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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MIGUEL O. CABARLES,
Petitioner,

- versus - C.T.A. CASE NO. 3385

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

3/25/83

D E C I S I O N

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.*

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*Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 4; citing 21 Corpus Juris Secundum, 127-128; Molina vs. Dela Riva, 6 Phil. 12; Fuentebella vs. Negros Coal Co., 50 Phil. 69; Vega vs. San Carlos Milling Co., 51 Phil. 908; U.S. vs. De la Santa, 9 Phil. 22; Vda. e Hijos de Pedro Rojas vs. Rafferty, 37 Phil. 957. (See also Oscar F. Santos vs. The Commissioner of Internal Revenue, CTA Case No. 3070, August 14, 1981.)

In the case at bar, the lack of jurisdiction of this Court, as invoked by respondent Commissioner of Customs in his answer to petitioner's petition for review and in his motion to dismiss, appears evident. For indeed the uncontroverted facts show that petitioner Miguel Cabarles has failed to perfect his appeal within the 15-day period prescribed in Section 2313 of the Tariff and Customs Code and thus the decision of the Collector of Customs in the seizure case has already become final and executory.

The District Collector of Customs of Iloilo rendered a decision in Seizure Identification No. 3-80 on November 27, 1980, ordering the return to petitioner Miguel Cabarles of 24,600 bags of imported fertilizer seized by the Bureau of Customs and the forfeiture of 10,622 bags in favor of the Government. Thereafter, in his order dated May 7, 1981, said Collector modified his decision decreeing that the 25,000 bags of fertilizer earlier ordered returned to Cabarles be likewise declared forfeited in favor of the Government. From receipt of this order on May 25, 1981, petitioner's counsel filed a motion for reconsideration on June 6, 1981 but said motion was denied by the Collector in his order of August 18, 1981. Subsequently, petitioner's counsel who received said order of denial on August 26, 1981, filed a notice of appeal on September 3, 1981 to have the case reviewed by the Commissioner of Customs. However, on October 2, 1981, respondent Commissioner of Customs dismissed said appeal on the ground that it "was made beyond the reglementary period of fifteen days as required by law" and that "the orders of the Collector of Customs of May 7, 1981 and August 18, 1981 sought to be reviewed have already become final and executory." On October 28, 1981, petitioner appealed to this Court contesting the legality of respondent's order of dismissal and the validity of forfeiture.

Clearly, petitioner consumed a period of twenty (20) days in filing his appeal from the order of the Collector of Customs of May 7, 1981 because from receipt by his counsel on May 25, 1981 of said order to June 6, 1981 when he filed his motion for reconsideration, a period of 12 days had already been consumed, and from receipt by petitioner's counsel on August 26, 1981 of the Collector's order of denial of said motion for reconsideration to the filing of petitioner's notice of appeal on September 3, 1981, another period of 8 days had elapsed, thus making a total of 20 days. We quote with approval, for further illucidation, respondent's observation in his answer with a motion to dismiss on this point:

> 14. This Honorable Court has no more jurisdiction to entertain the instant petition. The order of the Collector of Customs dated May 7, 1981 has already become final and executory. There had been a failure on the part of petitioner to appeal said order within fifteen (15) days from receipt thereof, in contravention of Section 2313 of the Tariff and Customs Code, as amended. x x x.
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> 15. Section 2313 of the Tariff and Customs Code, as amended, allows appeal within fifteen (15) days from receipt of the May 7, 1981 order to the Commissioner of Customs. Since the order was received by the petitioner, thru counsel, on May 25, 1981, the 15-day period would have expired on June 9, 1981. However, the running of the period was interrupted when, on June 6, 1981, petitioner filed a motion for reconsideration of the order in question. On that date, June 6, 1981, petitioner had already consumed 12 days of the 15 days and, therefore, had only three (3) days more left.

> Since, also, a copy of the order denying the motion for reconsideration was received by petitioner's counsel on August 26, 1981, petitioner had only three (3) days or up to August 29, 1981 within which to pursue further action. But the notice of appeal was actually filed on September 3, 1981, 8 days, not 3 days, from August 26, 1981. Adding these 8 days to the 12 days already consumed by petitioner before the motion for reconsideration was filed, a total of 20 days had already elapsed before the appeal was taken.
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> 16. Considering that the notice of appeal was filed beyond the reglementary period of 15 days as mandated by Section 2313 of the Tariff and Customs Code, as amended, the order of the Collector of Customs sought to be reviewed has, indeed, already become final and executory. The Commissioner of Customs, therefore, was correct in dismissing the appeal for lack of jurisdiction. Likewise, this Honorable Court has no more jurisdiction to entertain the present appeal, by way of a petition, as the order in question has become final and executory.

Section 2313 of the Tariff and Customs Code provides that "the person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of a seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner." Said legal requirement for appeal, which was then similarly embodied in Section 1380 of the Revised Administrative Code, has been construed as mandatory and the failure of petitioner to comply therewith renders the decision or action of the Collector final and conclusive and beyond the jurisdiction of the Commissioner of Customs or of this Court to review, revise or modify. (See My Man vs. Jacinto and Fabros, G.R. No. L-5612, October 31, 1953; Pascual vs. David, CTA Case No. 95 /Res./ April 21, 1956; F. Caballero Trading vs. Comm. of Customs, CTA Case No. 1672, August 21, 1967; La Union Electric Co., Inc. vs. Comm. of Customs, CTA Case No. 1957 /Res./ February 28, 1969; Jose Lagon vs. The Commissioner of Customs and The Collector of Customs, CTA Case No. 2810, November 11, 1977). The rationale of such principle was more emphatically enunciated by the Supreme Court in the case of Chan Kian vs. The Court of Tax Appeals and The Collector of Customs, G.R. No. L-12184, May 29, 1959, 105 Phil. 904, thus:

> "xxx. The period of 15 days prescribed by law for an appeal in

> cases of forfeiture is not a matter of procedure which courts may ignore. The provisions of the Customs law, like those of the internal revenue code, are not directory merely but mandatory. The period for an appeal is fixed by law at 15 days in order that penalties for violation of the laws or rules on importation may be decided promptly and expeditiously, as delays therein may result in the clogging of customs warehouses with merchandise illegally imported. It is beyond the power of the courts to extend the period for appeal. The Commissioner of Customs and the Court of Tax Appeals acted correctly in dismissing the appeal of petitioner, as it was not filed within the period of 15 days prescribed by law."

We find untenable petitioner's contention that although the 15-day period had expired when he filed his notice of appeal from the order of the Collector of May 7, 1981, his appeal was still seasonably filed insofar as the Collector's order of denial of August 18, 1981 is concerned because his motion for reconsideration raised new and substantial grounds. It should be noted that the order of the Collector dated May 7, 1981 which modified his previous decision involved the same seizure proceedings and same was rendered after a reexamination of the facts, the evidence and arguments presented by the parties therein. Said order, which subsequently decreed the forfeiture in favor of the government of the entire shipment of fertilizers, disposed of the case adverse to petitioner's claim and thus constitutes an appealable decision. Petitioner's motion for reconsideration thereof, filed on June 6, 1981, wherein new and additional grounds were raised, merely suspended the running of the period for appeal and the order of the Collector of August 18, 1981 denying the same simply sustains and reaffirms his order of May 7, 1981 and, therefore, cannot be treated as separate and distinct for purposes of appeal. Certainly, petitioner's motion for reconsideration, which purpose is to convince the Collector of Customs that his decision of May 7, 1981 is erroneous and improper or contrary to law or the evidence, must raise additional and substantive grounds; otherwise, it would be considered pro-forma and would not toll the running of the period for appeal. (See Dacanay vs. Alvendia, L-22633, October 31, 1969, 30 SCRA 31. Dauden-Hernaez vs. De los Angeles, L-27010, April 30, 1961, 27 SCRA 1276.)

Neither do we subscribe to petitioner's postulation that his appeal should be entertained because "no less than the property rights of petitioner over property worth approximately ₱2,000,000.00 is involved in this case" and that "the technicality presented by the respondent should not stand in the way towards the review of whether the order of August 26, 1981 which denied petitioner's plea to set aisde the order of forfeiture is consistent with the facts and the law." The facts and the law indubitably speak against taking cognizance of petitioner's appeal and the Court cannot do otherwise. Thus in the case of Lagon vs. Commissioner of Customs, supra, where a similar jurisdictional question calling for the application of Section 2313 of the Tariff and Customs Code was raised, this Court, citing the case of Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, L-10285, January 14, 1958, 102 Phil. 850, said:

> "Verily, we noted petitioner's invocation of the interest of justice to disregard technicalities in this case, but we feel, nonetheless, that this is not sufficient to overthrow the law and settled jurisprudence.

Expressing the soundness and justification for the application of the principle of exhaustion of administrative remedies, the Supreme Court said:

> In the case at bar, it appears that the importer failed to observe the procedure laid down by Section 1380 of the Revised Administrative Code aforementioned, thus, the lower Court acted properly in dismissing the petition filed therein in view of petitioner's failure to exhaust administrative remedies. This doctrine of exhaustion of administrative reliefs is indeed a sound rule for it provides for a policy of orderly procedure which favors a preliminary administrative sifting process, and serves to prevent attempts to swamp the Courts by resort to them in the first instance (United States vs. Sing Tuck, 104 US 161, 48 L ed 917, 24 S Ct 621; Oklahoma Pub. Welfare Commission vs. State, 186 Okla 654, 105 P (d) 547, 130 ALR 873). As already ruled in the aforementioned case of Rufino Lopez & Sons, Inc. vs. The Court of Tax Appeals, supra, "it is a sound rule that before one resorts to the Courts, the administrative remedy provided by law should first be exhausted."

IN VIEW OF THE FOREGOING, the petition for review of petitioner is hereby dismissed for lack of jurisdiction, with costs.

SO ORDERED.

Quezon City, Metro Manila, March 25, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge