REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGUM ELECTRIC COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2749

THE COMMISSIONER OF CUSTOMS,
Respondent.

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RESOLUTION

On November 21, 1975, respondent filed a motion with this Court praying for the dismissal of petitioner's appeal for lack of a cause of action.

Petitioner is a domestic corporation with principal office and place of business at Tagum, Davao. In the course of its operation, petitioner imported "One (1) case, one (1) unit, Alfa/De Laval Centrifugal Separator, Type MAB 103-,B024," valued at $3,305.80, which arrived at the Port of Manila on board the M/S "Hirado" on January 17, 1975. Thereafter, the Collector of Customs, Port of Manila, assessed and collected on the said equipment ten per cent (10%) ad valorem customs duty amounting to ₱2,537.00 and seven per cent (7%) compensating tax of ₱1,873.00, which petitioner paid under protest on March 4, 1975.

On June 27, 1975, the Collector of Customs of the Port of Manila dismissed petitioner's pro-

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test for lack of merit. A copy of said decision was received by petitioner on August 26, 1975.

On September 8, 1975, petitioner appealed to the Commissioner of Customs and, thereafter, without waiting for respondent's decision, petitioner filed its petition for review with this Court on October 8, 1975, praying that judgment be rendered declaring and ordering respondent to refund to it the said amounts of ₱1,873.00 and ₱2,537.00.

On November 21, 1975, respondent moved to dismiss the instant petition for failure of petitioner to exhaust the administrative remedies prescribed in Section 2313 of the Tariff and Customs Code, as amended, and that petitioner has no cause of action against respondent.

Petitioner, however, contends that it is not obliged to exhaust administrative remedies because the dispute involves purely a legal question. Moreover, since the case involves also a claim for refund of the compensating tax, it can bring this action within two years from payment of the tax under Section 306 of the Tax Code, without waiting for the decision of the Commissioner of Customs on its protest.

The issue boils down to whether or not this Court has jurisdiction to entertain the present appeal.

Petitioner's appeal is fatally defective on two fundamental points. First, the claim for refund of customs duty is premature because there is as yet no decision by the Commissioner of Customs which is appealable to this Court under Section 7, in relation to 11 of Republic Act No. 1125. (See Rufino Lopez & Sons, Inc. vs. CTA, G.R. No. L-9274, Feb. 1, 1957; Sampaguita Shoe & Slipper Factory vs. Comm. of Customs, G.R. No. L-10285, Jan. 14, 1958; Negros Navigation Co., Inc. vs. Comm. of Customs, G.R. No. L-18629, May 31, 1963; Southwest Agricultural Marketing Corporation v. The Secretary of Finance, et al., G.R. No. L-24797, October 8, 1969; P.J. Kiener Co., Ltd. vs. Comm. of Customs, CTA Case /Res./No. 1141, Jan. 13, 1962; Gumagda vs. Comm. of Int. Rev. & Comm. of Customs, CTA Case /Res./No. 1529, October 28, 1964; Borden Chemical Company (Phil.), Inc. vs. Comm. of Customs, CTA Case /Res./No. 1552, May 28, 1965; Sy vs. Comm. of Customs, CTA Case [Res.] No. 2163, August 12, 1970, and Procter & Gamble PMC vs. Comm. of Customs, CTA Case No. 2155, [Res.], April 15, 1971.)

In the second place, the claim for refund of the compensating tax has not been filed by petitioner with the Commissioner of Internal Revenue as required by Section 309 of the Tax Code. Moreover the Commissioner of Internal was not made a party respondent in this case and, therefore, petitioner's appeal is subject to dismissal for lack of jurisdiction. (See Luna vs. Comm. of Customs, CTA No. 1947, Nov. 29, 1968; Phil. Wallboard Corp. vs. Comm. of Customs, CTA No. 2136, Sept. 30, 1972; Procter & Gamble PMC vs. Comm. of Customs, CTA Case [Res.] No. 2155, April 15, 1971; citing Ace Publications, Inc. vs. The Commissioner of Customs and the Collector of Customs, G.R. No. L-18808, May 29, 1964.)

The procedure for protests and/or claims for refund of customs duty and claims for refund of compensating tax and/or advance sales tax (which are internal revenue taxes) is governed by different laws. The former is governed by the Tariff and Customs Code, but on appeal therefrom to this Court must comply with the provisions of Sections 7(2) and 11 of Republic Act No. 1125. However, with respect to refund of revenue taxes, it is governed by the National Internal Revenue Code (particularly Sec. 306 thereof) and Sections 7(1) and 11 of Republic Act No. 1125. The procedure set by law for the refund of customs duty cannot be availed of for the refund of revenue taxes. Thus, it was held:

> <u>Philippine Wallboard Corp. vs. Comm. of Customs, supra.</u>
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> There is another flaw in petitioner's appeal. Petitioner seeks to recover in this appeal not only customs duties but also compensating tax, a national internal revenue tax imposed by Section 190 of the National Internal Revenue Code. The recovery of national internal revenue taxes erroneously or illegally collected is governed by the National Internal Revenue Code and not by the Tariff and Customs Code, and the proper party respondent in appeal to this Court in cases of refunds of such taxes is the Commissioner of Internal Revenue and not the Commissioner of Customs.
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> <u>Luna vs. Comm. of Customs, supra</u>
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> .. . . It should be noted that the compensating tax is a national internal revenue tax and any claim for immunity therefrom must have to be lodged with an decided by the Commissioner of Internal Revenue. Only in an appeal from an adverse decision of the said

Commissioner can this Court pass upon the question of immunity. As regards the liability of said car to customs duty, the remedy of petitioner is provided in Sections 2306, et seq. of the Tariff and Customs Code.

> American International Dairy Co., Inc. vs. Misael Vera in his capacity as Commissioner of Internal Revenue and Rolando Geotina in his capacity as Commissioner of Customs, CTA Case No. 1975, June 30, 1972.

The claims for refund involved herein consist of two different charges, namely advance sales tax and customs duty.

With respect to the advance sales tax, the same is governed by Section 306 of the National Internal Revenue Code. Under said section, a written claim for refund of the alleged overpayment must be filed with the Commissioner of Internal Revenue within two years from the date of payment, and if the latter fails to act on the claim, the taxpayer can bring a judicial action without waiting for the decision of the Commissioner also within two years. (Coll. v. Sweeney, 106 Phil. 59; Gibbs v. Coll., 107 Phil. 232; Coll. v. Convention of Phil. Baptist Churches, G.R. No. L-11807, Jan. 28, 1961; Coll. v. Manila Hume Pipe, G.R. No. L-11494, Jan. 28, 1961; Koppel v. Coll. G.R. No. L-10550, Sept. 16, 1961; Comm. of Int. Rev. vs. Victorias Milling Co., No. L-24108, Jan. 3, 1968; 22 SCRA 12.) Of course, where the Commissioner renders a decision denying the claim of the taxpayer for refund, the taxpayer must appeal from the decision of the Commissioner within 30 days from the date of receipt of the decision, but in no case beyond two years from the date of payment. (Gibbs v. Collector, supra.)

As regards the customs duties, it is the general rule that when a ruling or decision of the Collector is made whereby liability for duties, taxes and other charges or any other matter is determined, except the fixing of fines in seizure cases, the party adversely affected is required to file a protest with the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter. (Sec. 2308 Tariff and Customs Code.) The decision of the Collector of Customs is appealable to the Commissioner of Customs within 15 days from receipt thereof. (Sec. 2313, Tariff and Customs Code.)

...It has been consistently held that in matters involving customs duties, only decisions of the Commissioner of Customs are appealable to this Court. (Rufino Lopez v. CTA 100 Phil. 850; Chan Kian v. CTA 105 Phil. 904.) Without a decision of the Commissioner of Customs, this Court acquires no jurisdiction over cases arising under Customs Laws. (See Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, 102 Phil. 850.)

<u>Procter & Gamble PMC vs. Comm. of Customs, supra</u>.

There is no merit in petitioner's pretension that its appeal should be entertained by us because it is filed to comply with the two-year period provided by law within which to file an action for "recovery of duties and surcharges illegally or erroneously collected." The law referred to by petitioner is obviously Section 306 of the National Internal Revenue Code which provides as follows:

x x x x x x x x x

But this provision applies only to internal revenue taxes as specifically stated therein, and not to customs duties and surcharges which are governed by the Tariff and Customs Code, not by the National Internal Revenue Code. Thus, says the Supreme Court on this point:

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> . . . That there is no decision or ruling by the Collector of Customs or Commissioner of Customs on the request of appellant for refund, is abundantly clear from the very allegations in the petition. Pursuant, therefore, to the above ruling of this Court, the presentation of the petition for review with the CTA was premature, for as things stand then, there was nothing to review.
>
> We cannot, by mere analogy, apply the interpretation given to Section 306 of the Internal Rev. Code to Sec. 7, par. 2 of Rep. Act No. 1125. Not only was the petition directed against the Customs officials, but it also appears that Sec. 306 has no counterpart in the Tariff and Customs Code. There is no statutory grant for importers claiming refund of duties to go directly to the CTA, without waiting the decisions of the Collector of Customs or the Commissioner of Customs, for one thing, the Collector or Commissioner may order the refund of taxes in question, in which event a review would not be necessary. (Ace Publications, Inc. v. The Commissioner of Customs and the Collector of Customs, G.R. No. L_18808, May 29, 1964.)

IN VIEW OF THE FOREGOING CONSIDERATIONS, the instant petition for review filed by petitioner is hereby dismissed, without pronouncement as to costs.

SO ORDERED.

Quezon City, September 13, 1976.

E. R. Alvarez
ESTANISLAO R. ALVAREZ
Presiding Judge

C. C. Roaquin
CONSTANTE C. ROAQUIN
Associate Judge

Amante Filler
AMANTE FILLER
Associate Judge

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