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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CINEMA AUDIO, INC.,
Petitioner,

- versus -

CTA CASE NO. 2806

THE ACTING COMMISSIONER
OF CUSTOMS,
Respondent.

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1/16/78

D E C I S I O N

Petition for review, with motion for suspension of collection of taxes, of a letter of respondent Commissioner of Customs dated April 21, 1976, assessing and demanding from petitioner Cinema Audio, Inc., payment of the amount of ₱1,798,944.00 representing alleged discrepancy of taxes and duties, including fine for gross undervaluation, misclassification and use of fake documents in the release of petitioner's importations.

As borne out by the pleadings submitted by the parties, it appears that:

1. Petitioner is a corporation duly organized and existing under the laws of the Philippines, with business address at 841 Torres Street, Mandaluyong, Rizal. Sometime in November, 1975, petitioner opened Letters of Credit Nos. 75/2700 and 75/2701 with the Bank of the Philippine Islands in the respective amount of $30,375.00 and $15,431.75 for the importation of

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one (1) unit Model 2488 Unwired Cinema Synchronize Recording Console and one (1) unit Ampex Model MM-1100-16 Channel Cinema Synchronize Master Recorder/Reproducer both to be used in recording music and sound tracks for movies.

2. These two importations arrived at the Manila International Airport (MIA) on or about February 23, 1976.

3. However, upon investigation by the Bureau of Customs, it was discovered that the release of the above-mentioned importations from customs custody was allegedly effected through the use of fake documents which resulted in gross undervaluation, misclassification, and in discrepancy of taxes and duties chargeable thereon. Consequently, on April 21, 1976 respondent assessed petitioner deficiency customs duties and taxes amounting to P1,798,944.00, including five times fine on the undervaluation and misclassification, and requesting payment within fifteen days from receipt thereof. (Annex "A", Petition for Review, p. 7, CTA records.)

4. In a letter dated May 3, 1976, petitioner asked respondent to reconsider his demand-assessment and requested that the case be reinvestigated in order to give petitioner full opportunity to present its side of the controversy, show its absolute good faith, prove the correct tariff classification and rate of duties and taxes applicable to the aforesaid importations, and to set the case for hearing. (Annex "B",

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Petition for Review, p. 8, CTA records.)

5. Without waiting for the action or decision of respondent on its request for reconsideration or reinvestigation, petitioner, on May 12, 1976, appealed to this Court from the demand-letter of respondent dated April 21, 1976. On June 3, 1976, respondent filed his answer to the petition for review, raising the affirmative and/or special defenses of lack of jurisdiction of this Court to take cognizance of the appeal on the ground that there is no ruling or decision yet of respondent to be reviewed, since the communication dated April 21, 1976 is merely a letter informing petitioner of the amount of discrepancy of taxes and duties on its importations, with the request to pay the same within fifteen (15) days from receipt thereof; and that petitioner must first avail of the administrative remedy of protest before coming to this Court.

6. On May 14, 1976, or two (2) days after the institution of the present appeal, the Collector of Customs of Manila issued a warrant of seizure and detention for the seizure of the aforesaid importations. As a matter of fact, the said Collector is now in the process of conducting the seizure proceedings, and the same is denominated as Seizure Identification No. 14944, Cinema Audio, Inc., Claimant. Thus, on Dec-
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ember 28, 1976, herein petitioner filed an "Urgent Petition for Preliminary Injunction", to stop respondent or the Collector of Customs from continuing with the seizure proceeding.

The jurisdiction of this Court over the case is now being questioned by respondent. It is alleged under paragraph 12 of the Answer, and reiterated by him during the hearing held on January 7, 1977, that:

> This Honorable Court has no jurisdiction to take cognizance of the instant petition for review, because, in the first place there is no ruling or decision yet to be reviewed. We disagree with petitioner treating Annex "A" of the petition as the ruling to be reviewed, because, said Annex "A" is a plain letter of the Acting Commissioner of Customs to petitioner's Manager, informing the latter of the amount of discrepancy of taxes and duties on petitioner's importation, with the request to pay the same within fifteen (15) days from receipt thereof. Clearly, said Annex "A" is not a ruling but a letter merely stating the findings of the Bureau of Customs about the discrepancy on petitioner's importation. The Commissioner of Customs has not as yet ruled on the matter, but merely informed petitioner of said Customs findings affecting its importation. Moreso, Annex "A" of the petition for review is not even a decision, because no case has been brought forth for decision. There being no ruling or decision issued by respondent on the matter, this Honorable Court has as yet no authority to exercise its appellate jurisdiction.
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> Secondly, petitioner has failed to exhaust the administrative remedies available to it. It has not filed any valid and formal protest in accordance with the Tariff and Customs Code, regulations and other pertinent law. Said provisions of law, together with the pertinent pronouncements of this Honorable Court and the Honorable Supreme Court on the matter, are hereunder quoted for ready reference:

"Sec. 2308. Protest and payment upon Protest in Civil Matters.- When a ruling or decision of the Collector is made whereby liability for duties x x x is determined, x x x the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest x x x." (Tariff and Customs Code).

"PAR. II. Protest must be in writing and signed by the party protesting or by counsel, must be filed in triplicate in the office of the Collector of the port where payment was made x x x." (Customs Administrative Order 2-6 dated Dec. 3, 1959).

"Sec. 2309. Protest Exclusive Remedy in Protestable Case.- In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him x x x." (Tariff and Customs Code).

"Sec. 2313. Review by Commissioner.- The person aggrieved by the decision or action of the Collector in any matter presented upon protest x x x may within fifteen days after notification in writing by the Collector of his action or decision, given written notice to the Collector of his desire to have the matter reviewed by the Commissioner x x x."

"Sec. 2402. Review by the Court of Tax Appeals. - The party aggrieved by the ruling of the Commissioner in any matter brought before upon protest x x x may appeal to the Court of Tax Appeals in the manner and within the period prescribed by law and regulations." (Tariff and Customs Code).

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"Sec. 7. The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -

" x x x

"(2) Decision of the Commissioner of Customs in cases involving liability for customs duties x x x or other matters arising under the Customs Law x x x." (R.A. 1125, as amended.)

" x x x the filing of a written protest with the proper Collector of Customs within the statutory period is mandatory and a condition precedent for the recovery of customs duties x x x allegedly erroneously or illegally collected and non-compliance herewith bars and fatal to the action." (Allied Brokerage Corporation vs. Commissioner of Customs and C.T.A., 40 SCRA, 555).

" x x x petitioner has not even lodged a formal protest with the Collector x x x in connection with the assessment and collection of the questioned x x x import tax as required by Section 2308 of the Tariff and Customs Code. Not having complied with these requirements, this Court has no jurisdiction to pass upon the legality of the collection of said tax." (Border Chemical (Phil.) Inc. vs. Commissioner of Customs and/or Commissioner of Internal Revenue, C.T.A. Case No. 1552, May 28, 1965, cited in Tejam's Commentaries on the TCC, Vol. 11, p. 2014, 1971 Ed.)

"The appeal of the petitioner has no customs stamps of ₱10.00 x x x when it was filed x x x. The stamp requirement is in the nature of a docket fee and the failure to pay the docket fee for appeals on time is fatal. There being no valid appeal from the Collector x x x to the Commissioner of Customs, this Court has naturally no jurisdiction to take cognizance of the case." (Alfredo

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Lepat vs. Comm. of Customs, C.T.A. Case No. 1442, Oct. 26, 1966, cited in Tejam, id. p. 2021).

"We believe and so hold that until and unless the Commissioner of Customs has rendered a "decision on appeal", on the action x x x of the Collector may an aggrieved person, association or corporation come to this Court under R.A. 1125." (Leuterio vs. Comm. of Customs, C.T.A. Case No. 61, June 23, 1955, cited in Tejam, id. p. 2032).

Thus, it is crystal clear that for a petition for review of, or an appeal from a decision of the Commissioner of Customs in cases involving liability for duties, taxes, etc., to prosper and be cognizable by this Honorable Court, the party concerned must have availed of the administrative remedy of protest by following the procedure laid down by law and the formalities prescribed in connection therewith. Otherwise, his failure to do is fatal to his cause of action.

Lastly, the importation in question is still pending seizure proceedings before the Collector of Manila, under S.I. No. 14944, Cinema Audio, Inc., Claimant, which only goes to show that appeal to this Honorable Court is indeed premature.

Section 7(2) of Republic Act No. 1125 confers upon this Court exclusive appellate jurisdiction to review by appeal decisions of the Commissioher 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. And Section 11 of the same Act authorizes this Court, at any stage of the preceeding, to suspend collection of customs duties if the collection thereof by the Commissioner would "jeopardize the interest of the Government and/or the taxpayer", after requiring the taxpayer to deposit the amount claimed or to file a surety bond for not more than double the amount.

Before the enactment of Republic Act No. 1125 the sole and exclusive remedy in a case involving liability for customs duties, fees or other money charges was to pay such duties, fees or charges and tb file a protest; and if the protest was denied by the Collector of Customs, to appeal to the Commissioner and to the courts. (See Sections 1370, et seq. of the Administrative Code; Sections 2308, et seq. of the Tariff and Customs Code) But respondent Commissioner of Customs has lost sight of the fact that with the enactment of Republic Act No. 1125 the requirement of "payment and protest" has ceased to be the exclusive remedy. Section 7(2) of said Act permits an importer or owner of imported goods to appeal to this Court a decision or ruling of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; and Section 11 authorizes this Court to suspend collection of such duties, fees or other money charges upon compliance with the requirements provided therein. From these provisions, it may be inferred that an appeal may be made before payment of customs duties, fees or other money charges, in which case, this Court is authorized, at any stage of the proceeding, to suspend collection of the duties, fees or other money charges if collection thereof before final determination of the case would "jeopardize the interest of the Government and/or the taxpayer" and upon the filing of an adequate bond. However, if payment of the customs duties, fees or other money charges has been made, the procedure outlined in Section 2308, et seq. of the Tariff and Customs Code, specifically with respect to the filing of a protest, must be followed. (Caltex (Philippines) Inc. vs. Commissioner of Customs and Collector of Customs for the Port of Manila, CTA Case No. 370, Resolution dated May 10, 1957.)

As already stated, respondent Commissioner of Customs, in a letter dated April 21, 1976, has assessed and demanded from petitioner the payment of the amount of ₱1,798,944.00 representing discrepancy of taxes and customs duties, including fine for gross undervaluation, misclassification and use of fake documents in the release of petitioner's importations, with the request to pay the same within fifteen (15) days from receipt thereof otherwise respondent "will be constrained to take the necessary legal remedies afforded by the Tariff and Customs Code, as amended by P.D. No. 34, to protect the interest of the government". (Annex "A", Petition for Review, p. 7, CTA records) Since the said demand-letter dated April 21, 1976, involves liability for duties and taxes, and demand is made on petitioner to pay the same within fifteen (15) days from receipt thereof, it is therefore a decision of respondent Commissioner of Customs involving liability for customs duties, fees or other money charges which falls squarely under Section 7(2) of Republic Act No. 1125. (See Caltex (Philippines) Inc. vs. Commissioner of Customs and Collector of Customs for the Port of Manila, CTA Case No. 370, Resolution dated May 10, 1957.)

Nonetheless, we agree with respondent that this Court has as yet no authority to exercise its appellate jurisdiction over the instant appeal because in a letter dated May 3, 1976, petitioner asked respondent to reconsider his decision and requested that the case be reinvestigated in order to give petitioner full opportunity to present its side of the controversy, show its absolute good faith, prove the correct tariff classification and rate of duties and taxes applicable to the aforesaid importations, and to set the case for hearing. (Paragraph 14, Petition for Review, and admitted by respondent under paragraph 6 of his Answer.) In fact, as early as April 6, April 14 and April 27, 1976 petitioner has already formally presented to respondent oral and documentary evidence to prove the absence of fraudulent intent, acts or participation on its part in the preparation, declaration and filing of the customs entries covering the importations in question. (Paragraph 2, Supplementary Petition) Since in the instant case respondent has not yet acted or resolved petitioner's motion or request for reconsideration, there is no decision of the Commissioner of Customs that may be appealed to or reviewed by this Court.

The requirements prescribed in Section 7(1) of Republic Act No. 1125 before the Court of Tax

Appeals can exercise its jurisdiction over appeals from decisions of the Commissioner of Internal Revenue are substantially similar to those provided in Section 7(2) of Republic Act No. 1125 regarding appeals from decisions of the Commissioner of Customs. Where a taxpayer questions an assessment or demand-letter and asks the Commissioner to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment or demand-letter becomes a disputed or contested assessment that the Commissioner must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Commissioner on the disputed or contested assessment. The decision on the request for reconsideration is the decision which is appealable to this Court. (St. Stephen's Association and St. Stephen's Chinese Girl's School vs. Collector of Internal Revenue, 104 Phil. 314; Baguio Country Club Corporation vs. Collector of Internal Revenue, et al., L-11419, April 22, 1959, 105 Phil. 1269, unpub.; Roman Catholic Archbishop of Cebu vs. Collector of Interhal Revenue, L-16683, January 31, 1962, 4 SCRA 279;

Commissioner of Internal Revenue vs. Lilia Yusay Gonzales, L-19495, November 24, 1966, 18 SCRA 757; Commissioner of Internal Revenue vs. Villa, L-23988, January 2, 1968; 22 SCRA 4.)

The same interpretation finds support in Section 11 of Republic Act No. 1125, which states:

> "SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Commissioner of Customs 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)

Note that the law uses the word "decisions", not "assessments" or "demand-letters", thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment or the request for reconsideration but not the assessment or demand-letter itself which was sought to be reconsidered. (See Villamin vs. Court of Tax Appeals, L-11536, October 31, 1960, 109 Phil. 896; Commissioner of Internal Revenue vs. Villa, supra). xxx." Since in the case at bar petitioner appealed from the assessment or demand-letter of respondent without waiting for his decision on its request for reconsideration or reinvestigation, the appeal was premature and this Court has no jurisdiction to entertain said appeal.

The absence of a decision of the Commissioner of Customs that may be appealed to or reviewed by this Court is further heightened by the fact that on the basis of the false and unauthorized declarations in the customs dntries resulting in gross undervaluation, the Collector of Customs of Manila has issued a warrant of seizure and detention of petitioner's importations. (Supplementary Petition, p. 20, CTA records) The seizure proceeding is still pending before the said Collector of Manila under Seizure Identification No. 14944, Cinema Audio Inc., Claimant.

Under the Tariff and Customs Code, when a seizure is made for any cause, the Collector of the district wherein the seizure is effected shall immediately make report thereof to the Commissioner of Customs and to the Auditor General, now Chairman of the Commission on Audit. (Sec. 2302, id.) The Collector shall give the owner of the property or his agent a written notice of the seizure and shall give him an opportunity to be heard in reference to the delinquency which was the occasion of such seizure. (Sec. 2303, id.) The property seized shall then be listed, described, classified and appraised, which list and appraisement shall be properly attested to by such Collector and the persons making the appraisal. (Sec. 2305, id.) The Collector, after hearing, shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper. (Sec. 2312, id.)

The person aggrieved by the decision of the Collector or his action in any case of seizure may, within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner of Customs. Thereupon, the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision. (Sec. 2313, id.) Notice of the decision of the Commissioner shall be given to the party by whom the case was brought before him for review, and in seizure cases such notice shall be effected by personal service if practicable. (Sec. 2314, id.) Any party aggrieved by the ruling or decision of the Commissioner of Customs may appeal to the Court of Tax Appeals. (Sec. 2402, id; Sec. 11, Republic Act No. 1125.)

It is clear from these statutory provisions that only decisions or rulings of the Commissioner of Customs in seizure cases, after compliance with the procedure and formalities prescribed in connection with seizure proceedings, can be appealed to the Court of Tax Appeals. The seizure proceeding instituted by the Collector of Customs of Manila involving petitioner's importations has therefore to take its course in accordance with the provisions of the Tariff and Customs Code as outlined above before it can be taken to this Court. There being as yet no decision of the Collector of Customs of Manila which is appealable to the Commissioner of Customs, there is no decision of the latter that may be appealed to or reviewed by this Court. Pursuant to Section 7 of Republic Act No. 1125 or Section 2402 of the Tariff and Customs Code, the Court of Tax Appeals cannot exercise its jurisdiction except on appeal from a decision of the Commissioner of Customs. The absence of such decision of the Commissioner of Customs underscores petitioner's failure to exhaust administrative remedies and suggests a lack of cause of action. This Court has therefore no case to take cognizance of. (See Southwest Agricultural Marketing Corp. vs. Secretary of Finance, L-24797, October 8, 1968, 25 SCRA 452; Allied Brokerage Corporation vs. Commissioner of Customs and Court of Tax Appeals, L-27641; August 31, 1971, 40 SCRA 555.)

And not having acquired jurisdiction over the instant case by the filing of the petition for review, this Court has neither the power nor the jurisdiction to act on the "Motion for Suspension of Collection of Taxes", "Motion to Admit Supplementary Petition" and "Urgent Petition For Preliminary Injunction" of petitioner, since it is elementary that the Court must first acquire jurisdiction over the case in order to act validly therein. (Rosario and Untalan vs. Carangdang, et al., No. L-7076, April 28, 1955, 96 Phil. 845; Vda. de Rosario vs. Justice of the Peace, Camiling, Tarlac, et al., No. 9284, July 31, 1956, 99 Phil. 693.) 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. (Collector of Internal Revenue vs. Yuseco, L-12518, October 28, 1961, 3 SCRA 313; Austin & Company vs. Commissioner of Internal Revenue, CTA Case No. 1400, October 31, 1963.)

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Accordingly, the affirmative and/or special defense of respondent, reiterated during the hearing of this case on January 7, 1977, that this Court has no jurisdiction to take cognizance of the instant petition for review because there is no ruling or decision yet to be reviewed, must be sustained.

WHEREFORE, the instant petition for review is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, January 16, 1979.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge