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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLID MILLS, INC., REMERCO GARMENTS MANUFACTURING CO., MENZI DEVELOPMENT CORPORATION, ET. AL.,
Petitioners,

- versus - C.T.A. CASE NO. 2995

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

11/28/80

D E C I S I O N

At bar is a suit for the (1) nullification of Customs Administrative Order No. 3-77 of respondent Commissioner of Customs issued on February 14, 1977 on the ground that it is repugnant to and violative of the provisions of Section 1903 of the Tariff and Customs Code as amended, and to enjoin respondent from further collecting the bonded warehousing fees provided therein; and (2) recovery of the amount of warehousing fees claimed to have been collected from each of herein petitioners under said Customs Administrative Order No. 3-77.

As borne out by the pleadings submitted by the parties, it appears that:

1. Petitioners, as listed in the attached Annex "A" of the petition for review, are corporations duly organized and existing under the laws of the Philippines, with business addresses as indicated

therein. They are all customs bonded warehouse operators duly authorized as such by the Bureau of Customs thru their respective District Collectors of Customs.

2. On February 14, 1977 respondent Commissioner of Customs issued, pursuant to the provisions of Sections 608 and 1903 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, Customs Administrative Order No. 3-77 entitled "Fixing and Establishing Customs Bonded Warehousing Fees." This customs administrative order promulgates regulations prescribing fees for customs bonded warehouses in the Philippines and directs all Collectors of Customs to collect annual warehousing fees from operators of customs bonded warehouses as indicated therein. It further provides that failure on the part of the bonded warehouse operators to pay the warehousing fees would be ground for either suspension/revocation or non-issuance of the license to operate a customs bonded warehouse.

3. On April 15, 1977 counsel for petitioners sent a letter to respondent Commissioner of Customs suggesting that the legality of said administrative order be thoroughly reviewed and at the same time requesting that pending such review the implementation of the customs administrative order be suspended.

There being no reply, a follow-up letter was sent by counsel for petitioners on December 13, 1978 making reference to the previous letter, and again requesting that the enforcement of Customs Administrative Order No. 3-77 be suspended until the legality thereof has been reviewed.

4. In a letter of January 15, 1979, respondent Commissioner of Customs, after pointing out the legal basis for the imposition of warehousing fees under Customs Administrative Order No. 3-77, maintained that the Bureau of Customs has the legal authority to collect the bonded warehousing fees specified therein and therefore denied the request for the revocation of said customs administrative order.

5. In view of this action of the Commissioner of Customs, petitioners thru counsel filed the instant petition for review praying that this Court render judgment:

> 1. Declaring Customs Administrative Order No. 3-77 null and void for being repugnant to and violative of the provisions of Section 1903 of the Tariff and Customs Code as amended, and ordering the Respondent Commissioner of Customs to desist from further collecting the bonded warehousing fees provided therein;
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> 2. Ordering the refund to Petitioners of the amount of warehousing fees already collected from each of them under Customs Administrative Order No. 3-77.

In a motion to dismiss the petition for review, the jurisdiction of this Court over the case is now being questioned by respondent. Respondent maintains that Customs Administrative Order No. 3-77 is not a decision of the Commissioner of Customs appealable to the Court of Tax Appeals under Section 7(2) of Republic Act No. 1125. The said customs administrative order was issued pursuant to Section 608 of the Tariff and Customs Code which authorizes the Commissioner, subject to the approval of the Secretary (now MInister) of Finance, to promulgate all rules and regulations necessary to enforce the provisions of the Code, and not a decision in the exercise of his quasi-judicial functions under Sections 2313 and 2315 of the same Code. And his reply letter of January 15, 1979 sustaining the authority of the Bureau of Customs to collect bonded warehousing fees and denying the request for revocation of Customs Administrative Order No. 3-77 is merely an answer to petitioners' query as to the legality of said administrative order. For a petition for review of or an appeal from a decision of the Commissioner of Customs in a case involving liability for the warehousing fees covered in Customs Administrative Order No. 3-77 to prosper and be cognizable by the Court, respondent therefore argues that petitioners should have availed first of the administrative remedy of protest by following the procedure laid down by the Tariff and Customs Code (Sec. 2308) and the formalities prescribed in connection therewith. Petitioners' failure to do so is fatal to their cause of action.

Petitioners contend, on the other hand, that Customs Administrative Order No. 3-77 which directs all collectors of customs to collect the warehousing fees prescribed therein with the sanction provided in Section 5 thereof that "Failure on the part of the owner/operator of Customs bonded warehouse to comply with any provision of this Order requiring action on their part shall constitute as ground for suspension/revocation or non-issuance of the license to operate" is the decision of respondent Commissioner of Customs which is appealable to the Court of Tax Appeals because it is his interpretation of the manner of implementing and enforcing the provisions of Section 1903 of the Tariff and Customs Code as amended. Since it requires the collection of customs bonded warehousing fees, Customs Administrative Order No. 3-77 would be within the contemplation of Section 7(2) of Republic Act No. 1125 as a decision either one involving "liability for fees", or a decision on "other matters arising under the Customs Law."

Does this Court have jurisdiction over the instant petition for review?

Section 7(2) of Republic Act No. 1125 confers upon this Court exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs. And Section 11 of the same Act authorizes this Court, at any stage of the proceeding, to suspend collection of customs duties if the collection thereof by the Commissioner would "jeopardize the interest of the Government and/or the taxpayer", after requiring the taxpayer to deposit the amount claimed or to file a surety bond for not more than double the amount. Under the Tariff and Customs Code, the party aggrieved by a ruling of the Commissioner of Customs in any matter brought before him upon protest or by his action or ruling in any case of seizure may also appeal to this Court in the manner and within the period prescribed by law and regulations. (Sec. 2402, id.)

Before the enactment of Republic Act No. 1125 the sole and exclusive remedy in a case involving liability for customs duties, fees or other money charges was to pay such duties, fees or charges and to file a protest; and if the protest was denied by the Collector of Customs, to appeal to the Commissioner and to the courts. (See Sections 1370, et seq. of the Administrative Code; Sections 2308, et seq. of the Tariff and Customs Code.) But with the enactment of Republic Act No. 1125 the requirement of "payment and protest" has ceased to be the exclusive remedy. Section 7(2) of said Act permits the appeal to this Court of a decision or ruling of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; and Section 11 authorizes this Court to suspend collection of such duties, fees or other money charges upon compliance with the requirements provided therein. From these provisions, it may be inferred that an appeal may be made before payment of customs duties, fees or other money charges, in which case, this Court is authorized, at any stage of the proceeding, to suspend collection of the duties, fees or other money charges if collection thereof before final determination of the case would "jeopardize the interest of the Government and/or the taxpayer" and upon the filing of an adequate bond. However, if payment of the customs duties, fees or other money charges has been made, the procedure outlined in Section 2308, et seq. of the Tariff and Customs Code, specifically with respect to the filing of a protest, must be followed. (Caltex /Philippines/ Inc. vs. Commissioner of Customs and Collector of Customs for the Port of Manila, CTA Case No. 370, May 10, 1957, certiorari denied in G.R. No. L-15708, August 14, 1959; Cinema Audio, Inc. vs. Acting Commissioner of Customs, CTA Case No. 2806, January 16, 1978, certiorari denied in G.R. No. L-48726, October 18, 1978.)

It appearing from the petition for review that the bonded warehousing fees fixed and established by Customs Administrative Order No. 3-77 have already been paid by petitioners and this suit seeks the refund of the amount of warehousing fees paid by them, the petition for review should be dismissed on the ground that petitioners failed to avail of the administrative remedy of protest in accordance with the Tariff and Customs Code. Under Section 2308 of the Tariff and Customs Code, when a ruling or decision of the Collector of Customs (bonded customs warehousing fees are collected by collectors of customs) is made whereby liability for duties, taxes, fees or other charges is determined, the party adversely affected should protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest; otherwise, under Section 2309 of the same Code, the action of the Collector shall be final and conclusive against the taxpayer. An appeal from the decision or action of the Collector, if adverse to the taxpayer, to the Commissioner of Customs, may be made under Section 2313 of the Code, whose decision in such appeal may, in turn, be reviewed by the Court of Tax Appeals.

Protest is required in matters affecting the legality of the collection under Customs Law of other fees and charges. (See Luzon Stevedoring Corporation vs. Court of Tax Appeals and Commissioner of Customs, L-21005, October 22, 1966, 18 SCRA 436; Victorias Milling Co., Inc. vs. Auditor General, L-17414, November 30, 1962, 6 SCRA 822.) The customs bonded warehousing fees paid by petitioners under Customs Administrative Order No. 3-77 were collected pursuant to Section 1903 of the Tariff and Customs Code. Since the assessment and collection of the warehousing fees in question is done by the Collector of Customs under the Tariff and Customs Code, protest is therefore required in cases involving the legality or correctness of the assessment and collection of warehousing fees.

Anent petitioners' argument that Customs Administrative Order No. 3-77 would be within the contemplation of Section 7(2) of Republic Act No. 1125 as a decision on "other matters arising under the Customs Law" appealable to this Court, suffice it to state that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decision of the Commissioner of Customs. In defining the cases that may be reviewed, the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under Customs law. This shows that the "other matters" that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as ejusdem generis. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included. (Enrile v. Court of Appeals, L-27549, Sept. 30, 1969, 29 SCRA 505.)

For a petition for review or an appeal from a decision or ruling of the Bureau of Customs in cases involving liability for bonded warehousing fees to prosper and be cognizable by this Court, petitioners must therefore avail first of the administrative remedy of protest by following the procedure laid down by the law and the formalities prescribed in connection therewith. Their failure to do so is fatal to their appeal.

WHEREFORE, the instant petition for review is hereby dismissed, with cost against petitioners.

SO ORDERED.

Quezon City, Metro Manila, November 28, 1980.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge