REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2849

COMMISSIONER OF CUSTOMS,
Respondent.

12/13/77

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D E C I S I O N

This is an appeal from the decision of the Collector of Customs of the Manila International Airport dated August 23, 1973 in M.I.A. Protest No. (72)-1 dismissing for lack of merit the protest filed by petitioner Procter & Gamble Philippine Manufacturing Corporation against the imposition and collection of customs duty on the latter's importation of toothpaste tubes.

As alleged by petitioner in its petition for review filed with this Court on January 13, 1977, it appears that:

1. Petitioner is a corporation organized and existing under the laws of the Philippines, with principal offices at the Sarmiento Building, Ayala Avenue, Makati, Metro Manila.

2. Sometime in October 1971, Procter & Gamble Manufacturing Company of Cincinnati, Ohio, U.S.A., petitioner's parent company, shipped to petitioner, at no cost to the latter, 5,400 sample tubes of toothpaste without brand and under terms contained in the Consular Invoice of Merchandise issued by the Philip-

pine Consular Office at Los Angeles, California, U.S.A., to wit:

> "Terms: Free Of Charge to Consignee For Free Distribution For Advertising And For Charity Purposes - Not For Resale, Barter or Trade."

3. The aforesaid toothpaste samples arrived in Manila on or about October 20, 1971, and the Central Bank, on November 24, 1971, allowed release of the shipment to petitioner as a "no-dollar" importation in view of the fact that the "same (were) to be used for sample research and trial purposes only."

4. Petitioner states that it made the "no-dollar" importation of the sample toothpaste for research and trial purposes, specifically for free distribution to the public to determine whether the taste and other peculiarities of the toothpaste would appeal to Philippine consumers and, thus, would be profitable to manufacture and market in the Philippines.

5. The Collector of Customs of the Manila International Airport assessed a duty of P33,838.00 on the toothpaste importation. Petitioner claims that on January 12, 1972, it paid the duty under protest and subsequently formalized the protest

in a letter dated February 7, 1972 to the Collector of Customs of the Manila International Airport.

6. After hearing, the Collector of Customs of the Manila International Airport, in a decision dated August 23, 1973, dismissed petitioner's protest for "not (being) meritorious".

7. Petitioner further avers that the notice of the aforesaid decision was received by it on September 5, 1973; and on September 19, 1973, it appealed the said decision to the Commissioner of Customs.

8. According to petitioner, despite several motions and letters over a 3-year period to the Commissioner of Customs for the resolution of the appeal, the appeal remained unresolved. Petitioner was, thus, prompted to file with respondent on December 17, 1976 an alleged letter dated December 16, 1976 requesting resolution of the appeal and stating inter alia that:

> "We shall assume that you have dismissed our appeal in the event we do not receive any resolution from you by January 5, 1977."

Without waiting for the decision of the Commissioner of Customs, or any resolution or other disposition of its appeal from the decision of the Collector of Customs of the Manila International Airport, petitioner filed with this Court on January 13, 1977 its petition for the review of the said decision of the Collector of Customs.

On February 2, 1977, respondent Commissioner of Customs filed a motion for the dismissal of petitioner's petition for review on the ground that this Court has no jurisdiction to take cognizance of the said petition, there being no decision or ruling of respondent Commissioneroof Customs to be reviewed by the Court.

On March 4, 1977, after this case had already been set for hearing, petitioner filed a "Manifestation/Motion" with this Court stating that on February 14, 1977, respondent Commissioner of Customs issued a decision affirming that of the Collector of Customs of the Manila International Airport and praying that said decision of respondent be incorporated into its petition for review as the decision sought to be reviewed.

The issue to be resolved is whether or not this Court has jurisdiction to take cognizance of the instant case.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law. (Commissioner of Internal Revenue vs. Villa, No. L-23988, January 2, 1968, 22 SCRA 8.) Section 7 of Republic Act No. 1125, otherwise known as "An Act Creating The Court of Tax Appeals," provides that this Court shall exercise exclusive appellate jurisdiction to review by appeal 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. Section 11 of the same law provides that any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Customs may file an appeal to the Court of Tax Appeals. And under Section 2402 of the Tariff and Customs Code, the party aggrieved by a ruling of the Commissioner of Customs 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.

It is clear from these statutory provisions that only decisions or rulings of the Commissioner of Customs, as conferred by law, can be appealed to the

Court of Tax Appeals. Since no decision or ruling has been rendered by the Commissioner of Customs in petitioner's protest against the imposition and collection of customs duty by the Collector of Customs of the Manila International Airport on its toothpaste importation at the time the petition for review was filed with this Court on January 13, 1977, the said petition was premature and should be dismissed. (Southwest Agricultural Marketing Corporation vs. Secretary of Finance, No. L-24797, October 8, 1968, 25 SCRA 452; Negros Navigation Co., Inc. vs. Commissioner of Customs, No. L-18629, May 31, 1963, 8 SCRA 250; See also, Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2155, Resolution dated April 15, 1971.) It has been consistently held that in matters involving customs duties, only decisions of the Commissioner of Customs are appealable to this Court. (Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, 100 Phil. 850; Chan Kian vs. Court of Tax Appeals and Collector of Customs, 105 Phil. 904; American International Dairy Company, Inc. vs. Misael Vera in his capacity as Commissioner of Internal Revenue and Rolando Geotina in his capacity as Commissioner of Customs, CTA Case No. 1975, June 30, 1972.) Without a decision of the Commissioner of Customs, this Court acquires no jurisdiction over cases arising under Customs Laws. (Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs, 102 Phil. 850.)

It is true that on March 4, 1977, after respondent Commissioner of Customs has filed his motion to dismiss the petition for review, petitioner filed a "Manifestation/Motion" alleging that on February 14, 1977 respondent Commissioner of Customs issued a decision which affirmed that of the Collector of Customs and praying that the said decision be incorporated into its petition as the decision sought to be reviewed. However, by virtue of the provisions of Sections 7 and 11 of Republic Act No. 1125, it is obvious that the appellate jurisdiction of the Court of Tax Appeals clearly contemplates the review of a decision rendered by respondent before and not after an appeal therefrom is instituted to this Court by the taxpayer. This is not only in accordance with the principle of exhaustion of administrative remedies consistently followed in our jurisdiction, but also in compliance with the rule enunciated by the Supreme Court to the effect that jurisdiction over the subject matter is conferred by law. None of the parties to the litigation can enlarge or diminish it or dictate when it shall attach or when it shall be removed. That is a matter of legislative enactment which none but the legislature may change. (Manila Railroad Co. vs. Atty. General, 20 Phil. 523; Allison J. Gibbs and Esther K. Gibbs vs. Commissioner of Internal Revenue, CTA Case Nos. 547, 564 & 572, Resolution dated March 16, 1966.)

Even more, although amendments to pleadings are favored and liberally allowed in the furtherance of justice, it is obvious that when it appears from the very face of the complaint that the Court has no jurisdiction over the subject matter of the case, an amendment of the complaint can not be allowed so as to confer jurisdiction upon the Court. Not having acquired jurisdiction over the case by the filing of the petition for review, this Court has neither the power nor the jurisdiction to act on the "Manifestation/Motion" of petitioner filed on March 4, 1977 for incorporation into its petition for review filed on January 13, 1977 of the decision of the Commissioner, much less to allow such incorporation and that any reference in such petition to a decision sought to be reviewed be understood to mean the said decision of respondent, since it is elementary that the court must first acquire jurisdiction over the case in order to act validly therein. (Rosario and Untalan vs. Carangdang, et. al., No. L-7076, April 28, 1955, 96 Phil. 845; Vda. de Rosario vs. Justice of the Peace, Camiling, Tarlac, et al., No. L-9284, July 31, 1956, 99 Phil. 693) And more so in this case when petitioner's manifestation/motion is a "Supplemental pleading" designed to cover matters subsequently occurring after its petition for review, jurisdiction over which this Court never acquired, was filed.

Accordingly, the motion of respondent Commissioner of Customs for the dismissal of the petition for review filed in this case on the ground of lack of jurisdiction must be sustained.

WHEREFORE, the instant petition for review is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, December 13, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge