June 21, 1961

AUYONG HIAN (HONG WHUA HANG),
Petitioner

versus CTA CASE NO. 1560

COLLECTOR OF CUSTOMS &
COMMISSIONER OF CUSTOMS
Respondents.

x - - - - - - - - - - - - - - - x

R E S O L U T I O N

The petitioner has appealed from the decision of respondent Commissioner of Customs which affirmed that of the Collector of Customs of Manila ordering the seizure and forfeiture of 600 hogsheads of Virginia leaf tobacco originating from the United States and consigned to petitioner.

The facts may be briefly stated as follows: Petitioner applied for and was granted by the Import Control Commission four (4) No-Dollar Remittance Licenses to import Virginia leaf tobacco with an aggregate value of $2,000,000.00. H e filed his application on June 29, 1953, and was advised of the approval of his application the following day, June 30, 1953, the day the Import Control Law (Rep. Act No. 650) expired. While negotiations for the importation of Virginia leaf tobacco under the authority of said licenses were undertaken by the licensee, it was not until December 30, 1961, that 600 hogsheads of Virginia leaf tobacco arrived in the Philippines aboard the S/S FERNSTATE. The Collector of Customs of Manila refused to release the said shipment of tobacco leaf to petitioner apparently in view of his doubt as to the legality of the importation. For this reason, petitioner instituted an action for mandamus in the Court of First Instance of Manila to compel respondents, the Collector of Customs and the Commissioner of Customs, to release and deliver to petitioner the tobacco in question. The Court of First Instance of Manila issued an order directing the release of the tobacco shipment. The Commissioner of Customs and the Collector of Customs filed a petition for certiorari in the Supreme Court to annul the mandatory order of the Court of First Instance of Manila. The Supreme Court declared the Court of First Instance of Manila without jurisdiction and held that the importation of said tobacco leaf was clearly illegal and that the refusal of respondents to release the said shipment was justified. (Climaco v. Barcelona, G. R. No. L-19597, July 31, 1962.) That the said importation was illegal and subject to forfeiture under Customs Law was reaffirmed in Collector of Customs v. Arca, G. R. No. L-21389, July 17, 1964.

Following the promulgation of the decision in Climaco v. Barcelona, supra, the Collector of Customs of Manila commenced seizure and forfeiture proceeding against the 600 hogsheads of Virginia leaf tobacco consigned to petitioner. On April 23, 1963, the Collector rendered his decision ordering the forfeiture of said tobacco. At the same time, the Collector ordered said tobacco to be sold at public auction. At the public auction sale, the offer of the Consolidated Tobacco Industries of the Philippines, Inc. to buy said tobacco for ₱1,500,000.00 was accepted. In the meantime, petitioner filed his appeal with the Commissioner of Customs, who affirmed the decision of the Collector in a decision dated December 7, 1964. Hence, this appeal.

Instead of filing an answer to the petition for review, respondents filed on February 4, 1965 a "Motion to Dismiss" the appeal on the grounds of (1) res judicata and (2) lack of cause of action.

On February 5, 1965, the Consolidated Tobacco Industries of the Philippines, Inc., the successful bidder at the public auction sale of said tobacco, filed a "Petition to Intervene" and at the same time sought admission of its "Answer in Intervention and Petition to Dismiss." Otherwise stated, the Consolidated Tobacco Industries of the Philippines, Inc. has joined respondents in seeking the dismissal of petitioner's appeal on the grounds of res judicata and lack of cause of action.

On February 13, 1965, petitioner filed his "Opposition to the Petition to Intervene and Urgent Motion to Strike Out from the Records Answer in Intervention and Petition to Dismiss." And on

February 24, 1965, he filed a "Petition to Strike Out Respondents' Motion to Dismiss and to Declare them in Default."

After hearing on February 27, 1965, this Court issued an order giving petitioner five days within which to file a memorandum of authorities, after which the issues raised in the motions of the parties were to be considered submitted for resolution. The memorandum of authorities was filed on March 3, 1965. Unfortunately, the case could not be decided by the Court within the statutory period provided in Section 13 of Republic Act No. 1125 for lack of quorum as a result of the retirement of Presiding Judge Mariano Nable and the untimely death on March 17, 1965 of Associate Judge Augusto M. Luciano. It was only on May 21, 1965 that the Court had a quorum with the appointment (ad interim) of the present Presiding Judge.

However, subsequent events intervened to delay further the disposition of this case. It appears that sometime last May, 1965, the Collector of Customs of Manila ordered the release of the tobacco in question to the Consolidated Tobacco Industries of the Philippines, Inc. without authority of the Commissioner of Customs. Believing that the Collector of Customs had no authority to order the delivery of said tobacco to the buyer, the Commissioner of Customs filed a motion praying that the

Consolidated Tobacco Industries of the Philippines be ordered to return the tobacco to the Bureau of Customs. In the meantime, the Consolidated Tobacco Industries of the Philippines filed a motion withdrawing its previous petition for intervention.

On June 18, 1965, the motion of the Commissioner of Customs for the return of the tobacco by the Consolidated Tobacco Industries of the Philippines to the Bureau of Customs was heard. After oral argument the issue raised in said motion was submitted for resolution.

We will consider first the issue raised in the motion to dismiss filed by respondents. It is alleged on behalf of respondents that -

> 1. The subject matter and the issues raised in the instant petition had been passed upon and resolved in two Supreme Court decisions (G.R. No. L-19597 entitled "Cesar Climaco, etc., et al. vs. Honorable Judge Manuel P. Barcelona and Auyong Hian," promulgated on July 31, 1962, and G.R. No. L-21389 entitled "Collector of Customs vs. Honorable Francisco Arca and Auyong Hian," promulgated on July 17, 1964); and therefore, the said decisions are _res judicata_ so as to control definitely the disposition of the instant case.
>
> 2. The petitioner has no cause of action.

On the other hand, petitioner contends that the decisions of the Supreme Court in the two cases cited above do not constitute _res judicata_ on the following grounds:

A. That the decision in both the Climaco and Arca Mandamus and Certiorari cases were not judgment on the merits, but merely a decision on the preliminary question of jurisdiction and the exercise of discretion by the respondent Judges and did not adjudicate the relative rights of the parties. Such is the nature and character of original actions in Mandamus and Certiorari proceedings. x x x

B. The judgment in both cases not being judgment on the merits were not final but merely interlocutory (on the legal question of jurisdiction and abuse of judicial discretion) so much so that the case had to be heard by the Commissioner of Customs, and appealed now before this Honorable Court;

C. The Supreme Court in both cases in the exercise of its original jurisdiction (Mandamus and Certiorari) did not have jurisdiction over the subject-matter - the 600 hogsheads of Virginia leaf tobacco because the original, primary and exclusive jurisdiction to pass on the legality of the tobacco importation devolves upon the Collector of Customs and later, the Commissioner of Customs under the Tariff and Customs Code. The jurisdiction of the Supreme Court over the subject matter is merely appellate, if and when an appeal from the decision of the Court of Tax Appeals is timely elevated. (Sec. 18, Rep. Act No. 1125.)

D. There is no identity of parties because in the Climaco case the main respondent was Judge Manuel Barcelona, while in the Arca case, the main respondents were Judge Francisco Arca and Tomas Cloma, with Auyong Hian and Consolidated Tobacco Industries of the Philippines, Inc. being merely intervenors;

There is no identity of subject-matter because in both cases, the legality of the seizure proceedings were not directly in issue. In fact in the Climaco case there was no seizure proceeding yet and nothing was said in the decision;

There is no identity of __cause of action__ because in the Climaco case, the Collector of Customs had not yet commenced exercising his primary jurisdiction over the tobacco importation, hence the action was for Mandamus; and in the Arca case, the Collector of Customs had already lost his jurisdiction over the tobacco because of the timely appeal interposed by Auyong Hian, which resulted in the hearing by the Commissioner of Customs whose decision is now before this Honorable Court on appeal. (Par. X, CUSTOMS ADMINISTRATIVE ORDER NO. 226, S. 1957; See Petition, pp. 24-28.)

Apart from lack of concurrence of __all__ the elements requisite for the operation of the doctrine of __res judicata__ or estoppel by judgment which is indispensable, the portion of the judgment relied upon, to wit, the alleged illegality of the tobacco importation is a mere __obiter dictum__, unnecessary to the decision and unsupported by evidence for there was none before the Supreme Court in both cases, and without any binding force and effect. Nay, it cannot be conclusive upon the Commissioner of Customs, much less upon this Honorable Court which is called upon to look into the merits of the appeal. (Pp. 6-8, Petitioner's Petition to Strike out Respondents Motion to Dismiss and to Declare Them in Default.)

In Climaco v. Barcelona, __supra__, the Supreme Court expressly held that the importation of the 600 hogsheads of Virginia leaf tobacco in question was clearly illegal. To quote from the decision:

At the time of the importation in the case at bar, i.e. December, 1961, the law that was in force is Republic Act No. 1194, under the provisions of which the importation of Virginia leaf tobacco would be allowed only in accordance with the provisions of Section 2 thereof, which contains the following limitations: (a) importation is to be allowed among legitimate manufacturers of Virginia-type cigarettes only; (b) upon proper allocation by the Central Bank, and (c) only where there is a certification that the indigenous production of Virginia leaf tobacco in the Philippines is insufficient to maintain the manufacture in the country at a level equal to that manufactured in the preceding fiscal year.

The importation in question, therefore, is a gross violation of the policy contained in Republic Acts Nos. 698 and 1194, limiting the Virginia leaf tobacco importation only to such amounts as could not be met with the local production of Virginia leaf tobacco, hence clearly illegal.

The supposed approval of the licenses by the President has been alleged as a ground for the validity of the importation. The President may not extend the life of licenses issued under Republic Act No. 650; he cannot make the illegal importation valid; he has no legal authority to do so and his act would be clearly violative of the express provisions of Republic Act 1194.

For all the foregoing considerations, and considering that the importations subject of the action were made in December, 1961, long after the Import Control Law expired in June, 1953, and at a time when the clearly expressed policy of the government as enunciated in Republic Acts Nos. 698 and 1194, is to prohibit the importation of Virginia leaf tobacco, except when the indigenous production is insufficient, <u>We are constrained to declare, as We hereby declare, that the importation in question has been illegally made</u>, notwithstanding the alleged approval thereof by the President. And We, therefore, hereby grant the petition and set aside the order of the court below of March 19, 1962 and the writ of preliminary injunction issued in accordance therewith, and furthermore declare that the defenses set up in Civil Case No. 49639 of the Court of First Instance of Manila are valid, meritorious and legal for which reason We further order that said Civil Case No. 49639 be dismissed. (Underscoring supplied.)

That the said importation was illegal was reaffirmed in Collector of Customs v. Arca, supra, wherein it was stated:

> There is no question that the importation of the tobacco leaf in question was illegal, having been made in clear violation of the policy contained in Republic Acts Nos. 698 and 1194. To this effect is the decision of this Court in Climaco vs. Judge Barcelona, et al., G. R. No. L-19597, July 31, 1962. The tobacco, therefore, is subject to forfeiture in accordance with Section 2530 of the Tariff and Customs Code (formerly Section 1363(f), Revised Administrative Code). x x x.

Notwithstanding the clear and unambiguous opinion of the Supreme Court holding the said tobacco importation illegal, petitioner contends that it has no binding effect, the same being merely obiter dictum. We have carefully studied the two decisions of the Supreme Court mentioned above and we find that the opinion of the Court as to the illegality of the importation is not obiter dictum. To quote from the decision in Climaco v. Barcelona, supra:

> The question that is, therefore, squarely presented for decision of this Court is whether, under the facts and circumstances above indicated, the petitioner has the clear legal right to make the importation in question and the respondents the clear legal duty to allow entry and release of said importations.

It will be noted that the decision itself expressly and clearly states that the question which was squarely presented for decision in said case was the legality of the importation of the leaf tobacco in question.

The jurisdiction of a court over a particular case implies the power and authority to decide the case for or against any party to the case. Has this Court the power to declare the importation by petitioner of the tobacco in question legal? Clearly not. This Court cannot review, revised, much less overrule a decision of the Highest Court. This being so, it is plain that this Court has no jurisdiction to entertain the instant appeal.

Finding that this Court has no jurisdiction to entertain the instant appeal, we deem it unnecessary to consider the other issues raised by petitioner. Accordingly, it may not also entertain the motion of the Commissioner of Customs for the issuance of an order for the return of the tobacco to the Bureau of Customs which was released by the Collector of Customs to the buyer, the Consolidated Tobacco Industries of the Philippines. At any rate, this Court is not the proper forum where controversies between the Collector of Customs and his superior officer, the Commissioner of Customs, may be ventilated.

WHEREFORE, the herein petition for review is dismissed for lack of jurisdiction. Without pronouncement as to costs.

SO ORDERED.

Quezon City, June 22, 1965

ROMAN M. UMALI
Associate Judge

I CONCUR:

TEOFILO D. REYES, SR.
Presiding Judge