LA PERLA CIGAR
& CIGARETTE FACTORY, ET AL.,
Petitioners,

versus

CTA CASE NO. 1892

THE SECRETARY OF FINANCE
and THE COMMISSIONER OF
INTERNAL REVENUE,
Respondents.

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R E S O L U T I O N

This is in connection with a "Motion to Dismiss" the petition for review filed by respondent on February 26, 1968 on the grounds that this Court lacks jurisdiction over the case; that the filing of the petition for review is premature; and that the petition for review does not state a cause of action.

The antecedent facts as gathered from the pleadings show that petitioners were and still are engaged in the business of importation of foreign leaf tobacco, and the manufacture and sale of cigars and cigarettes. During the months of September and October 1967, petitioners received from respondent copies of Revenue Memorandum Circular No. 30-67 dated August 22, 1967 (see pp. 2 and 3, Petition, C. T. A. rec.). In said Memorandum

Circular No. 30-67, manufacturers of cigars, cigarettes and other tobacco products are required to apply for inspection of their imported leaf tobacco, partially manufactured tobacco for local sale or factory use, which tobacco products cannot be removed until after inspection by the Bureau of Internal Revenue tobacco inspectors (see p. 4, Petition; also pp. 21 and 22, Annex "A", Memorandum Circular No. 30-67, C. T. A. rec.). Under Act 2613 as amended by Republic Act No. 31 on which Memorandum Circular No. 30-67 is predicated a fee for every inspection is charged and under said circular a 25% surcharge is prescribed for failure to pay the inspection fees within the time prescribed therein.

Petitioners believe that Memorandum Circular No. 30-67 is not authorized by the provisions of Act 2613 as amended by Republic Act No. 31 which makes no mention of imported leaf tobacco and manufactured cigars and cigarettes for domestic sale and is moreover an unreasonable procedure. Without protesting the Memorandum Circular No. 30-67 before the respondent Commissioner of Internal Revenue, they filed their petition for review before this Court, praying that the said Memorandum Circular No. 30-67 be nullified and declared unenforceable.

On February 26, 1968, respondent filed his

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"Motion to Dismiss" the petition for review, contending that this appeal from Memorandum Circular No. 30-67 of the Commissioner of Internal Revenue is not an appeal from a decision as contemplated under Section 7 of Republic Act No. 1125, or that this case does not involve a disputed assessment, and therefore, this Court has no jurisdiction over the instant case; that there being no protest against Memorandum Circular No. 30-67 and no decision on a protest having been rendered by the Commissioner of Internal Revenue, the filing of the petition for review is premature; and that this action being in effect a petition for declaratory relief, the petition for review does not state a cause of action.

Petitioners opposed the motion to dismiss on the grounds, among other things, that the memorandum circular in question is a decision which can be subject to appeal and invoked in support thereof the case of Antonio A. Rodriguez v. S. Blaquera, G. R. No. L-13941, September 30, 1960; that the legality of the provisions of the Memorandum Circular No. 30-67 as first contained in Resolution 2-67 of the Philippine Tobacco Board was protested by petitioners, and that the appeal having been taken from a decision which is incorporated in the Memorandum Circular No. 30-67 a cause of action has thereby accrued to petitioners.

The pertinent portion of the decision in the aforesaid case reads as follows:

> Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.
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> We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provision above mentioned, as set forth in the circular. The same incorporates, therefore, a dècision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of Republic Act No. 1125, section 7 of which provides that the Court of Tax Appeals "shall exercise exclusive appellate jurisdiction to review by appeal x x x decisions of the Collector of Internal Revenue in x x x matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." Besides, it is plain from plaintiff's original complaint that one of its main purposes was to secure an order for the refund of the sums collected in excess of the amount he claims to be due by way of annual fee from gun club members, regardless of the class of firearms they have. Although the prayer for reimbursement has been eliminated from his amended complaint, it is only too obvious that the nullification of General Circular No. V-148 is merely a step preparatory to a claim for refund.

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> Again the main purpose of plaintiff herein is to determine the validity of Circulars Nos. V-148 and V-199, in the light of the statute adverted to above, and to secure a declaration of the rights and duties of gun club members under said statute. Obviously, therefore, this is an action for a declaratory relief which is explicitly prohibited by Act No. 3736, as amended by Republic Act No. 55, and held in National Dental Supply Co. vs. Meer, G. R. No. L-4183; October 26, 1951. Ollada vs. Court of Tax Appeals (G. R. No. L-8878) cited by appellant, involved a case of unfair competition, which is not in point.

From what we understand in the foregoing doctrine, the present case is, in substance, an action for declaratory relief, for its purpose is to determine the validity of Circular No. 30-67 and to secure a declaration of the rights and duties of petitioners as importers of leaf tobacco and manufacturers of cigars and cigarettes. This is specially so since no payment of the required fee for inspection is alleged nor is there any allegation to the effect that respondent has enforced, or attempted to enforce, the said circular against petitioners. As an action for declaratory relief, same is prohibited by Act 3736, as amended by Commonwealth Act No. 55.

We are aware that the doctrine also states that a circular that directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by respondent to the statutory provisions in question, incorporates a decision of respondent on the manner of enforcement of the statute, the administration of which is entrusted by law to the Bureau of Internal Revenue and as such it comes within the purview of Republic Act No. 1125, section 7 of which provides that the Court of Tax Appeals "shall exercise exclusive jurisdiction to review by appeal x x x decision of the Collector of Internal Revenue x x x in matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." It would seem, however, that the foregoing pronouncement merely meant to determine the court with proper jurisdiction over cases involving the circular in question and not the requisites and procedure of the appeal. In other words, the doctrine does not purport to establish that after promulgation and notice of a circular directing officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the Commissioner of Internal Revenue to a statutory provision as set forth in the circular, a taxpayer may forthwith appeal the circular to this Court. The decision incorporated in the circular comes to life for the purpose of appeal to the Court only when a tax incident has

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happened, calling for the enforcement of the provision of law as interpreted by the circular. Thus, in the cited case the time for payment of the fee had accrued and was actually paid, and the taxpayer filed a claim for refund. A contrary interpretation would not only require this Court to take cognizance of actions for declaratory relief but also to render advisory opinions, "the handing down of which courts in this and other jurisdictions have cast a definite aversion (Moran Comments on the Rules of Court, 1952 Ed., Vol. 2, p. 143). And as the cited doctrine itself holds, an action for declaratory relief is prohibited by Act 3736, as amended by Commonwealth Act No. 55.

There seems to be nothing in the provisions of Section 7 of Republic Act No. 1125 that confers jurisdiction on this Court to entertain petitions which are substantially in the form of actions for declaratory relief. Said section vests this Court with jurisdiction to review by appeal "decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refund on internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." Disputed assessments and refunds presuppose the accrual of a tax incident that calls for interpretation of a statutory provision which of course precludes petitions which are in substance for declaratory relief. To be in keeping with this spirit the jurisdiction of this Court as regards "other matters" should be interpreted as likewise precluding petitions which are essentially for declaratory relief. At any rate, there is nothing in section 7 from which we can clearly infer an intention to abrogate the policy categorically declared in Act 3736, as amended by Commonwealth Act No. 55, prohibiting actions for declaratory relief in cases involving internal revenue taxes, fees and charges. A departure from a policy is generally expressed in clear and unambiguous language.

WHEREFORE, the petition for review is hereby dismissed for lack of a cause of action.

SO ORDERED.

Quezon City, May 29, 1968.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge

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