REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL COOPERATIVE EXCHANGE
INC. and CENTRAL PACIFIC TRADERS
& DEVELOPMENT CORPORATION,
Petitioners,

- versus - C.T.A. CASE No. 2044

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

July 30/71

D E C I S I O N

This is an appeal interposed by the petitioners from the decision of respondent Commissioner of Customs dated July 14, 1969 modifying the action taken by the Collector of Customs of Manila recommending the abatement or refund of ₱433,916.00 as customs duties paid on the importation of jute sacks by Central Cooperative Exchange, Inc. on various dates in 1965, pursuant to the provisions of Section 1704(b) of the Tariff and Customs Code.

Petitioner Central Cooperative Exchange, Inc., Cooperative Exchange for short, on various dates in 1965, imported 2,500,000 pieces of jute sacks covered by Import Entries Nos. 24551, 24552, 24997, 16056 and 16057, all series of 1965. The Collector of Customs of Manila, despite the Cooperative Exchange's claim that its importations were exempt from taxes and duties under Section 42 of Act No. 3425, otherwise known as the Cooperative Marketing Law, ordered the storage of the imported jute sacks in Customs Bonded Warehouse No. 76 for its failure to pay the taxes, duties and fees allegedly due thereon. Cooperative Exchange appealed to the Secretary of Finance who likewise denied its claim for exemption. Thereafter, it elevated the matter to the President of the Philippines for review where it is still pending up to the present (par. 3, Pet. for Rev.).

On January 19, 1968, Cooperative Exchange, in order to prevent the projected auction sale of the questioned importations, wrote a letter to the Collector of Customs tendering the sum of ₱500,000.00 as partial payment of the duties, taxes and fees on said importations "under protest and without prejudice to (its) right to ask for a reassessment of the duties, taxes and other charges due the Bureau of Customs for said shipment considering the condition of the jute sacks . . ." (p. 30, CTA rec.; p. 161, Customs rec.) On the same date, The Collector of Customs accepted the offer of payment subject to the condition, among others, that the balance of the total duties and taxes be paid not later than January 26, 1968 (p. 161, Customs rec.). In compliance therewith, Cooperative Exchange, on January 26, 1968, paid the balance in the total sum of ₱1,454,120.00 also under protest "and without prejudice to (its) asking for an abatement due to depreciation of the stock on account of long storage, condition as affected by water damage, and other circumstances, pilferage and actual count upon withdrawal" (p. 153, Customs rec.).

Meanwhile, on January 26, 1968, Cooperative Exchange, together with the Philippine National Cooperative Bank, which financed the importations, sold all their rights and interests in the jute sacks in question to petitioner Central Pacific Traders and Development Corp., Pacific Traders for short, subject to the condition that any abatement or refund of duties and taxes up to the amount of ₱350,000.00 shall belong to Cooperative Exchange and Philippine National Cooperative Bank, and any sum in excess thereof shall inure to the benefit of Pacific Traders (pp. 33-34, CTA rec.; pp. 20-21, Customs rec.).

On March 20, 1968, after a reexamination of the jute sacks, the customs examiners and appraiser designated to make an appraisal of the articles submitted a report, the relevant portion of which states:

> 2. Breakdown of water-damaged sacks:

Category	No. of Pieces	Ratio to G. Total	Degree of Damage or deterioration
A. Damaged but Serviceable - 1)	20,000	.80%	25%
2)	33,000	1.32%	38%
B. Severly Damaged	254,000	10.16%	57%
C. Very Severly Damaged - - -	304,000	12.16%	85%
D. Unusable - - -	88,000	3.52%	100%
T o t a l - -	699,000	27.96%	
E. Good Bales and Pieces - - -	1,801,000	72.04%	8%
Grand Total -	2,500,000	100.00%	

> It is herein noted that the degree of damage by water varied in graduated percentages. This was ascertained on the actual condition of the jute sacks. Water-damaged bales and/or pieces ranged from the edge of the bales or sacks up to two-thirds (2/3 or about 16 inches) high due to the uneven floor level or elevation of the warehouse. The eight percent (8%) deterioration on the good

> bales was assessed on the weakening of strength of jute fibers due to long time of storage and other elements.
>
> It was observed that most of the water-damaged sacks were the base or bottom layer bales or pieces (646) and loosed bundles or pieces (53 bales).
>
> It was also further observed that the damaged but serviceable pieces (Category A) pertained mostly to the loose bundles or pieces which were dried up after the flood.
>
> Category B and C (Severly and very severly damaged) with a total of 558 bales may be considered as totally damaged. It is to be noted that while these sacks physically appeared to be 57% and 85% damaged respectively, the deterioration or decay of the jute fibers will render the same unusable for the purpose for which they were intended. (P. 37, CTA rec.; pp. 145-146, Customs rec.; underlining supplied.)

On the basis of the above re-examination report, the Chief of the Liquidation Division, on April 18, 1968, submitted a "Statement of Refund" or liquidation wherein he computed the amount of ₱433,916.00 as the adjusted amount of customs duties refundable to Cooperative Exchange but withheld action on the advance sales tax pending authorization from the Commissioner of Internal Revenue (p. 167, Customs rec.). On June 11, 1968, the Collector of Customs certified the liquidation as correct and recommended the refund to the Commissioner of Customs, which was also favorably endorsed by the Chief of the Legal Department on August 17, 1968 (pp. 169-174, Customs rec.).

On July 14, 1969, respondent issued a memorandum directing the re-liquidation of the subject entries "so as to include only Items A, B, C and D of the Memorandum of the Chief, Liquidation Division, dated

November 18, 1968, thereby excluding Item or Category E, i.e., the 8% allowance for the 1,801,000 pieces of "good" sacks. (P. 177, Customs rec.) In compliance with the directive of the Commissioner of Customs, a re-liquidation of the import entries was made and the reduced amount of ₱338,146.00 was arrived at as customs duties subject to abatement or refund after disallowing Category E (pp. 16 & 39, CTA rec.; p. 175, Customs rec.).

On August 11, 1969, Pacific Traders, after learning of the action taken by respondent, moved for the reconsideration of his directive and asked that it be entitled to a <u>full abatement</u> not only of Item D but also of Items or Categories A, B and C and that it be entitled to the 8% allowance on Item E of the re-examination report dated March 20, 1968 (p. 53, CTA rec.; p. 187, Customs rec.).

On September 15, 1969, Pacific Traders, upon learning that the Commissioner of Customs had signed a Treasury Warrant for the payment of the reduced amount of ₱334,441.00 as abatement or refund to Cooperative Exchange, considered its request for reconsideration as having been impliedly denied, and wrote respondent a notice of its intention to appeal to this Court (p. 188, Customs rec.). On October 2, 1969, petitioners instituted the present appeal. In a "Manifestation" filed on January 11, 1971, the parties agreed to submit the case on the "basis of the pleadings and all annexes attached thereto, together with whatever evidences, oral and documentary" (pp. 94-95, CTA rec.). Petitioners filed their respective memorandum. No memorandum has been submitted by respondent.

The issues raised by petitioners are:

1. Whether or not petitioner Cooperative Exchange is exempt from customs duties on its importations of jute sacks under Section 48 of Act No. 3425, otherwise known as the Cooperative Marketing Law; and

2. Whether or not petitioners are entitled to the abatement or refund of the sum of ₱560,396.00 on the damaged jute sacks under Section 1704 of the Tariff and Customs Code.

It is evident, however, that this Court has no jurisdiction to entertain the herein appeal. Respondent has not rendered any formal decision on the question of the exemption from taxes and duties of said importations or on the amount refundable to petitioners. The question in regard to the exemption of said shipments from taxes and customs duties was elevated to the Secretary of Finance and subsequently to the President of the Philippines who has not rendered any decision on the matter. Neither decision of the Secretary of Finance nor of the President of the Philippines is appealable to this Court.

As regards the amount of customs duties refundable, no decision has as yet been formally rendered by respondent Commissioner of Customs. It is true that the Commissioner has approved the refund of ₱334,441.00 in favor of Central Cooperative Exchange, Inc., but this action of the Commissioner can in no sense be considered a decision which is appealable to this Court as petitioners have not been formally advised of such action and the reasons therefor. Petitioners should have waited for the decision of respondent on its protest against refund of an amount less than what they believe they are entitled to.

FOR THE FOREGOING CONSIDERATIONS, the herein petition for review is hereby dismissed without prejudice.

SO ORDERED.

Quezon City, July 30, 1971.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge