

AUYONG HIAN (HONG WHUA HANG), PETITIONER, VS. JUDGE GAUDENCIO CLORIBEL, PRESIDING, BRANCH VI, COURT OF FIRST INSTANCE OF MANILA, CONSOLIDATED TOBACCO INDUSTRIES OF THE PHILIPPIN...

G.R. No. L-24704. July 10, 1967

Ponente: ZALDIVAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/57153cf925d0/>

ZALDIVAR, J.:

The record of this case shows that:

1. On July 3, 1965, a petition for mandamus and certiorari with preliminary injunction was filed by Au-yong Hian (Hong Whua Hang) against Judge Gaudencio Clo-ribel of Branch VI of the Court of First Instance of Manila, the Consolidated Tobacco Industries of the Phil-ippines, Inc. (hereafter referred to as CTIP), the Col-lector of Customs, the Commissioner of Customs and the Consolidated Tobacco Terminals, Inc., praying, among others: (a) for a writ of certiorari declaring the order of respondent Judge of June 9, 1965 in Civil Case No. 59344 of the Court of First Instance of Manila illegal and without force and effect; (b) for a writ of mandamus directing respondent Judge to dismiss Civil Case No. 59344 of the Court of First Instance of Manila; and (c) to direct respondent CTIP to deliver and return the 600 hogsheads of Virginia leaf tobacco involved in the case to the custody of the Bureau of Customs under the control and supervision of the Commissioner of Customs. The petition further prays that pending decision an ex parte writ of preliminary injunction be issued res-training the respondent Judge from enforcing his order of June 9, 1965, and the respondent CTIP from disposing of and/or interfering in any manner with petitioner's tobacco. It is alleged in the petition that the Col-lector of Customs, without authority, had illegally released the tobacco in question to the CTIP, that the latter had no right to the tobacco, and the respondent Judge, also without authority, had validated the release of the tobacco to the CTIP.
2. On July 12, 1965, this Court, upon the filing of a bond of P5,000.00 by Auyong Hian, issued a writ of preliminary injunction addressed to Judge Gaudencio Clo-ribel, to CTIP, to the Consolidated Terminals, Inc., to the Collector of Customs, and to the Commissioner of Customs, enjoining them "from enforcing the order of June 9, 1965 and from disposing of and/or interfering in any manner with herein petitioner's tobacco in Civil Case No. 59344 (Auyong Hian, et al. v. Consolidated Terminals, Inc., et al) of the Court of First Instance of Manila, Branch VI)."
3. On October 4, 1965, the CTIP filed a petition to lift the above-mentioned writ of preliminary in-junction. To this motion of CTIP Auyong Hian filed his opposition on October 7, 1965. On October 8, 1965, this Court resolved to take note of that motion of CTIP.
4. On December 21, 1965, the CTIP filed a peti-tion, dated December 17, 1965, reiterating its prayer to lift the writ of preliminary injunction. To this petition Auyong Hian, on December 24, 1965, filed an op-position, and instead proposed that the 600 hogsheads of Virginia leaf tobacco in question be released to him upon his filing a bond in the sum of P2,000,000.00, or such amount as this Court would determine, to answer for customs duties,

taxes and other legal expenses.

5. On March 7, 1966, this Court required the Collector of Customs and the Commissioner of Customs to comment on the petition, dated December 17, 1965, of CTIP to lift the preliminary injunction.

6. On March 15, 1966, Collector of Customs Pedro Pacis submitted his comment on the petition of CTIP, concluding his comment with a recommendation that the petition for the lifting of the writ of preliminary injunction be granted "since such action will as well redound to the advantage and benefit of the Government."

7. On April 2, 1966, Auyong Hian filed a manifestation by way of an answer to the comment of Collector of Customs Pedro Pacis, reiterating his objection to the lifting of the writ of preliminary injunction. At the same time Auyong Hian brought to the attention of this Court that on March 30, 1966 the case, G. R. No. L-25181, entitled "Auyong Hian v. The Court of Tax Appeals, et al." was submitted for decision, stating that the issues raised in that case have a direct bearing on the matter regarding the disposition of the tobacco in question.

8. On April 13, 1966, the Solicitor General, in behalf of the Commissioner of Customs, filed his comment to the petition of the CTIP of December 17, 1965 praying for the lifting of the writ of preliminary injunction, in compliance with the order of this Court of March 7, 1966. In his comment the Solicitor General embodied a letter addressed to him by Commissioner of Customs Jacinto T. Gavino wherein the latter stated that he concurred with the stand taken by Collector of Customs Pacis. The Solicitor General submitted the matter regarding the petition of the CTIP to lift the writ of preliminary injunction to the sound discretion of this Court in the light of the facts stated in his comment.

9. On April 20, 1966, petitioner Auyong Hian filed a petition, dated April 19, 1966, to defer action on the petition of CTIP to lift the preliminary injunction until the decision of this case on the merits, along with the decision in the companion case of "Auyong Hian v. The Court of Tax Appeals, et al.," G. R. No. L-25181, considering that both cases had already been submitted to this Court for decision.

10. On May 9, 1966, the CTIP filed an "Urgent Manifestation and Reiteration of Motion for Lifting of Preliminary Injunction", dated May 6, 1966, and praying for an early decision of this case.

11. On May 9, 1966, Auyong Hian filed a manifestation on the comment submitted by the Solicitor General dated April 13, 1966 and, among others, called the attention of this Court to the fact that Secretary of Finance Eduardo G. Romualdez had reversed and countermanded the concurrence of Commissioner of Customs Gavino to the stand taken by Collector of Customs Pacis regarding the release of the tobacco in question.

12. On May 13, 1966, petitioner Auyong Hian filed a "Reiteration of Opposition to the Lifting of the Writ of Preliminary Injunction."

13. On October 24, 1966, Auyong Hian filed a petition, dated October 22, 1966, praying for the release of the tobacco in question to him upon his filing of a bond in the amount of P2,000,000.00, or such other amount as this Court would determine to answer for customs duties and taxes and other legal charges.

14. On November 17, 1966, the Luzon Stevedoring Corporation filed a motion, praying that it be authorized to proceed to satisfy its lien on the 600 hogsheads of Virginia leaf tobacco which are deposited in its warehouses, pursuant to Section 33 of the Warehouse Receipts Law, on account of the warehousing and other charges on said tobacco.

15. On November 18, 1966, petitioner Auyong Hian filed his opposition to the afore-mentioned motion of the Luzon Stevedoring Corporation.

16. On December 27, 1966, the CTIP filed an "Urgent Supplemental Petition to Lift the Preliminary Injunction"

dated December 27, 1966.

17. On December 28, 1966, the Collector of Customs, thru Special Counsel Jose Viduya, filed an urgent motion, dated December 20, 1966, praying for an early decision of this case and for the lifting of the writ of preliminary injunction upon the posting of a bond by the CTIP in the amount of P20,000.00.

18. On December 28, 1966, the CTIP filed a manifestation stating that "the Solicitor General, as counsel for the Commissioner of Customs, is agreeable to CTIP's 'Urgent Supplemental Petition to Lift Preliminary Injunction' dated December 27, 1966, as shown by the letter of the Solicitor General which is annexed to the manifestation."

19. On January 23, 1967, the CTIP filed "Additional Grounds for Lifting of Injunction", dated January 18, 1967, as a supplement to its "Urgent Supplementary Petition to Lift Preliminary Injunction" of December 27, 1966, calling attention to the fact that the bond which was filed by the petitioner Auyong Hian for the issuance of the writ of preliminary injunction in the sum of P5,000.00 is inadequate, and that the bond was filed by the Citadel Insurance Co., which is one of the bonding companies that are black-listed by the Insurance Commissioner on September 30, 1966. The CTIP also calls attention to the fact that petitioner Auyong Hian is facing two charges before the Deportation Board for tax evasion and fraud, and that if he is deported by reason of said cases he would not be able to answer for the damages suffered and accruing to the CTIP.

20. Again, on January 25, 1967, the CTIP, thru another counsel, filed an "Urgent Manifestation", also calling attention to the fact that the P5,000.00 bond filed by Auyong Hian for the issuance of a writ of preliminary injunction is inadequate and that said bond was posted by the Citadel Insurance Company, Inc., which is a black-listed insurance company whose operation as a bonding company was suspended by the Insurance Commissioner on September 30, 1966, and that Auyong Hian is facing charges before the Deportation Board for tax evasion and in the City Fiscal's Office of Manila for illegal importation of American Virginia leaf tobacco, in violation of the provisions of Republic Act 1194, as amended by Republic Act 4155. In this manifestation, the CTIP proposes that the writ of preliminary injunction be lifted upon its filing of a counterbond of P1,000,000.00, but that if this proposal is not accepted by the Court, Auyong Hian be required to increase his bond for the issuance of the writ of preliminary injunction to P1,000,000.00.

21. To the foregoing "Urgent Manifestation" filed by the CTIP, Auyong Hian filed a reply on January 27, 1967, stating that the Citadel Insurance Company, Inc. has been authorized by the Insurance Commissioner to transact business effective January 6, 1967, as shown in the photostatic copy of the certification of said Insurance Commissioner attached to the reply. The reply also states that the filing of charges against Auyong Hian before the Deportation Board is immaterial to the issues involved in the present case, because the basis of the charges of alleged non-payment of taxes are still the subject of proceedings before this Court in two cases (G. R. Nos. L-23395 and L-26790). In this reply Auyong Hian prays that the tobacco in question be re-leased to him upon the filing of a surety bond in the amount which this Court would determine, to answer for customs duties, taxes and other legal charges.

22. On January 30, 1967, this Court, resolving the motion of CTIP for the lifting of the writ of injunction, required Auyong Hian to increase the injunction bond, within fifteen days after notice, to P1,000,000.00.

23. On February 6, 1967, Auyong Hian filed a petition for reconsideration of the order of January 30, 1967 increasing the injunction bond to P1,000,000.00, and re-iterating his opposition to the lifting of the writ of preliminary injunction.

24. On February 14, 1967, the respondent CTIP filed its opposition to the motion for reconsideration of the order increasing the injunction bond to P1,000,000.00, and praying further that upon failure of Auyong Hian to file the

bond the writ of preliminary injunction be dismissed.

25. On February 15, 1967, this Court issued a resolution denying the motion for reconsideration of the order of January 30, 1967 and deferring action on the matter regarding the lifting of the injunction.

26. On February 23, 1967, Auyong Hian filed a petition to reduce the bond from P1,000,000.00 to P50,000.00, and that he be given at least thirty days from the date of receipt of the resolution of the Court within which to file the reduced injunction bond. This motion of petitioner was opposed by respondent CTIP in an opposition filed on February 27, 1967.

27. On March 17, 1967, this Court issued an order denying the petition of Auyong Hian for the reduction of the injunction bond from P1,000,000.00 to P50,000.00 and ordering said petitioner to file the injunction bond of P1,000,000.00 within thirty days from receipt of the copy of the resolution, and in the meantime denying the petition of CTIP for the lifting of the preliminary injunction.

28. On March 20, 1967, Atty. Jose Viduya, special counsel for the Collector of Customs, filed a manifestation reiterating the prayer for the immediate lifting of the preliminary injunction upon the ground that the tobacco involved in this case is fast deteriorating.

29. On April 5, 1967, counsel for CTIP filed a petition, dated April 3, 1967, praying for the dismissal of the instant case upon the ground that the proceedings in the instant case have become academic, because the respondent Judge had already ordered the dismissal of Civil Case No. 59344 of the Court of First Instance of Manila and had declared his order of June 9, 1965 in said case to be of no further legal effect; and the writ of mandamus prayed for by petitioner Auyong Hian in the instant case is precisely to compel the respondent Judge to dismiss that Civil Case No. 59344, and the writ of certiorari prayed for is precisely to declare null and void respondent Judge's order of June 9, 1965 in said Civil Case No. 59344.

30. On April 5, 1967, this Court issued an order requiring Auyong Hian to comment within ten days from notice thereof on the petition for dismissal filed by counsel for CTIP.

31. On April 21, 1967, counsel for CTIP filed a motion reiterating its petition for dismissal dated April 3, 1967, and pointing further that Auyong Hian failed to file the injunction bond of P1,000,000.00 within the time he was required to do so by this Court.

32. On April 25, 1967, Auyong Hian filed a motion for extension of thirty days from March 20, 1967 within which to file the P1,000,000.00 injunction bond. This motion was opposed by counsel for CTIP.

33. On April 27, 1967, this Court granted Auyong Hian an extension of fifteen days from April 19, 1967 to file the injunction bond of P1,000,000.00.

34. On May 2, 1967, Auyong Hian again moved for a further extension of thirty days within which to file the injunction bond of P1,000,000.00. This motion was opposed by counsel for the CTIP.

35. On May 8, 1967, counsel for CTIP filed an urgent reiteration of the motion for dismissal dated April 3, 1967.

36. On May 8, 1967, this Court issued an order deferring action on the motion for dismissal until after receipt of the comment on said motion from the adverse party, and granting Auyong Hian the last extension of thirty days from May 4 within which to file the P1,000,000.00 injunction bond.

37. On June 2, 1967, Auyong Hian filed his comment on the motion to dismiss this case, manifesting his opposition to said motion to dismiss upon the ground that the dismissal of this case would have the effect of dissolving the writ of preliminary injunction issued by this Court on July 12, 1965, said writ of preliminary

injunction having been issued precisely to prevent the disposal of the tobacco involved in this case by the CTIP, the delivery of which by the Collector of Customs to the CTIP was validated by the questioned order of June 9, 1965; and stating further that the dissolution of the preliminary injunction would enable the CTIP, which is not legally entitled to that tobacco, to dispose of that tobacco, and that whatever decision would be rendered in CTA Case No. 1560 pending in the Court of Tax Appeals, which also involves the same tobacco, would be nugatory and academic. Auyong Hian, instead, prayed that the tobacco in question be released to him upon his filing a surety bond in an amount to be fixed by this Court, in addition to the P1,000,000.00 injunction bond that he is required to file.

38. On June 3, 1967, Atty. Jose Viduya, special counsel for the Collector of Customs, filed a manifestation calling attention to the fact that the tobacco involved in this case is fast deteriorating and that the Government would suffer damages as a result of said deterioration, and thereby prayed that this case be dismissed, or that an order be issued lifting the writ of preliminary injunction.

39. On June 5, 1967, this Court issued an order setting this case for hearing on Tuesday, June 20, 1967 at 9:30 a.m. on all pending matters incident to the case.

40. At the hearing held on June 20, 1967, all the parties in this case were represented by counsel. Counsel for Auyong Hian argued the case for the petitioner, and Solicitor Augusto Amores argued the case for the respondents, and after the hearing all the pending incidents in this case were considered submitted for resolution.

41. After the pending incidents in this case were heard Auyong Hian filed, on June 27, 1967, an ex parte urgent manifestation by way of a supplement to the arguments and/or remarks made by his counsel during the hearing, and further assuring the Court that he could raise a P3,000,000.00 bond for the release of the tobacco in question in his favor.

Upon consideration of the main petition in this case, the above-mentioned petitions, motions and manifestations, as well as the answers, oppositions, comments and replies filed thereto, and the memoranda filed by the parties, and also the arguments adduced at the hearing on June 20, 1967, it appearing that the dismissal by the respondent Judge of Civil Case No. 59344 in the Court of First Instance of Manila and his having declared without legal force and effect the order of June 9, 1965 issued in said case were practically the reliefs sought by petitioner Auyong Hian in his prayer for a writ of mandamus and certiorari in this case, such that the issues involved in the petition for certiorari and mandamus with preliminary injunction in this case have practically become academic; and it appearing, further, that the 600 hogsheads of Virginia leaf tobacco involved in the present case is the same 600 hogsheads of tobacco which are involved in G. R. No. L-25181, entitled "Auyong Hian v. The Court of Tax Appeals," which was decided by this Court on January 11, 1967, and in that case We held that the Court of Tax Appeals has the jurisdiction to hear and determine all matters relating to the sale or the disposition of said 600 hogsheads of tobacco in CTA Case No. 1560 which this Court remanded to said Court of Tax Appeals for further proceedings and decision, the Court RESOLVED: (1) to grant the motion of CTIP, dated April 3, 1967, to dismiss this case, as it is hereby dismissed without costs; and, in consequence thereof, for the reason that the question of preliminary injunction is, at this time, properly cognizable by the Court of Tax Appeals, to consider the writ of preliminary injunction issued by this Court on July 12, 1965 dissolved and without any further force and effect upon this resolution becoming final; (2) to deny the prayers contained in all the other petitions, motions, and manifestations, enumerated in this resolution, which have not yet been resolved by this Court, without prejudice to the party or parties concerned filing his/its/their motions/petitions/manifestations before the Court of Tax Appeals in CTA Case No. 1560 now pending in said court; and (3) to furnish the Court of Tax Appeals a copy of this resolution.

Reyes, JBL, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.
Concepcion, C.J., did not take part.
Dizon, J., took no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.