REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JM MARKETING CENTER & (HK) CO.,
INC. AND CHITEX TRADING CO.,
Petitioners,

- versus -

C.T.A. CASE NO. 3830

THE COMMISSIONER OF CUSTOMS,
Respondents.

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D E C I S I O N

This is in connection with the order of this Court during the hearing on September 6, 1985 requiring the parties herein to file their respective memorandum for the purpose of thresing out jurisdictional issues.

It appears that on August 17, 1984, counsel for petitioners filed a petition for review with this Court alleging among others: that petitioners are suing upon a singular and isolated transaction; that petitioners are owners of two thousand six hundred sixty-three (2,663) bales and four (4) rolls of textile materials and fabrics made subject of a Seizure and Forfeiture Proceeding in the Port of Batangas, under Seizure Identification No. 1C-83, seeking the review and the setting aside of respondent's Order dated March 9, 1984 considering the appeal barred for failure of claimants to comply with the requirements prescribed by Customs laws and regulations and the Order dated June 20, 1984 denying petitioners' motion for reconsideration.

On October 11, 1984, an answer was filed by respondent setting forth as special and affirmative defenses, the following: (1) that petitioners have no legal capacity nor juridical personality to maintain the present suit in this jurisdiction; and (2) that this Court cannot assume jurisdiction over the persons of petitioners notwithstanding the filing of the unverified petition.

The pertinent facts and background that gave rise to the incident are setforth in the decision of the District Collector of Batangas and pleadings of the parties to wit:

> 1. The subject matter of the above-seizure proceeding are 2,663 bales and 4 rolls of imported textile and fabric materials on board a sea-going foreign vessel MV "WITTY ANNE" of Panamanian registry (EXH. "B", "B-1" to "B-3" EXH. "F" and EXH. "P");
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> 2. The entire shipment was manifested, as follows:
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> a. 115 Pckgs. cotton fabric and textile piece goods, with Kgs. 104,650, M3563 , shipper Chitex Trading Company of Hongkong, Consignee P.T. Hari Amad C/O PN PELNI Sorong, Irian, Jaya, Indonesia;
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> b. 97 Pkgs. cotton piece goods TW textile piece goods, Kgs. 88,370, M3-318.45, shipper JM Marketing Centre (HK) Company, Consignee same as above;
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> c. Total number of Pkgs. -212, total kgs - 193,020 and total M3-381.95 (EXH. "D").

3. That vessel MV "WITTY ANNE" was allegedly bound for Sorong, Indonesia from Hongkong, laden with more unmanifested cargoes than manifested (EXH. "D" and "B");

4. However, in Charts 1 & 2 of said vessel the route indicated therein were: From Hongkong to Balintang Channel to Casiguran Sound to Polilio Strait down to Atimonan, Quezon, all in Philippine waters, there was no stress of weather at that time, the weather conditions were quite normal and vessel MV "WITTY ANNE" was sea worthy (See EXHS. "U", "V" and TSN Dec. 14, 1983, pp. 8 to 9);

5. Thereafter, said foreign vessel anchored and berthed on September 25, 1983 at the NIDC wharf/pier located within the compound of Coco Chemicals Philippines, Inc., alleged leasee of said wharf, at Barangay Caridad, Ibaba, Atimonan, Quezon, within the jurisdiction of this District (EXHS. "A", "K", "P", "AA", "AA-1", and "AA-2");

6. Aforesaid dutiable merchandise w were then unloaded or discharged from said vessel and directly loaded to ten (10)-wheeler trucks parked alongside said pier or wharf on the night of September 25, 1983 without having obtained a permit for unloading imported articles at a port other than a port of entry, in violation of customs regulations, hence, "contrary to law", under paragraph 17 of Section 3514 of the Customs code (See EXHS. "A", "K", "X", "AA", "AA-1" and "AA-2");

7. The unloading or discharging of cargo by MV "WITTY ANNE" on September 25, 1983 at the NIDC wharf or pier which is not a port of entry is a violation of Section 1201 of the Tariff and Customs Code, hence, "contrary to law";

8. On or about 9:30 P.M. 25 September 1983 said vessel, illegal shipments, several persons suspected with financing, protecting and/or escorting in the smuggling activities

and the whole crew members of the vessel were caught red-handed, that is, while unloading from the vessel and loading to the waiting trucks said dutiable merchandise (See EXHS. "A", "AA", "AA-1", "AA-2" and EXH. "BB");

9. On October 4, 1983 Seizure proceedings were instituted by the District Collector, Port of Batangas under Seizure Identification No. 10-83 (EXH. "EE");

10. On December 1, 1983, vessel MV "WITTY ANNE" after several hearings duly held, under Seizure Identification No. 1-83 was ordered and declared forfeited in favor of the Government, the same has already become final and executory (See EXH. "Y");

11. On January 23, 1984, examination and appraisal of the 2,663 bales of assorted textile materials were completed: with a total yardage of 1,485,966 and a total value duty and S/tax ₱45,092,508.62 (EXHS. "FF" to "II-2").

On the other hand, claimants JM Marketing Centre (HK) Company and Chitex Trading Company do not deny any of the foregoing facts. As a matter of fact, in spite service of notices, their retained counsel appeared only but once during the entire hearing of the above-entitled case which was heard and tried for over four months, that was on November 15, 1983. During said hearing Atty. Armando S. Padilla appeared as counsel for claimants, JM Marketing Centre (HK) Company and Chitex Trading Company, both Hongkong based firms, claiming to own the merchandise on board MV "WITTY ANNE". As retained counsel he exhibited a cablegram from said firms as his authority. But for the Government and the Military four (4) objections were raised, namely:

a. Impugning the authenticity of the cablegram designating Atty. Paddila as retained counsel of said Hongkong based firms. And even if the same is authentic the names of the officers of said firms and their authority to act for and in behalf of said company in designating Atty. Padilla as their counsel, remains to be another question;

b. The legal existence and/or the juridical personality of JM Marketing Centre (HK) Company and Chitex Trading Company must be properly shown and proved by a certification and/or proper verification from the Philippine Consulate in Hongkong;

c. That, Atty. Padilla being a member of the Board of Examiners for Customs Broker (PRC) and being connected with the Government as a Presidential appointee, his appearance in the forfeiture proceeding would be in conflict with the interest of the Government and therefore, violates the provisions of R.A. No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Law (TSN November 15, 1983, pp. 1 to 10 and TSN February 9, 1984, p. 5);

d. No formal claim of ownership has ever been filed by said Hongkong based firms and/or their representative without which they may not have the legal personality to appear before this proceeding.

It must be emphasized that during the subsequent hearings conducted of the above-entitled case, despite due service of notices of hearing, the herein claimants nor their retained counsel failed to appear before this Office and thus, failed to present evidence on their side, the record is bare of even a single relevant evidence in their behalf. Furthermore, their failure to appear shall be construed as a waiver of their right to be heard.

On February 14, 1984, the District Collector of Batangas rendered the decision forfeiting the goods.

On February 21, 1984, Atty. Padilla received a copy of said decision, after which he sent a Notice of Appeal admittedly without documentary stamp attached to the Collector of Customs of Batangas but a copy with stamp paid at the Port of Manila was furnished the Commissioner of Customs.

On March 9, 1984, respondent issued an Order dismissing the appeal for failure of the claimants to comply with the requirements prescribed by Customs laws and regulations. A motion for reconsideration was subsequently denied.

Hence, the present appeal.

The issue raised for our consideration in this incident may be stated thus -

> Whether or not the petitioners have the legal standing and personality to maintain the present suit in this jurisdiction and as a corollary
>
> Whether or not this Court can take cognizance of the appeal.

On the first question, the answer is in the negative. Jurisdiction of this Court over a case and the parties cannot be presumed. Section 2 of Rule 5 of the Rules of the Court of Tax Appeals clearly provides that the Petition For Review shall contain allegations showing jurisdiction in the Court x x x.

In the present case, petitioners did not allege in their petition, the factual allegations showing their legal capacity to maintain present suit. They could have affirmatively pleaded their compliance with our laws or could have averred their exemption as the case maybe, to pursue their appeal to this Court. The mere allegations that petitioners are duly organized foreign corporations and summons as well as court processes may be sent to their counsel and that they are suing upon a singular and isolated transaction, to our mind, do not establish their legal capacity or personality to sue or be sued. As prescribed by Section 4, Rule 8 of the Rules of Court, "Facts showing the capacity of a party to sue or be sued x x x must be averred.

Moreover, the Supreme Court has ruled that in cases where the law denies a foreign corporation the right to maintain a suit unless it has previously complied with a certain requirement, then such compliance, or the fact that the suing corporation is exempt therefrom, becomes a necessary averment in the complaint (Atlantic Mutual Inc. Co. v. Cebu Stevedoring Co. Inc. No. L-18961, Aug. 31, 1966, 17 SCRA 1037.) We believe that failure of petitioner to allege such jurisdictional facts in their petition is fatal to their appeal.

But even assuming that petitioners have the legal capacity to maintain this suit, in resolving the corollary question also in the negative, we wish to point out briefly, that under the law, appeal by an importer or person aggrieved by the decision or action of any collector of customs may be done under Section 2313 of the Tariff and Customs Code of 1978, where such party is given 15 days after notification in writing by the Collector of his action or decision, to give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner. Under Paragraph VII of Customs Administrative Order No. 266, such notice of appeal shall be subject to a filing fee, and shall together with the records of the case be forthwith transmitted by the Collector of Customs to the Commissioner of Customs.

If still dissatisfied, his appeal could be projected to the Court of Tax Appeals pursuant to Section 7 of Republic Act No. 1125 by filing with said tribunal a petition within 30 days from notice of the decision or ruling sought to be reviewed (Sampaguita Shoe & Slipper Factory v. Comm. of Customs, et al., 102 Phil. 850.)

In the case at bar, counsel for petitioner was able to file written notice of appeal to the Collector of Customs of the Port of Batangas within the reglementary period of 15 days. However, he failed to affix thereto the necessary documentary stamps which evidenced payment of the filing fee. This failure to comply fully with Paragraph VII of Customs Administrative Order No. 226 is fatal in the sense that there could be no valid appeal. It seems already well-settled that payment of the fee is an indispensable step in the perfection of an appeal (Lazaro v. Endencia 57 Phil. 552.) The law on the matter is clear that a fee of ₱10.00 (now ₱53.50) in customs stamps should be paid for each and every seizure case (C.B. Antolin Enterprizes et al. v. Comm. of Customs, CTA Case No. 1435, January 14, 1965.) Therefore, no valid appeal to the Commissioner of Customs having been taken from the decision of the Collector of

Customs, neither can one be projected to this Court.

PREMISES CONSIDERED, the present appeal is hereby dismissed.

SO ORDERED.

Quezon City, Metro Manila, November 15, 1985.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge