REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MUTUAL SECURITY INSURANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 963

THE COMMISSIONER OF CUSTOMS,
Respondent.

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RESOLUTION

This is in connection with a "Motion to Dismiss" the petition for review filed by respondent on November 16, 1960 on the grounds (1) that this Court has no jurisdiction to entertain the petition for review; and (2) that the petitioner has no legal capacity to file the petition for review.

On October 6, 1959, there arrived in the Manila International Airport from abroad various articles such as assorted buttons, magnetic bands, radio phonographs, transistors and veils consigned to one Victor Venta of 1470 Antonio Rivera, Manila. These articles were seized by the customs authorities for alleged violation of Central Bank Circular No. 96 in relation to Section 2530 (f) of the Tariff and Customs Code of the Philippines. (Exhs. A & 1, p. 11, CTA rec.)

On November 18, 1959, the consignee Victor Venta, as principal, and the Mutual Security Insurance Corporation, as surety, executed and filed Bond No. S-2468-A in the amount of Five Thousand One Hundred Seventy-Four Pesos and Seventy-Four Centavos (₱5,174.74) to secure the release of the seized merchandise. (Exhs. C & 3 p. 14, CTA rec.) One of the conditions of the bond is "in the event that it could be finally decided that the merchandise herein mentioned should be forfeited to the Government, and/or that a fine or surcharge should be imposed, the entire sum of this bond, in the case of forfeiture, or the corresponding amount of the fine or surcharge as the case may be shall be paid in cash to the Bureau of Customs." (Exhs. 3 & C, Ibid.)

On April 23, 1960, the Bureau of Customs issued a notice of hearing in Seizure Identification No. 5880 to the principal Victor Venta and the herein petitioner Mutual Security Insurance Corporation, which hearing was scheduled on May 3, 1960. (Exhs. 4 & D, 4-A & 4-B, p. 17, CTA rec.) On the date set for hearing, the supposed importer and claimant Victor Venta did not appear. Whereupon, the said Victor Venta was declared in default and the Appraisers Division (Manila International Airport) presented its evidence (Exhs. A & 1, p. 11, CTA rec.).

On September 14, 1960, a decision was rendered by Pedro Pacis as "Acting Collector of Customs" (Exhs. A & 1, Ibid.), ordering and decreeing the forfeiture of the seized articles, but as it appears that the importation was released under Mutual Security Insurance Corp. Bond No. S-2468-A, then the amount of Five Thousand One Hundred Seventy-Four Pesos and Seventy-Four Centavos (₱5,174.74) Philippine currency, representing said bond should be paid in cash to the Bureau of Customs by the principal and surety, jointly and severally, within thirty (30) days from the receipt of the copy of the decision.

On November 4, 1960, petitioner Mutual Security Insurance Corporation filed its "Petition for Review" appealing from the decision of Pedro Pacis, "Acting Collector of Customs" dated September 14, 1960. On November 16, 1960, respondent filed the instant "Motion to Dismiss".

The issues in this incident are (1) whether or not this Court has jurisdiction to entertain the petition for review; and (2) whether or not the petitioner surety corporation has the legal capacity to file the instant petition for review.

The pertinent provisions of Sections 2312, 2313, 2314 and 2402 of the Tariff and Customs Code (Republic Act No. 1937) involved in this incident provide as follows:

> "SEC. 2312. Decision or Action by Collector in Protest and Seizure Cases.- When a protest in proper form is presented in a case where protest is required, the Collector shall reexamine the matter thus presented, and if the protest is sustained, in whole or in part, he shall enter the appropriate order, the entry reliquidated if necessary.
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> In seizure cases, the Collector, after a hearing, shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper.
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> "SEC. 2313. Review by Commissioner.- The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action 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 of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.
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> "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 laws and regulations, the action or ruling of the Commissioner shall be final and conclusive."

Sections 7 and 11 of Republic Act No. 1125, which are the jurisdictional provisions relied upon by the respondent read as follows:

> "SEC. 7 Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided-
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> (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 thereof; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;"
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> "SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

The inconsistency, in Sections 7 and 11 of Republic Act No. 1125, as regards whose decision, the

Commissioner of Customs or the Collector of Customs, should be appealed to this Court has been resolved by us to be that of the former, which resolution was sustained by the Supreme Court in the cases of Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals (G. R. No. L-9274, February 1, 1957) and Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, et al. (G. R. No. L-10285, January 14, 1958).

The above-quoted provisions of the Tariff and Customs Code clearly outline the preliminary administrative steps an aggrieved party should take before bringing his case to this Court. In seizure cases, the person aggrieved by the decision of forfeiture gives, within 15 days after notification of such decision, a written notice to the Collector of his desire to have the matter reviewed by the Commissioner of Customs. Then the latter official renders a decision thereon either approving, modifying or reversing the action or decision of his Collector. After these steps have been taken, the party aggrieved by the adverse ruling of the Commissioner of Customs may appeal the decision to the Court of Tax Appeals (Section 2402, supra), pursuant to Sections 7 and 11 of Republic Act No. 1125.

The petitioner has not appealed the decision of the "Acting Collector of Customs" to the Commissioner of Customs. There is no evidence on record that the decision (Exhs. A & 1) appealed from is the decision of the Commissioner of Customs, as alleged by petitioner in its petition for review. On the contrary, the evidence discloses that this is an appeal from the decision of the "Acting Collector of Customs" (Exhs. A & 1) and not of the Commissioner of Customs. Apparently, this is the result of petitioner's failure to exhaust the administrative remedies outlined by law before bringing this case to the Court.

The exhaustion of administrative remedies is an old principle and a sound rule. It provides for a policy of orderly procedure which favors a preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance. (Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, et al., supra.) On the basis of petitioner's failure to exhaust administrative remedies, it is proper for this Court to dismiss the appeal. (Silver Swan Manufacturing Co., Inc. vs. The Commissioner of Customs, C.T.A. Case No. 744, June 29, 1960.)

This is an appeal from the decision of the Collector of Customs, and under the law, particularly, the Customs Law and Republic Act No. 1125, the Court of Tax Appeals has no jurisdiction to review by appeal, decisions of the

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Collector of Customs. (Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, supra; see also Sugar Producers' Cooperative Marketing Association, Inc. vs. Commissioner of Customs, C.T.A. Cases Nos. 858 & 859), Resolution of October 27, 1960, and cases cited therein.)

Having disposed of the first issue adversely against petitioner, we find it unnecessary to consider the second ground of respondent's motion to dismiss, it having been rendered academic. But for the satisfaction of the petitioner and for its guidance, we wish to state that we had an occasion to rule on the question of whether or not a petitioner, as surety of an importer, has the legal capacity to file an appeal with this Court. We said:

> "We cannot subscribe to the theory that the petitioner is 'adversely affected' by the decision of respondent in Seizure Identification Case No. 2428. In interpreting the above cited provision of law, we have stated that it refers only to those 'persons, associations or corporations whose proprietary or pecuniary interests are adversely affected by a decision' of the officials therein mentioned. (See Acting Collector of Customs vs. Commissioner of Customs, C.T.A. Case No. 17, January 22, 1955, affirmed in G.R. No. L-8811, Oct. 31, 1957; Hough v. North Adams /1907/ 196 Mass. 290, 82 N. E. 46, cited in 74, ALR 1221.) It cannot be stated that by virtue of its undertaking of suretyship whereby it has agreed to be jointly and solidarily liable with Manuel Santos to respondent in the amount of ₱1,785.05, petitioner will actually suffer pecuniarily and fall within the contemplation of the phrase 'adversely affected' in Section 11 of Republic Act No. 1125. It is true that the nature of the obligation contracted by petitioner with Manuel Santos would enable

respondent to go against the petitioner to the exclusion of Manuel Santos, pursuant to Article 1216 of the New Civil Code. Nevertheless, it cannot be said that by this procedure petitioner would be adversely affected pecuniarily, because it still retains the right to be reimbursed by its principal Manuel Santos (Art. 2117, New Civil Code).

"From the foregoing, it is obvious that <u>petitioner does not fall within the purview of Section 11 of Republic Act No. 1125 and, consequently, does not have the legal capacity to institute the instant petition for review before this Court.</u>" (Philippines International Surety Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 745, Resolution, January 12, 1961; underscoring supplied.)

WHEREFORE, the petition for review should be, as it is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, February 15, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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