collected erroneously or illegally, Section 306 of the Tax Code which states ?

"SEC. 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."

finds no application.

This legal controversy has already been settled in the case of Commissioner of Internal Revenue v. Insular Lumber Company and Court of Tax Appeals, L-24221, December 11, 1967, the facts of which are similar to those in the present case. We there stated that:

"Sections 306 and 309 of the National Internal Revenue Code were intended to govern all kinds of refunds of internal revenue tax-es - those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, this Court stated that 'this provision' referring to Section 306, 'which is mandatory, is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made.' And to hold that the instant claim for refund of a specific tax, an internal revenue tax imposed in Section 142 of the National Internal Revenue Code, is beyond the scope of Sections 306 and 309 is to thwart the aforesaid intention and spirit underlying said provisions.

x x x x x

"x x x the intention is clear that refunds of internal revenue taxes are generally governed by Sections 306 and 309 of the Tax Code. Since in those cases the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in Section 306 should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund. And the claim for refund should be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period.

x x x x x

"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 occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified."

It is not disputed that the oils and fuels involved in this case were used during the period from June 18, 1952 to December 31, 1955; that the claim for refund was filed on December 23, 1957; and that the appeal to the Court of Tax Appeals was instituted only on February 14, 1962. The taxpayer's claim for refund with the Bureau of Internal Revenue of December 23, 1957 is within two years from December 1955 - the last month of the period during which the fuels and oils were used. The appeal to the Court of Tax Appeals however, was instituted six years and two months from December 31, 1955. We have repeatedly held that the claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. "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." [2] In the light of the above quoted ruling, We find that the right of Victorias Milling Co., Inc. to claim refund of P2,817.08 has prescribed.

WHEREFORE, the decision appealed from is reversed, and the petition for refund is dismissed on the ground of prescription. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Sec. 142, as amended by Republic Act 775 which took effect on June 18, 1952, of the National Internal Revenue Code.

[2] Gibbs v. Collector, L-13453, Feb. 29, 1960, citing College of Oral and Dental Surgery v. Court of Tax Appeals, 102 Phil. 912; Collector v. Court of Tax Appeals, L-11494, Jan. 28, 1961.

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