

Opinion
1168

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

CARTER-LANHARDT, INC.,)

Petitioner)

v.)

Docket No. 2610

DISTRICT OF COLUMBIA,)

Respondent)

MEMORANDUM ORDER

This comes before the Court on the respondent's motion to dismiss the petition on the grounds that the court lacks jurisdiction to hear the case.

I

This is an appeal from a personal property tax assessment for Fiscal Year 1975. The total tax paid was \$9,650.96 of which \$3,033 is in dispute. The tax was paid in two installments, one on November 26, 1974 and the other on March 31, 1975. Petitioner filed a claim for refund in the amount of \$3,033 on March 29, 1977, and the Commissioner took no action on that claim. The petition was filed in this court on September 15, 1978.

The basis of the appeal is that the respondent has taxed certain merchandise which petitioner alleges is not subject to the tax.

Respondent argues that the case should be dismissed on three grounds. First, the District contends that the statute, D. C. Code 1973, §47-2413(a), required the petitioner to file its claim for refund within two years of the date

of the first payment. The first payment was made on November 26, 1974, however, the claim for refund was not filed until March 29, 1977. Second, the District contends that if the claim for refund was timely, it was only timely with respect to the payment made on March 31, 1975, which was within two years of the date the claim was filed. Finally, the District argues that the petitioner has not filed a timely appeal with this court since the petition was not filed within the time period provided under Section 47-2413(a).

Since this Court finds the third argument to be dispositive, it will not address the first two arguments presented by the respondent.

II

Section 47-2413(a) provides in part, that:

...If the Commissioner disallows all or any part of the refund claim, he shall notify the taxpayer by registered or certified mail. After receiving notice of disallowance, if the claim is acted upon within six months of filing, or after the expiration of six months from the date of filing if the claim is not acted upon, the taxpayer may appeal as provided in sections 47-2403 and 47-2404 of this title.

The respondent argues that since the claim for refund was filed on March 29, 1977, the Commissioner had until six months thereafter within which to act upon the claim, or until September 29, 1977, and that when the Commissioner failed to act upon the claim within that time the petitioner had six months thereafter or until March 29, 1978, within which to file an appeal to this court.

Petitioner disagrees with that interpretation of the statute and contends that when the statute was amended by the District of Columbia Court Reform and Criminal Procedure Act, Pub. L. No. 91-385, 84 Stat. 473 (1970), hereinafter referred to as the 1970 amendment, Congress no longer set a time limitation for appeal to this court or, in the alternative, that if there is any time limitation, it should be the general statute of limitations for civil actions. This Court finds petitioner's arguments without merit.

Prior to the 1970 amendment, Section 47-2413(a) (D.C. Code 1967, §47-2413(a)) provided:

...If the Assessor disallows all or any part of the claim for refund, he shall send to the taxpayer by registered or certified mail a notice of disallowance. Within ninety days after the mailing of the notice of disallowance, if the claim is acted upon within six months after the filing thereof, or within ninety days after the termination of such six months' period, if the claim is not acted upon within such period, the taxpayer may appeal to the Board, in the same manner and to the same extent as set forth in sections 47-2403 and 47-2404 ...; (Emphasis the Court's.)

The above statute set forth a ninety-day period within which to appeal to the Board of Tax Appeals (predecessor of the Tax Division of the Superior Court) when the Assessor either disallowed or failed to act upon a claim for refund within six months after the filing of that claim. The statute also provided that the taxpayer was entitled to utilize certain other common law remedies to contest a tax assessment. See D.C. Code 1967, §57-2413(c).

The 1970 amendment gave the Tax Division of the Superior Court exclusive jurisdiction of all tax appeals, D. C. Code 1973, §11-1201, and abolished all common law remedies, D.C. Code 1973, §11-1202. It also lengthened the time within which a taxpayer may appeal most assessments from ninety days to six months. Several sections of the Code were amended to reflect this change, including D.C. Code 1973, §§47-2403 and 47-2413. Unfortunately, the 1970 amendment to Section 47-2403, incorporated language which is ambiguous. That ambiguity, insofar as it related to appeals from assessments made against alleged exempt organizations, was the subject of the decision in National Graduate University v. District of Columbia, 346 A.2d 740 (D.C. App. 1975). There the court noted that Section 47-2403 is ambiguous when read with the prepayment condition applicable and observed that the "ambiguity is the result of 1970 amendments in which Congress rephrased the language of the statute, increasing the time for appeal from ninety days to six months." (Emphasis this Court's.) Id at 741. As that court observed, 346 A.2d at 742, the reason for the amendment is explained in the House Committee Report which provides:

Section 161 amends various tax statutes of the District to reflect the exclusive jurisdiction of the Tax Division of the new Superior Court to repeal provisions made obsolete by the transfer, and to allow six months, rather than ninety days, for filing tax cases because of the abolition of the alternate common law remedies in the U.S. District Court. There are no other substantive changes. (Emphasis this Court's.) H.R. Rep. No. 90-901, 91st Cong. 2d Sess. 165 (1970).

Section 161 of the amending statute, amended Section 47-2413(a) as well as Section 47-2403. This Court concludes that the reasoning of the appellate court in National Graduate with respect to the amendments of Section 47-2403 is equally applicable to the amendment of Section 47-2413(a) and that the 1970 amendment only changed Section 47-2413(a) to provide for appeals to this court within six months rather than within ninety days and that there were "no other substantive changes." See 346 A.2d at 742. Accordingly, this Court rules that Section 2413(a) requires a taxpayer to file an appeal within six months from either the disallowance of a claim for refund or the failure of the Commissioner to act upon the claim for refund within six months from the filing of that claim.

Here, the claim for refund was filed on March 30, 1977, and therefor the six month period for the Commissioner to act upon the claim expired on or about September 29, 1977. Petitioner had six months from that date, or until March 29, 1978, to file its appeal with this court. The petition (appeal) was not filed until September 15, 1978, well beyond the six months period allowed for such appeals, and accordingly, this Court lacks jurisdiction to entertain this appeal.

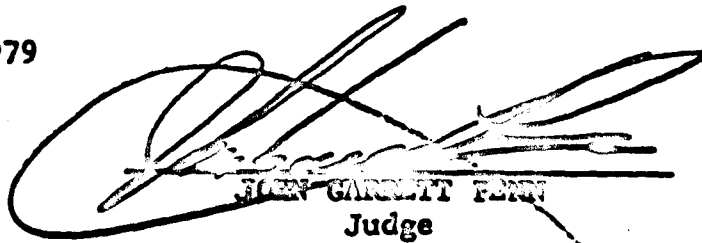
ORDER

It is hereby

ORDERED that the respondent's motion to dismiss the petition for lack of jurisdiction is granted, and it is further

ORDERED that the petition filed in this case is dismissed with prejudice.

Dated: March 8th, 1979



JOHN GARRETT FORD
Judge

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