REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

DOROTEO DE LEON, JR., ET AL.,
Petitioners,

- versus -

C.T.A.
CASE NO. 381

COMMISSIONER OF CUSTOMS,
Respondent.

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

R E S O L U T I O N

This case involves a claim for refund of customs duties amounting to ₱1,068.70 collected by the Bureau of Customs on an importation of 24 cartons of thread which arrived in Manila on July 11, 1954. The said amount was paid under protest on July 19, 1954.

The petition for review states that a written demand for the refund of said amount was filed with the Collector of Customs of Manila on August 4, 1954, on the ground that the articles in question were for the exclusive use of the Armed Forces of the Philippines, and that "on February 5, 1957, after a long exchange of several letters and communications, the Commissioner of Customs rendered a decision refusing to allow the refund x x x which decision was coursed through the Philippine Navy, and received by the petitioners by ordinary mail on April 28, 1957." (Pars. 6 and 7, Petition for Review.) Respondent has filed a motion to dismiss the appeal on the following grounds:

> "I. THE ACTION OR RULING OF THE COLLECTOR OF CUSTOMS NOT HAVING BEEN APPEALED TO THE COMMISSIONER OF CUSTOMS AND THE LATTER NOT HAVING RENDERED A RULING OR DECISION ON THIS CASE IN DUE COURSE OF APPEAL, THIS HONORABLE COURT LACKS JURIS-

DICTION THEREOF.

"II. THE PETITION FOR REFUND IS BARRED BY THE STATUTE OF LIMITATIONS APPLICABLE TO CUSTOMS CASES.

"III. THE ACTION OR RULING OF THE COLLECTOR OF CUSTOMS OF MANILA, DATED AUGUST 16, 1954 (Exh. 'H' for petitioners) HAS BECOME RES ADJUDICATA."

As regards the first ground, it appears that the claim for refund was denied by the Collector of Customs of Manila in a letter dated August 24, 1954. Instead of appealing the decision of the Collector of Customs to the Commissioner of Customs, petitioners appealed directly to the Secretary of Finance who sustained the decision of the Collector in a letter dated September 14, 1954. Petitioners sought the intervention of the Armed Forces of the Philippines, but the Secretary of Finance denied the claim for refund upon recommendation of respondent Commissioner of Customs, as contained in the latter's fourth indorsement dated February 5, 1957.

It is contended on behalf of respondent that since petitioners failed to appeal the decision of the Collector of Customs to the Commissioner of Customs within 15 days from the date of receipt thereof, it became final and unappealable. On the other hand, petitioners contend that the action of the Collector of Customs as contained in his letter dated August 16, 1954, not being a final decision, could not properly be appealed to the Commissioner of Customs, and that respondent rendered a decision on the case dated February 5, 1957, which is the subject of the petition for review.

We find the position of petitioners untenable. If, as contended, the Collector of Customs of Manila has not rendered a final decision on their claim for refund, it follows that no appeal could have been filed with the Commissioner of Customs and the latter could not have rendered a decision on appeal which is reviewable by this Court. If so, petitioners have not established their right to appeal to this Court under Section 7 of Republic Act No. 1125.

> "As the law on the matter now stands, We find that the appeal made available to an importer or person aggrieved by a decision or ruling of any collector of customs of the Philippines has 2 phases: first, the one provided for in Section 1380 of the Revised Administrative Code, i.e., such party is given 15 days from receipt of the adverse ruling or decision of the Collector to give notice in writing to the latter signifying his desire to have the matter reviewed by the Commissioner of Customs, and second, if still dissatisfied, his appeal could be projected to the Court of Tax Appeals pursuant to Section 7 of Act 1125 by filing with said tribunal a petition within 30 days from receipt of notice of the decision or ruling sought to be reviewed." (Sampaguita Shoe & Slipper Factory v. Com. of Customs, G. R. No. L-10285, Jan. 14, 1958.)

It appears, however, that the claim that the Collector of Customs of Manila has not rendered a final decision on petitioners' claim for refund has no legal basis. The letter of the Collector dated August 16, 1954 reads as follows:

> "This has reference to your letter dated August 4, 1954, requesting the refund of ₱1,068.70, representing the amount paid as customs duties under Official Receipt No. 44333 dated July 19, 1954 on the articles covered by Entry No. 57314 (1954). In reply, it is regretted to inform that

> after a careful study of the case this Office finds no merit in your request. In his letter to this Office of July 7, 1954, the Secretary of National Defense states that your bid tender 'did not include 17% exchange and 7% sales taxes'. This shows that your price included customs duty for which the AFP must have paid you or is obligated to pay.
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> "In view hereof, your request for refund of the amount of ₱1,068.70 is hereby denied."

The last paragraph of the letter of the Collector states that petitioners' "request for refund of the amount of ₱1,068.70 is hereby denied." We have not the least doubt that the said letter of the Collector is his final decision denying the claim for refund.

Petitioners sought to prove that the Collector of Customs of Manila informed them that if a certain document could be obtained from the Armed Forces of the Philippines, their claim for refund would be favorably considered, and it is for this reason that petitioners believe that the said letter of the Collector dated August 16, 1954, is not a final decision. In answer to this, it is enough to state that the legal effects of a written decision of the Collector of Customs can not be affected by any oral statement or manifestation to the contrary made subsequently to the rendition of the decision.

We have also found in the records of this case substantial evidence that petitioners themselves considered the letter of the Collector of Customs dated August 16, 1954 as his final decision. In their letter to the Secretary of Finance of September 2, 1954, they specifically stated that they were appealing from the decision of the Collector of Customs. They said, and we quote: "This is an appeal from the decision of the Collector of Customs denying the refund of the amount of ₱1,068.70 to D. DE LEON & SONS." (Exh. J.) If the letter of the Collector of Customs of August 16, 1954 is not a decision, as petitioners now would want us to believe, from what decision of the Collector did they appeal to the Secretary of Finance? And the Secretary of Finance treated the letter of petitioners of September 2, 1954 as an appeal from the decision of the Collector of Customs. Said the Secretary of Finance in his letter to petitioners dated September 14, 1954: "In view of the foregoing, this Office regrets its inability to take favorable action on your aforesaid appeal." (Exh. L.) Petitioners cannot now deny that the letter of the Collector of Customs of August 16, 1954 is his final decision which should have been appealed to the Commissioner of Customs.

Since it is admitted that no appeal to the Commissioner of Customs was taken by petitioners from the decision of the Collector of Customs within 15 days from the date of receipt of said decision, the decision of the Collector has become final and unappealable. (Sec. 1380, Ad. Code; Sampaguita Shoe & Slipper Factory v. Com. of Customs, C.T.A. No. 59, Oct. 17, 1955, affd. in G. R. No. L-10825, Jan. 14, 1958.)

C It was error for petitioners to have appealed the decision of the Collector of Customs directly to the Secretary of Finance, instead of to the Commissioner of Customs. In matters involving the assessment of customs duties, the supervisory authority of the Secretary is limited to the cases mentioned in Section 1393 of the Administrative Code (now Sec. 2315, Rep. Act No. 1937), which provides:

> "Sec. 1393. Supervisory authority of Commissioner and of Department Head in certain cases. - If in any case involving the assessment of duties the importer shall fail to protest the decision of the Collector of customs and the Commissioner shall be of the opinion that the decision was erroneous and unfavorable to the Government, the latter may order a reliquidation; and if the decision of the Commissioner in any unprotested case should, in the opinion of the Department Head, be erroneous and unfavorable to the Government, the Department Head may require the Commissioner to order a reliquidation or he may, if in his opinion the public interest requires, direct the Commissioner to certify the cause to the Court of First Instance of Manila, in the manner provided in section one thousand three hundred and eighty-six hereof, there to be reviewed by the court as other customs cases removed thereto.
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> "Except as in the preceding paragraph provided, the supervisory authority of the Department Head over the Bureau of Customs shall not extend to the administrative revisal of the decisions of the Commissioner in matters removable into court."

Note that the supervisory authority of the Secretary of Finance in matters involving the assessment of customs duties is limited to unprotested cases where the action of the Commissioner of Customs is adverse to the Government. His authority does not extend to the administrative revisal of the decisions of the Commissioner in matters removable into court, and this includes decisions of the Collector of Customs. Accordingly, in protested cases, as in the instant case, the final administrative authority is the Commissioner of Customs and not the Secretary of Finance. Petitioners, therefore, took an unnecessary risk when they appealed to the Secretary of Finance, and, having chosen an improper remedy, they must be prepared to bear the consequences of their own action.

But it is insisted that the Commissioner of Customs rendered a decision on their claim for refund, and it is that decision which is the subject of the present appeal. They refer to the fourth indorsement of the Commissioner dated February 5, 1957 (Exh. R). The records show that upon their failure to secure favorable action from the Secretary of Finance, petitioners went to the Armed Forces authorities who recommended approval of the refund. The Undersecretary of National Defense indorsed the papers to the Secretary of Finance. The Secretary of Finance in turn indorsed the papers to the Commissioner of Customs "for comment and recommendation or for appropriate action with advice to this Department." The Commissioner, in his fourth indorsement dated February 5, 1957 returning the papers to the Department of Finance, pursuant to the instructions of that Department, stated:

> "In view of the foregoing considerations, this Office is constrained to recommend that since the AFP would not be benefitted by the refund, such refund should not be allowed. (Saura Import & Export Co. vs. Edilberto David, C.T.A. No. 37; Plywood Industries vs. Commissioner of Customs, C.T.A. No. 72)."

It is obvious that the fourth indorsement of the Commissioner of Customs of February 5, 1957 is not a decision on the claim for refund of petitioners. It merely contained an expression of the Commissioner's opinion and his recommendation, and was made solely in obedience to the instructions of the Department of Finance. Such expression of an opinion and recommendation made by the Commissioner of Customs to his superior officer, the Secretary of Finance, can in no way be considered a decision within the meaning of Section 7 of Republic Act No. 1125 which provides for review by this Court of decisions of tax officials.

From whatever angle the case is viewed, we find that this Court has no jurisdiction to entertain the instant appeal.

The second and third grounds in support of the motion to dismiss are not clear to us. However, in view of what has been stated above, we find it unnecessary to consider the same.

The petition for review is hereby dismissed, with costs against petitioners.

SO ORDERED.

Manila, December 18, 1958.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge