REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GOLDMINE RICE MARKETING, represented by its Proprietor/General Manager, MR. ORLANDO C. MANUNTAG,
Petitioner,

- versus -

HON. DISTRICT COLLECTOR OF CUSTOMS, Port of MICP, North Harbor, Port Area, Manila; and **HON. REY LEONARDO GUERRERO**, Commissioner of Customs, South Harbor, Port Area, Manila,
Respondents.

CTA CASE NO. 10580

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO,
ANGELES, *JJ.*

Promulgated:

MAY 08 2024 10:30 a.m.

x - x

RESOLUTION

This resolves petitioner's *Motion for Reconsideration*, filed on January 2, 2024, praying that the Court reconsider the dismissal of its *Petition for Duty and Tax Refund.*

To recall, on October 16, 2023, the Court dismissed the instant case due to lack of jurisdiction, considering that inaction of the Commissioner of Customs is not one of the subject matters upon which the Court of Tax Appeals (CTA) exercises jurisdiction pursuant to Section 7(a) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503.

In its *Motion*, petitioner submits that the CTA has jurisdiction over inaction of the Commissioner of Customs, citing Section 11 of RA No. 1125, which states:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or **inaction** of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of

> Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx (*boldfacing supplied*)

Petitioner further states that when a protest is validly filed with the Commissioner of Customs, the inaction of the latter should not prejudice the right of the petitioner to claim for refund.

The *Motion* is denied for lack of merit.

Section 11 of RA No. 1125, as amended, reinforces the position that it is the inaction of the Commissioner of Internal Revenue which is appealable to the CTA, by the inclusion of the phrase "*after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein,*" and not the inaction of the Commissioner of Customs. There is no counterpart "inaction provision" which is applicable to the Commissioner of Customs in the RRCTA.

Nevertheless, a review of the Customs Modernization and Tariff Act (CMTA), shows that there is a period provided for the Commissioner of Customs to decide on protests, as follows:

> SEC. 1110. *Decision in Protest.* – When a protest is filed in proper form, **the Commissioner shall render a decision within thirty (30) days from receipt of the protest**. In case the protest is sustained, in whole or in part, the appropriate order shall be made, and the entry reassessed, if necessary. (*boldfacing supplied*)

Relative thereto, Section 10.3 of Customs Administrative Order (CAO) No. 02-2020 or the guidelines on "Dispute Settlements and Protest", provides:

> 10.3 When a protest is filed in proper form, **the Commissioner shall render a ruling within thirty (30) days from receipt of the protest. Otherwise, the ruling of the Collector shall be deemed affirmed if the Commissioner fails to act on the same**. (*boldfacing supplied*)

This deemed affirmed provision may be taken as an action of the Commissioner of Customs which is appealable to the CTA under Section 7(a)(4) of RA No. 1125, as amended.

However, even following this provision, the subject *Petition for Duty and Tax Refund* should still be dismissed for lack of jurisdiction, due to petitioner's failure to timely file the said petition.

As stated by petitioner, it filed a protest on May 6, 2021. Following Section 1110 of the CMTA, the Commissioner of Customs had thirty (30) days, or until June 6, 2021, to decide on the protest. However, the Commissioner of Customs failed to act on the protest. Applying Section 10.3 of CAO No. 2-2020, petitioner's protest was deemed denied and the decision of the Collector was deemed affirmed on June 6, 2021. Counting thirty (30) days from June 6, 2021, petitioner had until July 6, 2021 within which to timely file an appeal to the CTA. Unfortunately, the *Petition for Duty and Tax Refund* was filed out of time on July 9, 2021.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice