Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

BATAAN LEATHER GOODS, INC.,
Petitioner,

– versus – **C.T.A. Case No. 4344**

COMMISSIONER OF CUSTOMS,
Respondent.
x ------------------------------------ x

7/7/93

D E C I S I O N

This case stemmed from the Order of the Respondent Commissioner of Customs dated January 5, 1989, decreeing the forfeiture in favor of the government of the importation consisting of 59 bales of MX Leather Goods white (24,427.2 sq. ft.) valued at US$37,129.34.

Petitioner, a corporation duly organized and existing under the laws of the Philippines, is a subsidiary of Leo Corporation, a Japanese Corporation which shipped the goods in question. Petitioner was authorized and entrusted as the latter's agent in executing all and any procedures for the shipping back of the cargoes from Manila port to Japan (see Annex F).

The facts of the case are narrated in the opinion of the Petitioner:

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1. That on March 8, 1986, Leo Corporation shipped from Osaka, Japan, 59 bales MX Leather Goods white (22,427.2 sq. m.) to Manila, Philippines, under Bill of Lading No. 332727 dated March 8, 1987, issued by American President Lines, Ltd. Under the said bill of Lading, the shipment was consigned "To the Order of Rizal Commercial Banking Corporation, notify Lotus Export Specialists, Inc."

2. That the shipment arrived at the Port of Manila on March 21, 1986, and was discharged at Pier 3, Special Cargo Coral Warehouse No. 3.

3. That prior to such arrival, however, or on March 10, 1986, Leo Corporation received a telex from Lotus Export Specialist, Inc. ("Lotus"), requesting it to hold the shipment until instructions to proceed are given to it by Lotus.

4. That on that same date, Leo Corporation sent a reply telex to Lotus, informing the latter that the shipment had already been shipped on March 8, 1986.

5. That on April 5, 1986, Mr. Kim Young-Chang, General Manager of Lotus, wrote the Collector of Customs at the EPZA, stating therein that the "shipment was abandoned by us (Lotus) due to the following reasons:

> 1. Letter of Credit expired already before shipment was made by our Supplier;
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> 2. Previous shipments made by said same Supplier were mostly rejected leather so this time we don't want to take the risk of buying rejects again;

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3. The Central Bank prohibits the shipment from expired L/C."

In the same letter, Lotus requested that the Collector of Customs "allow our Supplier - **LEO CORPORATION** - to backship said shipment to them."

6. That on April 29, 1986, Lotus again wrote the Collector of Customs at Port Area, Manila, requesting for a **RETURN SHIPMENT PERMIT** in order to spare Lotus Corporation as owner/shipper from suffering any loss. Lotus also explained that while it had used the word "abandon" in its letter of April 5, 1986 its real intention was to seek the return of the shipment to the Owner/Shipper.

7. On the same date, Mrs. Zenaida R. Lapera, Assistant Manager of Rizal Commercial Banking Corporation ("RCBC"), Mariveles Branch, Bataan, likewise requested authority from the Collector of Customs to re-ship the shipment to Leo Corporation, the Owner/Shipper, for the reason that the letter of credit covering subject shipment had already expired.

8. That in a Memorandum for the Collector of Customs dated May 29, 1986, Atty. Manuel Rosete, Senior Legal Officer of the Law Division recommended the re-exportation of the shipment subject to filing of re-export bond and pertinent warehousing entry in response to the letter of RCBC.

9. That on June 11, 1986, Mr. Pablo B. Avestruz, Special Assistant, Port Operations Branch, also issued a Memorandum to the Head, Port Operations Branch, likewise recommending the approval of the request for re-shipment subject to the filing of constructive warehousing entry with ordinary re-export bond.

> 10. That on September 1, 1986, Mr. Yoshi Fujita of Petitioner wrote the then Commissioner of Customs Hon. Wigberto Tanada reiterating the request to re-export the shipment.
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> 11. That on September 10, 1986, seizure proceedings were commenced against the Shipment for alleged violation of Sec. 2530 f and 1. (3)-(5) of the Tariff and Customs Code ("Tariff Code")
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> 12. That on November 20, 1986, Petitioner filed a Motion for Leave To Intervene in the seizure cases.
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> 13. That on August 21, 1987, a decision on the seizure case was issued ordering the forfeiture of the shipment in favor of the government.
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> 14. That on August 16, 1987, petitioner filed an Appeal with the Commissioner of Customs (Customs Case No. 87-13), which was denied by the respondent in its Decision dated December 15, 1987. On January 26, 1988, petitioner filed a Motion for Reconsideration of the said Decision, which was denied by the respondent in its Order dated January 5, 1989: *(Request for Admission, pp. 87-90, CTA Records)*

The foregoing facts were admitted by the Respondent subject to the following qualifications:

> (a) that Leo Corporation is not the owner, but only the shipper, since for customs purposes, the consignee-owner of the subject shipment is Lotus Export Specialists, Inc., and;
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> (b) that the memoranda prepared by the Customs officers concerned (Atty. Manuel Rosete, Senior Legal Officer of the Law Division and Pablo Avestruz, Special Assistant, Port Operations

> Branch) contained mere recommendation which are not binding upon the Collector of Customs, much less on respondent Commissioner of Customs. *[Response (To Request for Admission) pp. 94-A to 95]*

Hence, this appeal.

In the narration of facts by the Petitioner which as a whole, was not objected by the Respondent, this Court observed, that herein Petitioner already filed an Appeal with the Commissioner of Customs (Customs Case No. 87-13) on August 16, 1987, or five days before the decision on the seizure case ordering the forfeiture of the shipment in favor of the government was issued on August 21, 1987. (see Statement of Facts, pars. 14 and 15 Petition for Review) This is not a mere case of typographical error. The Petitioner has been consistently presenting this chronological distortion of facts material to the case from the filing of the Petition for Review to the Request for Admission of Facts up to the filing of the Memorandum. Such chronological facts are essential in the determination of the running of the prescriptive period for filing an appeal. Respondent also failed to notice such glaring error. Both counsels of the government and the

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petitioner are admonished to take cautionary measures in presenting the facts in order not to put this Court in quandary as to where to start the counting of the running of the 15-day reglamentary period for appeal from the Decision of Collector of Customs to the Commissioner of Customs under Section 2313 of the Tariff and Customs Code.

The reglementary period prescribed by law for an appeal in cases of forfeiture is not a matter of procedure which the Courts may ignore. The provisions of the Customs Law, like those of the internal revenue code are not directory merely but mandatory. Hence, the importance of knowing the factual dates in order to determine the reglementary period for appeal.

The need to know the factual dates is also essential in determining the jurisdiction of the trying Court.

Under Section 7 in relation to Section 11 of Republic Act No. 1125 a taxpayer affected by the decision of the Commissioner of Custom may file an appeal to this Court within thirty days after the receipt of the decision or ruling.

In the case at bar, Petitioner received on January 20, 1988 the adverse ruling of the Commissioner of Customs dated December 15, 1987. It filed a Motion for Reconsideration on the Decision on January 26, 1988. On January 25, 1989, Petitioner, received an Order from the respondent denying its Motion for Reconsideration. On February 25, 1989 (see date of registry p. 28 CTA Records), Petitioner filed its Petition for Review in this Court.

A careful analysis of the chronological events that transpired leads Us to the conclusion that the Petition for Review was filed out of time. The running of the period should commence from the date of receipt of the Decision of the respondent on January 20, 1988 and not on January 25, 1989 which is the date of receipt of the denial of the Motion for Reconsideration. The filing of the Motion for Reconsideration only tolled the running of the prescriptive period. But, it has already commenced running as of January 20, 1988. It continued running on January 26, 1989 up to February 25, 1989. From January 20, 1988 which is the date of receipt of the Decision to January 25, 1988, the date Petitioner filed its

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Motion fo Reconsideration, five days have already been consumed. When the period started running again on January 25, 1989 the date of receipt of the denial of the Motion for Reconsideration to February 25, 1989, when the petition for review was filed before this Court, thirty-one days have elapsed or a total of thirty-six (36) days. Clearly the Petition for Review was filed out of time.

In a very similar case of Phils. Int'l. Surety Co., Inc., vs. Commissioner of Customs, (CTA Case No. 1183, Oct. 7, 1963) this Court said, thus:

> "The records show that from the time Rosario Commercial received the decision appealed from on November 28, 1961 to the day it filed its motion for reconsideration on December 28, 1961, exactly thirty days elapsed. From its receipt of the order denying the motion for reconsideration on February 23, 1962 to the filing of the petition for review in this case on March 22, 1962 seven days passed. All in all, petitioners consumed 37 days in perfecting its appeal. Such being the case, this Court is without jurisdiction to entertain the appeal."

Needless to emphasize, this same Court is likewise without jurisdiction to entertain the present appeal.

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ACCORDINGLY, this petition for review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, July 7, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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