Library

CMS ESTATE, INC.,
Petitioner,

May 31, 1961

- versus - C.T.A. CASE NO. 1014

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - - x

RESOLUTION

This refers to the respondent's motion to dismiss dated March 1, 1961, for lack of jurisdiction, alleging that the present petition for review has been prematurely filed.

The undisputed facts pertinent to the issue submitted for resolution are clearly alleged in the petition for review, which states:

> "6. On August 30, 1960, petitioner filed with the Collector of Customs of Davao City, a claim for the recovery of ₱60,319.52 representing the amount of wharfage dues illegally levied and collected by the Collector of Customs of Davao on petitioner's shipments of logs to Japan from Baganga, Davao, covering the period from September, 1957 to July 31, 1960, inclusive. Instead of rendering a decision on petitioner's claim, the letter was transmitted by the Collector of Customs of Davao City to the Commissioner of Customs, Manila, for instructions.
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> x x x x
>
> "8. On December 22, 1960, the Collector of Customs of Davao City informed the petitioner that pending receipt of the instructions from the Commissioner of Customs, Manila, petitioner's claim of August 30, 1960 and subsequent claims of the same nature would not be given due course. A copy of the said letter is attached hereto as Annex 'B'.

"9. On January 13, 1961, in compliance with the directive of the Commissioner of Customs, Manila, under the first indorsement dated December 9, 1960, which together with the letter of the Collector of Customs of Davao City dated January 13, 1961, were received by petitioner on February 1, 1961, copies of which are attached hereto and forming integral parts of this petition as Annexes 'A' and 'A-1', respectively, petitioner was informed by the latter that its claim for recovery of wharfage dues illegally collected 'is deemed without merit, hence, cannot be further entertained.'

x x x x

"It is admitted that no written protests were filed by petitioner nor by its agents in Davao at the time some of the wharfage dues in question were levied and paid. x x x x. Nevertheless, this lack of protest, petitioner respectfully submits, is not a bar to the recovery of the said wharfage dues. x x x.

x x x x

"As a matter of fact, if we must strictly follow the procedure laid down by our Supreme Court (Viuda e Hijos de Pedro R. Roxas v. James J. Rafferty, Collector of Internal Revenue, 37 Phil., 957, 961) x x x x, we need not, in the event of an adverse decision on the part of the Collector of Customs, appeal to the Commissioner of Customs, as is provided by law in protested cases.

"Petitioner can go directly to the Court of Tax Appeals -- which proves that if the tax is void as in the instant case, and not merely excessive and erroneous, protest is not necessary for recovery." (Pp. 2, 3, 7, 8 & 9 Petition for Review; underlining and words in parenthesis supplied.)

The above quoted material allegations contained in the petition for review, clearly discloses petitioner's position. Aside from the express admissions contained therein, a careful study of the evidence on record pertinent to the issue (Annexes A, A-1, and B of the Petition), there is as yet no decision of the respondent Commissioner of Customs from which an appeal to this Court may be taken in accordance with the provisions of Section 7 (2) of Republic Act No. 1125, which states:

> "(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."

(The document marked Annex "A", which is the 1st Indorsement dated December 9, 1960, is not a decision but a mere opinion or directive addressed to the Collector of Customs, Davao City, obviously in answer to a request made by the latter from the Commissioner of Customs. Annex "A-1" is the letter of the Acting Collector of Customs of Davao City to the petitioner informing him of the said opinion contained in Annex "A". And Annex "B", is another letter of the Acting Collector of Customs of Davao City, prior to Annex "A-1", in reply to petitioner's claim contained in his letter dated December 3, 1960, advising that said claim cannot be given due course.)

Clearly, therefore, the present petition for review is premature, inasmuch as no written protest or appeal from the action or decision of the Acting Collector of Customs of Davao City was taken pursuant to the provisions of Sections 2309 and 2313 of the Tariff and Customs Code. (Liberty Motors, Inc., v. Manahan, C.T.A. Case No. 325, January 22, 1957; Bookmark Inc. v. Com. of Customs, C.T.A. Case No. 627, April 6, 1959; Hatib Abdurasib v. Com. of Customs, C.T.A. Case No. 28, November 29, 1954.) As repeatedly held by our Supreme Court, only final decisions of the Commissioner of Customs are appealable to this Court. (Rufino Lopez & Sons, Inc., vs. Court of Tax Appeals, G.R. No. L-9274, February 1, 1957; Sampaguita Shoe & Slipper Factory v. Com. of Customs. G.R. No. L-10285, January 14, 1958.)

PREMISES CONSIDERED, the present petition for review should be dismissed, without pronouncement as to costs.

SO ORDERED.

Manila, May 31, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge