

**SOUTHWEST AGRICULTURAL MARKETING CORPORATION,
PLAINTIFF-APPELLANT, VS. THE SECRETARY OF FINANCE, THE
COMMISSIONER OF CUSTOMS AND GUSTAVO A. SUAREZ,
DEFENDANTS-APPELLEES.**

G.R. No. L-24797. October 08, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by plaintiff, Southwest Agricultural Marketing Corp., from an order, of the Court of First Instance of Manila, dismissing the complaint in this case, without special pronouncement as to costs.

Plaintiff is a domestic corporation seemingly engaged - in its own behalf and as agent of others - in the export of coprax from the port of Davao. By virtue of a contract entered into, on May 9, 1963, pursuant to section 1213 of the Tariff and Customs Code - hereinafter referred to as the Code[1] - by and between the Commissioner of Customs - hereinafter referred to as Commissioner - on behalf of the Government and Gustavo A. Suarez, the arrastre service for said port was awarded to the latter. Since the Code contains no schedule of arrastre charges for cargo exported from the Port of Davao, the Secretary of Finance had authorized the Commissioner¹ to adopt, in the aforementioned contract, the schedule of arrastre charges set forth in section 3106(b) of said Code for cargo exported from the Port of Iloilo. Hence, paragraph 14 of the contract incorporated said schedule, which fixed, inter alia, a fee of P2.00 for "general cargo" - except as otherwise specifically provided - "per ton of 40 cubic feet or 1, 000 kilos", with the proviso "that there shall be a minimum charge of P1.00."

It would seem that, applying this rate, Suarez was demanding payment of the aggregate sum of P36, 690.48 from the plaintiff, who objected thereto and, accordingly, commenced, in the Court of First Instance of Manila, the present action against the Secretary of Finance, the Commissioner and Suarez, alleging that the imposition of said export charges is illegal and unconscionable, upon the ground that the silence of the Code in connection therewith, as regards the Port of Davao, implies that no such charges shall be imposed therein, and that the amount fixed by the Code for the Port of Zamboanga is only P0.30 per ton. The prayer in plaintiff's complaint is: (1) that "the export arrastre contract for the Port of Davao be declared null and void" (2) that plaintiff be "allowed to withdraw and/or be refunded the total amount of P17,988.80 x x it has deposited and/or paid to defendants under protest, or such other additional amounts which plaintiff will have deposited and/or paid under protest"; and (3) that a writ of preliminary injunction be issued, restraining the defendants "from enforcing the above-mentioned contract."

The defendants opposed the issuance of said writ and moved to dismiss the case for lack of jurisdiction and absence of cause of action owing to plaintiff's failure to exhaust administrative re-medies. After due hearing, the lower court issued the order appealed from, dismissing the complaint, upon the ground that the present action falls within the exclusive jurisdiction of the Court of Tax Appeals.

Upon the other hand, plaintiff maintains that this is "an action to nullify the export arrastre contract and not to

protest exorbitant export arrastre charges", so that it is within the jurisdiction of the lower court, not of the Court of Tax Appeals. This pretense is belied by paragraph 10 of plaintiff's complaint, in which it is alleged:

"That defendant Suarez is threatening and actually trying to collect from the plaintiff the total amount of P36,690.48 as export arrastre service for which reason plaintiff is constrained to file this instant action for the courts to adjudicate this matter. "

In other words, plaintiff was "constrained to file this instant action" to prevent the collection of said sum of P36,690.48 by defendant Suarez. The prayer for the annulment of the latter's arrastre contract was only a means to achieve said purpose. As a matter of fact, plaintiff does not care who gets the contract for the arrastre service in the Port of Davao. It merely objects to the P2.00 arrastre charge per ton prescribed in said contract, which charge he assails as illegal and unconscionable.

The legality or illegality of said charge depends, however, upon whether or not it is sanctioned by the Code, upon the authority of which the contract incorporating the export arrastre charges was made. Thus, the issue raised by plaintiff calls for the interpretation and construction of said Code and other laws administered by the Bureau of Customs, the determination of which is within the "exclusive" appellate jurisdiction of the Court of Tax Appeals.¹ Thus, in *Millarez v. Amparo*,² we declared:

"Republic Act No. 1125, section 7, effective June 16, 1954 gave the Court of Tax Appeals exclusive appellate jurisdiction to review on appeal, decisions of the Commissioner of Customs, involving 'seizure, detention or release of property affected * * * or other matters arising under the Customs Law or other law administered by the Bureau of Customs'. x x x this provision necessarily has taken away the power of the Manila court of first instance to 'review' decisions of the Customs authorities, x x x.

"Consequently the respondent judge had no authority to entertain the complaints of Serree Investments, Lim Hu and Fructuoso Nepomuceno, which, although entitled Mandamus and Certiorari were in reality petitions to review the actuations of the proper customs authorities, now exclusively reviewable by the Court of Tax Appeals (R. A. 1125). Furthermore, conceding that the complaints were strictly mandamus or certiorari civil actions, still they were groundless, the petitioners having an adequate remedy by appeal, as stated, to the Court of Tax Appeals. x x x."

This view has been consistently reiterated in subsequent cases,¹ and we find no plausible reason to depart therefrom.

It is true that, pursuant to section 7 of Republic Act No. 1125, the Tax Court cannot exercise its jurisdiction except on appeal from a decision of the Commissioner of Customs, and that no such decision exists. This is, however, due to the fact that plaintiff has not taken the steps prescribed by law² therefor, namely: payment of the charges in question coupled with a written protest against said charges,³ and, upon rendition of the decision thereon of the Collector of Customs of Davao, an appeal therefrom, if adverse to the plaintiff, to the Commissioner of Customs, whose decision in such appeal may, in turn, be reviewed by the Court of Tax Appeals, to the exclusion of other courts. Indeed, the absence of such decision of the Commissioner of Customs merely underscores plaintiff's failure to exhaust administrative remedies¹ and suggests a lack of cause of action.

WHEREFORE, the order appealed from is hereby affirmed, with costs against plaintiff, Southwest Agricultural Marketing Corporation.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] Republic Act No. 1937.

1 In a third indorsement dated September 30, 1960.

1 Section 7(2), Republic Act No. 1125.

2 97 Phil. 282.

1 NAMARCO v. Macadaeg, 98 Phil. 185, 190; Sampaguita Shoe & Slipper Factory v. Comm. of Customs, 102 Phil. 850; Pepsi-Cola Bottling Co. v. Manahan, L-12096, April 30, 1959, 105 Phil. 1299, 1300; Acting Collector of Customs v. De la Rama Steamship, L-20676, Feb. 26, 1965; Auyong Hian v. Court of Tax Appeals, L-25181, Jan. 11, 1967; De Joya v. Lantin, L-24037, April 27, 1967; Acting Collector of Customs v. Caluag, L-23925, May 24, 1967; Romualdez v. Area, L-20516, Nov. 15, 1967.

2 Sections 2308 to 2309 of the Code.

3 Luzon Stevedoring v. Court of Tax Appeals, L-21005, Oct. 22, 1966.

1 Acting Collector of Customs v. Caluag, L-23925, May 24, 1967.

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