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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KHINGSLEY PAUL N. KOH,
Petitioner,

— versus — C.T.A. CASE NO. 2874

VICENTE D. YUTANGCO,
as Collector of Customs,
Port of Tacloban,
Commissioner of Customs,
Respondents.
x - - - - - - - - - - - - x

8/23/79

D E C I S I O N

At bar is a petition for prohibition with preliminary injunction wherein petitioner Khingsley Paul N. Koh asks that respondents Vicente D. Yutangco, as Collector of Customs for the Port of Tacloban, and the Commissioner of Customs, or any of their agents or representatives, be restrained, pending trial, from selling at auction, or disposing in any way, the motor launch M/L "Merchant King"; and after trial, the injunction be made permanent and perpetual, declaring respondent Commissioner's decision forfeiting the M/L "Merchant King" in favor of the Government null and void or at best academic. The petition also prays that respondents be ordered to deliver the motor launch unto petitioner and to pay attorney's fees and damages as may be proved.

As alleged by petitioner in his petition, the facts are as follows:

Petitioner is of legal age, married and a resident of 26 Espiras Avenue, Tacloban City. He is the registered owner of a motor launch, the M/L "Merchant King", which was chartered sometime in 1975 by one Anmad Apik. On or about July 20, 1975, the said motor launch was apprehended carrying on board 29,670 kilos tan bark, assorted dry goods, owned by the charterer Mrs. Maulay Ahmad Apik, in violation of the Tariff and Customs Code. Seizure and detention proceeding was immediately undertaken by the Collector of Customs for the Port of Tacloban, and after trial, a decision was rendered forfeiting in favor of the government the M/L "Merchant King" and the assorted dry goods. It is averred that a timely appeal was interposed by petitioner with the office of respondent Commissioner of Customs.

While the case was pending appeal with the Commissioner of Customs, it appears that the President of the Philippines, pursuant to his power vested in the Constitution to remit fines and forfeitures, as alleged by petitioner, directed the Commissioner of Customs and the Collector of Customs to return the seized articles to Mrs. Maulay Ahmad Apik. Pursuant to this order, the apprehending agencies composed of the joint team of the RASAC (Regional Anti-Smuggling Action Center), Bureau of Customs, Philippine Coast Guard, National Bureau of Investigation, Bureau of Forest Development, and Philippine Constabulary, released to Mrs. Maulay Ahmad Apik the tan bark and assorted dry goods. The criminal action for violation of Section 3601 of the Tariff and Customs Code instituted against petitioner in the Court of First Instance of Tacloban City was likewise dismissed provisionally by the Court. Respondent Commissioner of Customs, however, proceeded with the consideration and adjudication of the appeal interposed by petitioner, and accordingly promulgated a decision decreeing the forfeiture of the motor launch M/L "Merchant King" in favor of the government to be disposed of in accordance with law.

From this decision of respondent Commissioner of Customs, petitioner alleged under paragraph 12 of his petition that he is interposing "the timely appeal" to this Court. Because it may have a decisive effect on the disposition of the case at bar, the notice of appeal dated November 17, 1976 filed by petitioner with the Bureau of Customs, Port of Tacloban, attached as Annex "G" and made as an integral part of the petition, is reproduced hereunder as follows:

"NOTICE OF APPEAL

> COME NOW, the Respondents-Claimant, unto the Honorable Commissioner of Customs, most respectfully takes exception to the decision rendered by the Honorable Commissioner of Customs in the above-entitled case, and serves notice of their intention to appeal the said decision which was received by Respondent-Claimants on November 14, 1976, as they hereby appeal said decision to the Honorable Court of Tax Appeals.
>
> Tacloban City, November 17, 1976."

The "Petition" captioned PROHIBITION WITH PRELIMINARY INJUNCTION was filed with this Court on May 20, 1977.

Instead of filing their answer to the petition, respondents Vicente D. Yutangco, as Collector of Customs for the Port of Tacloban and Commissioner of Customs filed a "Motion To Dismiss Petition" on June 9, 1977 on the ground that "the Court has no jurisdiction to entertain the Petition, it appearing that the same is filed without legal basis, hence, petitioner has no cause of action." According to respondents, the decision in Customs Case No. 75-177 (Tacloban S.I. No. 7-20-75) entitled "Republic of the Philippines versus 29,670 kilos of Tan bark, Assorted Dry Goods and M/L "Merchant King", Mrs. Maulay Apik and Kingsley Paul N. Koh, Claimants", decreeing the forfeiture in favor of the Government of the motor launch, was rendered on October 29, 1976 by respondent Commissioner of Customs. The copy of said decision was received by petitioner thru counsel, Atty. Jose M. Maderazo, on November 9, 1976, as evidenced by a xerox copy of the Return Card as to Notice of decision attached thereto as Annex "1" (although petitioner's counsel in his notice of appeal, quoted above, states that "the said decision was received by respondent-claimants on November 14, 1976"). Considering that no motion for reconsideration of, or appeal from, said decision was seasonably made by petitioner, and the instant petition was filed with this Court on May 20, 1977, respondents now argue that this Court has no jurisdiction to entertain the petition since the decision appealed from had already become final and executory.

The issue posed is, of course, whether this Court has jurisdiction to entertain the present proceeding.

When respondents' motion to dismiss was heard on August 30, 1977, petitioner's counsel opposed said motion on the ground that he allegedly filed with the Bureau of Customs a motion for reconsideration of the decision of the Commissioner of Customs. Respondents' counsel was therefore directed to forward the records of the Bureau of Customs pertaining to this case to the Court for petitioner to show, from the said records, that a motion for reconsideration was duly filed by him. Notwithstanding several postponements of the hearing, no customs records were forwarded to the Court allegedly because the same had already been returned to the Collector of Customs for the Port of Tacloban for execution as the decision of the Commissioner had already become final and executory. Upon request of petitioner's counsel, subpoena duces tecum was issued to the Collector of Customs for the Port of Tacloban for him to bring the customs records of the case to this Court. However, in the hearing on May 24 and 25, 1978, wherein Vicente D. Yutangco, Collector of Customs for the Port of Tacloban, was present as subpoened by the Court, petitioner's counsel was absent in spite of the fact that notice of hearing was duly sent to, and received by, him. During the scheduled hearing of this case on March 28, 1979, wherein counsel for petitioner was again absent although he was duly notified, the Court, upon manifestation of counsel for respondents, considered submitted for resolution, his motion to dismiss.

In the instant proceeding, the lack of jurisdiction over the subject matter is evident from the facts as alleged in the pleadings. Petitioner received the decision of the Commissioner of Customs on November 9, 1976 as reflected on the registry return receipt (Annex "1", supra), or on "November 14, 1976" as stated by him in his notice of appeal (Annex "G", supra). The instant Petition for Prohibition with Preliminary Injunction was filed with this Court on May 20, 1977 or more six (6) months from November 9, 1976 or November 14, 1976. Under the law, a party adversely affected by the decision or ruling of the Commissioner of Customs has only thirty (30) days after receipt thereof within which to appeal to this Court. This is clear from the provisions of Section 11 of Republic Act No. 1125, the pertinent part of which reads as follows:

> Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs[1] or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. (Emphasis supplied)

Such statutory requirement is jurisdictional and non-extendible, and non-compliance therewith bars the appeal. (See Acting Commissioner of Internal Revenue vs. Joseph, et al., L-14034, August 30, 1962, 5 SCRA 895; Republic vs. Lim Tian Teng Sons and Co., Inc.,

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[1]The words Collector of Customs should be read Commissioner of Customs. (Rufino & Sons, Inc. v. Court of Tax Appeals, G.R. No. L-9274, Feb. 1, 1957, 53 O.G. 3065.

L-21731, March 31, 1966, 16 SCRA 584; Filipinas Investment and Finance Corp. vs. Commissioner of Internal Revenue, L-23501, May 16, 1967, 20 SCRA 50; Surigao Electric Co., Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, 57 SCRA 253, 528.) Consequently, since the petition of petitioner was filed beyond the 30-day period required under Section 11 of Republic Act No. 1125, this Court has acquired no jurisdiction to entertain said petition and the same must be dismissed. (Lazaro vs. Commissioner of Customs, CTA Case No. 1154, September 13, 1966; Sales vs. Commissioner of Customs, CTA Case No. 1607, February 28, 1967; Leonora and Co. vs. Commissioner of Customs, CTA Case No. 1615, February 20, 1967, United Artists of the Philippines, Inc. vs. Commissioner of Customs, CTA Case No. 1961, August 13, 1969; Far East Management Corporation vs. Commissioner of Customs, CTA Case No. 1466, June 3, 1967; Compania Maritima vs. Actg. Commissioner of Customs, CTA Case No. 2492, October 14, 1975.)

Assuming arguendo that a motion for reconsideration of the decision of respondent Commissioner of Customs was filed by petitioner, as alleged by him although no evidence was presented to this effect by petitioner, still this Court has no authority to exercise its appellate jurisdiction over the instant petition. There is no showing that respondent Commissioner of Customs has acted or resolved petitioner's motion for reconsideration. There is, therefore, no decision of the Commissioner of Customs that may be appealed to or reviewed by this Court. Consequently, since in the case at bar petitioner appealed from the decision of respondent Commissioner of Customs without waiting for his decision or action on his motion for reconsideration, the petition or appeal was premature and this Court has no jurisdiction to entertain said petition or appeal.

Moreover, granting that the present proceeding is in reality a petition for prohibition with preliminary injunction as stated in the caption, and not an appeal from the decision of respondent Commissioner of Customs, the same is still not cognizable by this Court. The Court of Tax Appeals is authorized to issue writs of prohibition or injunction, but it may do so only in aid of its appellate jurisdiction in cases properly appealed to it. A taxpayer (or any person for that matter) is not entitled to seek the aid of the Court of Tax Appeals for the issuance of writs of prohibition or injunction if he has not duly appealed from the decision of the Commissioner. (Collector of Internal Revenue vs. Yuseco, L-12518, October 28, 1961, 3 SCRA 313; Austin & Company vs. Commissioner, CTA Case No. 1400, October 31, 1963.)

Thus:

> Nowhere does the law expressly vest in the Court of Tax Appeals original jurisdiction to issue writs of prohibition and injunction independently of, and apart from, an appealed case. The writ of prohibition or injunction that it may issue under the provisions of Section 11, Republic Act No. 1125, to suspend the collection of taxes, is merely ancillary to and in furtherance of its appellate jurisdiction in the cases mentioned in Section 7 of the Act. The power to issue the writ exists only in cases appealed to it. In other words the intention of Congress to vest the Court of Tax Appeals with jurisdiction to issue writs of prohibition and injunction only in aid of its appellate jurisdiction in cases appealed to it and not to clothe it with original jurisidction to issue them. This is reflected in the explanatory note of the bill (House No. 175), creating the Court of Tax Appeals. (Collector of Internal Revenue vs. Yuseco, No. L-12518, October 28, 1961, 3 SCRA 313)

ACCORDINGLY, petitioner's petition filed with this Court on May 20, 1977 is hereby dismissed for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 23, 1979.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge