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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

May 29, 1961

ACE PUBLICATIONS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1006

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

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RESOLUTION

This treats of the "Motion to Dismiss" filed by the respondents on April 3, 1961, for lack of jurisdiction, and the "Omnibus Motion" filed by the petitioner on April 25, 1961, praying among others that said motion to dismiss be stricken off from the record and that the respondents be declared in default.

The record shows that the motion to dismiss was filed by the respondents on April 3, 1961, and a copy thereof was sent by ordinary mail to counsel for petitioner at Room 211 Garcia Building, 636 Rizal Avenue, Manila, as per notation at the bottom left hand corner of the last page of the motion. Actually, the evidence shows (Exhibit A-Motion) that said copy was mailed at the Manila post office only on April 18, 1961, and received by counsel for petitioner on April 21, 1961, that is six days after the hearing of said motion which was held on April 15, 1961. Obviously, therefore, the petitioner was not in a position to file an opposition for lack of prior notice.

On the other hand, it likewise appears of record that respondents acted in good faith in pressing upon the motion to dismiss for they honestly believed that a copy of the motion was sent on April 3, 1961 (see Exhibit 2-Motion), that is twelve (12) days prior to the hearing of said motion.

Without however passing upon the merits of the respective contentions of both parties, this Court *motu proprio*, on the basis of the express admission contained in the basic petition that up to now no action was taken by the respondents on its claim for refund (see pars. 5, 7, 9, 11, 13, and 15, Petition), decide the principal issue of jurisdiction. This admission is fatally decisive on the main issue raised, inasmuch as this Court has exclusive jurisdiction to review by appeal only *decisions* of the Commissioner of Internal Revenue, Commissioner of Customs, and Provincial or City Boards of Assessment Appeals. Without a decision from which an appeal can be taken, the petition for review is premature, as in the case at bar. (Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, G.R. No. L-10285, January 14, 1958; Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, G.R. No. L-9274, February 1, 1957.)

The pertinent provision of Section 7, of Republic Act No. 1125 states:

> "Sec. 7. *Jurisdiction*.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
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> x x x

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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, 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;"

WHEREFORE, premises considered, the instant petition for review is hereby dismissed without prejudice.

SO ORDERED.

Manila, May 29, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge