CATHAY PACIFIC AIRWAYS, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 2327

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal filed by petitioner Cathay Pacific Airways, Ltd., praying for refund of the sum of ₱6,152.00, representing alleged erroneously paid customs duty.

Petitioner, a British Corporation operating as an air carrier between the Philippines and the United Kingdom by virtue of a bilateral agreement entered into between the two countries, is the consignee of an importation consisting of one (1) Ground Power Unit 37.5 KVA Model TT4375D which arrived at the port of Manila sometime in the middle of March, 1971.

Prior to the arrival of said article, petitioner filed a letter with the Collector of Customs requesting exemption thereof from duties and taxes, but the latter instructed petitioner to file said request with the Office of the Secretary of Finance pursuant to directives that all claims for tax exemption must be filed with the latter office. Thereafter petitioner filed its request for tax exemption with the Secretary of Finance on March 17, 1971 but, without waiting for the latter's ruling thereon, it sought the release of the imported article which, by that time, had

67

already arrived.

The Collector of Customs, however, refused to release the importation since there was as yet no ruling by the Secretary of Finance on the request for exemption, and required petitioner to pay the customs duty, compensating tax and wharfage fee thereon in the sums of ₱6,152.00, ₱3,627.00 and ₱3.00, respectively.

On April 1, 1971, the aforesaid amounts assessed by the Collector of Customs were paid by the petitioner, with the receipt of payment bearing this notation: "paid under protest."

On April 30, 1971, petitioner received a ruling of the Secretary of Finance denying its request for exemption. Ten days thereafter, or on May 10, 1971, petitioner filed a formal claim for refund of the customs duty paid to the Collector of Customs on the ground that the imported article is exempt from duties and taxes under the provisions of the Bilateral Air Agreement and the ICAO Convention of which the Philippines was a signatory.

In a reply dated June 14, 1971 (received by petitioner on the same day), the Collector of Customs denied petitioner's claim for refund on the ground that the latter did not file a valid written protest within thirty (30) days from the date of payment in accordance with Section 2308 of the Tariff and Customs Code.

On June 17, 1971, petitioner sought reconsidera-

68

tion of the Collector's letter of denial, claiming that the 30-day period should be counted from April 30, 1971 (when the adverse ruling of the Secretary of Finance was received) because, allegedly, before that date, there was yet no ruling to question since the Collector himself never made any ruling on the matter of exemption.

The request for reconsideration was denied by the Collector of Customs and when petitioner sought recourse from the Commissioner of Customs, the latter adversely decided petitioner's appeal stating, among others as follows:

> As shown by the records, however, it appears that your application for tax exemption for the above-named cargo had already been passed upon by the Department of Finance and the Secretary had ruled that you should pay duties and taxes. This ruling of the Secretary is deemed final unless reconsidered by the Secretary himself. The Bureau of Customs as an office under the Department of Finance cannot disturb such findings.

On September 20, 1971, petitioner appealed to this Court raising the same point raised in the Bureau of Customs that the imported "Ground Power Unit" is exempt from customs duties and taxes; while respondent, in his answer filed on October 15, 1971 raised the affirmative defense of lack of cause of action for failure of petitioner to file a valid and timely protest pursuant to Section 2308 of the Tariff and Customs Code.

On October 20, 1971, while this case was pending hearing, the Secretary of Finance issued another ruling reversing its previous decision and exempting petitioner's importation from customs duties and taxes.

The question presented to this Court is whether the protest filed on May 10, 1971 was late and if so, whether this failure to file on time said protest is fatal to this petition for review.

The procedure for protests before the Collector of Customs has been stated in Luneta Motor Company vs. Eleuterio Capapas et al., C.T.A. Case No. 402, Resolution of October 14, 1957, as follows:

> x x x. The law provides that where customs duties, fees, or other money charge have been paid and the interested party desires to have the action of the Collector of Customs reviewed, the former must "make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matter correctible for manifest error." (Sec. 2309, Tariff and Customs Code.) The protest must be filed in writing at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter. The protest must set forth the objections to the payment of the duties and the reasons therefor. No protest may be considered unless payment of the amount due after final liquidation has first been made. (Sec. 2308, id.) The protest must be filed in accordance with the rules and regulations prescribed, and must point out the decision or ruling objected to and the ground or grounds upon which the protesting party bases his claim for relief. (Sec. 2310, id.) When a protest in proper form is presented in a case where protest is required, the Collector of Customs shall re-examine the matter thus presented, and if the case is decided against the protesting party, he may appeal to the Commissioner of Customs within 15 days after receipt of the decision of the Collector. (Secs. 2312-2313, id.) x x x.

From the foregoing, it is obvious that the bare notation "paid under protest" on the receipt of payment of duties is not equivalent to a protest. Under the Tariff and Customs Code a protest must be in writing and must point out the grounds upon which the protesting party bases his claim for relief, much like petitioner's letter filed on May 10, 1971 before the Collector of Customs. As a matter of fact petitioner points to said letter for refund as its protest and contends that the denial of the Secretary of Finance of his request for exemption was in effect the subject of the protest. This however, is not exactly correct. It is clear from Section 2308 of the Tariff and Customs Code that the subject of protest proceedings are the decision or rulings of the Collector of Customs and not the decisions or rulings of the Secretary of Finance.

> SEC. 2308. Protest and Payment upon Protest in Civil Matters. - When a ruling or decision of the Collector is made whereby liability for duties, fees or other money charge is 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 thirty days thereafter, a written protest setting forth his objections 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. (Tariff and Customs Code)

On the other hand, nowhere in the Tariff and Customs Code is there any indication that proceedings for a request for exemption before said Secretary may be a subject of a customs protest or may form a part of the prescribed steps for appeal to this Court. And this Court has repeatedly held that such rulings are not part of the jurisdictional steps outlined by the Tariff and Customs Code for bringing protest proceedings to the jurisdiction of this Court. (Central Cooperative Exchange et al. vs. Commissioner of Customs, C.T.A. Case No. 2044, July 30, 1971; La Union Electric Company, Inc. vs. Commissioner of Customs and Secretary of Finance, C.T.A. Case No. 1957, Nov. 20, 1968, Resolution; Liberty Motors, Inc. vs. Manahan, C.T.A. Case No. 325, Jan. 22, 1957.)

As may be plainly noted in the foregoing provision, protests should be filed not later than 30 days after payment of duties. This period had already lapsed when petitioner filed its protest on May 10, 1971, said payment having been made on April 1, 1971. The requirement to file a protest seasonably is mandatory and jurisdictional and non-compliance therewith bars the action for recovery or refund. Said the Supreme Court in Allied Brokerage Corporation vs. Commissioner of Customs and the Court of Tax Appeals, G.R. No. L-27641, Aug. 31, 1971:

> Under the aforequoted provisions of law x x x, the filing of a written protest with the proper Collector of Customs within the statutory period is mandatory and a condition precedent for the recovery of customs duties, fees and other charges allegedly erroneously or illegally collected and non-compliance therewith bars and is fatal to

72

the action.

In answer to petitioner's contention that at best respondent's defense is based on a technicality we reiterate what has been said in Saura Import & Export Co., Inc. vs. David, C.T.A. Case No. 37, August 22, 1955, which is as follows:

> It might be argued that this Court should not resort to the technicalities of customs procedure as to deprive the taxpayer of equitable remedies and rights. However, the case at bar involves a suit against the state for the recovery of alleged over-paid customs duties. It is recognized that unless there is a clear grant to the courts to hear such suits or actions, the court is without jurisdiction to hear and determine the subject matter. In permitting the suit against the state, Congress has plenary power to prescribe the requirements or conditions precedent and procedure for the same, and considering that these proceedings are in derogation of sovereign authority, strict compliance of such requirements must be observed by the parties.
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> xxx xxx xxx
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> Congress has never conferred upon the Customs Court jurisdiction of a case where the protest is not seasonably filed, and has not, either expressly or by implication, conferred authority upon any of the officers of the government to waive the limitation by statute. x x x. (James Akeroyd & Son v. U. S. 19 C.C.I. a. 249, cert. den. 285 U.S. 550, 76 L. Ed. 941, cited 1933 Anno. C.J. 792.)

For the foregoing consideration, it would seem that whatever remedy petitioner may have by virtue of the ruling of the Secretary of Finance of June 17, 1971 perforce does not lie in this Court but elsewhere, WHEREFORE, this case is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, May 15, 1974.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge