

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LA PLATA TRADING, INC., M/V
CAPTAIN UFUK,

Petitioner,

C.T.A. CASE NO. 8033

- versus -

REPUBLIC OF THE PHILIPPINES,
rep. by COMM. NAPOLEON L.
MORALES, OIC-COLL. ATTY.
ELVIRA CRUZ, ATTY. PORFIRIO
C. GABIOLA, JR., and other
persons acting in pursuance of a
Notice of Public Auction dated 8
March 2010 for the auction of
the vessel M/V Captain Ufuk,
Respondents.

Members:

ACOSTA, PJ
UY, and
FABON-VICTORINO, JJ.

Promulgated:

MAR 09 2010 ; 10:30 am

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RESOLUTION

Before the Court is petitioner's application for issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction incorporated in its Petition for Review filed before this Court in the afternoon of March 03, 2010.

Petitioner La Plata Trading, Inc. claims that it is the owner/operator of the subject Panamanian registered vessel M/V Captain Ufuk. On its maiden voyage, 100 units of SS1-V1 Pindad rifles were loaded on the vessel in Jakarta, Indonesia, for shipment to Bamako, Republic of Mali. The rifles were allegedly purchased by Mali's Ministry of Internal Security and Civil Protection as indicated in the End-User Certificate¹ dated April 24, 2009 issued by the purchaser and in the Bill of Lading² dated August 08, 2009.

It further alleges that while on its way to its destination, M/V Captain Ufuk developed engine trouble, prompting its ship captain to head for the nearest port of call, i.e. the port of Mariveles in Bataan, arriving thereat on August 19, 2009.

On August 20, 2009, authorities from the Bureau of Customs (BOC), Philippine Coast Guard (PCG) and the Bureau of Immigration (BI), boarded the vessel and served a Warrant of Seizure and Detention (WSD) against the vessel and the rifles.

Subsequently, respondent OIC-Collector of Customs Atty. Elvira Cruz lodged a seizure case against the subject vessel entitled Republic v. Vessel: M/V Captain Ufuk docketed as Port of Mariveles Seizure Identification No. 2009-1.

After hearing and exchange of pleadings by the parties, respondent Collector Atty. Cruz issued the assailed Decision dated November 3, 2009, directing the forfeiture of the vessel in favor of the Government. The Decision was received by petitioner on November 20, 2009, hence it had until December 5, 2009, within which to file an appeal with the Commissioner of Customs.

On December 5, 2009, petitioner, through registered mail, filed its Memorandum of Appeal³ assailing the legality of the November 3, 2009 Decision of respondent Collector Atty. Cruz.

On February 26, 2010, respondent Collector Atty. Cruz caused the publication of a Notice of Public Auction setting the public sale of the seized vessel on March 08, 2010. Only then did petitioner learn that respondent Collector Atty. Cruz issued a Certificate of Finality on December 7, 2010, or two (2) days after it filed its Memorandum of Appeal with the Commissioner of Customs without acting on the said appeal. Worse, it was never served upon petitioner. Petitioner likewise alleges that it has not been furnished with any decision or resolution pertaining to its appeal to the Commissioner of Customs which was seasonably filed, effectively depriving it of its right to due process.

Further, respondent Collector allegedly violated Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), as amended, which required her to transmit the record of the proceedings to the Commissioner of Customs upon receipt of notice of appeal.

In view of these alleged irregularities which rendered the proceedings before the Collector of Customs invalid, and with the pending and unresolved appeal of petitioner with the Commissioner of Customs, the auction of the subject vessel is deemed illegal and premature.

Hence, this petition praying for the issuance of a TRO and/or preliminary injunction to restrain respondents from proceeding with the auction of the seized vessel on March 8, 2010 as such act will jeopardize its interest.

During the hearing on the ancillary relief on March 5, 2010, only counsel for petitioner and its witness Atty. Ma. Carmen Aldea-Espinosa appeared. Counsel for petitioner manifested that there is no indication that respondents received notice and that petitioner only has a proof of service upon the prosecutor, which explained the absence of any representation for the respondents (TSN, March 5, 2010, p. 25).

Atty. Aldea-Espinosa testified that she is the duly authorized representative of petitioner La Plata Trading Inc. (Annex "A"). She allegedly learned about the incident and the actions taken by respondents against petitioner described in the petition through the information received by petitioner at its office in Makati. In view of the adverse Decision dated November 3, 2009, they filed within the reglementary period an appeal with the Commissioner of Customs through registered mail not on December 5, 2009, as alleged in the Petition but on December 3, 2009. Without action on petitioner's

petitioner learned from the newspaper that the subject vessel shall be sold in a public auction set on March 8, 2010, which disposition must be deemed premature considering the pendency of the appeal (Annex "D", also Exhs. "F", "F-1", and "F-2", TSN, March 5, 2010, pp. 20, 24, and 25). Notwithstanding knowledge of the auction sale, petitioner did not follow up or ask any assistance from respondent Commissioner of Customs as it deemed the instant petition a more expeditious and adequate remedy (Id. p. 35). Without the TRO, petitioner will suffer damage in the amount of \$800,000.00, representing the purchase price of the subject vessel M/V Captain Ufuk.

In the course of the trial, Atty. Aldea-Espinosa identified several documents most of which were mere machine copies of the purported documents as noted by the Court and admitted by petitioner's counsel.

Clearly, the Court has no jurisdiction over the instant petition. Petitioner consistently maintains that it seasonably filed an appeal with respondent Commissioner of Customs assailing the adverse Decision of November 3, 2009, rendered by respondent Collector Atty. Cruz. It further insists that the said appeal is pending and has not been resolved to date by respondent Commissioner of Customs. Such being the case, the assailed Decision has not gained finality to merit the subsequent action taken by respondents. In fact, the record of the case is still with the office of respondent Collector Atty. Cruz and has not been transmitted to the Bureau of Customs for review as required by the rules.

Simply put, the instant petition is prematurely filed, hence, beyond this Court's competence due to the pendency of petitioner's appeal with respondent Commissioner of Customs, which has the primary jurisdiction over the case.

upholds the settled jurisprudence that the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings and regular courts cannot interfere with this function. From the decision of the Collector, the appeal lies with the Commissioner of Customs and thereafter with the Court of Tax Appeals.

Further, Section 7 (a) (4) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides:

"Sec. 7. Jurisdiction. — The CTA shall exercise:

"(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

"(4) 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 in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

Elementary is the rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings⁴.

Anent the alleged irregularities in the seizure of the subject vessel, the Court, at this point, shall refrain from ruling on the matter to give respondents the full opportunity to determine all the

⁴ Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Tax Appeals, 222 SC 281 (1953).

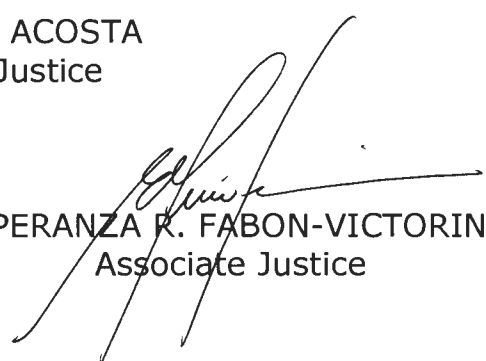
issues raised by petitioner in its appeal. It is well to note that a party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action. Besides, the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege that must be exercised in the manner and according to procedures laid down by law.⁵

WHEREFORE, the instant Petition for Review is hereby DISMISSED for lack of jurisdiction pursuant to Sec. 7(a)(4) of R.A. No. 9282, as amended, and Sec. 3(a)(4) of the Revised Rules of the Court of Tax Appeals, as amended, without prejudice. Consequently, petitioner's application for issuance of a Temporary Restraining Order is rendered MOOT.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice