REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HATIB ABDURASID, IDIRIS, ISMIN, HAJAD, LANGAWI, ABDURAHAM, SARAIL, MANSUL, SAJAWAN, ILLON ASALI, OTTO KALON, SAMAD HAMAD, ASID ABUNIPA, JULKANAIN IMPIT, DIONISIO TATTONG, MOHAMAD BANTALA, ADARISON, JAKARIA, BARUM, INTIONG, MONNONG, SAMAINDING, JAFAR, BASIO NICK, AMMOH, MOHAMAD DAYANI, MONDO, ALLA, HUSIN, ISA, and INCOH BANTALA,
Petitioners,

- versus -

C.T.A.
CASE NO. 542

THE COMMISSIONER OF CUSTOMS,
Respondent.

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RESOLUTION

This is a petition seeking to review an order of the Commissioner of Customs dated May 9, 1958, denying the appeal taken by petitioners from the order of the Collector of Customs of Jolo denying petitioners' motion to dismiss the Seizure Identification Cases Nos. 38, 39, 40, 41 and 42. On the theory that the instant petition lacks cause of action, respondent Commissioner of Customs filed his motion to dismiss the same.

This case comes to us for the third time. In the first instance (C.T.A. Case No. 28), petitioners asked this Court to review the order of the Acting Commissioner of Customs, sustaining the denial by the Acting Collector of Customs of Jolo of their motion to lift the warrant of seizure and detention.

30

In our resolution dated November 28, 1954, we dismissed the petition for review on the ground that said order appealed from was merely interlocutory. In the second case (C.T.A. Case No. 263), petitioners sought the review of the order of the Commissioner of Customs denying their motion to dismiss the seizure cases. Again the petition for review with preliminary injunction was dismissed pursuant to our resolution of July 31, 1956 on the same ground that the order appealed from was interlocutory. Upon petitioners' appeal by writ of certiorari of said resolution, the Supreme Court in a resolution dated October 11, 1956 in the case of Hatib Abdurasid, et al. vs. Hon. Mariano Nable, et al., G. R. No. L-11338, sustained this Court in finding the order complained of as interlocutory and dismissed the appeal.

Whereupon, the records of Jolo Seizure Identification Cases Nos. 38, 39, 40, 41 and 42 were remanded by the Commissioner of Customs to the Collector of Customs of Jolo for hearing on the merits. Before the scheduled hearing of the aforementioned seizure cases, petitioners again filed, with the Collector of Customs of Jolo, a motion to dismiss, dated August 26, 1957, in the said seizure cases. This motion was premised on the ground that the Criminal Case No. 989 filed in the Court of First Instance of Jolo against the herein petitioners, which allegedly involve the same incident, was provisionally dismissed upon the recommendation of the Assistant Provincial Fiscal on the theory that the merchandise were seized at sea beyond the 3-mile limit of Philippine territorial waters. However, the said motion was denied by the Jolo Collector of Customs, which action was affirmed by respondent, who ordered the case remanded for hearing on the merits. Hence, this appeal.

The only issue involved in this incident is whether or not the order of respondent Commissioner of Customs, denying petitioners' motion to dismiss the seizure cases, may be legally appealed to this Court pursuant to Section 7 (2) of Republic Act No. 1125.

Respondent contends that the order sought to be reviewed is interlocutory in nature because it leaves a hearing in the seizure proceedings to be undertaken and a decision to be rendered thereon.

We find respondent's view meritorious. In our resolution dated July 31, 1956 in case No. 263 involving the same party litigants, on a very analogous issue, we stated as follows:

> "We have held that the decisions of the Commissioner of Customs which are appealable to this Court are judgments or orders which are final in nature, and not interlocutory orders or judgments which do not dispose of the cases completely but leave still something to be done upon the merits as required by law of the Commissioner of Customs or the Collector of Customs concerned. (Hatib Abdurasid et al. v. Commissioner of Customs, C.T.A. Case No. 28, November 29, 1954.) The purpose is to avoid multiplicity of suits. It finds legal sanction in Section 2, Rule 41 of the Rules of Court. As aptly stated by the Supreme Court in C. N. Hodges v. Manuel R. Villanueva, G. R. No. L-4134, October 25, 1951:

32

> 'La apelacion es prematura. La orden denegando la mocion de sobreseimiento es interlocutoria, no da fin al asunto; por tanto es inapelable.'"

(Hatib Abdurasid, et al. v. The Commissioner of Customs and The Collector of Customs of Jolo, C.T.A. Case No. 263, Resolution dated July 31, 1956.)

We find no substantial difference between the order appealed from in C.T.A. Case No. 263 and that involved in this case. The mere fact that petitioners' motion to dismiss was denied does not necessarily result in the forfeiture of the merchandise involved. It would still necessitate hearings by the Jolo Collector of Customs to determine the forfeiture thereof as being supported by law and the facts.

Proceeding to petitioners' argument that, the jurisdiction of this Court has been enlarged by the provision of Section 2402 of the Tariff and Customs Code (Republic Act No. 1937), we find the same not well taken. We believe that Section 2402 of the said Code does not enlarge the jurisdiction of this Court so as to include the review of any ruling or order that is interlocutory in character. Section 2402 itself provides that any action or ruling may be appealed to this Court "in the manner and within the period prescribed by law and regulations." This contemplates necessarily Section 2 of Rule 41 of the Rules of Court, which provides that no interlocutory order or incidental judgment is subject to appeal. Hence, Section 2402 of the Tariff and Customs Code could not have considered as appealable a mere interlocutory order for the said section must be harmonized with the existing law and regulations affecting the jurisdiction of this Court.

Even assuming arguendo that the jurisdiction of this Court had been enlarged, we find no basis in applying said Section 2402. The detention of the merchandise involved in this case took place by virtue of the order dated October 15, 1953 of the Jolo Collector of Customs ordering the seizures of five sailboats together with the merchandise found on board therein, in alleged violation of Section 1363 (a) of the Revised Administrative Code in relation to Republic Act No. 426 (see C.T.A. Case No. 28, Resolution dated November 29, 1954). As the detention took place prior to the effectivity of the Tariff and Customs Code, pursuant to Section 3702 thereof, said code does not apply to the instant proceedings.

> "SEC. 3702. Transitory Provisions.- All suits, proceedings or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the effectivity of this Code, shall be commenced and/or prosecuted within the same time, in the same manner and with the same effect as if this Code had not been passed; and all rights acquired, offenses committed, and penalties, forfeitures or liabilities incurred, prior to the said effectivity, shall not be affected thereby." (Underscoring supplied.)

34

In fine, we are of the opinion and so hold that the order appealed from is interlocutory and, hence, unappealable and the petition for review is therefore prematurely filed.

WHEREFORE, the petition for review should be, as it is hereby, dismissed. With costs against petitioners.

SO ORDERED.

Manila, Philippines, August 30, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

35