REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ANDRES E. LAZARO,
Petitioner,

- versus -

C.T.A. CASE NO. 70

MANDAMUS WITH PRELIMINARY MANDATORY INJUNCTION

ROGACIANO MILLAREZ, as Acting Collector of Customs, Port of Manila, and EDILBERTO Y. DAVID, as Acting Commissioner of Customs,
Respondents.

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RESOLUTION

Acting on the Petition for Mandamus with Preliminary Injunction of the petitioner, Andres E. Lazaro, dated January 31, 1955, and it appearing that:

1. Under section 7 of the law creating this Court (Republic Act No. 1125), it is conferred exclusive appellate jurisdiction to review by appeal only cases involving decisions of the Collector of Internal Revenue, Commissioner of Customs and Provincial and City Boards of Assessment Appeals. The present petition does not involve an appeal from the decision of any of these three, but is intended primarily to compel the respondents to decide in one way or another the case of petitioner involving the importation of 1,000 packages of potatoes a matter which is outside the jurisdiction of this Court to hear and decide under the aforesaid section of Republic Act No. 1125;

2. Under section 1 of Republic Act No. 32, otherwise known as the Anti-Dumping Act, the Secretary of Finance is not given a time limit after receiving the report of his investigating Board composed of the Insular Collector of Customs, Collector of Internal Revenue and the Director of Commerce within which to decide whether or not an importation is in violation of the aforesaid Republic Act, and until such decision is rendered as is the case in the present instance, there can be no appeal over which this Court may exercise its exclusive appellate jurisdiction under section 7 of Republic Act No. 1125;

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3. The discretionary power of the respondents to recommend to the Secretary of Finance the release of the potatoes involved in the present case under certain conditions cannot be controlled by mandamus the function of the respondents in this regard being purely discretionary and not ministerial under sections 1374, 1388, 1395 and 1399 of the Revised Administrative Code and Republic Act No. 32. It is not mandatory for respondents to institute seizure or forfeiture proceedings for violation of Republic Act No. 32. Under the premises, they can conduct a public sale of the merchandise under section 1399 of the Revised Administrative Code, institute seizure or forfeiture proceedings or recommend to the Secretary of Finance the re-shipment of the importation to the port of embarkation. Mandamus can issue only if the duties sought to be enforced against a public official are ministerial. (Tabique vs. Duvall, 16 Phil. 324);

4. The special remedies of mandamus and injunction may be granted only in those cases where there is a clear and complete right. (Palileo vs. Custer, G.R. No. L-3261, December 29, 1949) In paragraph III of his petition, the petitioner admits that his importation of potatoes is not covered by any release certificate from the Central Bank. By such manifestation, the petitioner is therefore without any right to speak of since he admits having violated the Central Bank Act. The special remedies of mandamus and injunction are equitable remedies that may be availed of only by those who come to Court with clean hands.

5. That the case of Santiago Sambrano vs. Collector of Internal Revenue, C.T.A. Case No. 56, cited by petitioner in support of his proposition that this Court has jurisdiction to entertain the present petition, is not in point, there being in the aforesaid case a decision of the respondent Collector of Internal Revenue to collect from the petitioner Sambrano an assessment of ₱184,241.07 as income tax deficiencies for the years 1945 to 1948 and a decision of the respondent distraining and levying the properties of petitioner Sambrano and selling them at public auction.

WHEREFORE, for the reasons above-stated, the petition to dismiss of counsel for the respondents is hereby sustained.

Let this case be, as it is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, February 21, 1955.

AUGUSTO M. LUCIANO
Associate Judge

MARIANO NABLE
Presiding Judge