REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. F. CRUZ & CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5964

EDGARDO ESPIRITU in his official capacity as Secretary of the Department of Finance,
Respondent.

Promulgated:
AUG 0 9 2001

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DECISION

The case at bar seeks the reconsideration/setting aside of the 2nd indorsement dated December 15, 1998, issued by Respondent, affirming the resolution of Customs – SGS Imports Valuation and Classification Committee classifying Pre-Stressed Concrete (PC) 7 – Wire Strand under sub-heading 7312.10 90 with 20% rate of duty.

The facts of the case are undisputed.

On May 27, 1998, Petitioner imported 264.12 MT of 7 wire PC Strand loaded in 13 x 20 containers and was declared under Entry No. C-30241-98 under TH 7312.10.10 at 3% rate of duty.

Based on the declared tariff heading, duties and taxes were computed as follows:

Customs Duty	P159,403.00
VAT	552,590.00
IPF	250.00

On October 15, 1998, the Bureau of Customs SGS – Appeals Committee II issued a resolution classifying 7 Wire PC Strand under HS 7312.10.90 at 20% rate of duty.

On October 30, 1998, Petitioner moved for a reconsideration of said resolution.

On November 12, 1998, the Bureau of Customs – SGS Appeals Committee II recommended to the Commissioner of Customs that the matter be elevated to public Respondent Secretary of Finance for review.

On December 15, 1998, public Respondent Secretary of Finance affirmed the resolution of the Bureau of Customs – SGS Appeals Committee II classifying Pre – Stressed Concrete (PC) 7 Wire Strand under sub-heading 7312.10.90 at 20% rate of duty.

About eleven (11) months thereafter, or on November 26, 1999, Petitioner filed with this Court the instant Petition for Review praying that the 2nd Indorsement dated December 15, 1998 of the Secretary of Finance be reconsidered and set aside and that the 7 Wire PC Strand be classified under HS 7229.90 at 10% rate of duty and not under HS 7312.10.90 which carries a 20% rate of duty.

Petitioner presents the propositions as reasons of the Petition for Review that the Secretary of Finance acted with grave abuse of discretion amounting to lack of jurisdiction when it affirmed the resolution of the BOC —SGS Appeals Committee II reclassifying 7 Wire PC under HS 7312.10.90 at 20% rate of duty while there is a pending motion for reconsideration before said committee when it was elevated to the Secretary of Finance. Petitioner likewise argued that the Secretary of Finance has no authority to reverse the decision of this Court in **CTA Case No. 2568 dated May 9, 1977 in the case entitled Domingo Jose vs. The Commissioner of Customs.** Hence, it said that the 2nd Indorsement dated December 15, 1998 is invalid and has no force and effect as it was issued beyond the scope of authority of the Secretary of Finance.

On the other hand, Respondent asseverated that the Secretary of Finance has the power of control, supervision and review of the acts done by subordinate officials and employees in his department, like the Bureau of Customs, pursuant to Sections 6 and 7, Chapter 2 and Section 39(1), Chapter 8, Book IV of the 1987 Administrative Code, and that the Secretary of Finance has the power to make his own commodity classification or adopt the Tariff Commission's classification pursuant to Section 1313(a) of the Tariff and Customs Code. Respondent further stated that there is nothing in the law which suggests that the only instance when the Secretary of Finance can exercise jurisdiction over the decisions of the Collector and Commissioner of Customs is when said decisions are adverse to the government because what the law simply says is that the decisions that are adverse to the government are automatically elevated to the Secretary of Finance for final review. Hence, Respondent prayed for the dismissal of the case for lack of merit.

As jointly stipulated by the parties, this Court is tasked to resolve the following issues:

1. WHETHER OR NOT RESPONDENT SECRETARY OF FINANCE HAS THE POWER OF CONTROL, SUPERVISION AND REVIEW OF ACTS DONE BY SUBORDINATE OFFICIAL (sic) AND EMPLOYEES OF HIS DEPARTMENT;
2. WHETHER OR NOT RESPONDENT SECRETARY OF FINANCE IS CORRECT IN CLASSIFYING PRE – STRESSED CONCRETE (PC) 7-WIRE

STRAND UNDER SUBHEADING 7312.10.90 WITH A 20% RATE OF DUTY.

We do not agree with the contention of Petitioner that the Respondent's authority to review the decisions of the Collector or Commissioner of Customs is limited only to decisions that are adverse to the government.

The Bureau of Customs is under the supervision and control of the Department of Finance as provided for in Book IV, Title II, Chapter 4, Section 23 of the Administrative Code of 1997. Hence, the Secretary of Finance inherent in his power to review shall have the power to affirm, revise, modify or set aside rulings and other issuances of the Bureau of Customs, provided, the ruling or decision of the Commissioner is not yet appealed to the Court of Tax Appeals. In other words, 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 of Customs in matters already appealed to this Court. This is clearly provided in Section 2315 of the Tariff and Customs Code of the Philippines (TCCP) which provides as follows:

> **Section 2315.** ***Supervisory Authority of Commissioner and of Secretary of Finance in Certain Cases.*** - If 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 be 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 Commission 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 appealed to the Court of Tax Appeals.

There is nothing in the above proviso which states that the only instance when the Secretary of Finance can acquire jurisdiction over the decisions of the Collector and Commissioner of Customs is when said decisions are adverse to the government. The law merely provides that decisions that are adverse to the government are automatically elevated to the Secretary of Finance for final review. This is intended to protect the interest of the government in the collection of taxes and customs duties in those seizure and protest cases which, without the automatic review provided therein, neither the Commissioner of Customs nor the Secretary of Finance would probably ever know the decision of a Collector of Customs in any of our far-flung ports which is favorable to the taxpayer. The owner of the goods cannot be expected to appeal the Collector's decision when it is favorable to him. A decision that is favorable to the taxpayer would correspondingly be unfavorable to the Government, but who will appeal the Collector's decision in that case? Certainly not the collectors. Hence, the provision on automatic review (see **Yaokasin vs. Commissioner of Customs, 180 SCRA 591**).

Further, Section 1313 of the TCCP, quoted below, is explicit that the rulings of the Tariff Commission is binding upon the Bureau of Customs, unless the Secretary of

Finance rules otherwise. Clearly, the Secretary of Finance has the power to make his own commodity classification or adopt the Tariff Commission's classification.

> **Section 1313.** ***Information Furnished on Classification and Value.*** -
> *a. As to classification.* - When an article imported or intended to be imported is not specifically classified in this Code, the interested party, importer or foreign exporter may submit to the Tariff Commission a sample together with a full description of its component materials and uses, and request it in writing to indicate the heading under which the article is or shall be dutiable, and the Tariff Commission shall comply with such requests within thirty days from receipt thereof if it is satisfied that the application is made in good faith, in which case classification of the article in question upon the particular importation involved shall be made according to the heading indicated by the Tariff Commission. Provided, however, That such rulings of the Tariff Commission on commodity classification, shall be binding upon the Bureau of Customs, unless the Secretary shall rule otherwise. (Underscoring supplied)

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The above provisions of law vest appellate jurisdiction on the Secretary of Finance over the rulings or decisions on commodity classification of the Tariff Commission which is mandated with original jurisdiction over cases of classification of imported articles not specifically classified in the Code.

There is therefore no iota of doubt that the Secretary of Finance has jurisdiction when he took cognizance of the instant case and affirmed the classification made by the Tariff Commission and by the Bureau of Customs classifying 7 Wire PC Strand under sub-heading 7312.10 90 at 20% rate of duty on December 15, 1998.

The Court is in acquiescence with Respondent's ratiocination that the decision entitled **Domingo Jose, Inc. vs. Commissioner of Customs, CTA Case No. 2568,**

decided by this Court on May 6, 1977, which ruled that the Pre – Stressed Concrete Strand Wire should be classified under then Tariff Heading 73.15, which pertain to alloy steel and high carbon steel, no longer controls since the Tariff and Customs Code has undergone several amendments since that time. The present TCCP no longer contains a Tariff Heading corresponding to the said Tariff Heading 73.15. As explained by the Tariff Commission Pre – Stressed Concrete (PC) 7 Wire Strand is a stranded wire of high carbon steel used in pre – stressed concrete members to overcome the undesirable characteristics of ordinary reinforced concrete. It said that the subject article made of seven (7) solid wires had lost the essential character of an article falling within HS heading 72.29 which provides for wire of other alloy steel, as the same (7 piece solid wires) had undergone twisting operation which would conform with the coverage of HS heading 73.12 which provides for stranded wire, ropes, etc. Thus, the Secretary of Finance was correct when he affirmed the Tariff Commission's and the Customs' – SGS Imports Valuation and Classification Committee ruling classifying Pre – Stressed Concrete (PC) 7 Wire Strand under HS heading 7312.10.90 of the TCCP, as amended.

It is settled to the point of being elementary that an administrative circular/ruling issued for the implementation of the law has the force and effect of law (see **People vs. Que Po Lay, 94 Phil 640**) and that once established and found in conformity with the general purpose of the law, it is as much binding upon all the affected parties as if it had been written in the original law itself **(United States vs. Tupasi Molina, 29 Phil 125).**

Moreover, the records do not show that Petitioner filed any motion for reconsideration to the Secretary of Finance' second indorsement dated December 15, 1998 despite allegations to this effect. Petitioner failed to produce the alleged February 16, 1999 letter requesting reconsideration of said second indorsement. Petitioner merely filed a Petition for Review with this Court using the letter of Undersecretary Solomon S. Cua dated October 13, 1999 as its point of reference (Annex "A", page 8, CTA records). Moreover, in the said letter, Undersecretary Solomon S. Cua made mention of an August 21, 1999 letter of Atty. Gregorio B. Chavez not the alleged letter of February 16, 1999. This Court believes that said letter is not the decision appealable to this Court. What should have been the subject of an appeal is the 2nd Indorsement issued by then Secretary of Finance, Edgardo B. Espiritu dated December 15, 1998 (Annex "B", page 10, CTA records). The Petition for Review was filed only on November 26, 1999 which is more than ten (10) months after the lapse of the thirty (30) day reglementary period. Hence, We rule that the right of the Petitioner to appeal the decision of the Secretary of Finance had already prescribed. Section 11 of Republic Act No. 1125 (The Law Creating the Court of Tax Appeals) clearly provides, thus:

> **Section 11.** ***Who may appeal; effect of appeal.*** - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
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The thirty-day period prescribed by the aforequoted Section 11 R. A. 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue, Commissioner of Customs and the Secretary of Finance should file his appeal in this Court, is a jurisdictional requirement, and failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory.

Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action or otherwise noticing the defect, at any stage of the proceedings **(Ace Publications, Inc. vs. Commissioner of Customs and Collector of Customs, 11 SCRA 147).**

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is **DISMISSED** with costs against Petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance wi'h Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge