

## JOHNSTON LUMBER CO., INC., PETITIONER, VS. COURT OF TAX APPEALS, AND THE COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

*G. R. No. L-9292. April 23, 1957*

Ponente: FELIX, J.

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### FELIX, J.:

This is a petition filed by the Johnston Lumber Company to review a resolution of the Court of Tax Appeals dated May 13, 1955, dismissing the complaint for the recovery of taxes paid under protest made by said company against the Collector of Internal Revenue. This case was originally instituted in the Court of First Instance of Zamboanga and docketed as Civil Case No. 282 thereof, but was remanded to the Court of Tax Appeals pursuant to Section 22 of Republic Act No. 1125. The facts of the case may be stated as follows:

Johnston Lumber Co., Inc., is a duly organized corporation engaged in lumber business, with principal office at Zamboanga City. During the period of from July, 1939 to April, 1940, said corporation transmitted, shipped and allegedly consigned to the E. J. Stanton & Son, Inc., of Los Angeles, California, U.S.A. lumber valued at P318,354.77. Thereupon, the Collector of Internal Revenue, considering that said transactions were not on consignment but domestic sales consummated within the Philippine territory, because the terms of said shipments were f.o.b., Zamboanga, and the corresponding freight and insurance premiums from there (Zamboanga) to California were being paid by the vendees, imposed upon said corporation 3 1/2 per cent tax as prescribed by section 186 of the National Internal Revenue Code, plus an additional tax of 2 per cent and 25 per cent surcharge, or a total of P7,908.86, and demanded payment of this tax, which demand was renewed after the war. An exchange of correspondence ensued wherein the taxpayer objected to the imposition of said 3% per cent and additional taxes and which the Collector of Internal Revenue denied insisting on the collection of the same, and on July 24, 1947, the lumber company brought the matter to the Secretary of Finance who on September 19, 1947 affirmed the assessment made by the revenue official. Thereafter, a warrant of distraint and levy dated November 20, 1950, was issued by the City Treasurer of Zamboanga City which prompted said corporation to pay, under protest, the sum of P7,908.86 demanded by the Government.

On March 30, 1951, the Johnston Lumber Co., Inc., filed a complaint with the Court of First Instance of Zamboanga against the Collector of Internal Revenue alleging, among others, that during the period of from July, 1939, to April, 1940, plaintiff was the sole and exclusive owner of certain quantities of lumber in the City of Zamboanga, valued at P316,354.77 which were transmitted, shipped and consigned from the port of Zamboanga to the E. J. Stanton & Son, Inc., of Los Angeles, California; that defendant Collector of Internal Revenue assessed and demanded from said plaintiff the sum of P7,908.86 as taxes on account of said transactions on the ground that same were domestic sales; that plaintiff paid the said taxes under protest, and prayed that defendant Collector of Internal Revenue be ordered to refund to the plaintiff the sum of P7,908.86, with interest and costs. Said complaint was answered by the defendant, represented by the office of the Solicitor General, on April 16, 1951, admitting some of the averments of the complaint and denying some portions thereof, and at the same time

justifying the collection of said taxes by contending that in virtue of the terms of shipments and other circumstances, it was apparent that the transactions between the Johnston Lumber Co., Inc., and the foreign corporations (E. J. Stanton & Son, Inc., the Yamada Lumber Co., Ltd., Nomura Lumber Co., Ltd., An-gelus Furniture and Manufacturing Co. and Cadwallader Gibson & Sons) were consummated in the Philippines and subject to the 3% per cent tax as prescribed by section 186 of the Tax Code, and prayed that the complaint be dismissed with costs, and for such other relief as may be just and equitable in the premises.

The Court of Tax Appeals which took cognizance of the case set the trial for February 18, 1955, but before said date the Solicitor General filed a motion for leave to file and to admit amended answer and motion for preliminary-hearing, interposing for the first time the affirmative defenses that plaintiff had failed to file with defendant a claim for refund of the tax sought to be recovered as required by section 306 of the Tax Code; that the filing of said claim for refund is a condition precedent to the filing of any suit, the failure to make such claim being fatal and bars the action for recovery; that said failure to file a claim constitutes a ground for a motion to dismiss, and prayed that the answer be amended and a preliminary hearing on the additional defense be held before the hearing on the merits, in accordance with section 5, Rule 8, of the Rules of Court.

Plaintiff, on the other hand, filed a motion for leave to file amended complaint alleging, also for the first time, that the assessment and collection of the tax had been barred by the statute of limitations. Both motions were granted in open court on February 18, 1955.

After the parties had filed their respective memoranda, the Court issued a resolution on May 13, 1955, dismissing the complaint for lack of jurisdiction and holding that the filing of a claim with the Collector of Internal Revenue is a condition precedent before an action for recovery of a tax may be maintained in court.

Plaintiff, therefore, seeks to review said resolution by ascribing to the lower court the commission of the following errors:

- The respondent Court of Tax Appeals erred in resolving that it lacked jurisdiction to hear and decide the instant case and in considering the requirement of section 306 of the Tax Code as mandatory and condition precedent to the filing of an action for refund; and
- The respondent Court of Tax Appeals erred in not considering the requirements of section 306 of the Tax Code as repealed by Republic Act No. 1125.

In passing upon the questions raised by petitioner, it is necessary for Us to determine first whether Republic Act No. 1125 really repealed section 306 or not.

Section 306 of the National Internal Revenue Code prescribes the following:

"Sec. 306 Recovery of tax erroneously or illegally collected.— No suit or proceeding SHALL be maintained in any city or town 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."

The provision of Republic Act No. 1125, approved on June 16, 1954, which may be pertinent and may have some bearing on the case at bar, is Section 11 which reads as follows:

"Sec. 11. Who may appeal; effect of appeal—Any person, association or corporation adversely affected by a

decision or ruling of the Collector of Internal Revenue \* \* " may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue \* \* \* shall suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue \* \* \* may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said, collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

It is the contention of petitioner that the aforequoted provisions cannot stand side by side because, whereas section 806 of the Tax Code required the filing of a claim before an action in court may be maintained, Republic Act No. 1125 which confers jurisdiction upon the Court of Tax Appeals to take cognizance of appeals from the decisions of the Collector of Internal Revenue does not require any more the filing of said claim but merely provides that said appeal may be filed within 30 days from receipt of such decision or ruling.

A careful analysis of the provisions of both enactments would negative the assertion of petitioner. The specific provision of Republic Act No. 1125 regarding appeal (section 11) was intended to cope with a situation where the taxpayer, upon receipt of a decision or ruling of the Collector of Internal Revenue, elects to appeal to the Court of Tax Appeals instead of paying the tax. For this reason, the latter, part of said Section 11 provides that no such appeal, would suspend the payment of the tax demanded by the Government, unless for special reasons, the Court of Tax Appeals would deem it fit to restrain said collection. Section 306 of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery. We can, therefore, conclude that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by section 306 of the National Internal Revenue Code and that appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125. We see no conflict between the aforementioned sections of said laws.

We will now proceed to the determination of the other question raised by petitioner, i.e., whether the requirement of section 306 of the Tax Code is mandatory and a condition precedent to the filing of an action for refund. The wording of said section 306 is explicit and clear. It was stressed by the use of the word "shall" which can mean nothing but a mandate. That the lawmaker intended the requirements of said section to be mandatory was reflected in the ruling laid down by this Court in the case of *Wee Poco & Co. vs. Posadas*, 64 Phil. 640, interpreting the provisions of section 1579 of the Revised Administrative Code, which is the precursor of said section 306 of the Tax Code.

"\* \* \* The protest, however, is not sufficient. The law requires the taxpayer to request the decision of the Collector, and such requirement is not merely directory but clearly mandatory, as may be inferred from the words: 'and shall thereupon request the decision of the Collector of Internal Revenue. Taking into consideration that the protest is entered for the sole purpose of preserving the taxpayer's right to question the legality of the tax, hence the necessity of later requesting the decision of the Collector of Internal Revenue, and in order that said official may have an opportunity to render a decision with knowledge of the facts of the case, the taxpayer must state in his petition his reasons for questioning the legality of the tax and for demanding the refund of the amount paid by him

"Failure to comply with this requisite is fatal because it has been Repeatedly held that no action for the recovery of a tax paid can be maintained without strictly complying with each and every one of the conditions

required by tile law to thai effect."

This ruling was also adopted in later decisions of this Court, when it held in the case of Santiago Bermejo vs. the Collector of Internal Revenue, (87 Phil., 96, 47 Off. Gaz. [12] 292), that:

"The law clearly stipulates that after paying the tax, the citizen must submit a claim for refund before resorting to the courts. The idea probably, is, first, to afford the Collector an opportunity to correct the action of subordinate officers; and second, to notify the Government that such taxes have been questioned, and the notice should then be borne in mind in estimating tho revenue available for expenditure. Previous objections to the tax may not take the place of that claim for refund, because there may be some reason to believe that, in paying, the taxpayer has finally come to realise the validity of the assessment. Anyway, strict compliance with the conditions imposed for the return of the revenue collected is a doctrine consistently applied here and in the United States."

Again, in the case of P. J. Kiener Co., Ltd. vs. David, (92 Phil., 945, 49 Off. Gaz. [5] 1852) this Court found occasion to apply this provision:

"We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice or warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely, notice is, in other cases and for diverge salutary reasons, made a prerequisite to the prosecution of contemplated proceedings without imposing in the party to whom the notice was sent any obligation to make any more."

The interpretation given by American courts to a similar provision is not different from the one adopted by our courts:

"It is provided by statute that the filing of a claim for the refund of an overpayment of any internal revenue tax, with the Commissioner of Internal Revenue' is a condition precedent to the maintenance of a suit in any court for its recovery". (30 Am. Jur. 1(34, citing numerous American decisions).

The foregoing citations show that the filing of a claim for refund is mandatory and a prerequisite or a condition precedent to the prosecution of a suit for the recovery of taxes said to have been erroneously or illegally collected, and non-compliance therewith bars and is fatal to the action. As a condition precedent to the accrual of plaintiff's right of action, it should have been averred as an essential allegation (Rule 15, section 10, Rules of Court; Government vs. Inchausti and Co., 24 Phil. 315), and plaintiff's failure to allege the same rendered his complaint defective and subject to dismissal for lack of cause of action.

Wherefore and on the strength of the foregoing considerations, We hereby affirm the Resolution appealed from, with costs against petitioner. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and Endencia, JJ., concur.

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