REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING
AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2611

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

1/25/77

D E C I S I O N

As stated by petitioner:

"This is a petition for review of the ruling of respondent Commissioner of Customs dated 20 March 1974 denying petitioner's motion for reconsideration of respondent's ruling dated 24 September 1974 (1973) holding that the exportation by the petitioner to Japan of copper concentrates under the circumstances is subject to the payment of 6% export duty under Presidential Decree No. 230."

During the hearing of this case on January 28, 1976, petitioner manifested, and to which respondent concurred with, that the issues involved are basically questions of law. No trial on the merits was therefore conducted by the Court as the parties submitted this case for decision on the basis of the pleadings and of the records of the Bureau of Customs. They were however allowed to file their respective memorandum in support of their positions.

As borne out by the pleadings submitted by the parties, particularly the petition for review filed by petitioner, and the Customs records, it appears that:

1. Petitioner Atlas Consolidated Mining and Development Corporation is a mining corporation duly organized and existing under the laws of the Philippines. Under date of April 17, 1970, it entered into a processing contract with Mitsubishi Metal Mining Co. Ltd. of Japan, whereby petitioner agreed to set aside and allocate from its total production of copper concentrates some 7,000,000 lbs. for 1971; and 9,260,000 lbs. for 1972 for processing in Japan by Mitsubishi Metal Mining Co.

2. The processing agreement was entered into by petitioner allegedly by reason and in consideration of a prior subsisting agreement dated December 13, 1967, whereby it bound itself to supply and deliver processed copper rods, wires and ingots to Phelps Dodge Philippines, Inc., a manufacturing corporation organized and existing

under the laws of the Philippines supposedly engaged in the sale of copper products. It is asserted that petitioner covers every shipment with a surety bond in favor of the Central Bank for the full value of the shipment in order to fully and faithfully guarantee the return of the processed copper products; ownership of the copper concentrates remains with petitioner; and Mitsubishi Metal Mining Co. receives the copper concentrates solely for processing to be returned as processed copper products to the Philippines for Phelps Dodge.

3. On August 7, 1973, petitioner, pursuant to the processing contract, shipped some 972 dry metric tons of copper concentrates to Mitsubishi Metal Mining Co. to Japan. The records show that on this particular shipment, an export duty was assessed by the Bureau of Customs as per Order of Payment No. 003401 in the amount of ₱155,313.12. Under date of August 15, 1973, petitioner sent a letter addressed to respondent requesting that the assessment on this shipment as well as "future shipments of copper concentrates to be made by ATLAS for processing in bond" be exempted from the export duty imposed under Presidential Decree No. 230. In a letter dated September 24, 1973, the then acting Commissioner of Customs Pedro C. Mendoza,

Jr. informed petitioner that "the exportation to Japan of the copper concentrates in question is subject to the payment of 6% export duty under Presidential Decree No. 230". A request for a reconsideration filed to this effect was denied by respondent in his letter of March 20, 1974 and which was received by petitioner on April 3, 1974.

4. Hence, this appeal from the ruling of respondent holding that the exportation by petitioner to Japan of copper concentrates is subject to the payment of 6% export duty, with a prayer, additionally, that respondent be ordered to refund all payments allegedly made under protest which as of February 11, 1974 is, according to petitioner, in the total sum of ₱3,426,537.80.

In his answer with motion for dismissal of petition, respondent maintains that "The instant Petition for Review should be dismissed principally on the ground that herein Petitioner failed to avail of the administrative remedy of protest by not filing a valid and formal protest in accordance with the Tariff and Customs Code, regulations, and other pertinent laws." (p. 38, CTA rec.)

At this juncture, it may be stated that under Section 2308 of the Tariff and Customs Code, when a ruling or decision of the Collector of Customs is made whereby liability for duties, taxes, fees or other charges is determined, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest; otherwise, under Section 2309 of the same Code, the action of the Collector shall be final and conclusive against him. An appeal from the decision or action of the Collector, if adverse to the taxpayer, to the Commissioner of Customs, may be made, under Section 2313 of the Code, whose decision in such appeal may, in turn, be reviewed by the Court of Tax Appeals.

For a petition for review of or an appeal from a decision of the Commissioner of Customs in cases involving liability for duties, taxes, fees or other charges, to prosper and be cognizable by this Court, respondent therefore argues that the party concerned must have availed first of the administrative remedy of protest by following the procedure laid down by law and the formalities

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prescribed in connection therewith. Otherwise, his failure to do so is fatal to his cause of action. And averring that the letter dated August 15, 1973 of herein petitioner is not a valid and formal protest contemplated under the Customs laws, but a mere communication requesting for a ruling, as the last paragraph thereof states that "x x x we x x x request for a ruling from your Office that the above and future similar shipments of copper concentrates x x x are not subject to the export tariff under Presidential Decree No. 230 x x x", the instant petition for review should not be entertained by this Court.

For its stand, petitioner puts forward this rationale:

x x x x

> Atlas, respectfully submits, however, that, in a case when the assessment sought to be protested was made by the Office of the Commissioner itself, as in the instant case, the protest provisions of the Tariff and Customs Code, particularly Secs. 2308, 2309 and 2310 thereof, and the rules and regulations related thereto, are not applicable.
>
> It should be pointed out that, as evidenced by the different Orders of Payment marked and offered in evidence as Exhs. "A" to "I", the assessment of export/premium duties was made by the Office of the Commissioner of Customs, through the Export Coordination Se-

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partment, and not by any Port Collector. This being the case, the protest provisions of the Tariff and Customs Code, particularly Sections 2308, 2309 and 2310 cannot be made applicable. Indeed, even a cursory reading of the said protest provisions, cited herein for ready reference, would immediately and clearly indicate that they apply only to "rulings, decisions or acts" made by the Collector.

x x x x x

In view of the absence of statutory provisions that squarely govern the situation involved in this case, Atlas, coursed thru its agent bank, filed the protests directly with the Office of the Commissioner of Customs, through the Export Coordination Department, as evidenced by Exhibits "A-1", to "I-1", inclusive, and Exhibit "J".

x x x x x

It must be pointed out that the procedure and manner adopted and followed by Atlas in filing the protests is not without any precedent. It should be recalled that the Export Duty imposed under PD 230 was patterned after R.A. 6125, or that law authorizing the imposition by the Central Bank of 6% Stabilization Tax on the exportation of copper ore and concentrates, among several specified export products. Atlas, consistent with its position that the "Phelps Dodge Phil." shipments of copper concentrates to Japan for processing are not "exportation", paid the assessments, <u>under protest</u>, with the Central Bank by indicating, by means of a covering letter coursed thru its agent bank, that the payment is being made <u>under protest</u>. Such a procedure was specifically provided for under Central Bank Circular No. 300, June 2, 1970, par. 5 thereof.

When R.A. 6125 was repealed by PD 230, the protests filed by Atlas, this time directly with the Office of the Commissioner, followed the same procedure prescribed in

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CB Circular No. 300, for want of an alternative procedure for the filing a protest in cases where the assessment sought to be protested was made by the Office of the Commissioner.

It is relevant to note that Atlas' act of paying the export/premium duties, under protest, in the manner and procedure prescribed by CB Circular No. 300, was duly noted and acknowledged by the Government, as shown by the different Central Bank Official Receipts issued in connection with the payments by Atlas of the export/premium duties, under protest. On each of these CB official receipts, marked and offered in evidence as Exhs. "A-2" to "1-2-b", the government indicated, in clear and unmistakable terms, that the payment by Atlas was "PAID UNDER PROTEST." (pp. 30-34, Memorandum for the Petitioner )

Petitioner concedes at least that the procedure and manner adopted and followed by it in filing its protests is not in accordance with the protest provisions of the Tariff and Customs Code as well as the rules and regulations pertinent thereto. That petitioner failed to avail of the administrative remedy of protest by not filing a valid and formal protest in accordance with the Tariff and Customs Code, regulations and other pertinent laws, as alleged by respondent, is not therefore in dispute.

Much of petitioner's argument is addressed, however, to the fact that the protests allegedly filed by it with the Office of the Commissioner of Customs followed the same procedure prescribed in CB Circular No. 300, June 2, 1970. Before the

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repeal of Republic Act No. 6125, or the law authorizing the imposition of 6% stabilization tax on the exportation of certain specified export products, by Presidential Decree No. 230, the assessment and collection of this export duty was done by the Central Bank. After the repeal of Republic Act No. 6125, and the stabilization tax imposed therein made a permanent feature of the tariff system as an export duty assessed and collected by the Bureau of Customs (not anymore the Central Bank), petitioner consistent with the stand that its shipments of copper concentrates to Japan for processing are not "exportation", paid the export duty, under protests, with the Central Bank by indicating by means of a covering letter coursed thru its agent bank, that the payment is being made under protest in accordance with the manner and procedure provided for under Central Bank Circular No. 300.

Decisive is the question therefore whether the procedure specifically provided for under Central Bank Circular No. 300 June 2, 1970, is still to be followed and adopted in contesting or protesting the imposition of the export duty which is already levied by authority of Title III, Book I of the Tariff and Customs Code; assessed and collected by the Bureau of Customs; and not anymore by the Central Bank as stabilization tax which was formerly provided for under Republic Act No. 6125 before its repeal by Presidential Decree No. 230.

Considering that Presidential Decree No. 230 is accorded with the status of a legislative enactment (De Chavez vs. Zobel, No. L-28609, January 17, 1974, 55 SCRA 26; Aquino Jr. vs. Enrile, No. L-35540, September 17, 1974, 59 SCRA 183), just like any other law, judicial notice may be taken of its history, purpose and objectives (U.S. v. De Guzman, 30 Phil. 476) as it relates to Republic Act No. 6125 which it repealed, and as will make it harmonize with the Tariff and Customs Code which it amended and inserted new provisions thereof as Title III in Book I of the said Code.

Presidential Decree No. 230 has this for its title, to wit:

PRESIDENTIAL DECREE NO. 230

AMENDING THE TARIFF AND CUSTOMS CODE; CREATING TITLE III IN BOOK I - EXPORT TARIFF.

And for its purpose and objectives as follows:

> WHEREAS, Republic Act No. 6125 was enacted as a revenue raising measure and as a stabilization device to withdraw excessive money supply generated by windfall gains in the export sector due to the change in the exchange rate of the peso;
>
> WHEREAS, this fiscal measure can generate more benefits to the economy if made a permanent

feature of our tariff system as an export duty and used as instrument to promote certain economic objectives of stabilization and industrialization;

WHEREAS, the primary strategy in our export policy now is the restructuring of our export sector by inducing the processing of traditional export products and giving encouragement to exports of manufactured and semi-processed goods;

WHEREAS, it is appropriate to transfer assessment and collection of the export duty from the Central Bank to the Bureau of Customs;

Section 1 of said Presidential Decree reads:

Sec. 1.- Republic Act No. 6125, as amended, is hereby repealed and a new Title III is inserted in Book I of the Tariff and Customs Code to read as follows:

x x x x

Section 2 of the same decree provides:

Sec. 2.- The Commissioner of Customs shall promulgate the rules and regulations necessary for the implementation of this Decree, subject to the approval of the Secretary of Finance.

And Section 3 thereof states that:

Sec. 3.- All laws, decrees, rules and regulations which are inconsistent herewith are hereby amended or modified accordingly.

The title of Presidential Decree No. 230, the purpose and objectives thereof, and the provisions of the said decree just cited clearly and categorically state that an export duty is to be made a permanent feature of our tariff system and to transfer assessment and collection thereof from the Central Bank to the Bureau of Customs. Through the instrumentality of said decree, it amended the Tariff and Customs Code; created Title III in Book I - Export Tariff; inserted Sections 514, 515, 516, 517 and 518 in said Code providing for the levy, assessment and collection of a duty on the exportation of specified products enumerated therein, including the rates thereof; and charged the Bureau of Customs with the function of assessing and collecting the export duty. Section 1 of the decree states unmistakably that Republic Act No. 6125, which authorized the imposition of a stabilization tax on consignments abroad by the Central Bank through any authorized agent bank, is repealed. The Commissioner of Customs, as head of the Bureau of Customs, under Section 2, was thus charged with the duty of promulgating the rules and regulations necessary for the implementation of the decree, subject to the approval of the Secretary of Finance. And in accordance thereto, Customs Administrative Order No. 8-73, dated June 28, 1973, was issued, Section 1 of which provides:

Pursuant to Section 2 of Presidential Decree No. 230 promulgated on June 28, 1973, amending Republic Act No. 1937, as amended, otherwise known as the Tariff and Customs Code, by inserting Title III in Book I thereof, prescribing the rates of duty on export products and conferring the function of assessment and collection of such duty upon the Bureau of Customs through authorized agent banks of the Central Bank of the Philippines, the following guidelines are hereby prescribed:

Section 1.- Immediately upon completion of the loading of the export shipment, the Export Coordination Department of the Bureau of Customs, or the Collector of Customs concerned, or their duly designated representatives, shall issue an order of payment to the authorized agent bank to collect the export duty due thereon within thirty (30) days from date of shipment. This duty shall constitute a lien on the peso proceeds of the shipment.

Sec. 2.- Export duty collections shall be remitted to the Central Bank of the Philippines within seven (7) days from collection thereof.

Sec. 3. Report of collections of export duty shall be transmitted to the Bureau of Customs daily by the authorised agent bank concerned as in the case of import duty.

Sec. 4.- This Order shall take effect on July 1, 1973. All exports departing from Philippine territorial jurisdiction after midnight of June 30, 1973, shall be subject to the provisions of Presidential Decree No. 230 and these implementing regulations.

As can be seen from the foregoing, in one fell swoop, Republic Act No. 6125, which authorized the imposition by the Central Bank of the 6% stabilization tax on certain products, was repealed and revoked. Consequently, Central Bank Circular No. 300, June 2, 1970, which prescribed the manner and procedure for the filing of protests in the assessment and collection of the stabilization tax, and which was issued by the Central Bank pursuant to the said Republic Act was also repealed and revoked. (Sections 2 & 3, P.D. No. 230, supra.) In the same swoop, the Tariff and Customs Code was also amended and Title III in Book I providing for the assessment and collection of the export duty on several specified export products by the Bureau of Customs was inserted in the said Code.

It seems clear, therefore, that since the export duty is a permanent feature of the Tariff and Customs Code, the function of assessment and collection of which is conferred upon the Bureau of Customs, which is performed primarily by the Collector of Customs concerned, the Export

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Coordination Department of the said Bureau, or their duly designated representatives, as per order by the Commissioner of Customs with the approval of the Secretary of Finance, the procedure and manner prescribed in the Tariff and Customs Code for filing of protest against duties, taxes, fees and charges levied, assessed and collected under the said Code must perforce apply with equal force and effect to protest in connection with the assessment and collection of the export duty. It is well-settled that a statute must be enforced as written and all the provisions thereof should be construed with reference to each other so that effect may be given to all of them. To the extent that the protest filed by petitioner may be in the manner and procedure prescribed by Central Bank Circular No. 300, after the repeal of Republic Act No. 6125 upon whose authority said Central Bank Circular was issued, when the export duty is now levied, assessed and collected pursuant to the Tariff Customs Code, such can therefore be assailed as erroneous for not being in compliance with applicable legal provisions. For to follow the procedure of petitioner would result in the uneven application of the law, if not the denial to the taxpayer of his remedy whereby he can protest the wrongful assessment and collection of the export duty. It follows that the protest provisions of the Tariff and Customs Code as well as the rules and regulations related thereto are applicable in the instant case.

Under Sections 2308, 2309, 2310 and 2312 of the Code the requirements for filing a protest may be briefly stated as follows:

(a) The protest must be in writing.

(b) It must refer to the particular decision or ruling of the Collector (or the Export Coordination Department of the Bureau of Customs, as per Customs Administrative Order No. 8-73, June 28, 1973) to which exception is taken.

(c) It must state the grounds relied upon for relief.

(d) It must be limited to the subject matter of a single adjustment or other independent transaction.

(e) It must be filed when duties are paid or within fifteen days after payment.

(f) If the nature of the article permits, importers (exporters) filing protests involving questions of fact, must, upon demand, supply the Collector (or the Export Coordination Department) with samples of the articles which are the subject matter of the protest.

(g) The corresponding customs documentary stamp must be affixed to the protest.

Since Exhibits "A-1" to "I-1", inclusive, of petitioner, which merely show that in paying the export duty with the Central Bank, petitioner simply indicated by means of a covering letter coursed through its agent bank that the payment is being made under protest, are not in accordance with the requirements afore-stated, the same do not therefore constitute a valid and formal protest under the Tariff and Customs Code and the regulations pertinent thereto. Accordingly, we hold that petitioner failed to avail of the administrative remedy of protest for non-compliance with the procedure and manner laid down by law and the regulations prescribed in connection therewith.

Petitioner seeks refuge, however, in its letter dated August 15, 1973 to the Commissioner of Customs (Exh. "J"), claiming that the same also constitutes a protest in contemplation of law. In this letter, petitioner, after stating certain circumstances surrounding a shipment of copper concentrates to Japan, requested "a ruling from your Office that the above and future similar shipments of copper concentrates to be made by Atlas for processing in bond are not subject

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to the export tariff under Presidential Decree No. 230 issued on June 28, 1973". In reply thereto, respondent rendered a ruling contained in his letter dated September 24, 1973 (Exh. "J-1") holding that the exportation by petitioner to Japan of copper concentrates under the circumstances presented by petitioner is subject to the payment of 6% export duty under Presidential Decree No. 230. A motion for reconsideration (Exh. "K") filed by petitioner of this ruling was denied by respondent in his letter dated March 20, 1974 (Exh. "K-1"). As a matter of fact, as stated by petitioner itself, and quoted at the beginning of this decision, this case is a petition for the review of the ruling of respondent denying petitioner's motion for reconsideration of respondent's ruling holding that the exportation by petitioner to Japan of copper concentrates under the circumstances is subject to the payment of 6% export duty under Presidential Decree No. 230.

With this backdrop, petitioner now contends that this ruling of respondent, in connection with its Exhibits "A-1" to "I-1", which show that in paying the export duty with the Central Bank, petitioner indicated by means of a letter coursed through its agent bank that the payment is under protest, and its Exhibit "J" (the aforestated request for a ruling), is well covered by Section 2402 of the Tariff and Customs Code which provides to that "the party aggrieved by a ruling of the Commissioner in <u>any matter brought before him upon protest</u> x x x may appeal to the Court of Tax Appeals".

The implausibility of petitioner's stand is at once apparent. As Section 2402 expressly and categorically states, the law deals with a "ruling of the Commissioner <u>in any matter brought before him upon protest</u>", not a ruling of the Commissioner brought before him upon a letter-request for a ruling that certain shipments be exempt from the export duty, much less upon a letter addressed to the Central Bank stating that payment is under protest in accordance with a circular issued under a law which had already been repealed.

Under the well-settled rule of statutory construction that the particular clauses and phrases of the statute should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of

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any of its parts, Section 2402 entitled "Review by Court of Tax Appeals" under PART 3-JUDICIAL PROCEEDINGS, should be harmonized with Section 2313 entitled "Review by Commissioner", falling under PART 2-ADMINISTRATIVE PROCEEDINGS. As discussed above, Sections 2308, 2309, 2310 and 2312 specifically prescribe the manner and procedure for the filing of protest in protestable cases, and the administrative machinery to adjudicate them, under the Tariff and Customs Code. However, under Section 2313, the person aggrieved by the decision or action of the Collector in any matter presented upon protest may within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector 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 steps and make such orders as may be necessary to give effect to his decision. (Sec. 2313, id.) The decision of the

Commissioner in the <u>matter appealed before him upon protest</u> is the ruling now appealable to the Court of Tax Appeals under Section 2402.

Once the Commissioner has rendered his decision or ruling on the matter appealed before him upon protest, the administrative remedy of the taxpayer ends. His remedy now becomes judicial, that is, by appeal to the Court of Tax Appeals under Section 2402 of the Code, or under Section 7(2) of Republic Act No. 1125. Thus, Section 2402 falls under "PART 3- JUDICIAL PROCEEDINGS" and is entitled, "Review by Court of Tax Appeals". Proceedings in the Court of Tax Appeals are judicial in nature, the said Court being a court of record and is part of the judicial system. (Ursal v. Court of Tax Appeals, 101 Phil. 209).

It is thus plain that "a ruling of the Commissioner in any matter brought before him upon protest" appealable to the Court of Tax Appeals under Section 2402 refers to his ruling or decision in a protestable case within the provisions of Section 2308, involving determination of duties, taxes, fees or other money charges, which was

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originally presented to the Collector (or Export Coordination Department in this case) in the manner and procedure specified under the protest provisions of the Tariff and Customs Code discussed above. After the Collector (or the Export Coordination Department) has rendered his ruling or action in the protestable case brought before him, and the person aggrieved thereby duly appealed the ruling or action to the Commissioner, the ruling or decision of the latter on the case may in turn be reviewed by the Court of Tax Appeals. Any other interpretation would be to place the applicability of the protest provisions of the Tariff and Customs Code, particularly Sections 2308, 2309 and 2310 thereof, and the rules and regulations related thereto, at the exclusive determination of those precisely intended to be covered therein, for protestable cases which should be the object of protest, although not duly protested in accordance with the law and regulations, could be presented or brought before the Commissioner and eventually appealed to the Court of Tax Appeals. That would therefore make the protest provisions of the Tariff and Customs Code of little sense, if not a surplusage.

We are, therefore, of the opinion and so hold that this case being a protestable case, petitioner's letter of August 15, 1973 to respondent requesting for a ruling whether or not its exportations to Japan of copper concentrates are subject to the export duty under Presidential Decree No. 230, is not a "matter brought before him (Commissioner of Customs) upon protest" within the contemplation of Section 2402 of the Tariff and Customs Code. Consequently, the ruling of respondent contained in his letter of September 24, 1973 to petitioner in reply thereto, holding that its exportations of copper concentrates are subject to the export duty, is not "a ruling of the Commissioner in any matter brought before him upon protest" appealable to this Court under Section 2402 of the Code.

To the same effect, having reached the conclusion that this is a protestable case which should be the object of protest under the provisions of the Tariff and Customs Code, and petitioner having failed to avail of the administrative remedy of protest by following the procedure and manner laid down by law and the formalities prescribed in con-

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nection therewith, there is therefore no decision of the Collector of Customs concerned or the Export Coordination Department, which is directly charged with the function of assessment and collection of the export duty, appealable to the Commissioner of Customs. Accordingly, there is no decision of the Commissioner of Customs that may be appealed to, or reviewed by this Court. Pursuant to Section 7 of Republic Act No. 1125, the Court of Tax Appeals cannot exercise its jurisdiction except on appeal from a decision of the Commissioner of Customs. The absence of such decision of the Commissioner of Customs underscores petitioner's failure to exhaust administrative remedies and suggests a lack of cause of action. This Court has therefore no case to take cognizance of. (Southwest Agricultural Marketing Corp. vs. Secretary of Finance, L-24797, October 8, 1968, 25 SCRA 452; Allied Brokerage Corporation vs. Commissioner of Customs and Court of Tax Appeals, L-27641, August 31, 1971, 40 SCRA 555.)

Having come to this conclusion, it becomes unnecessary to discuss the question raised by petitioner whether or not the shipments of copper concentrates involved in this case are subject to the export duty under Section 514 of the Tariff and Customs Code.

WHEREFORE, the instant petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, January 25, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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