REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
M A N I L A

THIRTEENTH DIVISION

TOTAL 2000 CORPORATION, represented by INGRID LIM, its President,
Petitioner

- versus -

THE COURT OF TAX APPEALS, ET AL.,
Respondents

CA-G.R. SP NO. 42380

Members:

RASUL, J., Chairman
HOFILEÑA, H. and
TUQUERO, A. JJ.:

Promulgated:
FEB 17 1997

x - x

DECISION

TUQUERO, J.:

In this petition for certiorari, prohibition and mandamus against the Court of Tax Appeals, Filipino Pipe and Foundry Corporation, and Commissioner of Customs, petitioner Total 2000 Corporation prays "that respondent Court's two (2) Resolutions dated July 3, 1996 and September 3, 1996 be set aside and in lieu thereof another judgment be rendered dismissing private respondent's petition for review in CTA Case No. 5380" and "that pending final determination of the instant case, a preliminary injunction and a preliminary mandatory injunction be issued directing respondent Court to desist from implementing its challenged resolutions and the Commissioner of Customs not to suspend the implementation of the appealed decision of the Secretary of Finance dated April 8, 1996, subject of CTA Case No. 5380" (p. 17, Rollo).

Originally filed with the Supreme Court, the petition was, per resolution of said Court dated September 30, 1996, referred to this Court for proper determination and disposition pursuant to Revised Administrative Circular No. 1-95 dated May 16, 1995.

The antecedent facts are not in dispute.

Petitioner Total 2000 Corporation (Total 2000 for brevity), is a domestic corporation engaged in the business of importing and selling US-made Tyler Cast Iron Soil Pipes and Fittings without hub; whereas, private respondent Filipino Pipe and Foundry

Corporation (Filipino Pipe for brevity), likewise a domestic corporation, is engaged in the business of manufacturing Cast Iron Soil Pipes and Fittings with hub.

In 1994, Filipino Pipe filed a protest with the Department of Finance (DoF) against Total 2000, alleging that the latter's importation of US-made Tyler Cast Iron Soil Pipes and Fittings without hub from Singapore and USA is in violation of Section 301 of the Tariff and Customs Code, as amended. Acting on said protest, DoF Secretary Roberto F de Ocampo, in his letters dated March 16, 1994 and June 28, 1994, directed the Commissioner of Customs not to release any pending or subsequent shipment of said products from Singapore and USA unless Total 2000 post a bond in an amount equivalent to twice the estimated dutiable value thereof in accordance with Section 310 of the Tariff and Customs Code (TCC). Accordingly, Total 2000 posted anti-dumping bond for the release of its importation.

Meanwhile, Filipino Pipe's protest was referred to the Tariff Commission which conducted a formal investigation and public hearings thereon. Thereafter, Chairman Emmanuel T. Velasco of the Tariff Commission, in his letter dated November 15, 1995, submitted the Commission's report to the DoF with a recommendation that private respondent's protest be dismissed for lack of merit.

In a decision dated April 8, 1996 in Anti-Dumping Case No. 10-96, DoF Secretary Roberto F. de Ocampo found no cogent reason to disturb the findings and conclusions of the Tariff Commission and, considering that the conditions constituting dumping in the importation of hubless pipes and fittings from Singapore and the USA were not present accordingly dismissed the protest as recommended by the Commission. The parties were informed of the decision through Customs Memorandum Circular No 194-96 dated April 23, 1996, issued by Customs Deputy Commissioner Ray M Allas.

Not satisfied with aforesaid decision, Filipino Pipe filed a petition for review with the Court of Tax Appeals, docketed as CTA Case No. 5380 (Annex "F").

The Office of the Solicitor General (OSG), on behalf of Secretary Roberto F de Ocampo, filed a timely motion to dismiss. Total 2000 joined the OSG in seeking the dismissal of the petition, pointing out that the Court of Tax Appeals lacks jurisdiction over the appeal because the decision of the DoF Secretary does not impose dumping duty (Annexes "G" and "H"). Filipino Pipe filed its opposition to the motion (Annex "I").

For failure of the Bureau of Customs to implement the decision in Anti-Dumping Case No. 10-96, Secretary de Ocampo, in his indorsement dated June 6, 1996, informed the Bureau that it should allow the release of Total 2000's importation unless otherwise ordered by higher competent authorities (Annex "J").

On June 7, 1996, Filipino Pipe filed a motion to amend its petition, seeking the inclusion of the Commissioner of Customs as respondent in CTA Case No. 5380. Pending resolution of said motion, the Bureau of Customs allowed the release of Total 2000's importation pursuant to the indorsement of Secretary de Ocampo, without it posting dumping bond. Consequently, on July 2, 1996, Filipino Pipe filed a motion for contempt of court against all the respondents in CTA Case No. 5380 and their respective counsels. The OSG filed an opposition which was adopted by Total 2000 (Annexes "L" and "M").

On July 3, 1996, respondent Court issued its first assailed Order denying Total 2000's and the OSG's motions to dismiss, copy of which was received by herein petitioner on July 15, 1996 (Annex "N"). In another order of even date, respondent Court granted Filipino Pipe's motion to amend the petition by including the Commissioner of Customs as respondent and ordering him to desist from implementing the appealed decision pending final determination of the case (Annex "O").

On July 23, 1996, Total 2000 and the OSG filed their respective motions for reconsideration of the first assailed order, to which Filipino Pipe submitted its opposition ((Annexes "P", "Q", "R" and "S")

On September 3, 1996, respondent Court issued its second assailed order denying the motions for reconsideration, copy of which was received by petitioner Total 2000 on September 4, 1996 (Annex "T"). Said order also denied Filipino Pipe's motion for contempt and granted Total 2000's and OSG's motions for reconsideration of the desist order to the Commissioner of Customs. However, notwithstanding the recall of the desist order, the Commissioner of Customs has refused to implement the appealed decision and to allow the release of Total 2000's importation.

Hence, this petition of Total 2000, which raises the sole issue of whether or not respondent Court has jurisdiction to take cognizance of an appeal from the decision of the Secretary of Finance dismissing for lack of merit a protest filed under Section 310 of the Tariff and Customs Code, as amended.

Upon this point, the Court of Tax Appeals has exclusive appellate jurisdiction, among others, over decisions of the Commissioner of Customs in cases involving (1) liability for customs duties, fees, or other money charges; (2) seizure, detention or release of property affected thereby; (3) fines, forefeiture or other penalties imposed in relation thereto; and (4) other matters arising under the Tariff and Customs Code or other laws administered by the Bureau of Customs ((Sec. 7, R.A. 1125), and over decisions of the Secretary of Finance such as the imposition of dumping or countervailing duty, and in automatic review cases where such decision of the Secretary of Finance is adverse to the taxpayer (Vitug, Compendium of Tax Law and Jurisprudence, 2nd Rev. Ed., p. 323).

With respect to decisions of the Secretary of Finance in anti-dumping cases, it is expressly provided by law that "any aggrieved party may appeal only the amount of the dumping duty to the Court of Tax Appeals in the same manner and within the same period provided for by law in the case of appeal from decision of the Commissioner of Customs" (Sec. 301 [f], TCC).

Despite the fact that the appealed decision of the DoF Secretary imposes no dumping duty, respondent Court asserted jurisdiction over Filipino Pipe's appeal docketed as CTA Case No. 5380, reasoning out as follows:

> The imposition or non-imposition of dumping duties decreed by the Secretary of Finance and implemented by the Commissioner of Customs falls within the clause "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs as provided in the aforequoted Section 7 (2) of Republic Act 1125 (p. 13, Rollo)

We do not agree.

The phrase "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs" found in Section 7 (2) of Republic Act No. 1125 refers only to decisions of the Commissioner of Customs on said matters over which he has competence to act. Except by way of implementing the decision of the Secretary of Finance, the Commissioner of Customs has no authority to act on anti-dumping cases which are investigated by the Tariff Commission and decided by the Secretary of Finance (Sec 301 [b] and [c], TCC) And, as specifically provided in Section 301 (f) of the Tariff and Customs Code, in said cases, "any aggrieved party may appeal only the amount of the dumping duty to the Court of Tax Appeals in the same manner and within the same period provided by law in the case of appeal from the decision of the Commissioner of Customs "

Considering, therefore, that the decision of the Secretary of Finance subject of CTA Case No 5380 dismissed the protest filed by respondent Filipino Pipe against petitioner Total 2000, thus imposing no dumping duty against the latter an appeal therefrom with respondent Court does not lie, in accordance with the clear import of Section 301 (f) of the Tariff and Customs Code The use of the word "only" in said provision underscores the legislative intent to limit appeals before the Court of Tax Appeals in anti-dumping cases to decisions of the DoF Secretary imposing dumping duties This does not mean, however, that respondent Filipino Pipe is without any remedy from the decision of the Secretary of Finance Filipino Pipe could have appealed to the President who has control of all executive departments, bureaus and offices (Sec 1, Adm Code of 1987)

Respondent Court cites Secretary of Finance vs Agana, 62 SCRA 68, and Normal International Trading Corp vs Hattatan Phil Industrial Corp , CA-G R SP No 37786, December 13, 1995, in support of its assertion of jurisdiction over the appeal in CTA Case No 5380 It is worthy to note, however, that in both cases the decisions of the Secretary of Finance subject of the appeals imposed dumping duties Clearly, it is for this reason that We ruled in the Normal International Trading Corporation case that "the said Court of Tax Appeals is the appropriate judicial body to pass upon the validity of an order of the Secretary of Finance imposing anti-dumping duties "

In sum, We hold that respondent Court lacks jurisdiction to take cognizance of the appeal in CTA Case No 5380 and, therefore, seriously erred in issuing its assailed orders

WHEREFORE, respondent Court's Orders dated July 3, 1996 and September 3 1996 are REVERSED and SET ASIDE Accordingly, judgment is hereby rendered ordering the dismissal of respondent Filipino Pipe and Foundry

Corporation's appeal in CTA Case No. 5380; prohibiting respondent Court from taking cognizance thereof; and directing respondent Commissioner of Customs to implement the decision of the Secretary of Finance dated April 8, 1996, in Anti-Dumping Case No. 10-96.

SO ORDERED.

ARTEMIO G. TUQUERO
Associate Justice

WE CONCUR:

JAINAL D. RASUL
Associate Justice

HECTOR L. HOFILENA
Associate Justice

ATTESTATION

I hereby attest that this Decision was reached after due consultation among the Members of the Division in accordance with the provision of Section 13, Article VIII of the Constitution.

JAINAL D. RASUL
Associate Justice
Chairman, 13th Division

/AGT
/jtv