REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LIBBY, McNEILL & LIBBY
(PHIL.), INC.,
Petitioner,

- versus - C.T.A. CASE NO. 291

THE COMMISSIONER OF CUSTOMS,
Respondent.

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Aug. 27/56

RESOLUTION

This is in connection with the motion to dismiss filed by respondent's counsel on July 20, 1956, of the petition for review filed before this Court on June 26, 1956, by the petitioner, Libby, McNeill & Libby (Phil.) Inc.

The grounds relied upon by respondent's counsel for the dismissal of petitioner's appeal are as follows:

1. That this Court has no jurisdiction to review decisions of the Collector of Customs under sections 7 and 11 of Republic Act No. 1125; and

2. That the petition for review does not state a cause of action because, as appearing therein, there is actually no live controversy, the petitioner not having imported any specific merchandise which was subjected to customs duties, fees, money charges, seizure, fines, forfeitures or other penalties.

We find it unnecessary to pass upon the first ground of dismissal it appearing from the record that on July 11, 1956, the petitioner filed an amended petition for review correcting the typographical error committed in its original petition for review by substituting the Commissioner of Customs, as respondent, in place of the Collector of Customs.

The second ground for dismissal narrows down to the question as to whether or not this Court is duty bound to assume jurisdiction over an action for declaratory relief under paragraph 2, section 7 of Republic Act No. 1125, which reads as follows:

> "SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
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> x x x x
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> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;
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> x x x x

It appears from the amended petition for review that the petitioner herein has not imported any specific merchandise which was subjected to customs duties, fees, money charges, seizure, fines, forfeitures or other penalties. Petitioner alleges in its petition that from time to time it imports to the Philippines from the United States canned food products manufactured by "Libby's" among which is the popularly known "Libby's Vienna Sausage". Petitioner alleges that prior to the approval of Republic Act No. 1394, Libby's Vienna sausages imported by it to the Philippines were exempted from the payment of the 17% excise tax on foreign exchange imposed by Republic Act No. 601, as amended.

After the approval of Republic Act No. 1394, the petitioner, on January 9, 1956, sought the opinion of the Secretary of Finance on the question as to whether or not its periodic importation of Libby's Vienna Sausages from the United States could be classified as "canned beef" for the purpose of exemption from the payment of the graduated special import tax under the aforesaid Act. On May 4, 1956, the Secretary of Finance, in reply to the query of petitioner, rendered the opinion that since Libby's Vienna sausages are not manufactured entirely from the flesh of cow, the same cannot be classified as "canned beef" and therefore the merchandise is subject to the graduated special import tax imposed under the provisions of Republic Act No. 1394.

On June 11, 1956, the Assistant Commissioner of Customs, in reply to a letter of the petitioner dated May 28, 1956, informed the latter that the Bureau of Customs would adopt the ruling of the Secretary of Finance of May 4, 1956, imposing a 17% special import tax on Vienna sausages under the provisions of Republic Act No. 1374.

From this ruling of the Assistant Commissioner of Customs, the petitioner interposed the present appeal alleging, among other things, that Libby's Vienna sausages fall under the category of "canned beef" and therefore, it would be unwarranted and illegal on the part of the Bureau of Customs to subject the aforesaid importation to the graduated special import tax imposed by Republic Act No. 1394.

We are asked in this appeal, which it is admitted by both parties, partakes of the nature of an action for declaratory relief, to give our interpretation of the words "canned beef" as employed in Republic Act No. 1374 and to decide whether or not Libby's Vienna sausages fall under such category for the purpose of exemption from the 17% special import tax provided in said Act. A judicial declaration from this Court is sought by petitioner on the ruling of the Secretary of Finance which the Assistant Commissioner of Customs has decided to adopt and apply, to serve merely as a guide in the future importations by petitioner of Libby's Vienna sausages. In other words, what is sought in this appeal is to get a judgment in advance about a right before it has actually been asserted and contested through the usual administrative methods prescribed in sections 1370 to 1382 of the Revised Administrative Code.

While it is true that in ordinary civil cases, the Courts are given the discretion under sections 1 and 6, Rule 66, of the Rules of Court, to entertain actions for declaratory relief, this remedy, however, by express mandate of section 1 of Act No. 3736, as amended by Commonwealth Act No. 55, is not available in cases where taxpayers desire to question before the Courts their liability for the payment of any tax, duty or charge collectible under any law administered by the Bureau of Customs or the Bureau of Internal Revenue which is not yet due. In G. R. No. L-4183 entitled "National Dental Supply Co. vs. Bibiano L. Meer" promulgated on October 26, 1951, the Supreme Court has held that the proviso added by Commonwealth Act No. 55 to section 1 of Act No. 3736, is substantive in character and accordingly held that such a proviso is still effective and should be applied. The philosophy of the law behind the exception with respect to tax cases, as expressly provided in section 1 of Act No. 3736, as amended by Commonwealth Act No. 55, is, as explained by the Supreme Court in the National Dental Supply Co. case, "to prevent delay in the collection of taxes upon which the government depends for its very existence. To allow a taxpayer to first secure a ruling as regards the validity of the tax before paying it would be to defeat the purpose, and to prevent this result the rule regarding declaratory relief was declared inapplicable to cases involving collection of taxes."

Thus, the action for declaratory relief of the taxpayer in the aforecited case was thrown out of court.

We hold that the provisions of Republic Act No. 1125, creating the Court of Tax Appeals, and conferring upon it jurisdiction to review by appeal decisions of the Commissioner of Customs have not, in any way, modified or repealed section 1 of Act No. 3736, as amended by Commonwealth Act No. 55. In no less than two cases we held that "until and unless the Commissioner of Customs has rendered a decision or ruling on appeal on the action or decision of his Collector of Customs may an aggrieved person, association or corporation come to this Court under Republic Act No. 1125 (Leuterio vs.

Commissioner of Customs, C.T.A. Case No. 61, Resolution of July 23, 1955; S. Ombra Amilbangsa vs. Manuel Manahan, C.T.A. Case No. 221, Resolution of December 23, 1955). All available administrative remedies must first be exhausted before coming to this Court.

As we see it, the proper remedy of the herein petitioner is to make a test case of one of its future importations of Libby's Vienna sausages by paying the duty imposed under protest and then going through the usual administrative processes prescribed in sections 1370 to 1382 of the Revised Administrative Code. In this way, all the legal as well as factual issues could be ventilated in the administrative investigation which the Revised Administrative Code requires the Collector of Customs to conduct when a duty is paid under protest. The petitioner cannot circumvent these serviceable administrative remedies by appealing a mere opinion of the Secretary of Finance directly to this Court. Jurisdiction for a declaratory judgment ordinarily will not be entertained where another equally adequate and appropriate remedy is already available for the issues or rights sought to be determined and declared, as where another equally serviceable statutory remedy has been specially provided in cases of similar import, and particularly where such statutory remedy is exclusive (1 C.J.S. 1027, 1028; Hoskyns vs. National City Bank, G.R. No. L-1877, December 29, 1949, 47 O.G. 2882).

The opinion of Justice Moran cited by counsel for the petitioner in his memorandum in opposition to the motion to dismiss, cannot prevail over an express provision of law depriving taxpayers of the remedy of action for declaratory relief, the validity and applicability of which has been sustained by the Supreme Court in the National Dental Supply Co. case. As rightly contented by counsel for the respondent, neither is our ruling in C.T.A. Case No. 20, entitled "Vicente Francisco vs. Collector of Internal Revenue" promulgated on March 18, 1955, cited by counsel for the petitioner applicable to the instant case, because in the Francisco case there was actually an assessment made by the Collector of Internal Revenue which the petitioner questioned and brought on appeal before this Court. In the case at bar, no actual assessment of duties or other money charges was made by the respondent. Moreover, we are asked in this appeal to decide offhand legal as well as factual issues without even affording this Court an opportunity to hear and weigh the testimony of Analyst Estelita M. Payumo of the Institute of Science and Technology regarding her findings (p. 7 Bureau of Customs record) as to the ingredients used in the manufacture of Libby's Vienna sausages so as to be able to determine judiciously whether or not said imported merchandise falls under the category of "canned beef" for the purpose of exemption from special import taxes under Republic Act No. 1394. This Court would be treading dangerous grounds if it were to decide a legal issue of far-reaching consequences based solely on hearsay evidence. Declaratory relief is not proper where the ruling might change upon proof of facts not before the Court. (Supreme Tent of Knights of Maccabees vs. Dupriest 235 Ky. 46, 29 S. W. (2d) 599 cited on p. 151 Vol. 2 Moran's Comments on the Rules of Court, 1952 edition).

Furthermore, it will be noted that the provisions of section 7 of Republic Act No. 1125, which confer and define the jurisdiction of this Court, are practically a carbon copy of section 8 of Executive Order No. 401-A, the Presidential Order creating the defunct Board of Tax Appeals. (47 O.G. 1073, March, 1951) The only difference lies in the fact that while the defunct Board of Tax Appeals was conferred in addition, jurisdiction to review _motu proprio_ certain assessments when the public interest so required or when the original assessment was more than ₱5,000.00, this Court, under section 7 of Republic Act No. 1125, was not granted such power and authority. The reason for eliminating _motu proprio_ appeals in the charter of this Court is obvious. As may be gathered from the debates on the floor of Congress when House Bill No. 175 (now Republic Act No. 1125) was under consideration, the Legislature realized the magnitude of the task even if it were to restrict the jurisdiction of the Court solely to those cases mentioned in section 7 thereof. (pp. 2208, 2214 Vol. 1 No. 65 Congressional Record of the House of Representatives). This Court, under section 7 of Republic Act No. 1125, has exclusive appellate jurisdiction to review by appeal, decisions of the Collector of Internal Revenue, Commissioner of Customs, and Provincial or City Boards of Assessment Appeals throughout the entire archipelago. It would not be in keeping with the intention of the Legislature and would, on the other hand, be creating handicaps to the speedy termination of the cases appealed to this Court within its exclusive appellate jurisdiction, if we were to entertain, as well, actions for declaratory relief not involving live and actual controversies. After realizing the enormity of the task, Congress certainly could not have intended with one hand to lessen our jurisdiction as compared to the jurisdiction conferred upon the defunct Board of Tax Appeals, and with the other hand increase the burden by requiring this Court to decide even moot cases brought before it by way of consulta.

WHEREFORE, finding the second ground relied upon by respondent's counsel in support of his motion to dismiss, well-founded and meritorious, the same is hereby sustained.

Let this case be, as it is hereby dismissed, for lack of cause of action, with costs against petitioner.

SO ORDERED.

Manila, August 27, 1956.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge