REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus - C.T.A. CASE No. 1149

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

RESOLUTION

This is a "Motion to Dismiss" the present petition for review for lack of jurisdiction by this Court to try this case.

Stripped of nonessentials, the facts material to the issues herein are as follows:

Petitioner, a domestic corporation duly organized in accordance with our laws with office at No. 540 Padre Faura St., Manila, alleges in its petition that on several occasions in 1959 it imported from abroad various articles on which the respondent, through the Collector of Customs of Manila, levied and collected compensating and/or sales taxes under Sections 186 and 190 of the Tax Code. In the computation of said taxes, respondent included in the landed cost of the imported articles the special import tax imposed under Republic Act No. 1394 at the rate of 17% and not at 15.3% which is allegedly the correct rate. Upon this theory, petitioner made an overpayment of ₱4,874.00 compensating taxes for which petitioner seasonably filed a claim for

110

refund with respondent upon discovery of the error. Fearing that the right to claim for refund would lapse, petitioner filed the present petition on December 7, 1961, without waiting for respondent's decision on the claim.

In his answer, respondent alleges that petitioner has not filed any protest with the Bureau of Customs within thirty days after final liquidation of the importation questioning the legality of the rate of special import tax collected by the Collector of Customs and so this Court has no jurisdiction to take cognizance of the present action for failure of petitioner to exhaust all its administrative remedies.

Subsequently, respondent filed a motion to dismiss the petition citing the case of Caltex (Philippines) Inc. vs. Comm. of Int. Rev. (G.R. No. L-20462, June 30, 1965). The line of thought in said case is that the Special Import Tax Law, Republic Act No. 1394, is one of the laws administered by the Bureau of Customs, hence, any issue involving liability for, or exemption from, said tax as well as the procedure on protest and appeals should be governed by the pertinent provisions of the Tariff and Customs Code. Without an adverse ruling on the protest by the Commissioner of Customs, no appeal can be had to this Court pursuant to Section 7(2) of Republic Act 1125 in relation to Section 2402 of Republic Act 1937.

111

And an action for reimbursement of compensating taxes on the ground that the tax was improperly computed because the special import tax which was illegally collected was included in the landed cost of the article, is not feasible because it is, in the last analysis, an action that raises the legality of the collection of the Special Import Tax without following the proper procedure. Hereunder we quote the pertinent portion of the decision in the aforecited case:

> It is first contended by petitioner that the special import tax imposed by Republic Act No. 1394 is an internal revenue tax, and, as such, a claim for refund of taxes so erroneously or illegally levied and collected by the Collector of Customs pursuant to said law should be lodged with the Commissioner of Internal Revenue and not with the Commissioner of Customs. Petitioner argues that the Customs head and his subordinates are merely agents of the Revenue Commissioner in the collection of national internal revenue on imported articles (Section 6, National Internal Revenue Code); and that per Customs regulations, "protest against the payment of internal revenue taxes on imported merchandise shall, if filed with the Collector of Customs, be transmitted directly to the Collector of Internal Revenue for action in accordance with the provisions of the National Internal Revenue Code" (Par. V, first sentence, Customs Administrative Order No. 226, dated December 3, 1957; 54 O.G. 301).
>
> Petitioner's contention is not well-taken. In the guise of a demand for reimbursement of compensating taxes, petitioner's case is actually one for exemption from the special import tax under Republic Act No. 1394.
>
> Since Section 4 of Republic Act No. 1394 provides that:

117

> "The special import tax shall be paid by the importer to the Bureau of Customs in accordance with the regulations to be promulgated by the Department of Finance and prior to the release of the imported goods, articles or products from customs custody."

and it being undisputed that the Special Import Tax Law (Republic Act No. 1394) is one of the laws administered by the Bureau of Customs, it is evident that said law should be considered as customs law, to which the section of Customs Administrative Order No. 226 (invoked by Caltex) does not apply, since the section, by its terms, refers only to internal revenue taxes.

xx xx xx xx xx

Having arrived at the foregoing conclusion, and since the Bureau of Customs has jurisdiction over the special import tax in question (See also Section 602(a) and (j) of the Tariff and Customs Code), it also follows, as a logical consequence thereof, that any issue involving liability for, or exemption from, said tax as well as the procedure on protests and appeals should be governed by the pertinent provisions of the Tariff and Customs Code (Republic Act No. 1937), more specifically Sections 2308 to 2313 thereof. In fact, these provisions had been implemented by Customs Administrative Order No. 226, dated December 3, 1957 (published in 54 O.G. 300-302), in which the special import tax is enumerated as among those to be governed by said customs order.

It is also undisputed that the Collector of Customs of Manila has not yet acted upon the protests of petitioner. Hence, there is no adverse ruling from which an appeal may be taken to the Commissioner of Customs in accordance with Section 2313 of the Tariff and Customs Code. Likewise, there is no decision or ruling of the Commissioner of Customs which may be appealed to the

Court of Tax Appeals, pursuant to Section 7(2) of Republic Act No. 1125 in relation to Section 2402 of Republic Act No. 1937, both of which read -

> "Sec. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> x x x
>
> (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;" (Republic Act No. 1125)
>
> 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." (first paragraph, Republic Act No. 1937)

In the absence of any decision or ruling which may be the subject of an appeal or petition for review to the Court of Tax Appeals, said court has no case to take cognizance of (See CMS Estate, Inc. vs. Commissioner of Customs, G. R. No. L-18773, January 31, 1964). So that the lower court correctly dismissed the petition for review of petitioner for being premature or for not stating a cause of action.

The present motion for dismissal is submitted on the pleadings and we are not in a position to say whether a protest has been filed by petitioner within 30 days from the date of the final liquidation of the imported articles as this point is under controversy in the pleadings of the parties. Be that as it may, it is obvious that if there was such a protest the same remains unacted upon by the Commissioner of Customs and under the doctrine of the aforecited Caltex case (G.R. No. L-20462) which is squarely in point, this petition should be dismissed "for being premature or for lack of a cause of action."

Petitioner, however, distinguishes the present from the aforesaid Caltex (Philippines) Inc. (G. R. No. L-20462) case. Petitioner points out that in said case the legality of the imposition of the special import tax had not been decided yet by the Commissioner of Customs when the appeal to this Court was filed and when the Court passed upon the motion to dismiss therein. On the other hand, although the protest in this petition is still unacted upon by the Commissioner of Customs, subsequent to the filing thereof the Supreme Court ruled in Commissioner of Customs vs. Caltex (Philippines) Inc., G. R. No. L-24192, May 22, 1968, that the special import tax rate collectible for importations during the year 1959, which covers the period involved herein, is 15.3%, the rate claimed by petitioner. This distinction is immaterial to the issues in this present motion. The decision referred to in Caltex (Philippines) Inc. vs. Commissioner of Internal Revenue, G.R. No. 20462, is the decision of the Commissioner of Customs on the very protest that is involved in the action for refund of compensating tax, not just any ruling or decision of the Commissioner of Customs or of a court rendered in another case involving similar issues.

The Tariff and Customs Code provides that a taxpayer should file a protest before the Collector of Customs if he desires to question the legality of a collection of duties; failure to comply with this requisite makes the action of the Collector final and conclusive (Luzon Stevedoring Corp. vs. Court of Tax Appeals, G.R. No. L-21005, October 22, 1966). From the decision of the Collector, the taxpayer may appeal to the Commissioner of Customs and thereafter to the Court of Tax Appeals. Except as a guide to the Collector, the Commissioner and the Courts, a decision in another protest or case, even if relevant to the present case, is extraneous to the procedural steps constituting the due process of the present case. Hence, it cannot be the basis of the present appeal to this Court and, therefore, can not be a factor in determining whether the present appeal is premature or not. Petitioner's theory in effect violates the procedural steps constituting the due process for questioning the legality of collections of duties.

WHEREFORE, the present petition is hereby dismissed for being premature or for lack of a cause of action.

SO ORDERED.

Quezon City, December 5, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge