PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

versus

C. T. A. CASE NO. 2155

THE COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - x

R E S O L U T I O N

This refers to respondent's Answer with Motion to Dismiss filed on December 12, 1970. More particularly, it refers to the prayer therein that the petition be dismissed for lack of jurisdiction by this Court and for lack of a cause of action.

It appears from the allegations of the petition for review that on July 25, 1958, petitioner paid ₱8,596.00 for duties and surcharges on imported merchandise. Since allegedly the correct amount of collectible duties was only ₱3,480.00 there was therefore an overpayment of ₱5,116.00; wherefore, on July 30, 1968, petitioner filed a written request for the refund of the latter sum. Again, on November 10, 1968 petitioner paid ₱3,816.00 as duties and surcharges and in this respect there was allegedly an overpayment of ₱2,380.00. On

November 18, 1968, petitioner filed a written request for the refund of this overpayment. In view of the fact that to date respondent has not resolved the above claims for refund petitioner is allegedly "now compelled to file this instant petition in order to comply with the mandatory requirement of the law that suits for the recovery of duties and surcharges illegally and erroneously collected should be filed before this Honorable Court within two years from date of payment to the government."

Section 7 of Republic Act 1125 provides that the Court of Tax Appeals shall exercise exclusive jurisdiction to review by appeal decisions of the Commissioner of Customs. Section 11 of the same law provides that any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Customs may file an appeal to the Court of Tax Appeals. It is clear from these provisions that only decisions of the Commissioner of Customs can be appealed to the Court of Tax Appeals and since no decision has as yet been rendered by the Commissioner of Customs on petitioner's request for refund, this petition is premature and should be dismissed (Southwest Agricultural Marketing Corporation v. The Secretary of Finance et al., G.R. No. L-24797, October 8, 1968; Negros Navigation Co., Inc. v. Comm. of Customs, G.R. No. L-18629, May 31, 1963.)

There is no merit in petitioner's pretension that its appeal should be entertained by us because it is filed to comply with the two-year period provided by law within which to file an action for "recovery of duties and surcharges illegally or erroneously collected." The law referred to by petitioner is obviously Section 306 of the National Internal Revenue Code which provides as follows:

> SEC. 306. Recovery of tax erroneously or illegally collected.— No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

But this provision applies only to national internal revenue taxes as specifically stated therein, and not to customs duties and surcharges which are governed by the Tariff and Customs Code, not by the National Internal Revenue Code. Thus, says the Supreme Court on this point:

> . . . That there is no decision or ruling by the Collector of Customs or Commissioner of Customs on the requests of appellant for refund, is abundantly clear from the very allegations in the petition. Pursuant, therefore, to the above ruling of this Court, the presentation of the Petition for Review with the CTA was premature, for as things stood then, there was nothing to review.
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> We cannot, by mere analogy, apply the interpretation given to Sec. 306 of the Internal Rev. Code to Sec. 7, par. 2 of Rep. Act 1125. Not only was the petition directed against the Customs officials, but it also appears that Sec. 306 has no counterpart in the Tariff and Customs Code. There is no statutory grant for importers claiming refund of duties to go directly to the CTA, without waiting the decision of the Collector of Customs or Commissioner of Customs. For one thing, the Collector of Commissioner may order the refund of the taxes in question, in which event a review would not be necessary. (Ace Publications, Inc. v. The Commissioner of Customs and the Collector of Customs, G.R. No. L-18808, May 29, 1964.)

Needless to say this Court has no jurisdiction to entertain the present petition. Having reached this conclusion we find it unnecessary to dwell on the other issue posed by the motion to dismiss.

WHEREFORE, this petition is hereby dismissed with costs.

SO ORDERED.

Quezon City, April 15, 1971.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge