

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SENBA SHOKAI CO., LTD.,
(Represented by its Attorney-
In-Fact, Takashi Shimizu),

AMIRUL DIN ISLAM AL-
PHILIPPINES, INC.,

SENBA SHOKAI CO., LTD.,
(Represented by its President,
Yoshitaro Okazaki),
Petitioners,

- versus -

C.T.A. CASES NOS. 4310, 4313
& 4322

THE COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - x

10/15

R E S O L U T I O N

Petitioner Amirul Din Islam Al-Philippines, Inc. filed on December 16, 1988 a petition for review in this court of the decision of the Commissioner of Customs in Case No. 88-36 which started as Special Investigation (S.I.) No. 87-355 in the office of the District Collector alleging, among others, that it is the consignee and property owner of the articles subject of this case. Previously, Senba Shokai Co., Ltd. as represented by its Attorney-in-fact Takashi Shimizu had filed its petition for review of the said

RESOLUTION

**CTA CASES NOS. 4310, 4313
& 4322**

- 2 -

decision of the Commissioner of Customs on December 2, 1988 alleging itself to be the owner of the articles in this case. Another petition for review contesting the same decision also in the name of Senba Shokai Co., Ltd., but this time represented by Yoshitaro Okazaki, was filed on January 12, 1989. These petitions were eventually consolidated in one case, being involved with the same subject matter and having related issues. Subsequently, Petitioner Amirul filed a motion for release of the articles under bond on April 11, 1989. In response, "Motion to Dismiss and Opposition to Petitioner's Motion to Release Under Bond" was filed by respondent on August 16, 1989. In the hearing of June 27, 1991 respondent reiterated his pending motion to dismiss the case as against petitioner Amirul and moved for the resolution of said motion.

The respondent urges these grounds for the dismissal of the petition of Amirul: (1) petitioner has no legal personality to institute the present petition; (2) the court is without jurisdiction over the instant petition.

Petitioner Amirul contends, among others, that: it entered its appearance as a party claimant on September 21, 1987, by virtue of a Notice of Appearance signed by Sultan Amirullah S. Mangelen and counsel

**RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322**

- 3 -

Oscar P. Ferreros and filed with the District Collector, Port of Manila; (b) It was, however, not notified of the subsequent hearings and was not served with a copy of the District Collector's decision rendered on June 13, 1988; (c) This alleged denial of petitioner Amirul's right to due process was supposedly repeated when, having filed a motion for reconsideration of said decision, the same was also not acted upon; (d) Nonetheless, the decision of the Commissioner of Customs adverts to petitioner Amirul as claimant in the seizure proceedings.

The records of the case show that from the outset petitioner Amirul was not an original party to the administrative proceedings in S.I. No. 87-355. Amirul entered its appearance through Attorney Oscar P. Ferreros on September 21, 1987 when the administrative proceedings in S.I. No. 87-355 were well on the way. When said counsel Ferreros was asked about the personality of his client, said counsel manifested that his client is the owner of the shipment in question by virtue of an alleged Deed of Donation. Thus:

"HEARING OFFICER:

May I inquire from Atty. Ferreros the personality here of his client?

RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

- 4 -

ATTY. FERREROS:

This is for religious corporation the owner of the subject vehicles by virtue of a Deed of Donation executed by the donor itself. I will present in due time our documentary evidence in that effect." (p. 201, Customs Rec.)

In the course of that hearing on September 21, 1987, counsel for Amirul manifested his wish to include Amirul as party, but the request was not acted upon.

ATTY. FERREROS:

May be it is proper, your Honor, at this point in time that we amend the caption of this seizure proceedings to include all the claimants, your Honor.

HEARING OFFICER:

We will submit the request of Atty. Ferreros for whatever it will be deemed proper.

Case is reset to October 6, 1987 at 9:00 A.M. Parties are duly notified in open hearing." (p. 190, Customs Rec.)

This presence of petitioner Amirul in the hearing was never followed until the proceedings in S.I. No. 87-355 were concluded with a decree of forfeiture of the subject articles by the District Collector on June 13, 1988.

It was not until August 3, 1988 that petitioner Amirul appeared again to pursue a letter for

RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

- 5 -

reconsideration of the aforementioned decision of the district Collector it had filed on July 8, 1988.

HEARING OFFICER:

We are today in receipt of appearance from Atty. Romualdo Tecson as counsel for claimant intervenor Sultan Hadji Amurallah Sy Mangelen. I don't think Sultan Mangelen is a party-claimant in this case.

ATTY. TECSON:

Yes, sir, Sultan Mangelen filed a letter for reconsideration with the office so much so that with this pleadings he becomes a party in this case and this I will submit for resolution before this investigation.

HEARING OFFICER:

Have you furnished the prosecution a copy of your letter for reconsideration?

ATTY. TECSON:

I don't know, because I think this is the time of the former counsel.

HEARING OFFICER:

What is the interest of Sultan Mangelen in this case?

ATTY. TECSON:

I think he is the donee in the association of Amirul Din Islam Philippines.

HEARING OFFICER:

Where did this Amirul Din Islam get involved in this case?

ATTY. TECSON:

It was donated to him.

RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

- 6 -

HEARING OFFICER:

By whom?

ATTY. TECSON:

By the owner."
(pp. 341-342, Customs Rec.)

It is clear that up to this point of the administrative proceedings, petitioner Amirul has not been recognized as a party to the case, thus:

HEARING OFFICER:

Not even the supposed donor filed a Motion for Intervention showing the interest in this case. How can we enter the appearance of Sultan Mangelen not even the donor made a representation in this case. At any rate, we will consider this letter. We will just take note of this Motion for Reconsideration, it is already part of the records. What is our subject now is the resolution of the Motion for Reconsideration filed by intervenor Senba Shokai. The prosecution has already made an opposition to the Motion for Reconsideration. Would you still like to argue the Motion or you will just submit this for resolution?

ATTY. QUINTANILLA:

Based on that I am submitting our Motion for resolution of this office.

HEARING OFFICER:

We will take note of this letter for reconsideration by Atty. Tecson.

ATTY. CHUA:

But he has no personality. You did not enter your appearance in this hearing.

RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

- 7 -

HEARING OFFICER:

This chair will take care of his request for whatever value it has. The Motion for Reconsideration is submitted for resolution by this Office."
(pp. 339-340, Customs Rec.)

By its assertions, however, petitioner, Amirul holds the belief that merely entering its appearance during the hearings on September 21, 1987 was sufficient to make it a party to the case. The law, on the other hand, provides that jurisdiction over the person is acquired by the voluntary appearance of a party in court and his submission to its authority, or it is acquired by the coercive power of legal process exerted over the person (*Banco Espanol-Filipino v. Palanca*, 37 Phil. 921, 927 [1918]; *Nilo v. Romero*, 1 SCRA 926, 929 [1961]). Yet this principle speaks of a person already a party to the case, as a defendant, for example; and contemplates of conditions where the party tries to avoid the jurisdiction of the court. The applications of this principle pertain to cases of this nature (See *Banco Espanol-Filipino v. Palanca*; *Nilo v. Romero*, *supra*; *Infante v. Toledo*, 44 Phil. 834). We hold, therefore, that the mere voluntary appearance of petitioner Amirul in the pendency of the administrative proceedings, was not sufficient to make

RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

- 8 -

it a party to the case. The law affords a specific mode by which a third person not an original party can become party to a suit or action, and that is, by intervention.

"Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of the plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings." ("Moran, Comments on the Rules of Court, Vol. 1, p. 404, 1979 ed., citing C.J. 4477 and Lacuna v. Board of Liquidators, 12 SCRA 469, [1964]).

It must be that the attempt of petitioner Amirul to be included as party to the case was not allowed because the mode employed by it was not in accordance with that prescribed by the rules. Petitioner Amirul

**RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322**

- 9 -

cannot therefore invoke the principle of due process, when it was not served with a copy of the decision of the District Collector and when its letter of reconsideration was not acted upon, since it was not entitled to this consideration in the first place, not being party to the suit.

Rules of procedure are matters of public interest (Moran, supra, p. 117 citing cases), so that, when a procedure is provided for, it must be observed. Matters of procedure may be waived only if public interest is not affected (Id.). "A strict observance of the Rules of Court which have been considered indispensable to the prevention of needless delays and to the orderly and speedy dispatch of judicial business is an imperative necessity" (Alvaro v. Judge de la Rosa, 76 Phil. 428 [1946]).

Here the conduct of petitioner Amirul in pursuing its case cannot be described as characterized by consistency and diligence. It presented itself only once in the proceedings in S.I. No. 87-355, nay, seeking to intervene in a wrongful manner. Its failure to allege mandatory jurisdictional facts in its petition for review such as that, it was party to the seizure proceeding, and that it filed a notice of appeal of the decision of the District Collector,

RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

- 10 -

affects the power of this court to hear its case and proves disastrous to its cause.

When petitioner Amirul was not served the decision of the District Collector, it should have been forewarned that all is not well with its case. More so when its letter of reconsideration was not acted upon. It is too plain for petitioner Amirul not to see that during all the time that it was trying to be party to the case, the caption of the case has not been changed to include its name as party. If petitioner Amirul had filed a proceeding in intervention in compliance with the rules, it could have contested any denial of this action. Even during the appeal to the Commissioner, petitioner Amirul was not lacking in the recourse of intervention but this was not had.

We do not agree with petitioner Amirul that mere advertence by the Commissioner to it as a claimant could constitute it as a party with its concomitant rights. Petitioner Amirul was not even privy to the appeal in the Commissioner of Customs as it did not appeal the decision of the District Collector.

With all these, we find that the court has no jurisdiction to entertain the petition for review of petitioner Amirul.

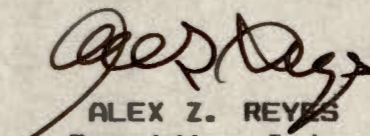
RESOLUTION
CTA CASES NOS. 4310, 4313
& 4322

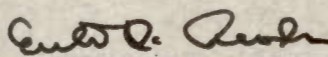
- 11 -

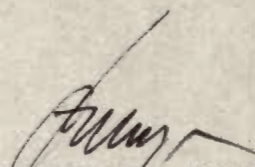
ACCORDINGLY, the petition for review of petitioner
Amirul Din Islam Al-Philippines, Inc. is hereby
DISMISSED for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, October 15, 1991.


ALEX Z. REYES
Presiding Judge


ERNESTO D. ACOSTA
Associate Judge


CONSTANTE C. ROAQUIN
Associate Judge