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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

Oct. 27, 1960

SUGAR PRODUCERS' COOPERATIVE MARKETING ASSOCIATION, INC., Petitioner,

- versus - C.T.A. CASE NO. 858

COMMISSIONER OF CUSTOMS, Respondent.

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SUGAR PRODUCERS' COOPERATIVE MARKETING ASSOCIATION, INC., Petitioner,

- versus - C.T.A. CASE NO. 859

COMMISSIONER OF CUSTOMS, Respondent.

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R E S O L U T I O N

This treats of the "Motion to Dismiss" filed by the respondent in these two cases on August 5, 1960.

Petitioner, a cooperative association duly organized and existing under the laws of the Philippines, imported several bags of fertilizer for which it paid under protest the corresponding wharfage dues at the City of Iloilo on July 8 and July 9, 1955, respectively. On April 19, 1956, a request for refund of the wharfage dues paid was filed by petitioner with the Collector of Customs of Iloilo City on the ground that it is exempt from the payment of wharfage dues under the proviso of Section 3 of Republic Act No. 1371. Petitioner's claim for refund was subsequently amended on June 27, 1956 and September 10, 1958.

After due hearing, the Collector of Customs for Iloilo City rendered his decision dated July 13, 1959, dismissing petitioner's request for refund on the ground that the same did not conform with the statutory requirements laid down in Sections 1370, 1371 and 1372 of the Revised Administrative Code. From this decision of the Collector, petitioner perfected an appeal to the respondent Commissioner of Customs on July 22, 1959. However, even before respondent could take action on petitioner's appeal, the latter filed the present case before this Court on July 9, 1960.

Respondent filed on August 5, 1960 a "Motion to Dismiss" on the ground that there is as yet no decision of the Commissioner of Customs which may be the subject of review by this Court, pursuant to the provisions of Section 7 of Republic Act No. 1125. This is the motion now before us for resolution.

The only issue to be resolved herein is whether this Court may properly take cognizance of these cases despite the fact that respondent has not yet rendered a decision on petitioner's appeals from the decision of the Collector of Customs of Iloilo.

Section 7 of Republic Act No. 1125 confers upon the Court of Tax Appeals jurisdiction to review by appeal, among others, decisions of the Commissioner of Customs and not that of a Collector of Customs. (See Acting Collector of Customs vs. Court of Tax Appeals, et al., Philippine Education Co., Inc., Intervenor, C.T.A. Case No. 17, Jan. 22, 1955, affirmed in G. R. No. L-8811, Oct. 31, 1957; Mitosis vs. The Acting Collector of Customs for the Port of Manila, C.T.A. Case No. 58, Mar. 22, 1955; Sampaguita Shoe and Slipper Factory vs. The Commissioner of Customs, et al., C.T.A. Case No. 59, Oct. 17, 1955, affirmed in G. R. No. L-10285, Jan. 14, 1958; Leuterio vs. The Commissioner of Customs, C.T.A. Case No. 61, July 23, 1955; Rufino Lopez and Sons, Inc. vs. The Collector of Customs, C.T.A. Case No. 101, May 23, 1955, affirmed in G. R. No. L-9274, Feb. 1, 1957; Amilbangsa vs. Manahan, et al., C.T.A. Case No. 221, Dec. 23, 1955; Amilbangsa vs. Angangco, C.T.A. Case No. 255, May 7, 1956; and Asturias Sugar Central, Inc. vs. Commissioner of Customs, C.T.A. Case No. 761, June 6, 1960.)

In the cases at bar, it appears that respondent Commissioner of Customs has not yet rendered a decision on the appeals interposed by petitioner from the decision of the Collector of Customs of Iloilo. There is, therefore, no decision within the contemplation of Section 7 of Republic Act No. 1125 which can be reviewed by this Court. Consequently, we are constrained to dismiss the instant petitions for review for having been prematurely filed.

Petitioner contends, however, that there is no need to wait for the Commissioner of Customs to render his decision on its appeals from the decision of the

Collector of Customs of Iloilo, because the right of petitioner to institute the proper action in court for the recovery of the wharfage dues is about to prescribe. According to petitioner, Article 1149 of the New Civil Code applies in these cases because of the absence of a provision in any special law limiting the period for bringing an action in court for the recovery of wharfage dues. Therefore, he claims that the action should be brought within five years from the date of payment of the wharfage dues. Petitioner's contention is premised on the doctrine enunciated by the Supreme Court in the cases of P. J. Kiener Co. vs. David, G. R. No. L-5163, April 22, 1953; 49 O.G. 1852; College of Oral & Dental Surgery vs. Court of Tax Appeals, et al., G. R. No. L-10446, Jan. 28, 1958; 54 O.G. 7055; Muller & Phipps /Manila/, Ltd. vs. The Collector of Internal Revenue, G. R. No. L-10694, Mar. 20, 1958; Collector of Internal Revenue vs. Sweeney, et al., G. R. No. L-12178, August 21, 1959; and, Gibbs, et al. vs. Collector of Internal Revenue, et al., G. R. No. L-13453, Feb. 29, 1960.

We have had an occasion to pass upon this contention. In the analogous case of Asturias Sugar Central, Inc. vs. The Commissioner of Customs, et al., C.T.A. Case No. 761, Resolution, June 6, 1960, we held:

> "Petitioner however claims that it filed its present petition for review for fear that it would lose its right to claim for refund should the Commissioner of Customs not decide its appeal in time to enable it to file its

action before this Court within the two-year period prescribed in Section 306 of the Tax Code. It justifies its present action with the ruling of the Supreme Court in the case of P. J. Kiener Company, Ltd. vs. Saturnino David, 49 O.G. p. 1852, and Allison J. Gibbs, et al. vs. Collector of Internal Revenue and Court of Tax Appeals, G. R. No. L-13453, February 29, 1960, where it was held that the claimant for refund need not wait for the decision of the official to whom the claim for refund is directed, but proceed to file his case within the two-year period. The cases cited refer to internal revenue taxes and not to customs duties.

There is nothing in the Tax Code which provides that these provisions shall also be applicable to customs duties or charges imposed under the Customs Law. On the contrary, the Revised Administrative Code, in Chapter XXX, Article XII, Sections 1300 and 1301 (now Sections 1707 and 1708, Tariff and Customs Code), contains specific provisions as to the time and manner of filing claims for refund of customs duties. These provisions in the old Administrative Code and the Tariff and Customs Code of the Philippines show that the provisions of Sections 306 and 309 of the National Internal Revenue Code on refund of internal revenue taxes erroneously and illegally collected do not apply to customs duties."

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petitions for review in these two cases, filed on July 9, 1960, are hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, October 27, 1960.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge