REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JESUS L. GUMOGDA, doing business under the name and style of "Rizal Foundry Shop",

Petitioner,

Oct. 29, 1964

- versus -

C.T.A. CASE NO. 1529

THE COMMISSIONER OF INTERNAL REVENUE, THE COMMISSIONER OF CUSTOMS,

Respondents.

x - - - - - - - - - - - - - - - - - x

R E S O L U T I O N

This refers to a "Motion to Dismiss" the Petition for Review, filed by counsel for the Commissioner of Customs for lack of jurisdiction and for failure to state a cause of action.

The records show that the Petition for Review was filed on September 8, 1964 against the Commissioner of Internal Revenue and the Commissioner of Customs for the refund of an alleged excess payment in the total sum of ₱4,662.49, representing the Special Import Tax and Sales Tax on aluminum scrap materials purchased from the United States Clark Air Force Base in Pampanga. (pars. 4 & 5, Petition for Review).

Counsel for respondent Commissioner of Customs filed, on September 22, 1964, a "Motion to Dismiss" the Petition for Review, which was vigorously opposed by the petitioner. (pp. 8 & 16, CTA rec.). On the other hand, respondent Commissioner of Internal Revenue filed a "Motion for Extension of Time to File Answer", which was granted in our order dated September 24, 1964. (p. 13, CTA rec.).

The motion to dismiss the Petition for Review, as far as respondent Commissioner of Customs is concerned, is well taken. There is no decision rendered as yet by the Commissioner of Customs reviewable by this Court. (See Sampaguita Shoe & Slipper Factory vs. Comm. of Customs, G.R. No. L-10285, Jan. 14, 1958; Rufino Lopez & Sons, Inc. vs. C.T.A., G.R. No. L-9274, Feb. 1, 1957). Only decisions of the Commissioner of Customs are appealable to the Court of Tax Appeals. (Sec. 7(2), Rep. Act No. 1125). In fact, petitioner has not even lodged a formal protest with the Collector of Customs of Manila in connection with the assessment and collection of the questioned special import tax (p. 22, CTA rec.) as required by section 2308 of the Tariff and Customs Code. Not having complied with these administrative requirements, this Court has no jurisdiction to pass upon the legality of the collection of said tax.

WHEREFORE, finding the instant "Motion to Dismiss" meritorious, the same should be, as it is hereby, granted. The Petition for Review filed on September 8, 1964, insofar as respondent Commissioner of Customs is concerned, is hereby dismissed.

SO ORDERED.

Quezon City, October 28, 1964.

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge