18

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTLE PHILIPPINES, INC.
(Formerly Filipro),
Petitioner,

- versus -

C.T.A. CASE NO. 4478

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
MAY 30 1995

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DECISION

This is a Petition for Review filed by petitioner Nestle Philippines, Inc. (formerly Filipro) to compel respondent Commissioner of Customs to grant petitioner's claims for refund of allegedly overpaid import duties on various importations of milk powder totalling P5,008,029.00.

Petitioner is domestic corporation duly organized and existing under the laws of the Philippines. It is a regular importer of milk and milk products for processing, distribution and sale in the Philippines.

On various dates between July and November 1984, petitioner made sixteen (16) separate importations of various milk and milk products from Belgium, France, Canada, Holland, New Zealand and Australia. These importations were covered by separate consumption entries duly filed with the Bureau of Customs, to wit: consumption entries 46218, 46988, 52043, 46217, 45799, 45764, 48367, 51183, 45763, 20647, 21361, 21844, 22516, 22907, 51694 and 52540.

For each of these importations, the Bureau of Customs assigned the corresponding home consumption values based on existing published revision orders, which in turn became the basis for the computation of the import duties that petitioner was required to pay. Based on the published home consumption values, petitioner was required to pay the following import duties, to wit:

Entry No.	Home Consumption Value (Per R. O)	Import Duties Paid
46218	US$ 1,693.00	P 1,712,318.00
46988	1,693.00	1,501,156.00
52043	1,693.00	1,771,989.00
46217	2,000.00	1,759,217.00
45799	3,396.54	164,415.00
45764	1,039.91	991,861.00
48367	1,039.91	367,315.00
51183	1,039.91	122,253.00
45763	3,375.00	21,219.00
20647	993.00	3,804,123.00
21361	993.00	1,812,393.00
21844	993.00	1,812,392.74
22516	993.00	1,176,113.00
22907	993.00	1,695,887.00
21694	817.08	716,217.00
52540	3.29	530,235.00

Petitioner after payment filed various protests with the Collector of Customs which uniformly alleged that the Bureau of Customs had used the wrong home consumption values in determining the dutiable value of petitioner's importations. On various dates, Petitioner claimed a refund of the alleged overpaid import duties totalling P5,008,029.08, broken down as follows:

Entry No.	Duties Paid	Due Based on Correct HCV	Difference
46218	P1,712,318.00	P1,480,451.00	P 231,867.00
46988	1,501,156.00	1,297,882.00	203,273.00
52043	1,771,989.00	1,548,733.00	223,245.00
46217	1,759,217.00	1,395,876.00	363,241.00
45799	164,415.00	120,403.00	45,910.00
45764	991,861.00	679,751.00	312,110.00
48367	367,315.00	249,183.00	118,132.00
51183	122,253.00	82,934.00	39,319.00
45763	21,219.00	14,734.00	6,485.00
20647	3,804,123.00	2,606,757.00	1,197,366.00
21361	1,812,393.00	1,241,934.00	570,459.00
21844	1,812,392.74	1,241,933.66	570,459.00
22516	1,176,113.00	805,926.00	370,187.00
22907	1,695,887.00	1,156,280.00	539,607.00
21694	716,217.00	621,989.00	94,228.00
52540	530,235.00	408,289.00	121,946.00
			P5,008,029.08

It appears from the Petition for Review filed before Us that neither the Collector of Customs nor respondent Commissioner of Customs acted upon petitioner's various claims for refund.

Hence, this appeal.

The issues raised before Us for resolution are the following:

1. Whether or not petitioner is entitled to the claim for refund;

> 2. Whether or not this Court has jurisdiction over this case there being no resolution or decision yet on the protest either from the Collector of Customs or from the respondent Commissioner of Customs;
>
> 3. Whether or not petitioner has cause of action.

Let Us first discuss the issue of jurisdiction which We answer in the negative. And rightly so.

This Court indeed has no jurisdiction over this case since there was no decision rendered yet by the Collector of Customs as well as the Commissioner of Customs for which this Court could take cognizance of contrary to Section 2402 of the Tariff and Customs Code of the Philippines which provides, thus:

> SEC. 2402. *Review by Court of Tax Appeals.* - The party aggrieved by a <u>ruling of the Commissioner in any matter brought before him upon protest</u> 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.
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> xxx xxx xxx

and under Section 7 of Republic Act No. 1125 which provides, thus:

> Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) xxx xxx xxx
>
> (2) <u>Decisions of the Commissioner of Customs</u> in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property

> affected; fines, forfeitures 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;

Hence, "in a petition for review seeking refund paid on various dates of customs duties, special import tax, sales tax or compensating tax, said petition must state that a decision of the Collector of Customs as well as the Commissioner of Customs has been rendered which was the occasion for its appeal to the Court and failure to so state is fatal to said petition. The Supreme Court in at least two cases and the Court of Tax appeals in a long line of resolutions rejected the appeal of taxpayers relative to their respective claims where no decision of the Commissioner of Customs had yet been rendered. (**Rufino Lopez & sons vs. CTA**, G.R. No. 9274, Feb. 1, 1957 and a long line of other decisions; **TEJAM**, Commentaries on the Tariff and Customs Code of the Philippines, Vol. IV, 1986 ed. p. 2312) In fine, the Court cannot take cognizance of petitioner's appeal for refund of duties and special import tax for the reason that there is as yet no decision of the Commissioner of Customs upon which to base the petition for refund. (**Reynolds (Phil.) Corp. vs. Com. of Int. Rev. & Coll. of Customs**, CTA Case No. 1101, Aug. 1, 1961).

In the case at bar, there was no allegation that there was a decision of the Collector of Customs. Neither was there an allegation that a decision by the Commissioner of Customs has been rendered. Thus, it cannot be denied that this Court, indeed, lacks jurisdiction to take cognizance of this case.

We, however, are not unaware of a more recent decision promulgated by the Court of Appeals that under "peculiar circumstances" this Court may take cognizance of a Customs case even without the decision of the Commissioner of Customs <u>for as long as the procedural prerequisites have been complied.</u> Said, the Court of Appeals, thus:

> In the matter of whether or not the CTA has jurisdiction over the petition for review filed within by PMC, We are of the persuasion that the CTA under the peculiar circumstances herein obtaining may take cognizance of the case and decide it on its merits.
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> There is no dispute concerning the requirement in the filing of petition for review with the CTA that need first be made. But as the petitioner had explained, the Commissioner of Customs for well over three (3) years and despite the requests in several letters by PMC for a resolution of the protest, said office had not acted which had caused the petitioner to file with it the letter of December 17, 1976 informing said office that petitioner would consider the Commissioner of Customs denying the protest if no resolution is received from that office by January 5, 1977 and thus had coursed on January 13, 1977 with the Court of Tax Appeals the aforesaid petition for review. <u>Indeed, as the petitioner has</u>

> stated, it and other persons similarly situated would practically be at the mercy of respondent Commissioner of Customs who would interminably delay resolution of matters pending before him and prevent said petitioner from filing an appeal to the CTA and other courts. (Emphasis supplied)
>
> The situation of the petitioner in the instant case is different from the cited cases by CTA which involved the failure of the petitioners therein to follow the procedures set by law which is to file a protest with the Collector of Customs, appeal the decision of the Collector of Customs to the respondent Commissioner of Customs. In the case at bar, petitioner PMC had followed all the procedures provided for by law and it went to the Court of Tax Appeals despite the failure of the Commissioner of Customs to decide the case but only because it had waited for over three (3) years and had given the Commissioner of Customs an alert of what it will assume the Commissioner of Customs as having affirmed the collector's decision denying petitioner's protest and thus implicitly, that it intended to file a petition for review with the Court of Tax Appeals considering the Commissioner of Customs' assumed denial of its protest.
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> xxx xxx xxx
>
> The principle of exhaustion of administrative remedies invoked by the CTA is subject to certain exceptions, one of which is when under the circumstances, an administrative remedy is not a plain, speedy and adequate remedy (**De Lara vs. Cloribel**, 14 SCRA 267, 272-273), its application would result to nullification of a claim (**Gravador vs. Mamigo**, 20 SCRA 742, 748), or would leave no other recourse (**Sta. Maria vs. Lopez**, 31 SCRA 637, 670) or if there is unreasonable delay or official inaction (**Azuelo vs. Arnaldo**, 108 Phil. 293, 296). (Emphasis supplied)
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> (**Procter & Gamble Philippine Manufacturing Corporation vs. Hon. Court of Tax Appeals and Commissioner of Customs**, CA-G.R. SP No. 25594, May 19, 1992)

We thus agree with the Court of Appeals if only to give justice to hapless taxpayers who would be practically at the mercy of the Collector of Customs or the Commissioner of Customs who would interminably delay resolution of matters pending before them and prevent said taxpayer from filing an appeal to this Court. Otherwise, this Court would cease to be the refuge of victims of injustice because of administrative omission or inaction. We cannot allow that.

The ruling enunciated in the above cited case should have been applied to the present case but unfortunately, We cannot, because of procedural infirmity which proved fatal to the cause of the petitioner. And, regardless of the alleged merits of the case, as procedural rules have not been complied with, the same cannot by itself resurrect what has been from the start a dead case.

We are referring to the fact that petitioner in its protests failed to attach the required customs documentary stamps which "is in the nature of a docket fee and failure to pay the docket fee for appeals on time is fatal." (Lipat vs. Commissioner of Customs, CTA Case No. 1442, Oct. 26, 1966). Hence, such notice of appeal can only be considered a mere "scrap of paper" since it was not perfected for the failure of Petitioner to affix to the notice of appeal the required customs stamps pursuant to Sections 2308 and 3301 of the Tariff and Customs Code. (see also **Consolidated Plywood Industries, Inc. vs. Commissioner of Customs**, CTA Case No. 4613, March 2, 1993). Unfortunately, We cannot condone procedural defects as they are within the control of the taxpayers unlike the inaction or omission of the Collector or Commissioner of Customs to decide a case which is clearly beyond their control and thus, need the compassion of this Court.

Such being the case, the discussion of the other issues and the merits or demerits of the case will only be purely an academic exercise as this Court lacks the required jurisdiction.

ACCORDINGLY, this case is hereby **DISMISSED** for want of jurisdiction.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals