REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4184

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

7/29/88

D E C I S I O N

Petitioner Caltex (Philippines) Inc., under Section 106(c) of the Tariff and Customs Code, is seeking from respondent Commissioner of Customs duty drawback or refund/credit of customs duties in the aggregate amount of P59,823,090.00 paid on imported crude oil upon the exportation of certain petroleum products refined therefrom. Respondent has filed an answer, and incorporated therein as special and/or affirmative defense, among others, is an allegation that this Court has no jurisdiction to entertain the appeal.

The petition for review filed on August 3, 1987 alleges that:

1. Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 540 Padre Faura Street, Manila, Philippines.

2. Petitioner, on a regular basis, exports certain petroleum products, such as naphtha and grease, which are refined out of imported crude oil on which Caltex pays customs duties.

3. For such exports, petitioner invariably receives, on application with the Bureau of Customs and supported by adequate evidence of actual exportation of products such as Bureau of Energy Utilization export approval, Central Bank (CB) permit, Export Declaration, Bill of Lading, Commercial Invoice and CB or agent bank certificate of dollar remittance, duty drawback from the Commissioner of Customs in accordance with the provisions of Section 106(c) of the Tariff and Customs Code.

4. Sometime on November 15, 1985, the Chief of the Dra back Unit of the Bureau of Customs denied six (6) of petitioner's claims for duty drawback in the total amount of P59,823,090.00.

Ground for denial invoked was alleged failure of petitioner to mark its export declarations/permit with the words "SUBJECT TO DRAWBACK" printed in red letters along the right hand margin as required by Customs Memorandum Order No. 41-83.

5. Petitioner requested reconsideration citing that it had submitted unimpeachable proof of actual exportation of its products and payment of Customs duty subject to drawback.

6. Aforementioned Drawback Unit Chief, on January 27, 1986, replied to petitioner's request for reconsideration by advising that "he has passed on said request to the Legal and Intelligence Services for final disposition, being the legal arm of the Commissioner of Customs".

7. Despite petitioner's repeated representations with the Legal and Intelligence Services, based on the ground that CMO #41-83 does not have legal effect, the same having been issued by the Customs Commissioner in clear violation of law, no action was undertaken on petitioner's request for drawback of customs duty of P59,823,090.00.

8. Thus, sometime in March, 1986, petitioner's representative met with the then Commissioner of Customs, Mr. Wigberto Tanada at his office, to request that the claims already long pending and having taken more than the prescribed sixty (60) day period for Bureau action, be expeditiously processed. Commissioner Tanada then instructed the Bureau of Customs Legal Services to prepare its opinion and recommendation to aid him in arriving at a decision on petitioner's claims.

9. Despite further repeated official calls and letters to the respondent, no action was taken on petitioner's claims.

10. Sometime on July 2, 1987, petitioner came into possession of the indorsement letter from the Deputy Commissioner of Customs upholding the legality of CMO #41-83 and referring petitioner's claims for authoritative ruling to the Minister (now Secretary) of Finance.

For better appreciation of the legal and factual aspects involved in this case, quoted hereunder is the 1st Indorsement dated March 3, 1987 of Deputy Commissioner of Customs Vicente A.

Feria, Jr., forwarding to the Minister (now Secretary) of Finance, for authoritative ruling, the drawback claims of petitioner:

> Respectfully forwarded to the Honorable, the Minister of Finance, Manila, for authoritative ruling, the within Drawback Claim Nos. 4462-84, 4367-84, 4612-84, 4591-84 and 4722-84 in the total amount of P59,823,090.00 which was denied by our Drawback Unit for non-compliance with Customs Memorandum Order (CMO) No. 41-83 dated September 15, 1983, the pertinent provisions thereof are as follows:
>
> > "Effective immediately, all export declarations/permits (ED/EP) to be filed with the Bureau of Customs beginning 15 September 1983 covering shipments for which Drawback Claims shall be applied for must be clearly marked in red the words <u>SUBJECT TO DRAWBACK</u>. x x x
> >
> > "SEC. 2. <u>Exporters responsibility to mark</u>.- It shall be the responsibility of the exporter to mark all copies of the export declarations as described in Section 1 above. <u>No drawback claim shall be awarded on any shipment for which the covering export declaration has not been properly marked</u>. x x x
> >
> > "SEC. 5. <u>Penalty Clause</u>. Failure to comply with any of the provisions of this Memorandum Order shall be ground for denial of the Drawback Claim". (Underscoring supplied)

> This Office upholds the legality of the said Customs Memorandum Order No. 41-83 dated September 15, 1983, as an important guideline in the implementation of Section 106(c) of the Tariff and Customs Code of the Philippines and as a measure to prevent fraud on the revenue.
>
> The contrary view of the claimant CALTEX (PHIL.) INC. is contained in their letter dated September 9, 1986 to this Bureau, a copy of which is attached.
>
> VICENTE A. FERIA, JR.
> Deputy Commissioner of Customs

Petitioner Caltex (Philippines) Inc. now contends that the above-quoted 1st Indorsement of the Deputy Commissioner of Customs is appealable or reviewable by this Court as a decision of respondent Commissioner of Customs.

Hence, the present recourse.

The controlling statute is Section 7(2) of Republic Act No. 1125, which provides that the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal.

> (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. (Emphasis supplied.)

Of course, Section 2402 of the Tariff and Customs Code allows a party aggrieved by a ruling of the Commissioner of Customs in any matter brought before him upon protest or by his action or ruling in any case of seizure to appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulation, but the case at bar is admittedly not a protest case or a seizure case. Neither does this case involve dumping duty wherein the amount imposed by the Secretary of Finance may be appealed to this Court under Section 301-f of the Tariff and Customs Code; or assessment of customs duties automatically elevated to the Secretary of Finance whose decision is appealable to this Court if adverse to a private party under Section 2315 of the same Code.

In the instant case, neither the Commissioner of Customs nor the Secretary of Finance has rendered a decision on petitioner's claims for duty drawback in the amount of P59,823,090.00. After petitioner's claims were denied by the Drawback Unit of the Bureau of Customs for non-compliance with Customs Memorandum Order No. 41-83, supra, the only action taken by the Commissioner of Customs, on the assumption that the Deputy Commissioner of Customs was acting for and on his behalf, is to refer or indorse the drawback claims of petitioner, as clearly and plainly stated therein, to the Minister (now Secretary) of Finance for "authoritative ruling" on the matter. While it is stated in the indorsement that "This Office upholds the legality of the said Customs Memorandum Order No. 41-83 dated September 15, 1983", the upholding, as expressed therein, is solely "as an important guideline in the implementation of Section 106(c) of the Tariff and Customs Code of the Philippines and as a measure to prevent fraud on the revenues". Simply put, the indorsement in question is merely for the purpose of securing a ruling for the guidance of officers and employees of the Bureau of Customs as the authority of the Commissioner to issue and promulgate rules and regulations necessary to enforce the provisions of the Tariff and Customs Code is subject to approval by the Secretary of Finance pursuant to Section 608 of the said Code. The indorsement did not in any manner finally adjudicate or determine the claims of petitioner for duty drawback. Neither did it settle petitioner's claims so that petitioner would be able to determine when its right to appeal to this Court accrues. Indeed, a decision connotes the adjudication or settlement of a controversy. (Phil. American Life Ins. Co. vs. Social Security Commission, L-20383, May 24, 1967, 20 SCRA 163.)

It is an elementary rule of practice and procedure that a decision must be in writing, personally and directly prepared by the judge (or person or agency lawfully authorized to issue the same), signed by him, stating clearly and distinctly the facts and the law on which it is based. (Sec. 1, Rule 36, Rules of Court.) It is thus to be fairly and justly presumed that the term "decisions of the Commissioner of Customs" appealable to the Court of Tax Appeals, pursuant to its exclusive appellate jurisdiction under Section 7(2) of Republic Act No. 1125, should comply substantially to the above requirements in order that, without ambiguity and difficulty, an aggrieved taxpayer would be able to determine when his right to appeal accrues.

Under the above provision of the Rules, it has been established that a decision contains three parts, one the opinion, the other disposition of the case, and third the signature. The opinion is that portion of the decision containing the findings of facts and conclusions of law. The disposition of the case is that part containing the final and actual disposition and adjudication of the rights litigated. Findings and disposition are essential to the validity of a decision or judgment. (See Director of Lands vs. Sanz, 45 Phil. 117; Aguirre vs. Aguirre, L-33080, Aug. 15, 1974, 58 SCRA 461.) There being no decision rendered by the Commissioner of Customs which finally and actually disposed and adjudicated petitioner's claims for duty drawback or refund, this Court has no jurisdiction to entertain the present appeal.

Thus, it has been held that where a decision of the Collector of Customs was appealed to the Secretary of Finance, and the latter requested the comment and recommendation of the Commissioner of Customs, the indorsement of the Commissioner is <u>not</u> an appealable decision to the Court of Tax Appeals.

A recommendation made by a subordinate official to his superior officer can in no sense be considered a decision. (De Leon vs. Commissioner of Customs, CTA Case No. 381, Dec. 18, 1958.) The rulings of the Commissioner of Customs contained in a circular letter is not a decision appealable to the Court of Tax Appeals. (Liberty Motors vs. Manahan, CTA Case No. 325, Jan. 22, 1957.)

Even more, if the theory of petitioner Caltex (Philippines, Inc. that the 1st indorsement letter of the Deputy Commissioner of Customs is appealable or reviewable by this Court, petitioner's appeal is already time-barred, the petition for review in this case having been filed beyond the 30-day period provided under Section 11 of Republic Act No. 1125. As alleged in paragraph 10 of the petition for review, "Sometime on July 2, 1987, Petitioner came into possession of the indorsement letter from the Deputy Commissioner of Customs upholding the legality of CMO #41-83 and referring our claims for authoritative ruling to the Minister of Finance". The petition for review was filed on August 3, 1987. Counting thirty (30) days from July 2, 1987, the last day for filing the petition for review was August 1, 1987. The statutory period for appeal being jurisdictional, the Court of Tax Appeals may motu propio dismiss the case if it is shown that the appeal was filed out of time. (Ker & Co. vs. Collector of Internal Revenue, L-12396, Jan. 31, 1962, 4 SCRA 160.)

WHEREFORE, the petition for review filed in the above-entitled case is dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, July 29, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Amante Filler

AMANTE FILLER
Presiding Judge
Court of Tax Appeals