JOSE LAGON,
Petitioner,

- versus -

C.T.A. CASE NO. 2810

THE COMMISSIONER OF CUSTOMS,
THE COLLECTOR OF CUSTOMS,
PORT OF DAVAO and BALTAZAR
ARCEO,
Respondents.

11/3/77

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R E S O L U T I O N

This is in connection with the motion to dismiss and affirmative defense of respondents Commissioner of Customs and Collector of Customs of the Port of Davao, and the affirmative defense of respondent Baltazar Arceo, questioning the jurisdiction of this Court to entertain the appeal of petitioner Jose Lagon.

The jurisdictional facts, insofar as material to the present incident, may be stated as follows:

Petitioner, a resident of Tacurong, Cotabato, is the consignee of two (2) Yanmar Generating Sets, in five (5) cases each, which arrived separately at the Port of Davao sometime in August and October, 1971. On July 30, 1974, for his alleged failure to file an import entry and claim the said merchandise, a notice of abandonment, allegedly covering the said goods, was issued by the Collector of Customs of Davao, copies of which were posted at the Davao Customs-house. On June 5, 1975, since no one still claimed the goods, the Collector of Customs, in his letters allegedly addressed to petitioner (but receipt of which is being denied and contested by the latter), declared that the articles had been abandoned. On September 5, 1975, a public auction sale was conducted at the Davao Customhouse, and allegedly the said articles were bidden by, and sold to, respondent Baltazar Arceo.

On November 18, 1975, pending the final certificate of award and release of the articles to Baltazar Arceo, petitioner filed an Omnibus Petition with the Collector disputing the validity and legality of the notice of abandonment, declaration of abandonment, and the sale of said articles, and requesting that he be allowed to reclaim the same.

On January 13, 1976, after proper hearings, the Collector of Customs of Davao, upon the report and recommendation of Atty. Jacobo Jocom of the Customs Legal and Intelligence Service, rendered a decision upholding the legality and validity of the abandonment and sale of said goods, and denying, for lack of merit, petitioner's Omnibus Petition.

On January 15, 1976, the Collector of Customs made the 1st Indorsement to the Commissioner of Customs, stating as follows:

> Respectfully forwarded to the Honorable, the Acting Commissioner of Customs, Manila, the herein memorandum of Atty. Jacobo Jocom of the Legal and Intelligence Service and the herein attached decision and complete records in connection with the Omnibus Petition to set aside Notice of Abandonment of imported articles sold at public auction on September 5, 1975 at the port of Davao.
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> This is being submitted for the action and approval of the Acting Commissioner of Customs.

On January 22, 1976, the Commissioner of Customs in turn, made the 2nd Indorsement concurring with the decision of the Collector, thus:

> Respectfully forwarded to the Collector of Customs, Port of Davao, the herein decision of the Collector of Customs dated January 13, 1976.
>
> This Office, after a thorough study of the case concurs with the said decision decreeing the validity of the declaration of abandonment of the articles in question and the Auction Sale conducted on September 5, 1975 at said port, thereby denying the petition of Mr. Jose Lagon.
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> xxx xxx xxx xxx

Meantime, or on January 24, 1976, petitioner received the notice of the decision of the Collector denying his Omnibus Petition and, on January 27, 1976, he filed a motion for reconsideration with the Commissioner of Customs, questioning the legality of the decision of the Collector of Customs.

On March 18, 1976, the Commissioner of Customs rendered a decision resolving the merits of the controversy and sustaining the decision of the Collector. Apparently, in this decision, the Commissioner referred to the motion for reconsideration of petitioner as an appeal for he stated therein the following:

> This is an appeal from the decision of the Collector of Customs of the Port of Davao, dated January 13, 1976 x x xx :
>
> xxxx xxxx xxxxx
>
> Thus the issues for resolution in this appeal appear to be as follows:
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> xxxx xxxx xxxxx
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> In view of the foregoing, this Office finds no legal justification or any compelling reason to reverse itself.

On April 23, 1976, after receipt of notice of the Commissioner's decision dated March 18, 1976, petitioner filed a notice of appeal with the said official, stating that he was appealing said decision to the Court of Tax Appeals.

On April 26, 1976, in view of the notice of appeal filed by petitioner, Atty. Jose Feria, Chief of the Legal and Intelligence Service of the Bureau of Customs, sent a telegram to the Collector of Customs of Davao instructing him to hold in abeyance the implementation of the decision of the Commissioner of Customs, but the articles in question had already been released to the alleged buyer, herein respondent Baltazar Arceo.

Consequently, petitioner appealed to this Court on May 20, 1976.

In the affirmative defenses raised in their answers to petitioner's appeal, and their motion to dismiss, respondents assailed the jurisdiction of this Court contending that the decision of the Collector of Customs dated January 13, 1976 had already become final and executory on February 8, 1976. They argued that the motion for reconsideration filed by petitioner with the Commissioner of Customs was not an appeal contemplated under Section 2313 of the Tariff and Customs Code and, therefore, said motion did not suspend the running of the 15-day period prescribed in said section. Respondents insisted that under Section 2313 of the Code, petitioner should have filed a written notice of appeal with the Collector and furnished a copy thereof to the Commissioner of Customs, and paid the filing or docketing fee.

However, in his opposition, it is insisted by petitioner that his motion for reconsideration is a sufficient compliance with the law because the Commissioner has already concurred with the decision of the Collector in his 2nd Indorsement, and that said motion for reconsideration was considered by the Commissioner as an appeal. Moreover, petitioner argues that, considering the amount involved in the subject importations, interest of justice dictates that mere technicalities should be disregarded, especially where no right has been prejudiced.

Indeed, Section 2313 of the Tariff and Customs Code, as amended by P.D. No. 34, provides:

> SEC. 2313. Review by Commissioner.- The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.

Under the foregoing section, which was formerly Section 1380 of the Revised Administrative Code, the settled interpretation and judicial pronouncements are to the effect that the party aggrieved by the decision of the Collector of Customs must appeal to the Commissioner of Customs within 15 days from receipt of notice of the decision or action of the Collector. To perfect the appeal, it is required that a written notice of appeal, within the period, must be given by the aggrieved party to the Collector[1]

Sec. 1380

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1 Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, G.R. No. L-10285, Jan. 14, 1958; De Leon vs. Comm. of Customs, CTA No. 381 [Res.], Dec. 18, 1958; C.B. Antelin Enterprises, et al. vs. Comm. of Customs, CTA Case No. 1435, Jan. 14, 1965; Serree Investment vs. Comm. of Customs, CTA Case No. 526 [Res.] Aug. 3, 1959, affirmed in G.R. No. L-15935, May 23, 1961, 2 SCRA 51; F. Caballero Trading vs. Comm. of Customs, CTA Case No. 1672, Aug. 21, 1967; Manabat vs. Comm. of Customs, CTA Case No. 1643, Dec. 13, 1966 & cases cited therein.

and that a filing or docketing fee must be paid.[2] These requirements for perfection of an appeal are mandatory, and non-compliance therewith results in the forfeiture of the right of appeal.[3] Otherwise stated, the failure to avail of the remedy for appeal prescribed by law, renders the decision of the Collector of Customs final and executory.[4]

In the case at bar, petitioner has not complied with the requirements for appeal under Section 2313 of the Tariff and Customs Code. No written notice of appeal was given to the Collector and Commissioner of Customs and, certainly, no payment of the docketing or filing fee was made by the petitioner. What petitioner did was simply file a motion for reconsideration of the Collector's decision direct with the Commissioner of Customs, apparently because the Commissioner has already concurred with

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[2] C.B. Antolin Enterprises, et al. vs. Comm. of Customs, supra; Sweet Lines, Inc. vs. Geotina, Comm. of Customs, CTA Case No. 2705, Feb. 22, 1977 & cases cited therein.

[3] La Union Electric Co., Inc. vs. Comm. of Customs, CTA Case No. 1957 [Res.] Feb. 28, 1969; Chan Kian vs. Court of Tax Appeals, 105 Phil. 904.

[4] See Pascual vs. David, CTA Case No. 95 [Res.] April 21, 1956; F. Caballero Trading vs. Comm. of Customs, supra; Menobat vs. Comm. of Customs, supra; Phil. Tax Board Factory vs. Collector of Customs, Manila Civil Case No. 21641, Nov. 29, 1956.

and approved the decision of the Collector in his 2nd Indorsement. Well, this Court has already ruled that the requirement of Section 2313 of the Tariff and Customs Code is not satisfied by the mere filing of a motion for reconsideration with the Commissioner of Customs. Said this Court in the case of La Union Electric Co., Inc. vs. Commissioner of Customs, *supra*:

> Section 2313 of the Tariff and Customs Code provides that a decision of the Collector of Customs must be appealed to the Commissioner of Customs within 15 days from the date of receipt of such decision. This requirement is mandatory, and non-compliance therewith results in the forfeiture of the right to appeal. (Chan Kian v. Court of Tax Appeals, 105 Phil. 904.) An appeal is perfected if the aggrieved party, within the statutory period, gives written notice to the Collector of his desire to have his decision reviewed by the Commissioner. The requirement of a notice of appeal is not satisfied by filing with the Commissioner of Customs x x x a "request for reconsideration "of the decision of the Collector. While the Commissioner of Customs has the power to review on appeal a decision of the Collector of Customs, the former has no authority to reconsider a decision of the latter. (Underlining supplied.)

Petitioner, indeed, may have been put ~~at~~ in a quandary as to the proper procedure after the Commissioner of Customs concurred with the decision of the Collector in his 2nd Indorsement, but still he could have played safe by filing his motion for reconsideration with the Collector or by filing an appeal with the Commissioner of Customs pursuant to Section 2313 of the Tariff and Customs Code. It should be noted that an indorsement wherein the Commissioner concurs with, or approves, the decision or action of the Collector, after the same is referred to him for action, is not a formal and appealable decision rendered by the Commissioner by virtue of his appellate power under Section 2313 of the Tariff and Customs Code but is a mere opinion given in the exercise of his supervisory power over a subordinate official, and such opinion does not transform the decision of the Collector into that of the Commissioner. Irrespective of the Commissioner's opinion in his indorsement, the aggrieved party can still appeal the decision of the Collector to the Commissioner in accordance with Section 2313 of the Code.[5]

Petitioner, however, impresses upon us that the requirements of the law have been sustantially complied with inasmuch as his motion for reconsideration was considered by the Commissioner of Customs as an appeal. Suffice it to say that if such were the intention of the Commissioner, he had obviously made an error, and such error will not cure the defect in the procedure taken by the petitioner. The requirements for an appeal under Section 2313 of the Tariff and Customs

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[5] See Sampaguita Shoe & Slipper Factory vs. Comm. of Customs, supra; Negros Navigation Co., Inc. vs. The Comm. of Customs, et al., G.R. L-18629, May 31, 1963; 8 SCRA 250.

Code are mandatory, as already observed, and we believe that the same cannot be waived by the Commissioner in whatever manner.

Considering, therefore, that petitioner's motion for reconsideration of the Collector's decision, filed directly with the Commissioner of Customs, does not satisfy the requirements of an appeal under Section 2313 of the Tariff and Customs Code, it results that the running of the 15-day period from January 24, 1976, date of receipt by petitioner of the Collector's decision, was not suspended, and, therefore, said decision became final and executory on February 8, 1976. Consequently, as correctly contended by the respondents, this Court has no jurisdiction to entertain petitioner's appeal.

Verily, we noted petitioner's invocation of the interest of justice to disregard technicalities in this case, but we feel, nonetheless, that this is not sufficient to overthrow the law and settled jurisprudence. Expressing the soundness and justification for the application of the principle of exhaustion of administrative remedies, the Supreme Court said:

> In the case at bar, it appears that the importer failed to observe the procedure laid down by Section 1380 of the Revised Administrative Code aforementioned, thus, the lower Court acted properly in dismissing the petition filed therein in view of petitioner's failure to exhaust administrative remedies. This doctrine of exhaustion of administrative reliefs is indeed a sound rule for it provides for a policy of orderly procedure which favors a pre-

> liminary administrative sifting process, and serves to prevent attempts to swamp the Courts by resort to them in the first instance (United States vs. Sing Tuck, 194 US 161, 48 L ed 917, 24 S Ct 621; Oklahoma Pub. Welfare Commission vs. State 186 Okla 654, 105 P (d) 547, 130 ALR 873). As already ruled in the aforementioned case of Rufino Lopez & Sons, Inc. vs. The Court of Tax Appeals, supra, "it is a sound rule that before one resorts to the Courts, the administrative remedy provided by law should first be exhausted.[6]

IN VIEW OF THE FOREGOING, petitioner's appeal is hereby DISMISSED for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Quezon City, November 3, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge

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6 Sampaguita Shoe & Slipper Factory vs. Comm. of Customs, et al., supra.