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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SERRANE INVESTMENT,
Petitioner,

- versus -

C.T.A.
CASE NO. 326

THE COMMISSIONER OF CUSTOMS,
Respondent.

8/5/59

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R E S O L U T I O N

The petitioner imported from Hongkong 75 packages of garlic which arrived in Manila on August 28, 1954. Seizure and forfeiture proceedings were instituted (Manila Seizure Identification No. 1917) against said shipment for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) and (m) 3, 4 and 5 of the Administrative Code. After due hearing, the 75 packages of garlic in question were declared forfeited in a decision rendered by the Collector of Customs of Manila dated November 24, 1954. A copy of said decision was received by petitioner, through its counsel, on December 14, 1954.

While the seizure proceeding was pending in the Bureau of Customs, that is, on September 10, 1954, petitioner instituted in the Court of First Instance of Manila an action for certiorari and mandamus with preliminary injunction. A writ of preliminary injunction having been issued on September 11, 1954 by the Court of First Instance of Manila against the Collector of Customs, the latter elevated the case to the Supreme Court by certiorari. The Supreme Court, in Millarez v. Amparo, G. R. Nos. L-8364, L-8365 and L-8351, June 30, 1955 (51 O. G. 3464), held that the Court of First Instance of Manila had no jurisdiction to entertain the action of petitioner, the matter being exclusively within the province of this Court.

Meanwhile, in a letter dated December 29, 1954, petitioner, through its counsel, addressed a letter to the Collector of Customs reading as follows:

> "With reference to your decision in the above-entitled seizure identification ordering 'that the claimant be required to pay in cash the amount of ₱17,706.00 covered by the bond, and if said amount is not paid within 30 days from the date of the demand for payment, action should be filed in court to effect collection thereon', please be reminded that the said bond has been filed by the Serree Investments Co. pursuant to a writ of preliminary mandatory injunction issued by the Court of First Instance of Manila, dated September 11, 1954 in Civil Case No. 23908 entitled 'Serree Investments Co. v. Rogaciano Millarez' which is a petition for certiorari and mandamus with preliminary injunction filed on September 10, 1954.
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> "Considering therefore that the civil case is still pending and that the subject matter of said civil case is the declaration of invalidity of Central Bank Circulars Nos. 44 and 45, we respectfully request that action on the above-entitled decision be held in abeyance until the civil case is terminated.
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> "For the same reason, we reserve our right to appeal from the above-mentioned decision to the Commissioner of Customs in the event that the civil case is not decided in our favor." (Exh. A; page 20, Customs records.)

The Collector of Customs treated the said letter as a notice of appeal, as required by Section 1380 of the Administrative Code,[1] and transmitted the records of the case to the Commissioner. The Commissioner issued an order dated May 14, 1956, dismissing the appeal for lack of jurisdiction on the ground that the notice of appeal was filed beyond the 15-day period prescribed by law. We quote from the order of the Commissioner:

> "This case has been elevated to this Office due to the observation in the letter of transmittal that the above-referred to letter of counsel for the importer, dated December 29, 1954, is virtually an appeal from the decision of the Manila Collector of Customs in the instant seizure case.
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> "The record of the case has been thoroughly examined and there is nothing therein to show that after the promulgation of the Order of the Court of First Instance in Civil Case No. 23988, dated September 7, 1955, the claimant herein filed its notice of appeal within the period provided for in Section 1380 of the Revised Administrative Code. Without making any declaration whether or not a party adversely affected by a decision of a collector of customs must file a written notice of appeal aside from his written reservation to do so, this Office finds that the said letter of counsel for the importer, dated December 29, 1954, was received in the Records Division of this Bureau on January 3, 1955, or nineteen (19) days after receipt by the said counsel of copy of the decision so that even if the said letter were a notice of appeal, the same was in any way filed out of the statutory period of fifteen (15) days allowed for the filing thereof.
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> "Premises considered, this Office has no jurisdiction to review the decision of the Manila Collector of Customs in Manila Seizure Identification No. 1917 and accordingly remands the record thereof to the

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[1] New Section 2313, Tariff and Customs Code (Rep. Act No. 1937).

said Collector for execution of his decision." (Page 17, Customs records.)

After an unsuccessful attempt to have the order of respondent Commissioner reconsidered, petitioner has appealed to this Court. It is alleged that respondent erred in refusing to take cognizance of the appeal dated December 29, 1954 which was mailed on the same date, although it was actually received in the Bureau of Customs only on January 3, 1955, the next business day after December 29, 1954.

It is contended on behalf of respondent that petitioner has not appealed from the decision of the Collector of Customs of Manila dated November 24, 1954 within 15 days from the date of receipt of a copy thereof on December 14, 1954, and that even if the letter of counsel for petitioner dated December 29, 1954 may be considered a notice of appeal, the same was received in the Bureau of Customs on January 3, 1955, after the lapse of the 15-day period prescribed by Section 1380 of the Administrative Code.

Section 1380 of the Administrative Code provides that a person aggrieved by a decision of the collector of customs in any case of seizure may, within fifteen days after notification in writing by the collector of his action or decision, give written notice to the collector signifying his desire to have the matter reviewed by the Commissioner. In this case, counsel for petitioner, in their letter to the Collector of Customs of Manila of December 29, 1954, merely requested "that action on the above-entitled decision be held in abeyance until the civil case (in the Court of First Instance of Manila) is terminated", at the same time reserving their "right to appeal from the above-mentioned decision to the Commissioner of Customs in the event that the civil case is not decided in our favor." The notice given by petitioner to the Collector of Customs of Manila that it was reserving its right to appeal from the latter's decision is not the equivalent of a notice of appeal as required by Section 1380 of the Administrative Code. No appeal having been taken by petitioner from the decision of the Collector of Customs of Manila, the decision has become final and unappealable. (Sy Man v. Jacinto, G. R. No. L-5612, Oct. 31, 1953; Sampaquita Shoe & Slipper Factory v. Commissioner of Customs, C.T.A. No. 99, Oct. 17, 1955, affd. in G. R. No. L-10285, Jan. 14, 1958; Pascual v. David, C.T.A. No. 95, April 21, 1956; Phil. Tex Board Factory v. Coll. of Customs, Manila C. C. No. 21641, Nov. 29, 1956; Chan Kian v. Commissioner of Customs, C.T.A. No. 319, Jan. 4, 1957, affd. in G. R. No. L-12184, May 29, 1959; Doroteo de Leon v. Com. of Customs, C.T.A. No. 381, Dec. 18, 1958, motion for reconsideration denied Feb. 18, 1959; Que Po Lay v. Central Bank, G. R. No. L-11019, Nov. 28, 1958, citing Com. of Customs v. Encarnacion, G. R. No. L-7598, July 26, 1954.)

Petitioner perhaps deemed it impracticable at the time to file a notice of appeal because of the pendency of the action for certiorari and mandamus with preliminary injunction which it filed with the Court of First Instance of Manila against the Collector of Customs. Since it chose to ventilate its grievances in the wrong court, it must suffer the consequences of its own error. As aptly observed by the Supreme Court:

> "Needless to add, a party is bound by his choice of legal remedies, by the theory he adopts or by the cause of action he elects to stand on; as in life, his success depends upon a correct choice." (Sta. Clara Lumber Co. v. Court of Tax Appeals, G. R. No. L-9833, Dec. 21, 1957.)

It is true that the Collector of Customs of Manila considered the letter of December 29, 1954 of counsel for petitioner as a notice of appeal and respondent Commissioner of Customs did not pass upon this question in his order dismissing the appeal, but the matter involves a question of law, and any opinion thereon by the Collector of Customs of Manila and by the Commissioner is not binding on this Court.

In view of our opinion that no appeal has been taken by petitioner from the decision of the Collector of Customs of Manila decreeing the forfeiture of the 75 packages of garlic in question, we find it unnecessary to pass upon the question whether or not the letter of December 29, 1954 was filed within 15 days from the date of receipt by petitioner of a copy of said decision.

WHEREFORE, the herein appeal is dismissed, with costs against petitioner.

SO ORDERED.

Manila, August 3, 1959.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge