REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HERMINIGILDO PAHATE, doing business under the name and style "FIVE RINGS ENTERPRISES AND HEISEI SHOKAI LTD. (Japan)", represented by their Attys.-in-fact YOLANDO LIM and EDUARDO FRIVALDO,
Petitioner,

- versus -

C.T.A. CASE NO. 5264

LICERIO EVANGELISTA, Deputy Commissioner, ARNEL ALCARAZ and MAGTANGGOL GUNIGUNDO, JR., Office of the Commissioner and District Collector of Customs, MICP,
Respondent.

Promulgated:

FEB 12 1996

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RESOLUTION

Assailed by the respondent in the instant case, through a motion for reconsideration filed on November 24, 1995, is the resolution promulgated by this Court on November 10, 1995, the dispositive portion of which reads:

> "**WHEREFORE**, finding Petitioners' Motion meritorious, We hereby **ADMIT** the same. Hence, Respondent's Motion to Dismiss is hereby **DENIED** for lack of merit. **ACCORDINGLY**, Petitioners' Motion to Order the Release of Six Containers Under Bond filed on August 9, 1995 is hereby

> **GRANTED** there being no clear showing of fraud on the part of the Petitioner. In this regard, Respondent is hereby **ORDERED** to **SUBMIT** to this Court within ten (10) days from receipt of this Resolution an official inventory of the cargoes subject of this case. The inventory should be witnessed by a representative of the Petitioner. Together with the Inventory, Respondent is also **ORDERED** to **SUBMIT** a valuation report on the value of the cargoes including the taxes and duties thereof for this Court to determine the amount of the bond to be put up by the Petitioner. The bond should be from a reputable insurance or surety company duly registered with the Supreme Court and the Office of the Insurance Commission. A certificate from the Office of the Insurance Commission should be secured to the effect that the surety company is financially capable of underwriting the total amount of the bond. The bond should be for an indefinite period while the case is pending before the CTA and to guarantee unconditionally its obligation to pay the Bureau of Customs whatever amount will be adjudged against the petitioner. The amount of the bond shall be one and one-half the appraised value including duties and taxes due on the vehicles.
>
> **SO ORDERED.**"

Respondent contends that aside from the existence of a *prima facie* case, there was actual fraud committed in the subject importation by the petitioner, as shown by the discovery of undeclared items, notable among which were the presence of motor vehicles; that the actions of petitioner in repeatedly applying for redemption were an admission that the forfeiture was in order; and, that to allow release of the importation under surety bond would contravene R.A. No. 7651 which requires cash bond only in the temporary release of shipments under forfeiture proceedings. In addition, respondent vigorously insists on the lack of jurisdiction of this Court and the non-exhaustion of administrative remedies attendant to the case at bar. (Ibid., pp. 3-4; pp. 127-128, CTA records)

After a painstaking re-scrutiny of all the facts and circumstances involved, we hereby rule in favor of respondent.

Indeed, facts show that petitioner opted to redeem his seized property subject of forfeiture proceeding before the Collector of Customs, MICP, Manila. (Annexes "C" and "C-1" of the Petition). On the basis of such offer to redeem, said collector endorsed her favorable recommendation therein to the Office of the Commissioner of Customs. (Annex "G", ibid) In reply, the latter office denied in separate occasions the recommendation of the Collector. (Annexes "H", "K", "P" and "P-1", ibid.) The denials directed the Collector to continue with the forfeiture proceedings and to immediately dispose of the subject articles in accordance with law. (ibid.)

Petitioner deemed the above directive as a preclusion of his right to appeal the denial to the Commissioner of Customs and a way of rendering his case ineffectual, and moot and academic, if not restrained

(Petition, p. 13, Amended Appeal, p. 12; p. 13, 109 CTA records) Thus, his resort to the instant petition for review.

The judicial remedy taken by petitioner is premature. He has not exhausted all administrative remedies available to him. What he considered as a whimsical and capricious order or declaration of forfeiture and disposal of his shipments by respondent, after the latter refused his offer of redemption (Amended Appeal, p. 11, p. 108, CTA records) is on the contrary found by this Court to be well within the legal mandate of respondent.

The applicable provision of the Tariff and Customs Code of the Philippines governing redemption of forfeited property states, thusly:

> **Sec. 2307.** ***Settlement of Case by Payment of Fine or Redemption of Forfeited Property.*** - Subject to the approval of the Commissioner, the district collector may *while the case is still pending*, accept the settlement of any seizure case provided that the owner, importer, or consignee or his agent shall offer to pay the fine that may be imposed upon the property, or in case of forfeiture, the owner, importer, or consignee or his agent shall offer to pay the domestic market value of the property. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
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> Upon payment of the fine imposed or the domestic market value, the property shall be forthwith surrendered and all liabilities which

> may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any cash deposit or bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.
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> Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering to redeem the same would be contrary to law. (Underscoring supplied)

It must be observed that while the seizure case was still pending, petitioner offered to redeem his shipments before the Collector. Pursuant to the above provision of law, said Collector made his recommendations and sought the approval of his Commissioner. Unfortunately, the recommendations were not favorably acted upon. The respondent, through Deputy Commissioner Licerio Evangelista instead directed the Collector "to continue with the forfeiture proceedings and to immediately dispose of the subject articles in accordance with law." (Annexes "H" and "P", pp. 44, 65, CTA records)

Petitioner somehow misread the intentions of respondent. There was no final order or declaration of forfeiture and disposal made by the latter. A mere continuance of the forfeiture proceedings in accordance with law was the only directive given by respondent.

In such regard, petitioner should have followed the provision of Section 2312 of the same Code, which states, to quote:

> "SECTION 2312. ***Decision in Action by Collector in Protest and Seizure Cases.*** xxx In seizure cases, the Collector, after a 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." (Underscoring supplied)

With the offer of redemption rejected, petitioner would have to await for the final action of the Collector on the forfeiture case *still pending.* This, however, petitioner failed to do. He elevated his case straight up to this Court without any action of the Collector on the seizure case.

Petitioner is obviously mixed-up on the procedure he has chosen. The settlement of a case by redemption is a separate and distinct administrative remedy with that of seizure proceedings. The former is initiated by the owner, importer, or consignee or his agent through an offer of payment of the domestic market value of the seized property while the latter is pursued by the government at its end for alleged violation of customs law which may ultimately end up in forfeiture of the seized property. The former can be availed of both at the level of the Collector and the Commissioner while a seizure case is conducted only at the level of the Collector with a possible appeal to the Commissioner. It can be said that the resort to redemption of the seized property by the petitioner is in the nature of a compromise settlement by the government and itself as allowed by customs law *during* seizure proceedings. On the other hand, a seizure proceeding is an onerous remedy availed of by the government and has for its object the forfeiture or confiscation of the seized property in its favor for alleged violation of customs law. They are two diametrically different administrative remedies prescribed by law.

It is important to note that the Collector of Customs rendered his final decision on the subject seizure case three (3) days after the herein petition was filed on July 10, 1993.(Decision of the Collector of Customs, p. 91, CTA records) Petitioner could have still shored up his case by filing an appeal before the Commissioner of Customs within the 15-day reglementary period from the promulgation of the decision of the Collector and from there make an appeal before this court.(Sections 2313 and 2402, Tariff and Customs Code of the Philippines) Unfortunately, records fail to show that petitioner ever availed of such remedies up to this time, thus rendering the decision of said Collector already final and executory. Also implied therefrom is the loss of petitioner's right to offer any redemption of the seized articles. We could only commiserate thus on the situation befalling him.

Viewed from another angle, petitioner likewise committed a grave error in impleading wrong parties to the case at bar. The Commissioner of Customs is an indispensable party to any customs case cognizable by the Court of Tax Appeals. It is only his final decision on any matter arising under the customs law or other law or part of law administered by the Bureau of Customs that is reviewable by this court. (Section 7 (2), Republic Act No. 1125) Deputy Commissioner Licerio Evangelista, Messeurs Arnel Alcaraz and Magtanggol Gunigundo of the Office of the Commissioner, and the District Collector are subalterns of the Commissioner of Customs, and thus, have no legal standing on their own to be impleaded in this case. The only instance where they may be impleaded is when they are considered as proper parties to a case, but always with the Commissioner of Customs as the real party-in-interest.

Prescinding from the above, we find it improper, therefore, to dwell on the substantive merit of the issues raised by both parties due to lack of jurisdiction by herein Court.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge