REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BORDEN CHEMICAL COMPANY
(PHILIPPINES), INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1552

COMMISSIONER OF CUSTOMS
AND/OR COMMISSIONER OF
INTERNAL REVENUE,
Respondents.
x - - - - - - - - - - - - x

May 28, 1965

RESOLUTION

This is in connection with the motion filed by the respondent Commissioner of Customs seeking the dismissal of the petition for refund insofar as he is concerned.

Petitioner, a domestic corporation engaged in the production and manufacture of basic chemicals, imported during the period from June, 1962 to June 29, 1964, equipment, machinery spare parts and other articles necessary for its operation as a chemical industry (par. 4, "Petition for Refund"). Before the withdrawal of the said importations from the Bureau of Customs, respondent Commissioner of Customs collected from the petitioner the sum of ₱70,642.00, representing customs duties, special import tax and compensating tax due on said importations. On June 29, 1964, petitioner was granted by the Board of Industries a certificate of tax exemption, BI Certificate No. 40 (p. 6, CTA rec.), exempting its importations of machineries and spare parts from customs duties, special import tax and compensating tax. Having been granted tax exemption, petitioner filed with the respondents a claim for refund of the taxes paid on its various importations. However, respondents Commissioner of Customs and Commissioner of Internal Revenue have not acted on petitioner's claim for refund up to this time; hence, the instant petition for refund. The Commissioner of Customs filed on February 16, 1965, a "Motion to Dismiss" the petition for refund while the Commissioner of Internal Revenue filed his answer on February 22, 1965. An "Opposition to Motion to Dismiss" was filed by petitioner's counsel on March 6, 1965.

In his motion to dismiss, respondent Commissioner of Customs argues that this Court has no jurisdiction to take cognizance of the present case and that the petition for refund fails to allege and show a cause of action for the following reasons: (a) that the Commissioner of Customs has not rendered any decision reviewable by this Court; (b) that petitioner has not exhausted the administrative remedies available to it under the provisions of the Tariff and Customs Code concerning appeals from decisions of the Collector of Customs to the Commissioner of Customs; and (c) that the petition is in reality a petition for mandamus which this Court cannot entertain. (See pars. 1-4, "Motion to Dismiss".)

We are in accord with the respondent Commissioner of Customs that this Court cannot entertain the instant petition for refund of customs duties and the special import tax. No decision has as yet been rendered by him and the appeal relating to the claim for refund of customs duties and special import tax is, therefore, patently premature. (Sec. 7(2), Rep. Act No. 1125.)

In a similar case, we held:

> "The motion to dismiss the Petition for Review, as far as respondent Commissioner of Customs is concerned, is well taken. There is no decision rendered as yet by the Commissioner of Customs reviewable by this Court. (See Sampaguita Shoe & Slipper Factory vs.Comm. of Customs, G.R. No. L-10285, Jan. 14, 1958; Rufino Lopez & Sons, Inc. vs. C.T.A., G.R. No. L-9274, Feb. 1, 1957.) Only decisions of the Commissioner of Customs are appealable to the Court of Tax Appeals. (Sec. 7(2), Rep. Act No. 1125.) In fact, petitioner has not even lodged a formal protest with the Collector of Customs of Manila in connection with the assessment and collection of the questioned special import tax (p. 22, CTA rec.) as required by section 2308 of the Tariff and Customs Code. Not having complied with these administrative requirements, this Court has no jurisdiction to pass upon the legality of the collection of said tax". (Jesus Gumogda vs. The Comm. of Int. Rev., et al., CTA Case No. 1529, Reso. of Oct. 28, 1964.)

Finding the "Motion to Dismiss" filed by respondent Commissioner of Customs meritorious, the same is hereby granted. The petition for refund filed on December 12, 1964, is dismissed insofar as respondent Commissioner of Customs is concerned.

SO ORDERED.

Quezon City, May 28, 1965.

ROMAN M. UMALI
Associate Judge

I concur:

TEOFILO D. REYES, SR.
Presiding Judge