REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

FORMER EIGHTH DIVISION

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, Petitioner,	CA-G.R. SP NO. 34215
	Members:
- versus -	LANTIN, Chairman, AUSTRIA-MARTINEZ, and SALAS, JJ.
COMMISSIONER OF CUSTOMS and THE COURT OF TAX APPEALS, Respondents.	Promulgated: FEB 29 1996

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DECISION

AUSTRIA-MARTINEZ, J.:

This is a petition for review filed by the Atlas Consolidated Mining and Development Corporation (ACMDC) against respondents Commissioner of Customs and the Court of Tax Appeals seeking the setting aside of the Resolution dated April 13, 1994, of the respondent Court of Tax Appeals dismissing the petition for review in C.T.A. Case No. 2856, entitled "Atlas Consolidated Mining and Development Corporation versus The Commissioner of Customs," for lack of jurisdiction. Petitioner prays that an order be issued remanding the case to respondent Court of Tax Appeals, in order that the latter may resolve the case on the merits.

Petitioner is engaged in the mining industry, including copper mining and the exportation of mineral products such as copper concentrates. On nineteen different occasions in 1974, petitioner exported copper concentrates to Japan. It is alleged that on said shipments, petitioner paid under protest the total amounts of ₱32,090,030.45 and ₱38,618,614.44 as export and premium duties, respectively, pursuant to

Presidential Decree No. 230. The payments of the duties are evidenced by Bureau of Customs Orders of Payment and Central Bank Official Receipts. The said duties were determined and computed by the Export Coordination Department (ECD) of the Bureau of Customs, using "last month's average price of the exported product in arriving at the gross F.O.B. value at the time of shipment."

Petitioner sent a letter dated January 13, 1975 to the Commissioner of Customs, protesting the method of computation of the export and premium duties, and requesting for a refund of the overpayments. In a letter dated January 27, 1977, the Commissioner of Customs denied the request for a refund.

Petitioner then filed a petition for review with the respondent Court of Tax Appeals praying that judgment be rendered ordering the Commissioner of Customs to refund to the petitioner the latter's overpaid export and premium duties in the total amount of ₱15,041,382.53.

The respondent Court dismissed the petition for review upon the Commissioner of Customs' motion for dismissal. The motion was premised on lack of jurisdiction for the reason that "petitioner did not file any protest before the Collector of Customs, such that there was no decision of the Collector of Customs which was appealed to the Commissioner of Customs. Consequently, there was no decision of the Commissioner of Customs to be appealed from or to be reviewed by this Court."

In this petition for review, petitioner claims that: 1) the respondent court erred in holding that it has no jurisdiction to take cognizance of the petition for review filed by the petitioner; and 2) the respondent court erred in ruling that petitioner had failed to file a valid protest as required under the Tariff and Customs Code.

Significantly, the records reveal that during the proceedings in the respondent Court of Tax Appeals, the petitioner filed a Motion to Defer Trial on December 15, 1978, on the ground that "it would be convenient if the scheduled trial of the instant case were deferred until the issue of jurisdiction pending in the Supreme Court shall have been finally resolved," referring to G.R. No. L-45733, involving the same parties and issue of jurisdiction in the instant petition. In an Order dated December 18, 1978, the CTA granted the motion and reset the hearing of the case. Thereafter, during the hearing of October 7, 1987, petitioner again moved to defer the hearing of the case for the same reason that there is "pending resolution of G.R. No. L-45733 involving the same parties and the same issues in the Supreme Court." On June 23, 1989, the CTA resolved to archive the case "considering this case has long been pending x x x and that motions for postponement, deferment or holding in abeyance of trial, without objection from respondent, have been constantly filed by the petitioner" on the above-mentioned ground. Sometime in March, the parties were notified that a hearing was set on April 23, 1992. On April 14, 1992, petitioner filed its third Motion to Hold in Abeyance the case on the same ground of pendency of the same issues in G.R. L-45733. These motions, among others, resulted in protracted proceedings spanning nearly two decades, from 1977 when the petition was filed with the respondent Court, up to 1994, when the C.T.A. resolution under review herein was issued.

For a brief backgrounder, G.R. L-45733 was a petition for review on certiorari brought before the Supreme Court. G.R. No. L-45733 stems from C.T.A. Case No. 2611, entitled "Atlas Consolidated Mining and Development Corporation versus Commissioner of Customs." In said Case No. 2611 as in the case at bench, the Court of Tax Appeals dismissed the petition for review on the ground of lack of jurisdiction, for failure of petitioner to file a protest.

The Supreme Court settled the issue of whether or not the Court of Tax Appeals erroneously dismissed the petition for review for want of jurisdiction in its Resolution dated March 7, 1994. It affirmed the resolution of the CTA and denied the petition for review on certiorari for lack of merit.

The said Resolution was adopted by the Court of Tax Appeals in disposing of the same issue of jurisdiction raised in C.T.A. Case No. 2856, in its Resolution dated April 13, 1994, under review herein. The pertinent portions thereof read:

> "The respondent Court dismissed the petition for review on the ground that petitioner, having failed to avail of the administrative remedy of protest under the Tariff and Customs Code, there was no 'decision' of the Collector of Customs or

"the Export Coordination Department from which to appeal to the Commissioner of Customs, and, hence, there was likewise no 'decision' of the Commissioner of Customs that may be appealed to or reviewed by respondent court.

"In this petition for review on certiorari, petitioner contends that the respondent court erred in holding that protests on the assessment of export duties made directly by the Office of the Commissioner of Customs, through the Export Coordination Department, (ECD) must be filed with the Office of the Collector of Customs.

"The argument is not impressed with merit. A careful examination of the decision of the respondent court shows that it did not hold that protests on the assessment of export duties made by the ECD of the Office of Commissioner of Customs should be filed with the Collector of Customs. What the respondent Court ruled was that the protest should be filed with the ECD of the Office of the Commissioner of Customs. Pertinent portion of the decision reads:

x x x

> 'It is thus plain that 'a ruling of the Commissioner in any matter brought before him upon protest' appealable to the Court of Tax Appeals under Section 2402 refers to his ruling or decision in a protestable case within the provisions of Section 2308, involving determination of duties, taxes, fees or other money , charges, which was originally presented to the Collector (or Export Coordination Department in this case) in the manner and procedure specified under the protest provisions of the Tariff and Customs Code discussed above. After the Collector (or the Export Coordination

> 'Department) has rendered his ruling or action in the protestable case brought before him, and the person aggrieved thereby duly appealed the ruling or action to the Commissioner, the ruling or decision of the latter on the case may in turn be reviewed by the Court of Tax Appeals.' (pp. 21-22, CTA decision, pp. 358-359, rollo)'

"Petitioner also contends that respondent Court erred in holding that the protest procedure for duties assessed by a Collector of Customs must be followed in respect of a protest to an assessment made by the ECD of the Office of Commissioner of Customs. Petitioner insists that the protest provisions of the Tariff and Customs Code are expressly made applicable to the regular assessment of customs duties made by the Collector of Customs and that they do not encompass the assessments made by the Commissioner of Customs, through the ECD as allowed by PD 230 and No. CAO 8-73.

"We agree with the respondent Court which held that the provisions of the Tariff and Customs Code cover and apply to the assessment for export duty made by the ECD as allowed by P.D. 230 and CAO No. 8-73 as the export duty imposed by PD 230 is a permanent feature of the Code, having been incorporated there by the decree as Title III of Book I of the Code, thus:

> 'AMENDING THE TARIFF AND CUSTOMS CODE, CREATING TITLE III IN BOOK I - EXPORT TARIFF.
>
> 'WHEREAS, Republic Act No. 6125 was enacted as a revenue raising measure and as a stabilization device to withdraw excessive money supply generated by windfall gains in the export sector due to the change in the exchange rate of the peso;
>
> 'WHEREAS, this fiscal measure can generate more

'benefits to the economy if made a permanent feature of our tariff system as an export duty and used as instrument to promote certain economic objective of stabilization and industrialization;

'WHEREAS, the primary strategy in our export policy now is the restructuring of our export sector by inducing the processing of traditional export products and giving encouragement to exports of manufactured and semi-processed goods;

'WHEREAS, it is appropriate to transfer assessment and collection of the export duty from Central Bank to the Bureau of Customs;

x x x

'Section 1. - Republic Act No. 6125, as amended, is hereby repealed and a new Title III is inserted in Book I of the Tariff and Customs Code. x x x"

"Petitioner further claims that the procedure if followed is in accord with Central Bank Circular No. 300, dated June 2, 1970. This circular laid down the protest procedure on claims for refund of Stabilization Tax under R.A. 6125. Under paragraph 5 thereof, a claim for refund of Stabilization Tax shall be in writing and coursed through the authorized agent bank which collected the Stabilization Tax and it shall state the grounds upon which the claim is based and shall be accompanied by evidence of payment of the tax and the document related to the taxable transaction. Petitioner, however, overlooks that P.D. No. 230 repealed RA 6125 which imposed the Stabilization Tax. Needless to state, Circular No. 300 also ceased to be operative since it merely spelled out the procedure for filing protests in the assessment and collection of said Stabilization Tax."

On June 15, 1994, the Supreme Court issued a Resolution (dated January 15, 1994), denying with finality ACMDC's motion for reconsideration.

Evidently, the above-quoted Supreme Court Resolution issued in G.R. No. L-45733 has settled the issues raised by petitioner in this petition for review, rendering the instant petition moot and academic.

Petitioner's argument that "there is a hiatus in the law on where to file protests on assessments made by the ECD" particularly herein export and premium duties, "since Section 2308 of the Tariff and Customs Code refers exclusively to protests pertaining to the Collector of Customs," has no leg to stand on. This same argument has already been raised and finally resolved in the previous case.

Neither does petitioner's contention that "the letter-request filed with the Commissioner of Customs may be considered as valid protest or substantial compliance therewith" deserve serious consideration.

The requisites of a valid protest are:

"a) The protest must be in writing;

"b) It must refer to the particular decision or ruling of the Collector (or the Export Coordination Department of the Bureau of Customs, as per Customs Administrative Order No. 8-73, June 28, 1973) to which exception is taken;

"c) It must state the grounds relied upon relief;

"d) It must be limited to the subject matter of a single adjustment or other independent transaction;

"e) It must be filed when duties are paid or within fifteen days after payment;

"f) If the nature of the article permits, importers (exporters) filing protests involving questions of fact, must, upon demand, supply the collector (or the Export Coordinator Department) with samples of the articles which are the subject matter of the protest;

"g) The corresponding customs documentary stamps must be affixed to the protest;" (CTA Resolution, April 13, 1994)

In light of the Supreme Court's final Resolution, petitioner's other argument is unmeritorious. The protest with the requisites above-enumerated must be filed with the Export Coordination Department within the fifteen-day period.

Petitioner asserts that it has filed other protests, but these allegations are unsubstantiated. The only letter-protest on record is one addressed to the Acting Chief of the ECD, Mrs. Eligia F. Romero. However, it is dated December 5, 1994, clearly beyond the 15-day reglementary period from payment required by Sections 2308 and 2210 of the Tariff and Customs Code. Last payment was made in August, 1974, as borne out by the records.

In its memorandum, petitioner, in essence, wants us to set aside the technical rules of procedure in the interest of substantial justice. It must be borne in mind that "procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law may not be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution." (Edra vs. Court of Appeals, 179 SCRA 344).

WHEREFORE, the petition for review is dismissed for being moot and academic. The resolution of the respondent Court of Tax Appeals in C.T.A Case No. 2856 is affirmed in toto.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

WE CONCUR:

JAIME M. LANTIN
Associate Justice

BERNARDO LL. SALAS
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Rule VIII of the Constitution.

JAIME M. LANTIN
Chairman
Former Eighth Division