REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

IN THE MATTER OF PROTEST AGAINST THE IMPORTATION OF TERRY TOWELLING PRODUCTS AND 6302.9100 FROM THE PEOPLE'S REPUBLIC OF CHINA & HONGKONG

ASIA COTTON MANUFACTURING CO, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6325

TARIFF COMMISSION AND DEPARTMENT OF TRADE AND INDUSTRY,
Respondents.

Promulgated:
JUL 03 2002

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RESOLUTION

Submitted for resolution is a Motion to Dismiss filed by public respondents Tariff Commission and Department of Trade and Industry (DTI) on the ground that the appeal brought by the petitioner is premature for its failure to await the resolution of the DTI on the appeal from the Order of respondent Commission dismissing the request for expiry review of the 1996 Anti-Dumping Decision in Case No. 11-96.

It is the contention of the respondents that the appeal brought by the petitioner on 26 July 2001 before this Honorable Court is premature as it violates the doctrine of "Exhaustion of Administrative Remedies." Consequently, the instant petition should be dismissed on the ground of lack of cause of action.

760

Petitioner counters that although there is no dispute that under the doctrine of "exhaustion of administrative remedies", an administrative decision, such as the one before Us, must first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review, the same is not absolute. Petitioner further argues that there is no law, rule or regulation requiring or mandating appeal to the Secretary of DTI from the Order of the respondent Commission dismissing petitioner's request of expiry review of the subject 1996 Anti-Dumping Decision in Case No. 11-96.

After considering the attending facts, evidence, laws and jurisprudence applicable in this case, We find the petitioner's arguments bereft of merit. Accordingly, We dismiss the instant petition.

Contrary to petitioner's contentions that nowhere in **Republic Act No. 8752** (The Anti-Dumping Act of 1999) and in the **Implementing Rules and Regulations Governing the Imposition of an Anti-Dumping Duty under Republic Act 8752**, would one find a statement requiring appeal or resort to the respondent DTI from the adverse final order of the respondent Tariff Commission, the said requisite in fact is implied and is an ever present principle governing the implementation of the said Act. Significant to this matter is **Section 301(o) of R.A. No. 8752**, to wit:

> "However, the need for the continued imposition of the anti-dumping duty may be reviewed by the Commission when warranted *motu propio,* or upon the direction of the Secretary, taking into consideration the need to protect the existing domestic industry against dumping.
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> x x x   x x x   x x x

741

> **If the Commission determines that the anti-dumping duty is no longer necessary or warranted, the Secretary shall, upon recommendation, issue a department order immediately terminating the imposition of the anti-dumping duty**. All parties concerned shall be notified accordingly of such termination, including the Secretary of Finance and the Commissioner of Customs." (Emphasis supplied).

The aforequoted provision provides a clear guideline to those tasked to carry out the said law, *viz.*, the Commission is the one that conducts an investigation and subsequently recommends to the Secretary of the concerned Department what it views is the proper action on the issue of imposition of the dumping duty or its extension in the case of an expiry review.

Needless to say, the Secretary is not expected to merely adopt the recommendation of the Commission. The Secretary may decide to adopt, modify or even reverse the said recommendation based on his own evaluation of the Commission's investigation report.

Petitioner maintains that the "exhaustion of administrative remedies" doctrine is not a hard and fast rule and **does not apply where the issue is purely a legal case**. (**Salinas, Jr. vs. National Labor Relations Commission**, 319 SCRA 54). But this is what makes the said requirement of prior resort to superior administrative bodies more important.

Besides, the matter involves factual issues. One that requires a comprehensive investigation that would merit either the imposition of dumping duty, its denial or its extension. And administrative agencies that have the supposed competencies, manpower and expertise are admittedly more suited to meet this situation.

762

The doctrine does not require merely the initiation of available administrative procedures. It is one of exhausting them, that is, of pursuing them to their appropriate conclusion (**Rivera, Law of Public Administration**, 1st Edition, p.913). It has been held that a direct action in court without prior exhaustion of administrative remedy is premature warranting its dismissal grounded on lack of cause of action (**Republic vs. Sandiganbayan**, 225 SCRA 438; **Fernando vs. Sto. Tomas**, 234 SCRA 546).

Likewise, if indeed petitioner believes that there is no rule or law requiring an appeal be first filed with the DTI, then why did it file one before it in the first place instead of going directly to the CTA?

The Court desires to stress the principle that "party-litigants must come to Court with clean hands." Petitioner cannot be allowed to benefit from its fault, especially after realizing that its decision to appeal first to the DTI would not be beneficial. Definitely, the Court would not allow this ambivalent stand to prosper.

Clearly from the foregoing, this failure of the petitioner to await the decision of the DTI on its appeal, in spite of the fact that the same is a prerequisite to a subsequent judicial review, is fatal to the instant petition for being premature.

In addition, the Court would like to set the record that although not assigned as one of the issues or grounds for the Motion to Dismiss, it decided to use as one of the bases for granting the motion to dismiss, its lack of jurisdiction over the case.

The Honorable Supreme Court in the case of **Ace Publications, Inc. vs. The Commissioner of Customs** (L-16761, 31 October 1964), held that, " Courts are bound to take notice of the limits of their authority, and **they may by their own motion** (motu

763

propio), **eventhough the question is not raised** by the pleadings, **or not even suggested by counsel, recognize the want of jurisdiction, and act accordingly by** staying the pleadings, **dismissing the action, or otherwise notice the defect, at any stage of the proceedings**." The reason for this rule is that the court without jurisdiction cannot render a valid judgment (**Zamora vs. CA, 183 SCRA 279**).

It must be pointed out that the right to appeal, being a mere statutory right, cannot be simply based on mere implications. There must be an express grant before the same can be exercised or sought. And central to the dispute is **Section 301(p) of R.A. No. 8752**. Said provision is hereunder quoted for easy reference:

> "**(p) Judicial review. – Any interested party in an anti-dumping investigation who is adversely affected by a final ruling in connection with the imposition of an anti-dumping duty may file with the Court of Tax Appeals, a petition for the review of such ruling within thirty (30) days from his receipt of notice of the final ruling**. Provided, however, That the filing of such petition for review shall not in any way stop, suspend, or otherwise hold the imposition or collection, as the case may be, of the anti-dumping duty on the imported product, commodity or article. The rules of procedure of the court on the petition for review filed with the Court of Tax Appeals shall be applied." (Emphasis supplied).

Prescinding from the above provision, the Court is authorized to receive petitions for review only, when (1) it is filed by an interested party in an anti-dumping investigation; (2) who is adversely affected; (3) by a final ruling; and (4) in connection with the imposition of an anti-dumping duty.

In the case of **National Steel Corp. vs. Tariff Commission, et. al.** (CTA Case No. 6140), this Court provided a thorough explanation on the subject. We held that:

> "The provision of subsection (p) is quite clear. Thus, **only a party who is adversely affected by a final ruling in connection with the**

764

> **imposition of an anti-dumping duty may file a petition for review with the CTA**. Considering that in the case at bar no anti-dumping duty was imposed, filing a petition for review with the CTA is not proper. To put it differently, the CTA has no jurisdiction to entertain the same.
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> The rationale for defining limit upon the jurisdiction of the CTA on appeals from decisions is anchored on the recognition by law of the presumed expertise of the investigating/deciding authority in the dumping case." (Emphasis supplied)

Further, the Court of Appeals, in the case of **Total 2000 Corporation vs. Court of Tax Appeals** (CA-G.R. SP No. 42380, 18 February 1997), ruled that the CTA is without jurisdiction if the anti-dumping decision of the Secretary of Finance does not impose any dumping duty.

In the case at bar, no dumping duty has been imposed in the decision sought to be reviewed in the instant case, i.e., the Order denying petitioner's request for expiry review. In fact, no expiry review has yet been conducted and ruled upon that would warrant judicial intervention from this Honorable Court. Absent such imposition or injury, judicial recourse to this Court is certainly premature, not to mention improper. To reiterate, this case is not ripe for judicial determination. To date, the initial process of expiry investigation has not yet commenced. All these because of petitioner's failure to supply respondents with the necessary documents in support of its request.

In sum, basic is the rule that jurisdiction is conferred by the Constitution, substantive law or by other statutes. The exclusive appellate jurisdiction of the Court of Tax Appeals is conferred by R.A. No. 1125, specifically Section 7 thereof. However, it does not mean that CTA's jurisdiction is limited only to the decisions of the Commissioner of Internal Revenue, Commissioner of Customs or provincial or city

Board of Assessment Appeals. It also includes decisions of the Secretary of Finance in certain cases as clearly provided for in Section 2315 of PD 1464, otherwise known as The Tariff and Customs Code of the Philippines (TCCP). The jurisdiction of this Court was likewise expanded by Section 301 of the TCCP as amended by R.A. 8752.

Paragraph (p) of said Section 301 of the TCCP, as amended, provides that any party adversely affected by a final ruling in connection with the imposition of an anti-dumping duty may file a petition for review with this Court. Even assuming arguendo, that an anti-dumping duty has been imposed in this case, petitioner is not an interested party adversely affected with such imposition. Absent this element, Section 301(p) of R.A. 8752 cannot be availed of.

WHEREFORE, in view of all the foregoing, the respondent's Motion to Dismiss is hereby **GRANTED**. The Petition for Review is accordingly **DISMISSED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge

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