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Republic of the Philippines
COURT OF TAX APPEALS
Manila

HENRY LANG, in his capacity as accused and subsequently acquitted in Criminal Case No. 59119, Court of First Instance, Manila,
ANDREW JOHNSON, in his capacity as accused and subsequently acquitted in Criminal Case No. 59119, Court of First Instance, Manila,
PROTASIO CAÑALITA, in his capacity as legal representative of Bay Pacific Export Co., in Court of Appeals Case No. 30057-R,
BAY PACIFIC EXPORT CO., AND ATLAS COMPANY, LTD.,
Petitioners,

October 31/63

- versus -

C.T.A.
CASE NO. 1437

COMMISSIONER OF CUSTOMS, and
COLLECTOR OF CUSTOMS,
Respondents.

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

RESOLUTION

The petitioners have appealed from the decision of the respondent affirming that of the Collector of Customs of Manila ordering the forfeiture of ten (10) cases containing a total of 160 hogsheads of Virginia type leaf tobacco consigned to the NARIC-Philippine Associated Development Company. Petitioners pray that, pending hearing on the merits, an ex-parte writ of preliminary injunction be issued "restraining respondents Commissioner and Collector of Customs from enforcing their decisions dated April 17, 1963 and June 16, 1961, respectively, and/or disposing or selling the 160 hogsheads Virginia leaf tobacco."

Respondents filed a motion to dismiss on the following grounds:

> 1. That the petitioners herein have no legal capacity or personality to sue;
>
> 2. That the decision of the respondent Commissioner of Customs has become res adjudicata and can no longer be eleva ted to this Honorable Court;
>
> 3. That there being no appeal, for indeed the respondent Commissioner's decision is no longer appealable, this Hon. Court has no jurisdiction to issue the ancillary writs prayed for; neither does this Hon. Court have jurisdiction to entertain original actions for "certiorari, prohibition, mandamus with preliminary injunction;"
>
> 4. That assuming, without admitting, that a "motion to set aside decision" was filed with the respondent Commissioner of Customs, then the petitioners herein have not exhausted the administrative remedies before coming to this Hon. Court.

It is admitted that the decision of respondent Commissioner of Customs dated April 17, 1963 was received by counsel for petitioners on April 24, 1963. Under Section 11 of Republic Act No. 1125, petitioners should have appealed said decision to this Court within 30 days after receipt of said decision, assuming they have legal capacity to appeal. They filed the instant petition with this Court only on July 27, 1963, long after the expiration of said statutory period. Therefore, they have lost their right to appeal.

It is contended, however, that on April 10, 1963, a motion was filed in the Court of First Instance of

Manila "for the release of the evidence" (referring to the leaf tobacco in question), which motion was still pending consideration when the decision of the Commissioner of Customs was supposed to become final and executory on May 24, 1963. Then, too, it is alleged that in a case pending in the Court of Appeals, a motion was filed with said Court to declare null and void the decision of the Commissioner of Customs in the seizure proceeding, which motion was denied in an order dated May 29, 1963, which was received by counsel for petitioners on June 11, 1963. Accordingly, it is argued that the thirty-day period within which the decision of the Commissioner of Customs may be appealed to this Court should start from June 11, 1963.

We find no merit in petitioners' contention. The running of the period for appeal provided in Section 11 of Republic Act No. 1125 is not affected by any motion filed either in the Court of First Instance or the Court of Appeals as said courts have no jurisdiction over cases cognizable by the Court of Tax Appeals.

In view of our finding that the instant appeal was filed with this Court beyond the statutory period, we find it unnecessary to consider the other issues raised in the motion to dismiss.

WHEREFORE, the herein petition, whether considered as an appeal or an original action for certiorari, prohibition, or mandamus with preliminary injunction, is hereby dismissed, with costs against petitioners.

SO ORDERED.

Manila, October 31, 1963.

(Sgd.) ROMAN M. UMALI
Associate Judge

I CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge