LIM BONFING Y HNOS., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1900

JUAN PONCE ENRILE, as Commissioner of Customs,
Respondent.
x- - - - - - - - - - - - - -x

R E S O L U T I O N

This is in connection with the motion to dismiss filed by respondent on December 13, 1967 seeking the dismissal of the petition for review for lack of jurisdiction and for lack of cause of action.

It appears that petitioner imported from abroad 300 aluminum wire cloth opal, 100 lineal ft. reel, which arrived at the Port of Cebu on January 18, 1966. The shipment was appraised and was assessed customs duties in the sum of ₱7,560.00, wharfage fee in the sum of ₱4.00 and advance sales tax in the sum of ₱2,140.00, or a total amount of ₱9,704.00, which it allegedly paid under protest. (See Official Receipt No. 7949262 dated January 17, 1966.)

Petitioner claims that of the sum of ₱9,704.00 which was paid by it on January 17, 1966, it made an overpayment of ₱5,755.00, of which ₱5,292.00 represents the alleged overpayment of the customs duties and ₱463.00, the excess payment of the advance sales tax.

In a decision dated May 22, 1967, the Collector of Customs of Cebu dismissed the protest, which was received by petitioner on June 2, 1967. On June 6, 1967, petitioner appealed the decision of the Collector of Customs to the Commissioner of Customs. No decision has as yet been rendered by the Commissioner of Customs. On December 11, 1967, petitioner filed the instant petition for review.

Respondent contends that since no decision has as yet been rendered by the Commissioner of Customs, the filing of the petition for review is premature, invoking in support of his stand the decisions in the cases of Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, 102 Phil. 850; Rufino Lopez vs. Court of Tax Appeals, 100 Phil. 850; and Jose L. Gumogda vs. The Commissioner of Internal Revenue, et al. (C.T.A. Case No. 1529, Oct. 28, 1964).

On the other hand, petitioner contends that there is a cause of action and it can proceed with the present suit within the period of two years from the date of the payment of the duties and taxes without waiting for the decision of the Commissioner of Customs and invoked the decision in the case of P. J. Kiener Co., Ltd. vs. Saturnino David, 92 Phil. 945.

The claim for refund consists of two different

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charges, namely, overpaid customs duties in the amount of ₱5,292.00 and advance sales tax in the amount of ₱463.00.

With respect to the protest and claim for refund of the alleged overpaid customs duties in the said amount of ₱5,292.00, it is governed by the provisions of the Tariff and Customs Code in relation to Section 11 of Republic Act No. 1125. The procedure in assailing the erroneous or illegal collection of customs duties is to file a protest with the Collector of Customs. The decision of the Collector of Customs on the protest is appealable to the Commissioner of Customs within fifteen days from the date of receipt of the decision of the Collector (Section 2313, Tariff & Customs Code). Within 30 days from the date of receipt of the decision of the Commissioner of Customs, the protestant, if adversely affected, may appeal to the Court of Tax Appeals. (Sections 7 and 11, Republic Act No. 1125; see also Sec. 2402, Tariff and Customs Code.) The failure to observe the procedure outlined above in bringing protested customs cases before this Court is fatal to the appeal. There being no decision rendered on appeal by the Commissioner of Customs, there is, therefore, no decision within the contemplation of Sections 7 and 11 of Republic Act No. 1125 which may be ap-

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pealed to this Court. Consequently, the petition for review has been prematurely filed. (Sugar Producer's Cooperative Marketing Association, Inc., vs. Commissioner of Customs, C.T.A. Cases Nos. 858 and 859, Oct. 27, 1960; Chan Kian vs. C.T.A., G.R. No. L-12184, May 29, 1959, 57 O.G. 8661; see also Negros Navigation Co., Inc. vs. Comm. of Customs, G.R. No. L-18619, May 31, 1963; Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, supra; Rufino Lopez vs. Court of Tax Appeals, supra.)

With respect to the claim for refund of ₱463.00 as alleged overpaid advance sales tax, which is an internal revenue tax, the same is governed by Section 306 of the National Internal Revenue Code, and not by the Tariff and Customs Code. Under said section, a written claim for refund of the alleged overpayment must be filed with the Commissioner of Internal Revenue within two years from the date of payment, and if the latter fails to act on the claim, the taxpayer can bring a judicial action (appeal to this Court) without waiting for the decision of the Commissioner, also within two years from the date of payment. Where a protest or claim for refund is filed with the Collector of Customs, who is a deputy of the Commissioner of Internal Revenue in the collection of internal revenue taxes on imported goods, the same is a substantial compliance with the requirement of Section 306 of the Revenue Code. (Victorias Milling Co., Inc. vs. Comm. of Int. Rev., C.T.A. Case No. 685, Oct. 20, 1960; Coca-Cola Export Corporation vs. Comm. of Int. Rev., C.T.A. Case No. 655, April 18, 1962.) However, in actions for recovery of internal revenue taxes allegedly erroneously or illegally paid, the proper party against whom the action must be filed is the Commissioner of Internal Revenue and not the Commissioner of Customs. In this case, the Commissioner of Internal Revenue is not included as a party respondent.

IN VIEW OF THE FOREGOING, the petition for review is hereby dismissed. No pronouncement as to costs.

SO ORDERED.

Quezon City, March 7, 1968.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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