REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PHILIPPINES INTERNATIONAL
SURETY CO., Inc.,
Petitioner,

- versus - C.T.A. CASE No. 771

COMMISSIONER OF CUSTOMS,
Respondent.
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DECISION

The petitioner Philippines International Surety Co., Inc., the surety of Andres E. Lazaro, appeals from the decision dated February 19, 1960 of the Commissioner of Customs ordering Andres E. Lazaro as well as the Philippines International Surety Co., Inc. to pay, jointly and severally, the total sum of ₱67,041.00.

Andres E. Lazaro is the claimant of 300 packages of green peas, 200 packages of dried green peas and 70 packages of dried fish (codfish) which arrived in the port of Manila on various dates. The importations in question were not covered by release certificates issued by the Central Bank or any of its agent banks. Consequently, seizure proceedings were instituted, but during the pendency of the proceedings the articles in question were released to the claimant under bond (Customs rec., pp. 80-87, 89 & 104). After hearing, the Collector of Customs for the port of Manila ordered their forfeiture for having been im-

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ported in violations of Central Bank Circulars Nos. 44 and 45. It appearing that they were released under bond, he ordered the claimant, as well as his surety, the Philippines International Surety Co., Inc., to pay, jointly and severally, the full amount of the surety bonds or the sum of ₱67,041.00 (Customs rec., pp. 52-54). Notices of said decision were given to the claimant and the Philippines International Surety Co., Inc. (Customs rec., pp. 50-51). The claimant appealed to the Commissioner of Customs who affirmed the decision of the Collector of Customs (Customs rec., pp. 39-42). After receipt of the decision of the Commissioner of Customs on February 22, 1960 (Customs rec., pp. 37-38), the claimant and his surety filed separate motions for reconsideration on March 21, 1960 (Customs rec., p. 23) and March 23, 1960 (Customs rec., p. 17), respectively. The former motion was denied on March 25, 1960 (Customs rec., pp. 11-16), and the counsel for Andres E. Lazaro and the Philippines International Surety Co., Inc. received the order of denial on March 25, 1960 and March 28, 1960, respectively (Customs rec., pp. 9-10).

The claimant filed a second motion for reconsideration on March 31, 1960. In an order dated

April 4, 1960 (Customs rec., p. 5), the Commissioner of Customs denied the second motion for reconsideration and furnished Andres E. Lazaro and the Philippines International Surety Co., Inc. copies thereof on April 5, 1960 (Customs rec., pp. 3-4). Three days later or on April 8, 1960 the Philippines International Surety Co., Inc. instituted the instant appeal.

The petitioner questions the validity of the seizure and forfeiture proceedings, the same being -

> (1) contrary to the purpose and intent of Republic Act No. 1410; and
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> (2) based on Central Bank Circulars Nos. 44 and 45 which are null and void insofar as no-dollar importations are concerned in view of the absence of authority on the part of the Central Bank to issue said circulars.

On the other hand, the respondent assails the jurisdiction of this Court to entertain the instant case, the same having been filed allegedly beyond the 30-day reglementary period. He further challenges the personality of the petitioner to appeal, it being merely the surety of the claimant of the imported articles involved.

We shall first dispose of the preliminary issues posed by the respondent.

The respondent maintains that the petitioner, being merely the surety of Andres E. Lazaro, has no personality to appeal from the decision of the Commissioner of Customs inasmuch as it is not a person adversely affected by the decision appealed from. This question has been passed upon by this Court unfavorably against the petitioner in two previous cases (Philippines International Surety Co., Inc. vs. Com. of Customs, CTA Case No. 745, Resolution, Jan. 12, 1961; Philippines International Surety Co., Inc. vs. The Com. of Customs, CTA Case No. 736, Resolution, Dec. 3, 1962). We said therein that the surety has no legal capacity to appeal to this Court. We see no strong and convincingly valid reason to depart from our ruling in the two aforementioned cases.

Assuming, however, that the petitioner can appeal from the decision of the Commissioner of Customs, still this Court cannot take cognizance of the instant appeal for the reason that the petition for review was filed beyond the thirty-day period provided for in Section 11 of Republic Act No. 1125.

It appears that Andres E. Lazaro and the petitioner received the decision of the Commissioner of Customs on February 22, 1960. Both filed separate motions for reconsideration on March 21, 1960 and March 23, 1960, respectively. The respondent denied the motion filed by Andres E. Lazaro on March 25, 1960 and furnished the claimant and the petitioner copies of the order of denial on March 25, 1960 and March 28, 1960, respectively. On March 31, 1960, Andres E. Lazaro filed a second motion for reconsideration. This appeal was commenced three days after the petitioner and Andres E. Lazaro received the order denying the latter's second motion for reconsideration. From the date of receipt of the decision of the Commissioner of Customs until the filing of the second motion for reconsideration, Andres E. Lazaro consumed 34 days. The petitioner filed the petition for review in this case 36 days after receipt of the respondent's decision.

The contention of the petitioner that its appeal was timely filed, because the motion for reconsideration he filed immediately after receipt of the respondent's decision has not been acted upon, is without merit. Its motion for reconsideration was filed on March 23, 1960, two days after its principal, Andres E. Lazaro, filed his motion. Both motions raised practically identical issues. On March 25, 1960 the respondent denied the motion of Andres E. Lazaro. Although no mention was made of the petitioner's motion, we are of the opinion that the denial of Lazaro's motion for reconsideration was also a denial of the petitioner's motion, firstly, because the petitioner intervened in the case merely as surety of Andres E. Lazaro; secondly, because the petitioner raised the same issues set up by its principal.

Moreover, Andres E. Lazaro, for having consumed a total of 34 days from receipt of the respondent's decision until he filed his second motion for reconsideration, has lost his right to institute an appeal. Likewise, the herein petitioner, under the circumstances obtaining in this case, cannot legally appeal to this Court, it being merely the surety of Andres E. Lazaro. A surety cannot have a better right than its principal.

Having found that the petitioner lacks the legal capacity to appeal from the decision of the Commissioner of Customs and that this Court has no jurisdiction to entertain this case for the reason that the petition for review was filed beyond the thirty-day period provided for in Section 11 of Republic Act No. 1125, we shall abstain from discussing the other issues presented by the parties.

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IN VIEW OF THE FOREGOING CONSIDERATIONS, the petition for review is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, January 4, 1963.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge