NATIONAL DENTAL SUPPLY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2710

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

3/1/78

D E C I S I O N

Petitioner appealed from respondent's denial of its claim for refund in the amount of ₱438.00 allegedly, as excess duties and taxes, based on respondent's alleged erroneous classification of its importation of Polyclave Pressure Vessel under Tariff Heading No. 73.38 at 70% ad valorem, instead of under No. 84.59 at 30% ad valorem. Respondent filed his "Answer with Motion to Dismiss" on the ground that this Court has no jurisdiction over the case since the "Amended Petition for Review" was filed only on June 18, 1975, 32 days after May 17, 1975, the date of receipt of the notice of the action of the Secretary of Finance. Petitioner countered that the original petition for review was filed on June 16, 1975, or within the 30-day reglementary period required by law. This Court ruled that the motion to dismiss will be resolved in the decision on the merits.

As borne out by the pleadings and evidence presented, petitioner is an importer of dental supplies intended for resale to local dental companies. On September 27, 1974, petitioner lodged a formal protest (Manila Protest No. 9449, Annex A, Petition for Review) against the Collector of Customs of Manila, seeking the refund, as a result of the alleged erroneous classification of its importation of Polyclav Pressure Vessel as Pressure Cooker under Tariff Heading No. 73.38 (70%) instead of under No. 84.59 (30%), of ₱438.80 in customs duty and taxes and, as a result of the alleged erroneous classification of the lingual buttons and eyelets under Tariff Heading No. 73.40 (70%), instead of under No. 90.19 (10%), the amount of ₱970.90, or a total sum of ₱1,409.70, which it had paid.

In support of its protest, petitioner asserts that although the Polyclav Pressure Vessel should be classified under Tariff Heading No. 84.59 at 30% because, although it looks like a common kitchen pressure cooker, several differences are noticeable, namely: (1) the Polyclav Pressure Vessel has an "air inlet valve" - the heart of the apparatus - to introduce air pressure, while the kitchen pressure cooker has none; (2) the former uses air pressure while the latter uses steam pressure; (3) the former uses minimum heat of short duration while the latter uses high heat of longer duration; (4) the former eliminates weakening internal bubbles in dentures processed in open vessels without air pressure which is not present in the latter; and (5) the former is a denture cooker while the latter is a kitchen cooker. Petitioner further states that it is not a dealer of domestic appliances as evidenced by the catalogues it presented.

As regards the lingual buttons and eyelets, petitioner avers that the appraiser erred in classifying them under 73.40 B, "Other articles of iron or metal," (70%) on two counts: (1) Heading 73.40 B (70%) is too general a heading and must yield to a more specific description as that found under 90.19 at 10% ad valorem, and (2) the dental catalogue shows these articles to be orthodontic appliances.

Acting on the aforesaid protest, the Collector of Customs rendered a decision dated January 2, 1975 (Annex B, Petition for Review), and received by petitioner on January 23, 1975, dismissing the protest and denying petitioner's claim for refund.

On January 27, 1975, petitioner filed with the Commissioner of Customs an Appeal for Review and Reversal of the decision of the Collector of Customs. However, before respondent Commissioner could act on said appeal, the above-mentioned Collector of Customs again rendered another decision dated March 10, 1975 and received by petitioner on May 17, 1975, modifying his previous decision of January 2, 1975. This latter decision ordered a re-liquidation of Entry No. 765-99-74 as regards lingual buttons and eyelets, and the excess customs duty and revenue tax collected thereon in the amount of ₱970.90 be credited to petitioner. But as regards the article Polyclav Pressure Vessel, however, the Collector of Customs stood pat on his former decision by classifying it under Tariff Heading No. 73.38 at 70% _ad valorem_. Pursuant to Section 2315 of the Tariff and Customs Code, as amended by P.D. 34, this latter decision was forwarded to the Commissioner of Customs for automatic review, who in a subsequent indorsement dated March 13, 1975, forwarded it to the Secretary of Finance. The Secretary of Finance, in a 2nd indorsement dated April 10, 1975, affirmed _in toto_ the decision of the Collector of Customs. From this decision of the

Collector of Customs which was received by petitioner on May 17, 1975, petitioner appealed to this Court on June 16, 1975.

The issues to be resolved by the Court are as follows:

(1) Whether or not this Court has jurisdiction over the instant case; and

(2) Whether or not the Polyclav Pressure Vessel should be classified under Tariff Heading No. 73.38 as decided by respondent or under Tariff Heading No. 84.59 as contended by petitioner.

Anent the question of jurisdiction raised by respondent in his "Answer with Motion to Dismiss," a perusal of the records in the instant case manifestly shows that this Court has no jurisdiction to entertain this case, not on the alleged ground of non-compliance by petitioner of the 30-day reglementary period for appeal to this Court, but on the basis of the fact that there is no decision of the Commissioner of Customs to be appealed from. Although respondent erroneously admitted in his Answer that there was a decision of the Commissioner of Customs, a painstaking review of the records, however, yields none. What can be gathered is that there are actually two decisions of the Collector of Customs - the first, on January 2, 1975, from which petitioner appealed to the Commissioner of Customs, but upon which no decision was rendered by the latter, and the second decision on March 10, 1975 where the Collector of Customs modified his prior decision as regards the Lingual Buttons and Eyelets. From this last decision of the Collector of Customs, petitioner did not follow the mandatory requirement of interposing an appeal to the Commissioner of Customs pursuant to Section 2313 of the Tariff and Customs Code, as amended by P.D. No. 34, to wit:

> SEC. 2313. Review by Commissioner.- The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.

The issue of jurisdiction is not of first impression. We ruled on several occasions that without the decision of the Commissioner of Customs appealed from, this Court cannot have jurisdiction and take cognizance of a case. Squarely applicable to this instant case is the ruling in Sampaguita Shoe & Slipper Factory vs. Comm. of Customs, et. al., 102

Phil 857, wherein the Supreme Court held:

> x x x As the law on the matter actually stands, we find that the appeal made available to an importer or person aggrieved by a decision or ruling of any collector of customs of the Philippines has 2 phases: __first__, the one provided for in Section 1380 of the Revised Administrative Code, i.e., such party is given 15 days from receipt of the adverse ruling or decision of the Collector to give notice in writing to the latter signifying his desire to have the matter reviewed by the Commissioner of Customs, and __second__, if still dissatisfied, his appeal could be projected to the Court of Tax Appeals pursuant to Section 7 of Act 1125 by filing with said tribunal a petition within 30 days from receipt of notice of the decision or ruling sought to be reviewed.
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> In the case at bar, it appears that the importer failed to observe the procedure laid down by Section 1380 of the Revised Administrative Code aforementioned, thus, the lower Court acted properly in dismissing the petition filed therein in view of petitioner's failure to exhaust administrative remedies. The doctrine of exhaustion of administrative reliefs is indeed a sound rule for it provides for a policy of orderly procedure which favors a preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance (United States vs. Sing Tuck, 194 US 161, 48 L ed 917, 24 S Ct 621; Oklahoma Pub. Welfare Commission vs. State 186 Okla. 654, 105 P. (d) 547, 130 ALR 873). As already ruled in the aforementioned case of Rufino Lopez & Sons, Inc. vs. The Court of Tax Appeals, __supra__, "It is a sound rule that before one resorts to the Courts, the administrative remedy provided by law should first be exhausted". As petitioner herein did not interpose an appeal to the Commissioner of Customs from the decision of the Collector of Customs of Cebu within the period of 15 days prescribed by law, said decision of the latter became final and executory; hence, petitioner cannot take its case on appeal to the Court of Tax Appeals. Anyway, and even if we would

> consider that it could, we find that petitioner has also failed to appeal from any Commissioner of Customs' decision on the matter to the Court of Tax Appeals within the time prescribed by Section 11 of Republic Act No. 1125.

This view has been consistently reiterated in the subsequent case of Southwest Marketing Corp. vs. Secretary of Finance, 25 SCRA 456, wherein the Court ruled:

> It is true that, pursuant to Section 7 of Republic Act No. 1125, the Tax Court cannot exercise its jurisdiction except on appeal from a decision of the Commissioner of Customs, and that no such decision exists. This is, however, due to the fact that plaintiff has not taken the steps prescribed by law therefor, namely: payment of the charges in question coupled with a written protest against said charges, and, upon rendition of the decision thereon of the Collector of Customs of Davao, an appeal therefrom, if adverse to the plaintiff, to the Commissioner of Customs, whose decision in such appeal may, in turn, be reviewed by the Court of Tax Appeals, to the exclusion of other courts. Indeed, the absence of such decision of the Commissioner of Customs merely underscores plaintiff's failure to exhaust administrative remedies and suggests a lack of cause of action.

Accordingly, we find no plausible reason to depart therefrom.

While it is true that according to Section 2315 of the Tariff and Customs Code, as amended by P.D. No. 34, either the decision of the Commissioner of Customs or of the Secretary of Finance may be appealed to this Court, to wit:

> SEC. 2315. Supervisory Authority of Commissioner and of Secretary of Finance in Certain Cases.- If in any case involving the assessment of duties, the Collector renders a decision adverse to the government, such decision shall automatically be elevated to, and reviewed by, the Commissioner; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and be finally reviewed by, the Secretary of Finance: Provided, however, That if within thirty (30) days from receipt of the record of the case by the Commissioner or by the Secretary of Finance, as the case may be, no decision is rendered by either of them, the decision under review shall become final and executory: Provided, further, That any party aggrieved by either the decision of the Commissioner or of the Secretary of Finance may appeal to the Court of Tax Appeals within thirty (30) days from receipt of a copy of such decision. For this purpose Republic Act Numbered Eleven hundred and twenty-five is hereby amended accordingly.
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> Except as provided in the preceding paragraph, the supervisory authority of the Secretary of Finance over the Bureau of Customs shall not extend to the administrative review of the ruling or decision of the Commissioner in matters appealable to the Court of Tax Appeals.

still it is manifest that the decision of the Secretary of Finance in the instant case does not fall within the purview of the above-quoted provision of law as the appealable decision to this Court. From the wordings of the above-mentioned Section 2315, it is crystal clear that there is automatic review of the decision of the Collector of Customs by the Commissioner of Customs and subsequently by the Secretary of Finance, if the decision of the Collector is adverse to the government. In the case at bar, the two decisions of the Collector are not adverse to the government for petitioner was required to pay the duties and taxes as provided by law. Assuming arguendo that the modification by the Collector in his March 10, 1975 decision of his prior decision of January 2, 1975 resulted in a decision adverse to the government, wherein he ordered a re-liquidation of the duties and taxes paid on the Lingual Buttons and Eyelets with a refund in the amount of ₱970.90 by way of tax credit to petitioner, still it will only be this portion of the decision that should be automatically reviewed by the Commissioner and the Secretary of Finance. As regards the portion of the decision on the Polyclav Pressure Vessel, such is adverse to the petitioner and therefore not subject to automatic review by the Commissioner and the Secretary of Finance. Hence, the decision of the Secretary of Finance on this Polyclav Pressure Vessel cannot be appealed to this Court. Moreover, since both the Commissioner of Customs and the Secretary of Finance affirmed the decision of the Collector as regards the lingual buttons, which is favorable to the petitioner, then there is no decision of either the Commissioner or of the Secretary of Finance that is adverse to the taxpayer that can be appealed to this Court. Consequently, the provision of

Section 2315, as amended by P.D. No. 34, granting the right to the petitioner to appeal to this Court from an adverse ruling of the Commissioner or Secretary of Finance is not applicable herein but rather Section 2313 of the Tariff and Customs Code where a decision of the Commissioner is a requisite for appeal.

As regards the ground set forth by respondent in his Answer with Motion to Dismiss that there is non-compliance with the 30-day reglementary period for appeal to this Court, suffice it for this Court to state that such stand cannot be taken into consideration since said rule presupposes a final decision of the Commissioner of Customs from which to appeal. In this case, there is none. Since it is elementary that this Court must first acquire jurisdiction over the case in order that it can validly act thereon, and finding failure of petitioner to meet the mandatory requirements for this Court to acquire jurisdiction thereof, the resolution of the second issue therefore becomes moot and academic.

WHEREFORE, finding that this Court has no jurisdiction over the instant case, petitioner's appeal is hereby DISMISSED.

With costs against petitioner.

DECISION -
C.T.A. CASE NO. 2710

SO ORDERED.

Quezon City, Philippines, March 1, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge