REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED PHILIPPINE LINES, INC.,
Petitioner,

- versus -   CTA CASE NO. 2640

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

March 15/77

D E C I S I O N

This is an appeal from an order dated November 9, 1974 of the Acting Commissioner of Customs, affirming the order of the Collector of Customs dated September 27, 1974 dismissing petitioner's protest for lack of jurisdiction.

This case was submitted for decision by the parties based upon the pleadings and the customs records. It appears from said pleadings and records that Bonifacio Maglaqui, Collector of Customs for the Port of La Union wrote a letter dated August 23, 1973 to the Shipside, Inc. of San Fernando, La Union, agent of petitioner United Philippine Lines, Inc., imposing upon the latter a fine of ₱10,000.00 for violation of Section 2521 of the Tariff and Customs Code for the carrying on its ship, the M.V. "Philippines," of unmanifested cargo consisting of 16 packages of personal effects discharged in the Port of La Union sometime on August 11, 1973. In compliance therewith, petitioner, through its agent, the Shipside, Inc., paid the fine of ₱10,000.00 on

August 21, 1973 and advised the Collector, thru its agent's letter dated August 20, 1973, that it was "being paid under protest," and was covered by Official Receipt No. 2253859.

The Collector of Customs, in his letter dated August 23, 1973, acknowledged the payment of ₱10,000.00, but expressed regrets that the "protest" made against the fine cannot be accepted or given due course for not being in conformity with Customs Administrative Order No. 226-57, and advised petitioner to file and perfect its "protest" in accordance with the forms and requirements of the rules and regulations and within the reglementary period of 15 days from payment of the fine. (p. 6, Customs rec.)

On August 31, 1973, or 10 days from the date of payment of the fine, petitioner actually received the receipt of payment of the fine of ₱10,000.00 from its agent the Shipside, Inc. However, it was unable to forward the aforesaid receipt of payment immediately to its lawyers. (Annex C, Petition for Review; p. 25, Customs Records.) Consequently, petitioner's lawyers were not able to file the formal written protest within the reglementary period of 15 days from date of payment thereof, which should have been not later than September 5, 1973, prescribed under Section 2308 of the Tariff and Customs Code, as amended, as it was only on September 14, 1973,

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or after the 15-day period, when the documents relative to the payment of the fine of ₱10,000.00 were forwarded to its lawyers. (Ibid.)

On September 24, 1973, petitioner, through its counsel, wrote a letter to Collector Maglaqui requesting for reconsideration of the imposed fine of ₱10,000.00 and for not giving due course to its protest based on the grounds: (1) that there was no final hearing or investigation conducted by the Customs Collector inasmuch as the period of apprehension of the unmanifested cargo of 16 packages of personal effects was too brief; that it was not given the opportunity to be heard and unable to present its own evidence; and (2) that the criminal complaint against the master of the vessel, Hermogenes Closa, and several other persons, for the alleged smuggling of the unmanifested personal effects was dismissed for lack of sufficient evidence, and praying that the fine of ₱10,000.00 be reconsidered or set aside. (pp. 9-11, Customs rec.)

In a letter dated October 15, 1973, Collector Maglaqui answered advising petitioner that the 15-day period within which to file a protest counted from the date of payment under Section 2308 of the Tariff and Customs Code, as amended, had already lapsed, and no formal written protest having been perfected, the payment thereof became final and

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conclusive and operated as a bar to the request for reconsideration. (p. 12, Customs rec.) It was also emphasized in said letter of the Collector that the failure of the interested party to perfect a protest is fatal to the claim inasmuch as protest is the exclusive remedy in a protestable case, and, consequently, denied the request for reconsideration. (Ibid.)

An appeal was taken by petitioner on November 15, 1973 from the above letter of October 15, 1973 to the Acting Commissioner of Customs, based upon the ground that the failure to file within 15 days from payment of the fine was due to petitioner's alleged honest mistake and excusable negligence (pp. 20-22, Customs rec.) and was verified by the affidavit of Angel Salcedo, Assistant Vice President - Legal & Administrative of petitioner. (p. 19, Customs rec.)

In an order dated March 5, 1974, the Acting Commissioner of Customs, Rolando G. Geotina, denied the appeal on the ground that it was filed beyond the reglementary period (p. 28, Customs rec.) which reads as follows:

O r d e r

Finding the appeal filed by the counsel for the herein protestant beyond the reglementary period, the same is hereby denied.

SO ORDERED.

Manila, Philippines, March 5, 1974.

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ROLANDO G. GEOTINA
Acting Commissioner of Customs

On March 20, 1974, petitioner's counsel filed a motion for reconsideration of the Order dated March 5, 1974 of the Acting Commissioner of Customs alleging that the Order of Collector Maglaqui dated October 15, 1973 subject of the appeal having been received by petitioner on October 26, 1973, it had 15 days from said date, or until November 10, 1973, within which to appeal to the Commissioner of Customs; and that it was only on November 5, 1973, or five days before the expiration of the 15-day period of appeal, when petitioner filed its notice of appeal, which was well within the 15-day period to appeal provided by law; and, hence, it claimed that the Order of Acting Commissioner of Customs, Rolando G. Geotina, dated March 7, 1974, dismissing the case for failure to appeal on time is, therefore, without factual basis.

Subsequently, based on the above motion for reconsideration, the Acting Commissioner of Customs, in an order dated September 27, 1974, held that the protest filed by the Protestant, United Philippine Lines, Inc. was in order being in substantial compliance with Section 2308 of the Tariff and Customs Code, as amended, and ordered the entire records of said protest (Customs Case No. 74-04) remanded to the Collector of Customs of the Port of La Union for decision on the merits, thereby setting aside his Order of March 5, 1974 previously denying petitioner's appeal. (p. 36, Customs rec.)

On October 16, 1974, acting upon the aforesaid Order of the Acting Commissioner of Customs dated September 27, 1974, Legal Officer Jose P. Ladia of the Port of La Union, wrote a strong memorandum dated October 16, 1974 analyzing the facts of the case and the law applicable thereto, as recited above, to the Collector of Customs, and which was later endorsed on October 18, 1974 by the Acting Collector of Customs Luciano N. Morabe to the Acting Commissioner of Customs, wherein it was asserted that petitioner has not complied with the prescribed requirements for the filing of a formal protest laid down by law and regulations, and, therefore, the Collector of Customs had no jurisdiction over the case and that the Acting Commissioner of Customs, by reason of the failure of petitioner to file a formal written protest on time and in the prescribe forms, did not, consequently, acquire jurisdiction over the case as there was no decision of the Collector to be legally appealed from, pertinent portions of which is quoted hereunder:

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> Upon the foregoing elucidations, with all due respect to the decision of the Honorable Commissioner of Customs in the case at bar, this representation begs to differ as it is believed the decision is not in conformity with the law on the subject matter. Firstly, where is the protest? Nowhere in the records of the

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case can we find a protest filed by the respondents. Thus, no protest identification number is even assigned to the case. The mere mention by Shipside, Inc. that they are paying the fine under protest is not in substantial compliance with the provisions of Section 2308 of the TCC, which provides:

"Section 2308.- Protest and Payment upon Protest in Civil Matters.- When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question; together with the reasons therefor.xxx". (Underscoring supplied).

"Also, Section 2310 of the TCC provides:

"Section 2310.- Form and scope of Protest.- Every protest shall be filed in accordance with the prescribed rules and regulations promulgated under this Section and shall point out the particular decision or ruling of the Collector to which exception is taken or objection made, and shall indicate with reasonable precision the particular ground or grounds upon which the protesting party bares his claim for relief." (Underscoring supplied).

And Customs Administrative Order No. 226-57 providing for the rules and regulations in the filing of protests and appeals, also provides:

"PAR. II - Protests must be in

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> writing and signed by the party protesting or by counsel, must be filed in triplicate in the Office of the Collector of Customs of the Port where payment was made. x x x".
>
> "PAR. VI - Every protest other than those for refund of internal revenue taxes mentioned in Paragraph V hereof must have affixed thereto a Customs stamp in the value of ₱5.00 and a documentary stamp of ₱0.30, otherwise, <u>the same shall not be given due course</u>." (Underscoring supplied.)

Conformably with the above quoted provisions of law, the letter-protest of respondents necessarily must fail and therefore, cannot be given due course. Respondents were so informed of the defect of their alleged protest, but instead of filing and perfecting one within the reglamentary period, having been notified on August 23, 1973, the respondents requested for a reconsideration of the Order of the Collector imposing the fine. The request for reconsideration was filed on September 24, 1973, which is already well beyond the fifteen (15) day period to contest the Order (counted from the date of payment on August 21, 1973) and as such, payment became final and conclusive, there being no protest perfected by the aggrieved party. This contention finds support under Section 2309 of the TCC which provides:

> "Section 2309. Protest Exclusive Remedy in Protestable Case.- In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, <u>the action of the Collector shall</u> be final and conclusive against him x x x". (Underscoring supplied.)

Thus, for failure of the respondents to file and perfect a formal protest in accordance with the aforecited laws, rules and regulations on protests, it is the position of this representation that, THERE IS NO DECISION BY THE COLLECTOR THAT HAS BEEN BROUGHT ON APPEAL to the Honorable Commissioner of Customs.

In passing, the resolution of the Notice of Appeal in the case at bar, by the Honorable Commissioner has lost sight of the main issue in the case when by his Order of March 5, 1974, it was ruled:

> "Finding the appeal filed by the counsel for the herein protestant beyond the reglamentary period, the same is hereby denied." (Please refer to page 28 of the records)

To the extent of being repetitious the main issue here is whether the respondent has filed and perfected a protest. If so, and the same is decided by the Collector of Customs, then appeal is in order. If not, then there is no decision to appeal from and any appeal thereto must be dismissed for lack of merit. A mere Order is not a fitting subject of an appeal is elementary in law. In the instant case, while the appeal is denied IT IS SO ORDERED UNDER A WRONG PREMISE.

Compounding the confusion is the setting aside of the above order when the Honorable Commissioner acting on a Motion for Reconsideration by the respondents dated March 29, 1974, ruled:

> "Finding the protest filed by the protestant, United Philippines Lines, Inc. in order, having been in substantial compliance with Section 2308 of the Tariff and Customs Code, as amended, the entire records of said protest (Customs Case No. 74-04) is hereby remanded to that Office for decision on the merits." (Please refer to page 36 of the records).

The above ruling is now the object of this Memorandum which is being submitted to the Collector of Customs for whatever it is worth, with the aim and view of stirring the authorities concerned to provide remedial measures in like cases in the future considering that the Order is adverse to the best interest of the government.

On November 9, 1974, said Acting Commissioner of Customs, acting favorably on the memorandum of

Atty. Ladia, promulgated an Order sustaining his previous order of September 27, 1974, and affirming the findings and action of the Collector of Customs of La Union dismissing the notice of appeal for lack of jurisdiction (pp. 43-45, Customs rec.), portion of which is quoted hereunder:

<u>ORDER</u>

Anent the Order of this Office dated September 27, 1974, the entire records of the above-entitled case was remanded to the Collector of Customs, Port of San Fernando, La Union, for decision on the merits. On basically valid ground, the same was returned to this Office undecided, in view of the alleged fact that no <u>valid protest</u> can be considered as having been filed within the 15-day period from the date of payment of the ₱10,000.00 administrative fine on August 21, 1973.

Records of the case show that on August 20, 1973, Mr. H. R. Campbell, Vice President and Resident Manager of the Shipside Incorporated, filed a letter to the Collector of Customs, Port of San Fernando, La Union, protesting the imposition of the ₱10,000.00 fine imposed on the vessel M/V "PHILIPPINES" which was paid on August 21, 1973, under O. R. No. 2253859. On said letter, no iota of evidence exists to prove that protestant has complied with the required filing fee of ₱10.00 and ₱0.30 documentary stamp. Thus, on August 23, 1973, said Collector of Customs clearly advised in his reply-letter; that:

> "With much regret, however, please be informed that your protest of the above payment under Section 2308 of the TCC cannot be accepted as being in conformity with CAO 226-57 and for that matter, it is not being given due course in the meantime. It is, therefore, advised by this Office that you perfect your protest in accordance with prescribed rules and regulations within the reglementary period, otherwise, the same will not be taken coggizance of."

On September 24, 1973, the Teves, Campos, Hernandez and Associates, sought a reconsideration of the aforestated letter of advise of the Collector of Customs. The latter, acting on said letter of reconsideration, replied that:

> " x x x, please be advised that the 15-day period (from the date of payment) under Section 2308 of the Tariff and Customs Code as amended by Presidential Decree No. 34 within which to contest the ruling of the Collector of Customs imposing the said fine has already elapsed without a written protest having been perfected by the aggrieved party. Thus, the payment becomes final and conclusive so that now the same operates as a bar to your request for reconsideration. (Letter dated October 15, 1973).
>
> "The failure of the interested party to perfect a protest is fatal to the claim inasmuch as protest is the exclusive remedy in the protestable case as in the case at bar."

On November 9, 1973, a notice of appeal dated November 5, 1973, was filed with the Collector of Customs, Port of San Fernando, La Union, stating that "the failure of United Philippine Lines, Inc. to file and perfect the written protest within the reglementary period was due to honest mistake and/or excusable negligence as allegedly shown by the Affidavit of Merit attached thereto and marked as Annex "A".

The foregoing findings revealed, as it is admitted by protestant's counsel, that when the letter of protest dated August 20, 1973, was filed on same date, prior to the payment of the ₱10,000.00 fine under O. R. No. 2253859, protestant failed to comply with the required filing fee for said protest and repeatedly failed to do so despite the formal letter of advise of the Collector of Customs, Port of San Fernando, La Union, in his letter dated August 23, 1973. These indubitable facts of non-compliance with the requirement for a valid protest strongly overthrow the credence and weight of the ground alleged in the notice of appeal, i.e., that the failure of the United Philippine Lines, Inc. to file and perfect the protest was due to honest mistake and/or excusable negligence.

> "The rule is settled that, in case of appeals from inferior courts to the Court of First Instance, the amount of the appellate court's docket fee should be deposited in full within the period of fifteen days, otherwise, no appeal is deemed perfected;" (Lazaro vs. Endencia, et al., 57 Phil. 552; Gambol et al. vs. Barcelona, et al., L-14339, Sept. 30, 1959).

From the foregoing facts and circumstances, it is crystal-clear that there is no valid protest filed by the United Philippine Lines for non-compliance with the required filing fee (CAO No. 226) which is in the nature of a docket fee. Because of this, the Collector of Customs, Port of San Fernando, La Union, has no jurisdiction to entertain and act on the alleged subject protest. (Alfredo E. Lipat vs. Comm. of Customs, C.T.A. Case No. 1442, Oct. 26, 1966).

In view thereof, this Office finds no alternative to sustain its previous order of September 27, 1974; that it hereby rectifies the same by affirming the findings of and action taken by the Collector of Customs, Port of San Fernando, La Union; and that the notice of appeal taken therefrom by the protestant is hereby dismissed for want of jurisdiction.

SO ORDERED.

Manila, Philippines, November 9, 1974.

ROLANDO G. GEOTINA
Acting Commissioner of Customs

Hence, this appeal filed by petitioner.

The issues presented for determination in this case are as follows:

1. Whether or not petitioner has complied with the filing of written protest in accordance with the provisions of Sections

2308, 2309 and 2310 of the Tariff and Customs Code, and the implementing Customs Administrative Order No. 226-57;

2. Whether or not this Court has jurisdiction to entertain the appeal of petitioner United Philippine Lines, Inc.; and

3. Whether or not petitioner is liable for the administrative fine of ₱10,000.00 in violation of Section 2521 of the Tariff and Customs Code.

The first and second issues being interrelated, we shall dispose of them at the same time. The law involved in the determination of the first two (2) issues are Sections 2308, 2309, 2310 and 2312 of the Tariff and Customs Code of the Philippines, which are quoted as follows:

> Sec. 2308. Protest and Payment Upon Protest in Civil Matters.- When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees, or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made.
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> Sec. 2309. Protest Exclusive Remedy in Protestable Case.- In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.

Sec. 2310. <u>Form and Scope of Protest</u>.- Every protest shall be filed in accordance with the prescribed rules and regulations promulgated under this section and shall point out the particular decision or ruling of the Collector to which exception is taken or objection made, and shall indicate with reasonable precision the particular ground or grounds upon which the protesting party bases his claim for relief.

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Sec. 2312. <u>Decision or Action by Collector in Protest And Seizure Cases</u>.- When a protest in proper form is presented in a case where protest is required, the Collector shall issue an order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented. Upon the termination of the hearing, the Collector shall render a decision within thirty (30) days, and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated if necessary.

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.

In construing and applying the above provisions of law, Legal Officer Jose Ledia of the Customs Port of La Union was correct in his analysis that the requirements of law for the filing of a formal written protest in protestable cases must be followed and there must also be compliance with the implementing regulation (Customs Administrative Order No. 226-57, Series of 1957) regarding the payment of a filing fee of P10.00 and documentary stamps for purposes of a valid formal protest. Where there is a lack of compliance of requirements of the law, the protest must necessarily fail because the requirements for formal protest is a jurisdictional matter. Moreover, the requirements for a protest are mandatory and failure to file the protest on time, as is true in this case, is fatal to the recovery of the administrative fine which was already paid. (See Allied Brokerage Corp. vs. Customs, G.R. No. L-21665, October 22, 1966) Having failed in complying with the formal requirements for a valid protest, there could not have been any legal Order or a protestable case promulgated by the Collector of Customs of La Union which can be appealed to the Commissioner of Customs within 15 days from receipt thereof under the provisions of Section 2308 of the Tariff and Customs Code. It is obvious that the Acting Commissioner of Customs could not have also rendered a valid and legal ruling or decision on a protestable case, which is properly appealable for this Court's determination. In the recently decided analogous case of Atlas Consolidated Mining and Development Corp. vs. Commissioner of Customs (CTA Case No. 2611, January 25, 1977), this Court said:

> At this juncture, it may be stated that under Sections 2308 of the Tariff and Customs Code, when a ruling or decision of the Collector of Customs is made whereby liability for duties, taxes, fees or other charge is determined, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen

(15) days thereafter, a written protest; otherwise, under Section 2309 of the same Code, the action of the Collector shall be final and conclusive against him. An appeal from the decision of action of the Collector, if adverse to the taxpayer, to the Commissioner of Customs, may be made under Section 2313 of the Code, whose decision in such appeal may, in turn, be reviewed by the Court of Tax Appeals.

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Petitioner concedes at least that the procedure and manner adopted and followed by it in filing its protest is not in accordance with the protest provisions of the Tariff and Customs Code as well as the rules and regulations pertinent thereto; that petitioner failed to avail of the administrative remedy of protest by not filing a valid and formal protest in accordance with the Tariff and Customs Code, regulations and other pertinent law, as alleged by respondent, is not therefore in dispute.

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Under Sections 2308, 2309, 2310 and 2312 of the Code the requirements for filing a protest may be briefly stated as follows:

(a) The protest must be in writing.

(b) It must refer to the particular decision or ruling of the Collector (x x x) to which exception is taken.

(c) It must state the grounds relied upon for relief.

(d) It must be limited to the subject matter of single adjustment or other independent transaction.

(e) It must be filed when duties are paid or within fifteen days after payment.

(f) If the nature of the article permits, importers (exporters) filing protests involving questions of fact must, upon demand, supply the Collector (x x x) with samples of the articles which are the subject matter of the protest.

> (g) The corresponding customs documentary stamp must be affixed to the protest.
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> Since Exhibits "A-1" to "I-1" inclusive, x x x merely show that in paying the export duty x x x petitioner simply indicated by means of covering letter x x x that the payment is being made under protest, are not in accordance with the requirements afore-stated, the same do not therefore constitute a valid and formal protest under the Tariff and Customs Code and the regulations pertinent thereto. Accordingly, we hold that petitioner failed to avail of the administrative remedy of protest for non-compliance with the procedure and manner laid down by law and regulations prescribed in connection therewith.

In conclusion, this Court, in the aforecited decision, supra, said that there being no ruling or decision of the Collector of Customs upon a protest properly and formally filed, there was no ruling or decision on a protestable case appealable to the Commissioner of Customs in contemplation of Section 2402 of the Tariff and Customs Code, and there can equally be no ruling or decision of the Commissioner of Customs appealable to, and reviewable by, the Court of Tax Appeals under the provisions of Sections 7 and 11 of Republic Act No. 1125. In its final disposition, this Court dismissed the aforecited case of Atlas Consolidated Mining and Development Corp., supra, on grounds (1) of failure to exhaust the administrative remedies required for the filing of a proper formal protest and (2) of lack of a cause of action, citing as authorities the cases of Southwest Agricultural Marketing Corp. vs. Secretary of Finance, 25 SCRA 452, and Allied Brokerage Corp. vs. Comm. of Customs, et al., 40 SCRA 555. Accordingly, this Court cannot deviate from our decision in that case and holds, likewise in this case, that we do not have jurisdiction for failure of petitioner to exhaust administrative remedies provided for by the Customs law and the regulations and for lack of a cause of action.

The claim of petitioner that its failure to file the formal written protest on time, or in other words within the 15-day period from the date of payment of the fine, and to pay the required docket fee of ₱10.00 and documentary tax within the same period, was due to honest mistake, or excusable negligence is without merit. Note that petitioner have been properly advised by the Collector of Customs on August 23, 1973, or prior to the expiration of the 15-day period to file its formal written protest to comply with the substantive requirements of the law on customs protests. But like in the case of the famous proverbial Rip Van Winkle, who had fallen too long in deep slumber, and woke up too late to find his child had married and his wife had since died, petitioner cannot seek refuge under the law and cry for justice at this late date, so as to restore its right which was lost by lapse of time.

Having come to the conclusion that this Court has no jurisdiction over the case, the determination of the third and last issue becomes moot and academic.

WHEREFORE, the instant petition for review is hereby dismissed for lack of jurisdiction.

With costs against petitioner.

SO ORDERED.

Quezon City, March 15, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I concur:

AMANTE FILLER
Acting Presiding Judge