REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE CLEARING HOUSE CORPORATION,
Petitioner,

- versus -

C.T.A. Case No. 4339

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

2/4/94

DECISION

This is a claim for refund in the amount of P1,024,342.00 representing the alleged excess import duties paid by petitioner for the two units of electronic data processing equipments with peripherals and controls.

Petitioner, Philippine Clearing House Corporation, is a non-profit corporation engaged in providing facilities for interbank clearing of checks and other clearing items such as treasury warrants and settlement of interbank balances. In furnishing such facilities, petitioner charges the various banks which participate in said clearing operations minimal sums in accord with public interest by reason of which it has not declared dividends to its stockholders which are the banks themselves participating in the clearing operations. (Petitioner for Review, pp. 1-2; C.T.A. Records. pp. 1-2)

During the month of December 1988, petitioner imported one item of MICR Reader/Sorter Unit (B9190 Document System 1625 DPM). It paid the amount of P512,171.00 on October 12, 1988 as duties representing ten *per centum* (10%) of the dutiable value of the equipment. Thereafter, or on December 5, 1988, herein petitioner paid an additional amount of P521,888.00 to complete the total sum of P1,034,051.00 which is twenty *per centum* (20%) of the dutiable value in the amount of P5,170,255.50.

Petitioner, in its letter of December 5, 1988 addressed to the Tariff Commission, requested that the tariff classification code heading of Burroughs B9190 Document Processor be changed form "84.53.900" to "84.53.500", the latter classification being subject merely to a ten *per centum* (10%) *ad valorem* duties.

On December 6, 1988, petitioner wrote the respondent Commissioner of Customs, the letter (Exhibit "R"; C.T.A. Records, p. 112) of which is quoted hereunder in full:

06 December 1988

THE COMMISSIONER
BUREAU OF CUSTOMS
Port of Manila
Department of Finance

Dear Sir:

We furnish herewith a copy of our letter (with enclosures) to the Tariff Commission requesting for a reconsideration of the classification/heading used on our importation of one (1) unit Burroughs B9190 Document Processor.

We trust that this shall serve to justify our position that the subject equipment indeed qualifies the classification code: 752.50-00, under Tariff Heading: 84-53-500 and Harmonized Code: 8471.92-00.

Yours very truly,

FRANCISCO V. YAP, JR.
Executive Vice President

Enclosed: a/s

Respondent, on December 19, 1988, answered the above letter confirming the tariff classification of the machine as rendered by the Tariff Commission. In the said letter, received by petitioner on January 23, 1988, respondent stated that;

> "Evaluation of the pertinent documents presented shows that subject article is indeed a magnetic reader for automatic document processing, specifically for the purpose of reading checks with magnetic encoded characters and sorting them accordingly. Hence, such peripheral unit is classified under the Harmonized System (HS) Code 8471.99-90 with the rate of duty at 20%" (Exhibit "S"; C.T.A. Records, p. 113)

Not satisfied with the respondent's action, petitioner instituted this instant petition for review praying that it be refunded the sum of P512,171.00 representing excess import duties paid.

After the respondent filed his Answer to the petition, petitioner moved that its amended petition be admitted by this Court claiming that sometime in January 1989, it imported another equipment and paid the corresponding twenty *per centum* (20%) *ad valorem* duties. Petitioner prayed that its claim for refunds be increased to P1,024,342.00 representing the excess import duties it paid for the two equipments it imported plus interest thereon at the legal rate from December 6, 1988 up to the date of refund.

Respondent, in his Answer and Memorandum, opposes the refund claiming that this Court has no jurisdiction over the subject of the petition.

The issues before this Court are 1) Whether or not this Court has jurisdiction to render judgment on this case; and in the affirmative 2) Whether or not petitioner is entitled to a refund in the amount of P1,024,342.00 representing the alleged excess import duties paid.

Section 7 of Republic Act (R.A.) No. 1125 (An Act Creating the Court of Tax Appeals) provides :

> "*Jurisdiction* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> xxx xxx xxx
>
> (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; and
>
> xxx xxx xxx"

This Court has no jurisdiction.

Under the statute above-cited, the cause of action accrues from the time the Commissioner issues his final decision on the protest made by the taxpayer.

The pertinent provisions of the Tariff and Customs Code are as follows:

> 1) **Sec. 2308.** *Protest and payment upon Protest in Civil Matters.* - When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected <u>may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question</u>, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301.

> 2) **Sec. 2309.** *Protest Exclusive Remedy in Protestable Case.* - In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.
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> 3) **Sec. 2313.** *Review by Commissioner.* - 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 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. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.
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> 4) **Sec. 2402.** *Review by Court of Tax Appeals.* - The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations. (Underscoring supplied)
>
> Unless an appeal is made to the Court of Tax Appeal in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

Pursuant to the Code, the adverse party aggrieved by the assessment issued by the Collector may question the assessment by filing a written protest, otherwise the action of the Collector shall become final and unappealable.

Thereafter, if the Collector's decision is adverse to the party, the later can then appeal the matter to the Commissioner of Customs whose decision can be elevated before this Court for review.

It is ironic that when petitioner paid the additional duties in the amount of P521,880.00 on December 5, 1988, it did not file a protest before the Collector of Customs pursuant to Section 2309 of the Tariff and Customs Code. Instead, it sent a letter to the Tariff Commission requesting for a lower rate of *ad valorem* duties.

Respondent is correct in saying that:

> "**First of all**, xxx petitioner did not file any protest under Sections 2308 to 2312 of the Tariff and Customs Code, which could thereafter have been reviewed by respondent Commissioner under Sections 2313 to 2314 of the Tariff and Custom code, and whose decision thereon could have been reviewed on appeal by the Honorable Court under Section 2402 of the Tariff and Custom Code and Section 7(2) of R.A. No. 1125.
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> **Secondly**, the letter from respondent Commissioner (Annex "D") merely disapproved the **reclassification** of the imported article from classification code 84.53.900 to 84.53.500, as was the **objective** of petitioner in its letter of December 6, 1988 to respondent Commissioner (Annex "C" of Petition), and in its letter to the Tariff Commissioner dated December 5, 1988 (Annex "C-1" of Petition). Nothing was mentioned about petitioner's questioning the

amount of duties assessed," (Answer, p. 5; C.T.A. Records, p. 35)

This court cannot take cognizance of this case for it is evident that petitioner failed to avail of the legal remedies provided for by law amounting to lack of jurisdiction.

In the case of **Commissioner of Internal Revenue vs. Villa** (22 SCRA 3) the Supreme Court held:

> "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 ability of its entire proceedings xxx."

Notwithstanding the fact that this case, after the presentation of witnesses, documents and memoranda, has already been submitted for decision, this Court cannot pass judgment on a case where it has no jurisdiction.

Having thus ruled that this Court has no jurisdiction, the resolution of the other issue raised in this case would only result to an empty academic discussion.

WHEREFORE, in view of all the foregoing, this Court hereby **DISMISSES** this case for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, February 4,1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals