

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CENTRAL AZUCARERA DON PEDRO, RESPONDENT.

G.R. No. L-28467. February 28, 1973

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Commissioner of Internal Revenue seeks a review of the decision of the Court of Tax Appeals dated November 8, 1967 in CTA Case No. 1768, ordering him to allow the respondent Central Azucarera Don Pedro a tax credit in the amount of P48,302.00.

The Central Azucarera Don Pedro, hereinafter referred to as the Central, is a domestic corporation engaged in the operation of a sugar mill and in the manufacture of alcohol and yeast from sugar cane. On May 22, 1963 it filed an application with the Board of Industries for tax exemption privileges under Rep. Act No. 3127 in connection with its importations of machineries, spare parts and other equipment to be used in its central. As the different shipments arrived from abroad, one after another, they were withdrawn from customs upon payment of the corresponding customs duties, special import tax, compensating tax and miscellaneous charges. As compensating tax, the amount of P294,705.00 was collected pursuant to Section 190 of the Internal Revenue Code. One such shipment, which arrived at the port of Manila in May 1963, was valued at US P155,000.00, on which a compensating tax of P48,302.00 was collected on May 29, 1963, when the Central's application for tax exemption under Rep. Act No. 3127 was still pending before the Board of Industries. The Central did, however, advise the Commissioner of Internal Revenue of such fact on July 22, 1965, saying that it would submit the certificate of tax exemption as soon as its application was granted.

The application was approved by the Board of Industries in its meeting of September 20, 1965 and the corresponding certificate of tax exemption was issued on the following October 5. The certificate stated, among other things, as follows:

"x x x upon application filed by Central Azucarera Don Pedro in respect to the manufacture/production of 'sugar, alcohol and dry yeast out of sugar cane,' said industry has been determined to be basic under Sec. 2, Paragraph B and S of Republic Act No. 3127 and Regulation 2; Paragraph 28(c) and 5 of Regulation 1, S 1961 of the Board of Industries, in view of which this Certificate of Tax Exemption has been issued entitling the above-named person firm to exemption from the payment of x x x compensating tax x x x directly payable by him/it in respect to the importation of machinery, spare parts and/or equipment found to be directly and actually needed and will be used exclusively by the said industry, listed in the attached duly stamped Annex 1 of this certificate x x x."

On November 3, 1965 the Central informed the Commissioner of Internal Revenue of the approval of its application for tax exemption and claimed a tax credit for the entire amount of P294,705.00 which it had paid as compensating tax. Included therein was the amount of 48,302.00 which was collected on May 29, 1963.

In a letter dated May 12, 1966 the Commissioner informed the Central that he was allowing a tax credit of only

P246,403.00 and disallowing the sum of P48,302.00 on the ground that the claim for tax credit with respect there-to was filed only on July 22, 1965, or more than two (2) years after it was paid, and therefore under Sec. 309 of the Tax Code the right to recover the same had already prescribed.

On June 8, 1966, or within thirty (30) days from re-ceipt of the Commissioner's ruling, it was elevated for review by the Court of Tax Appeals, which thereafter rendered a judgment of reversal.

The only issue before Us is whether the statutory period of prescription fixed in Sections 306 and 309 of the Internal Revenue Code applies in this case. These sections provide:

"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 here-after 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 Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest of duress. In any case, no such suit or proceed-ing shall be begun after the expiration of two years from the date of payment of the tax or penalty.

"Sec. 309. Authority of Commissioner to make compromises and to refund taxes. – The Commissioner of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law adminis-tered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegal-ly received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.

"x x x x x x x x

"The authority of the Commissioner of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty."

The Court of Tax Appeals held that the foregoing statutory provisions do not apply in this case since they refer to taxes erroneously or illegally or in any manner wrongfully collected, or penalties collected without authority, citing Our decision in *Muller & Phipps (Manila), Ltd., vs. Coll. of Int. Revenue*, March 20, 1958, 103 Phil. 145. That the period within which a claim for credit or refund should be filed with the Commissioner of Internal Revenue, or a suit or proceeding commenced in court for the same purpose, should start from the date of payment of the tax is logical in the cases covered by the said provisions, inasmuch as the collection is tainted with illegality or error from the beginning and therefore it is from that moment that the basis for the claim or the cause of action in the suit may be said to have arisen.

In connection with the claim for tax credit filed by the respondent Central, the basis thereof is the tax exemption granted by the Board of Industries under Rep. Act No. 3127. Before the application for such exemption was approved there was absolutely no basis for the Central to file a claim with the Commissioner or to commence a suit in court.

The petitioner suggests that the respondent could have refused to pay the tax in question if only to fore-stall the running of the two-year prescriptive period while its application for tax exemption with the Board of Industries was still pending. The suggestion is not only unrealistic because non-payment of the tax would prevent the release of the goods from customs custody, but al-together unjustified since the tax was due and payable and its collection was neither illegal or erroneous. As a matter of fact the petitioner admits that "under Bureau of Internal Revenue policy, one who has merely filed with the Board of Industries an application for tax exemption privileges under Rep. Act No. 3127, which is still being processed but not yet approved or granted by said board, is not

allowed to withdraw the importation covered by said application from customs custody without the pre-payment of the compensating tax thereon." [1]

Under Rep. Act No. 3127, Sec. 7, the granting of a tax exemption to an applicant engaged in a basic industry retroacts to the date of the filing of application for exemption. If it is the grant of exemption by the Board of Industries that gives rise to the right to file a claim for tax credit or tax refund with the Commissioner of Internal Revenue, what is the period within which the claim should be filed and when does it begin to run?

The case of *Muller & Phipps*, supra, was relied upon by the Court of Tax Appeals in reversing the action of the herein petitioner. In that case advance sales taxes were paid on imported raw materials upon their withdrawal from customs custody. Subsequently, since not all of said materials could be used, the importer shipped back a portion of them to its supplier in the United States and then filed a claim for the refund of the corresponding amount of advance sales taxes which it had paid. The Collector of Internal Revenue denied the claim and the importer went to the Court of Tax Appeals. The petition for review, however, was filed beyond the two-year prescriptive period fixed in Section 306 of the Tax Code and the Court of Tax Appeals dismissed the same upon motion by the Collector. The case was thereafter brought before this Court for review on appeal, and We held that "the prescriptive period of two (2) years from payment, fixed by Section 306 of the Tax Code, cannot apply to the present case," on the ground that the advance sales tax in question was not erroneously or illegally collected but that although it was legitimately due when paid the tax payer subsequently became entitled to a partial refund by reason of a supervening circumstance, namely, the re-exportation of the imported materials. The ruling was subsequently clarified by this Court in a later case, *Commissioner of Internal Revenue vs. Insular Lumber Co.*, Dec. 11, 1967, 21 SCRA 1237. It was there held that Sections 306 and 309 of the Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes – those taxes imposed and collected pursuant to the National Internal Revenue Code. In other words the prescriptive period of two (2) years therein provided is the one which should govern and not any other prescriptive period, such as that of ten (10) years provided for in Article 1144, paragraph (2) of the Civil Code. But at the same time this Court ruled: "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 tax payer 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." Clarifying the point further, this Court added: "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."

Considering that in the present case the supervening cause from which the right to the tax credit applied for arose was the issuance of the certificate of tax exemption by the Board of Industries on October 5, 1965 and the Central filed its claim for tax credit with the Commissioner of Internal Revenue on the following November 3, or well within the two-year period, it is clear that the said claim had not yet prescribed.

WHEREFORE the judgment of the Court of Tax Appeals is hereby affirmed, without pronouncement as to costs in this instance.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur. Barredo, J., did not take part.

[1] Exh. "I", Par. C, cited by respondent on page 10 of its brief.

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