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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLIED BROKERAGE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 1564

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

April 29/67

D E C I S I O N

Petitioner seeks the refund of the amount of ₱35,227.00 paid to the Customs Arrastre Service allegedly in excess of the amount required by law.

The facts as stipulated by the parties are as follows:

"1. Petitioner is a corporation duly organized and existing under the laws of the Philippines, with business address at Robert Dollar Building, Port Area, Manila, Philippines; respondent is the duly appointed Commissioner of Customs and may be served with summons at his Office in the Bureau of Customs Building, Port Area, Manila, Philippines;

"2. Petitioner is duly licensed to engaged in the Customs brokerage business, having as its clients, importers and/or exporters. For an agreed fee, its main business or functions are to obtain the clearance and release from the custody of the Bureau of Customs, merchandise or goods consigned to its client-importers, depositing in advance with the Bureau of Customs the estimated charges and securing with surety bonds whatever deficiencies may be found in the final liquidation;

"3. That Section 3102(e) of the Tariff and Customs Code provides:

'SEC. 3102. At the Port of Manila -

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e. Heavy Cargo.- On any single package of import, export, transit cargo, weighing more than two (2) tons handled on a pier or wharf, the charge shall be, per ton or any fraction thereof - - - ₱13.50,

Provided, that this charge shall not apply to automobiles, motor trucks and transit cargo for coastwise ports.'

"4. That on April 30, 1963, the then Commissioner of Customs, Norberto Romualdez, Jr., thru his Acting Deputy Commissioner Rolando Geotina, issued an unnumbered Customs Memorandum Order hereinbelow quoted for ready reference:

'CUSTOMS ARRASTRE SERVICE
Port Area, Manila

April 30, 1963

CUSTOMS MEMORANDUM ORDER
No. ______

TO: COLLECTOR OF CUSTOMS, Manila
MANAGER, CUSTOMS ARRASTRE SERVICE IMPORTERS, BROKERS AND OTHERS CONCERNED:

The arrastre charge for "Heavy Cargo" as prescribed under Section 3102(e) of the Customs and Tariff Code, viz.:

(e) Heavy Cargo - On any single package of import, export, transit cargo, weighing more than two (2) tons, handled on a pier or wharf, the charge shall be, per ton or any fraction thereof - - - ₱13.50,

<u>shall be applied to mean that one ton shall be equivalent to 1,000</u>

kilos or 40 cubic feet volume, whichever is higher. (Underlining supplied)

The foregoing interpretation is in consonance with the universal shipping and trade practices and should have been followed since the beginning of the operation of the Customs Arrastre Service.

This order shall take effect as of November 23, 1962.'

"5. That on May 7, 1963, the President of the Association of Customs Brokers, Inc. addressed a letter of protest to respondent protesting the enforcement of the said Memorandum Order under which the arrastre charges are collected based on "1,000 kilos or 40 cubic feet volume" per ton, whichever is higher;

"6. That the petitioner on May 25, 1964 filed with respondent a claim for refund of the amount of ₱20,658.85 representing the amounts collected by the Customs Arrastre Service from the petitioner during the period from April 30, 1963 to May 25, 1964;

"7. That petitioner, after several representations in writing to the Commissioner of Customs, received a letter from the latter dated October 26, 1964, disapproving petitioner's claim;

"8. That on February 18, 1965, the Chief of the Law Division in his 3rd Indorsement addressed to the Commissioner of Customs recommended the immediate repeal or abrogation of the unnumbered memorandum order under consideration. A photostatic copy of the abovementioned indorsement is hereto attached and marked as Annex 'A';

"9. That after the admission of this stipulation of facts and the corresponding memoranda together with the pleadings filed and the records of the Bureau of Customs pertaining to this case now in the custody of this Honorable Court, the parties

agree to submit the case for decision."
(Stipulation of Facts, pp. 65-67, CTA
rec.)

Petitioner assails the validity of the unnumbered Customs Memorandum Order dated August 30, 1963, for the reasons that it is contrary to law; that it contravens established international shipping practices; and that it is void *ab initio*. On the other hand, respondent interposed the defense of petitioner's lack of cause of action.

The following issues are raised for our determination:

1. Whether or not petitioner has a cause of action, and in the affirmative;

2. Whether or not the arrastre charges collected from petitioner based on the 1,000 kilos or 40 cubic feet volume whichever is higher, is legal.

Respondent contends that petitioner has no cause of action on the ground that it did not pay under protest the charges, the refund of which it now seeks and it failed to exhaust the administrative remedies provided by law. We find the contention meritorious.

It appears that petitioner did not file any protest with the Collector of Customs at the time of collection of the charges, but instead filed its claim for refund directly with the Commissioner of Customs. The pertinent provisions of the Tariff and Customs Code on the matter of refund provide as follows:

"SEC. 2308. Protest and Payment upon Protest in Civil Matters.- When a ruling or decision of the Collector is made whereby liability for duties, fees, or other money charge is determined, except the fixing of fines in seizure cases, 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 thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made.

"SEC. 2309. Protest Exclusive Remedy in Protestable Case.- In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.

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"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 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 such steps and make such orders as may be necessary to give effect to his decision.

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"SEC. 2402. Review by Court of Tax Appeals.- The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations."

In the case of Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, et al., G.R. No. L-10285, Jan. 15, 1958, it was held:

"x x x As the law on the matter actually 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.

"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 favor a preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a 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 López & 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'. As petitioner herein did not interpose an appeal to the Commissioner of Customs from the decision of the Collector of Customs of Cebu within the period of 15 days prescribed by law, said decision of the latter became final and executory; hence, petitioner cannot take its case on appeal to the Court of Tax Appeals. Anyway, and even if We would consider that it could, We find that petitioner has also failed to appeal from any Commissioner of Customs' decision on the matter to the Court of Tax Appeals within the time prescribed by Section 11 of Republic Act No. 1125."

In the case of CMS Estate v. Commissioner of Customs, et al., G.R. No. L-18773, January 31, 1964, it was held that where no written protest or appeal from the decision of the Collector of Customs was taken pursuant to the provisions of sections 2309 and 2313 of the Tariff and Customs Code, the petition for review of such decision filed in the Court of Tax Appeals is premature.

Under the aforequoted provisions of law and the cases cited above, the filing of a written protest with the proper Collector of Customs within the statutory period is mandatory and a condition precedent for the recovery of customs duties, fees and other charges allegedly erroneously or illegally collected and noncompliance therewith bars and is fatal to the action. (See also Luzon Stevedoring Corporation v. Comm. of Customs, G.R. No. L-21005, Oct. 22, 1966.)

Having reached a conclusion on the first issue adverse to petitioner, we deem it unnecessary to consider the other issue.

WHEREFORE, the petition for review in the above-entitled case is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, April 29, 1967.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge Estanislao R. Alvarez did not take part.