REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 761

THE COMMISSIONER OF CUSTOMS
and THE COLLECTOR OF CUSTOMS
OF THE PORT OF ILOILO,
Respondents.

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R E S O L U T I O N

This refers to the motion to dismiss filed by respondents, dated April 27, 1960, of the petition for review on the ground of lack of jurisdiction.

On March 21, 1958, petitioner paid under protest the sums of ₱11,912.82 and ₱16,716.60 to the respondent Collector of Customs for the Port of Iloilo, as customs duties and special import tax on jute bags (not yet re-exported) imported for its use as containers in the milling and production of centrifugal sugar, which shipments were declared under Import Entry No. 48, dated January 8, 1957, and Import Entry No. 243, dated February 8, 1957 (pp. 1 & 2, Petition for Review; p. 1, Annex A, Petition). These payments are evidenced by Official Receipts Nos. B-115682 and B-115683. On April 10, 1958, petitioner demanded the refund of said amounts which was denied by the respondent Collector in a decision, dated January 21, 1960, in the case entitled "In re Protest No. 15 filed by Asturias Sugar Central, Inc. against payment of customs duties and special import tax on jute bags imported under

Import Entries Nos. 48 and 243." (See Annex A, Petition for Review.) One copy of this decision was received by the petitioner on January 22, 1960, and on the same date it filed its notice of appeal from said decision to the Commissioner of Customs of Manila. Pending decision on this appeal, and fearing that its right to claim for refund would prescribe under Section 306 of the Tax Code, should the respondent Commissioner not decide the appeal immediately, petitioner filed the present petition for review on March 18, 1960.

The only issue raised is whether or not this Court has jurisdiction to take cognizance of this case, it appearing of record that the appeal taken by the petitioner to the Commissioner of Customs from the decision of the Collector of Customs of Iloilo is still pending decision by the former.

For ready reference, the provisions of Sections 7 and 11 of Republic Act No. 1125, creating the Court of Tax Appeals, delineating the jurisdiction of this Court is hereby reproduced, to wit:

> "SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided --
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> "(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
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> "(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected; fines,

forfeiture or other penalties imposed in relation thereto; or other matters arising under the Customs law or other law or part of law administered by the Bureau of Customs; and

"(3) Decisions of provincial or city Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto."

"SEC. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

"No appeal taken to the Court of Tax Appeals from the decision or ruling of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court." (Underlining supplied.)

In the unanimous decision of the Supreme Court in the case of Rufino Lopez & Sons, Inc. vs. The Court of Tax Appeals, G. R. No. L-9274, February 1, 1957, the simple facts of which are in all fours with the present, and wherein the petitioner in that case, like in the instant case, appealed directly to this Court from the decision of the Collector of Customs without first coursing his appeal to and awaiting the decision of the Commissioner of Customs, it was held that under Section 7 of Republic Act

No. 1125, this Court has exclusive appellate jurisdiction to review by appeal decisions of the Collector of Internal Revenue, decisions of the Commissioner of Customs and decisions of provincial or city Board of Assessment Appeals on cases mentioned in said section; that the apparently conflicting provisions of said Act 1125 (Sections 7 and 11) should be harmonized and reconciled if possible, in order to give effect to the whole act; that "it is more reasonable and logical to hold that in Section 11 of the Act, the Legislature meant and intended to say, the Commissioner of Customs instead of Collector of Customs in the first paragraph and the first part of the second paragraph of said section," and that it is within the province of the courts to correct and rectify a manifest and obvious clerical error in the wording of a statute to give due course and carry out the evident intention of Congress (see Acting Collector of Customs vs. Commissioner of Customs, C.T.A. Case No. 17, Resolution dated May 23, 1955). Hence, only decisions of the Commissioner of Customs, Collector of Internal Revenue, and provincial or city Board of Assessment Appeals, are appealable to this Court. Consequently, inasmuch as in the instant case, the appeal taken by the petitioner to the Commissioner of Customs from the decision of the Collector of Customs of Iloilo, is still pending before the former, the filing of the present petition for review is premature.

Petitioner however claims that it filed its present petition for review for fear that it would lose its right to claim for refund should the Commissioner of Customs not decide its appeal in time to enable it to file its action before this Court within the two-year period prescribed in Section 306 of the Tax Code. It justifies its present action with the ruling of the Supreme Court in the cases of P. J. Kiener Company, Ltd. vs. Saturnino David, 49 O.G. p. 1852, and Allison J. Gibbs, et al. vs. Collector of Internal Revenue and Court of Tax Appeals, G. R. No. L-13453, February 29, 1960, where it was held that the claimant for refund need not wait for the decision of the official to whom the claim for refund is directed, but proceed to file his case within the two-year period. The cases cited refer to internal revenue taxes and not to customs duties.

"There is nothing in the Tax Code which provides that these provisions shall also be applicable to customs duties or charges imposed under the Customs Law. On the contrary, the Revised Administrative Code, in Chapter XXX, Article XII, Sections 1300 and 1301 (now Sections 1707 and 1708, Tariff and Customs Code), contains specific provisions as to the time and manner of filing claims for refund of customs duties. These provisions in the old Administrative Code and the Tariff and Customs Code of the Philippines show that the provisions of Sections 306 and 309 of the National Internal Revenue Code on refund of internal revenue taxes erroneously and illegally collected do not apply to customs duties."

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petition for review is hereby dismissed without prejudice, without pronouncement as to costs.

SO ORDERED.

Manila, June 6, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO is on leave.

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