LUNETA MOTOR COMPANY,
Plaintiff,

- versus - C.T.A. CASE NO. 402

ELEUTERIO CAPAPAS, in his capacity as Commissioner of Customs, and ISIDRO C. ANGANGCO, in his capacity as Collector of Customs,
Defendants.

10/14/57

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RESOLUTION

The Luneta Motor Company, a corporation organized and existing under the laws of the Philippines, has filed a complaint[1] against the Commissioner of Customs and the Collector of Customs of Manila, as defendants, seeking to recover the sums of ₱72,731.35, representing alleged overpayment of customs duties on imported "knocked-down complete motor vehicles"; ₱6,457.55, as 17% special import tax, and ₱6,621.35, as sales tax, or a total of ₱85,810.25. It is alleged in the complaint that from October 20, 1954 to April 6, 1956, plaintiff imported and received from abroad motor vehicles on which defendants issued and collected ₱210,969.67 as customs duties and ₱100,227.06 as sales tax, although the amounts actually due were ₱138,238.32 as customs duties and ₱93,605.71 as sales tax, thereby giving rise to the overpayments mentioned above.

Counsel for defendants filed a motion to dismiss on the grounds that the complaint does not state a cause of action and that this Court has no jurisdiction over the case.

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[1] Sec. 1, Rule 5, of the Rules of the Court of Tax Appeals requires that the appeal be entitled "Petition for Review", the appellant to be called the "Petitioner" and the party whose decision is being appealed as the "Respondent".

The first two items of ₱72,731.35 and ₱6,457.55 which are sought to be recovered represent alleged overpayment of customs duties and special import tax from October 20, 1954 to April 6, 1956. The administrative procedure for contesting the validity of the assessment of customs duties, fees, or other money charges is now governed by Part 2, Title VI, Book II, of the Tariff and Customs Code (effective July 1, 1957), formerly Article XIX, Chapter 39, of the Administrative Code. The law provides that where customs duties, fees, or other money charge have been paid and the interested party desires to have the action of the Collector of Customs reviewed, the former must "make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest error." (Sec. 2309, Tariff and Customs Code.) The protest must be filed in writing at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter. The protest must set forth the objections to the payment of the duties and the reasons therefor. No protest may be considered unless payment of the amount due after final liquidation has first been made. (Sec. 2308, id.) The protest must be filed in accordance with the rules and regulations prescribed, and must point out the decision or ruling objected to and the ground or grounds upon which the protesting party bases his claim for relief. (Sec. 2310, id.) When a protest in proper form is presented in a case where protest is required,

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the Collector of Customs shall reexamine the matter thus presented, and if the case is decided against the protesting party, he may appeal to the Commissioner of Customs within 15 days after receipt of the decision of the Collector. (Secs. 2312-2313, id.) It is only after a decision has been rendered by the Commissioner of Customs that the party aggrieved by such decision may appeal to this Court (Sec. 2402, id.), for the jurisdiction conferred upon it, in customs cases, is limited to a review of the decision of the Commissioner upon appeal by the aggrieved party (Secs. 7 & 11, Rep. Act No. 1125). This Court has no authority to review a decision of a collector of customs. (Rufino Lopez & Sons v. Collector of Customs, C.T.A. No. 101, May 23, 1955, affirmed in G. R. No. L-9274, Feb. 1, 1957.)

In this case, the complaint does not state whether a decision has been rendered by the Collector of Customs of Manila; if there was such a decision, when the plaintiff received a copy thereof; whether the decision of the Collector was appealed to the Commissioner within the statutory period; whether the Commissioner has rendered a decision on appeal; and when the decision of the Commissioner was received by plaintiff. These are jurisdictional facts which must be stated clearly and in detail in the appeal, and failure to allege the same renders the petition for review defective and subject to dismissal for lack of cause of action.

Moreover, Section 2, Rule 5, of the Rules of this Court requires that a copy of the decision appealed from be attached to the petition for review. No such copy has been attached to the complaint.

It may be contended that the complaint may be treated as an action for mandamus, because plaintiff seeks, among others, to compel defendants to "liquidate or reliquidate the shipments involved", defendants having "failed and refused, and still neglect, fail and refuse, to take action on plaintiff's repeated petitions for liquidation or reliquidation of the aforesaid shipments to conform with the legal, correct and proper classifications and assessments," and an action for injunction because the complaint seeks to enjoin defendants from "further appropriating, applying and converting plaintiff's funds to the settlement of outstanding obligations of G. M. Cansipit, Inc. or any other party for that matter, without plaintiff's previous knowledge and consent." (See pages 4 and 5 of the Complaint.) It is a well settled rule that neither of these remedies is available where relief by appeal is provided. (Millarez v. Amparo, G.R. Nos. L-8364, L-8365 & L-8351, June 30, 1955.) Plaintiff has an adequate remedy by appeal as already stated above. (See Sec. 2308, et seq., Tariff & Customs Code; formerly Sec. 1370, et seq., Administrative Code.)

With respect to the sum of ₱6,621.35, we take it that it represents alleged excess payment of the advance sales tax collected by the Collector of Customs of Manila, as deputy of the Collector of Internal Revenue (Sec. 6, National Internal Revenue Code), in accordance with Section 183 (B) of the Revenue Code. This being an internal revenue tax, it is essential that a written claim for refund thereof be filed by plaintiff with the Collector of Internal Revenue within two years from the date of payment (Sec. 306, Revenue Code), and in case of denial, an appeal may be filed with this Court within 30 days from the date of receipt of the decision of the Collector (Secs. 7 and 11, Rep. Act No. 1125). Failure to file a written claim for refund is a bar to an action in court for its recovery.

> "x x x the filing of a claim for refund is mandatory and a prerequisite or a condition precedent to the prosecution of a suit for the recovery of taxes said to have been erroneously or illegally collected, and non-compliance therewith bars and is fatal to the action. As a condition precedent to the accrual of plaintiff's right of action, it should have been averred as an essential allegation (Rule 15, Section 10, Rules of Court; Government vs. Inchausti and Co., 24 Phil. 315), and plaintiff's failure to allege the same renders his complaint defective and subject to dismissal for lack of cause of action." (Johnston Lumber Co., Inc. v. Court of Tax Appeals, G. R. No. L-9292, April 23, 1957.)

The complaint does not state whether a written claim for refund has been filed with the Collector of Internal Revenue in accordance with Section 306 of the Revenue Code, and no allegation has been made whether or not a decision has been rendered by the Collector. Furthermore, the proper party in an action for recovery of an internal revenue tax is the Collector of Internal Revenue and not the Collector of Customs of Manila or the Commissioner of Customs.

We are, therefore, of the opinion that the complaint in the instant case does not state a cause of action, and accordingly the same is hereby dismissed without prejudice. With costs against plaintiff.

SO ORDERED.

Manila, Philippines, October 14, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge