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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SILVER SWAN MANUFACTURING COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 744

THE COMMISSIONER OF CUSTOMS,
Respondent.

June 29, 1960

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R E S O L U T I O N

This is a motion to dismiss the petition for review filed by the respondent, on the grounds: (1) that this Court lacks jurisdiction over the case; and (2) that the petition for review states no cause of action.

The petitioner, a corporation duly organized under the laws of the Philippines with offices located at 209 A. del Mundo St., Grace Park, Caloocan, Rizal, was granted tax exemption in the manufacture of soy sauce by the Secretary of Finance pursuant to the provisions of Republic Act No. 901 (Annexes "A" & "B", Petition). The grant commenced August 27, 1957, and limited the materials to be imported only to cellulose bands, soy beans, monosodium glutamate, and preservatives. (See Annex "B", and par. 5, Petition for Review.)

At various times between March 5 and September 30, 1957, the petitioner imported raw materials for use in its manufacture of soy sauce, on which it paid duties and taxes on the dates indicated below:

Date of Payment	Articles	Duties Paid	Import Tax Paid	Customs O.R. No.
3/ 5/57	Soy Beans	₱ 295.43	₱ 1,857.35	55900
3/ 6/57	Soy Beans	354.63	2,216.52	56132
4/16/57	Soy Beans	422.59	2,435.67	61699
4/17/57	Cellulose Bands	372.02	593.66	61908
5/14/57	Sodium Benzoate	194.96	577.62	52225
5/14/57	Cellulose Bands	15.39	27.01	52296
6/21/57	Cellophane Paper	760.50	309.98	71856
8/ 2/57	Soy Beans	11,469.00	4,624.00	53912
8/22/57	Vinyl Bags	353.00	545.00	58693
9/16/57	White Beans	949.00	1,705.00	64300
9/30/57	Soy Beans	2,849.00	1,204.00	67661
		₱18,035.52	₱16,045.81	

(Annex "C", Petition for Review.)

On October 28, 1958, the petitioner, thru its counsel, filed with the respondent a written request for refund of the sums of ₱18,035.52 and ₱16,045.81 paid as customs duties and special import tax on its importations. (Annex "D", Petition.) The request was based upon the theory that "the Secretary of Finance has no right to grant a limited exemption". (Par. 7, Petition.) Accordingly, said request was referred to the Secretary of Finance, who, in a 2nd Indorsement of January 2, 1959 (p. 2, Annex "E", Petition), disallowed the claims for refund of the amounts paid on items Nos. 1 to 9 which were imported from March 23, 1957, to July 25, 1957, and cleared from customs custody prior to August 27, 1957 (the date when the grant was made effective); and the amount paid on item No. 10 (white beans), for not being included in the list of raw materials granted tax exemption. He allowed only the claims for the refund of the respective amounts of

₱2,849.00 and ₱1,204.00 paid as duties and special import tax on item No. 11 (Annex "E", Petition for Review).

In a letter dated January 22, 1960, to which was attached a copy of the said 2nd Indorsement, the respondent Commissioner of Customs advised the petitioner that "only the amount of ₱4,053.00 out of your (petitioner's) total claim has been authorized by the Secretary of Finance to be refunded to that company." And on February 2, 1960, the petitioner filed before this Court his petition for review, which the respondent seeks to dismiss on the grounds afore-stated.

The respondent contends that the decision (Annex "E", Petition for Review) against which the appeal to this Court is taken is a decision of the Secretary of Finance, not that of the respondent Commissioner, and therefore, not one falling under Section 7 (2) of Republic Act No. 1125, which provides:

> "SEC. 7. Jurisdiction. The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided:
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> x x x
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> (2) Decisions of the Commissioner of Customs in cases involving liability of 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 administered by the Bureau of Customs."

The respondent argues that his letter dated January 22, 1960 (Annex "E", Petition) is nothing more than a routine letter of transmittal to the petitioner of the 2nd Indorsement of the Secretary of Finance, who made the determination on the petitioner's claim for refund.

This contention of the respondent is untenable. The written request for refund of ₱34,081.33 dated October 28, 1958 (Annex "D", Petition) was addressed to the Commissioner of Customs. With reference to the request for refund, the respondent, in his letter to the petitioner, advised the latter that of said amount of ₱34,081.33, only ₱4,053.00 was authorized by the Secretary of Finance to be refunded. The fact that such refund was authorized by the Secretary of Finance, thereby impliedly deciding that the refund of the difference between the amount claimed and the amount authorized to be refunded was disallowed, did not convert said decision into that of the Secretary of Finance. This letter-decision of the respondent merely adopted the opinion of, or is based upon the 2nd Indorsement of the Secretary of Finance dated January 2, 1959. But, whether or not said letter-decision is supporteed by the opinion of the Secretary of Finance, the fact remains that it is a decision on the claim for refund by the petitioner because it settles and determines definitely that out of the total claim of ₱34,081.33 only the sum of ₱4,053.00 is refundable. It is still a decision of the respondent which may be appealed to this Court in pursuance of Section 7 of Republic Act No. 1125.

It is also contended by the respondent that "the petition for review states no cause of action, hence it should be dismissed," under Section 1 (f) Rule 8, of the Rules of Court. The reason advanced is that the petitioner failed to comply with the procedural law on refund and exhaust all the administrative remedies provided for in Sections 1370, 1371, 1372, 1373, 1379 and 1380 of the Revised Administrative Code (now Sections 2308, 2309, 2310, 2311, 2312 and 2313 of the Tariff & Customs Code). As provided for in the cited provisions of the Revised Administrative Code, the importer or person who wants a refund of customs duties paid must comply with the following procedural remedites, to wit: (1) The importer or person who is adversely affected by any _ruling_ or _decision_ of the Collector in cases involving liability for _duties_, _fees_, or _other money charge_ (excepting fixing of fines in seizure cases) _may file a written protest with the Collector at the time when payment is made, or within 30 days thereafter_, setting forth his objections to the ruling or decision in question together with the reasons therefor. But no protest shall be received or considered unless payment of the amount claimed to be due has first been made (Sec. 1370, Revised Administrative Code, now Sec. 2308, Tariff & Customs Code); (2) In any protestable case, the party interested adversely to the Government is required to make protest, if he desires to have the action of the Collector reviewed; otherwise such action shall be final and conclusive, unless the matter be correctible for manifest error in the manner prescribed in Section 1300 of the Revised Administrative Code, now Section 1707 of the Tariff & Customs Code. (Section 1371, ID, now Section 2309 Tariff & Customs Code); (3) The protest shall indicate the particular decision or ruling objected to, the ground or grounds relied upon, and its scope must be limited to a single adjustment or independent transaction. (Section 1372, ID., now Section 2310 Tariff & Customs Code); (4) Upon filing of the proper protest in a protestable case, the Collector shall re-examine the matter and render his decision accordingly (Section 1379, ID., now Section 2312, Tariff & Customs Code); (5) Within fifteen days after notification in writing by the Collector of his action or decision, the aggrieved party may file a written notice with the Collector of his desire to have the case reviewed by the Commissioner (Section 1380, ID., now Section 2313, Tariff & Customs Code); and (6) Within thirty days after receipt of the decision of the Commissioner of Customs, the aggrieved party, if he so desires, may file his petition for review with this Court. (Section 11, Republic Act No. 1125).

Undoubtedly, the present case is a protestable case within the provisions of Section 1370 of the Revised Administrative Code, for it is a civil matter involving the determination of duties, fees, or money charge. However, the petitioner did not file a written protest with the Collector at the time of making payment or within 30 days thereafter, stating the particular portion of the ruling or decision objected, and the ground or grounds relied upon. Likewise, he did not signify to the Collector, within fifteen days after notification of the action or decision, his desire to have the case reviewed by the Commissioner of Customs. Consequently, for petitioner's failure to exhaust the administrative remedies provided for by law, it is proper for this Court to dismiss the appeal (see Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, G.R. No. L-10235, January 14, 1958). As impliedly stated in the case of Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, G. R. No. L-9274, February 1, 1957; 53 O.G. No. 10, p. 3065, and restated in the case of Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, supra, the doctrine of exhaustion of administrative remedies as formulated in Sections 1370, 1371, 1373, 1379 and 1380 of the Revised Administrative Code (now Sections 2308 to 2313 inclusive of the Tariff & Customs Code) is a condition sine qua non before one can resort to the Courts because it is "indeed a sound rule for it provides for a policy of orderly procedure which favors a preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance"(citing United States vs. Sing Tuck, 194 U.S. 161, 48 L. Ed. 917, 24 St. Ct. 621; Oklahoma Pub. Welfare Commission vs. State, 186 Okla. 654, 105 P (d) 547, 130 ALR 873). Respondent's contention that the petition for review states no cause of action is well taken.

The suggestion, advanced on behalf of the petitioner, that the procedure outlined in Sections 2308 to 2311 of the Tariff and Customs Code does not apply to the case at bar because the said provisions of law cover finally liquidated duties only is also not well-taken. It is to be noted that the petitioner itself alleged that it paid duties and taxes on the imported raw materials and supplies in question. (Par. 6, Petition for Review.) Annex "C" of the petition for review attests to the amounts of "Duties paid" and "Import Tax paid". These allegation and attestation clearly indicate that the duties sought to be recovered have been finally liquidated, not otherwise as the petitioner urges upon us.

Finally, the suggestion that the present motion to dismiss was filed out of time, on the ground that it was filed during the period of extension granted by this Court within which to file the answer, is equally not well taken. The motion to dismiss was filed within the time for pleading. (See Section 1, Rule 8 of the Rules of Court of the Philippines.) It is immaterial that the respondent's time to plead was extended by this Court.

FOR ALL THE FOREGOING CONSIDERATIONS, the petition for review is dismissed, with costs against petitioner.

SO ORDERED.

Manila, June 29, 1960.

MARIANO NABLE
Presiding Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO is on leave.