

## **ALLIED BROKERAGE CORPORATION, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS AND THE COURT OF TAX APPEALS, RESPONDENTS.**

*G.R. No. L-27641. August 31, 1971*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9476fcad70e4/>

---

### **FERNANDO, J.:**

Petitioner Allied Brokerage Corporation seeks the reversal of a decision of respondent Court of Tax Appeals dismissing its action for the refund of the amount of P35,227.00 paid to the Customs Arrastre Service allegedly in excess of what was due under the Tariff and Customs Code. Respondent Commissioner of Customs contended before respondent Court that petitioner lacked a cause of action as it did not pay under protest the charges collected and it did not exhaust the administrative remedies. Such an argument was found meritorious by respondent Court. Hence its decision now sought to be reviewed. It being undisputed that the steps required by law to be fulfilled before respondent Court could act on a claim for refund were not complied with, no legal ground exists to call for a reversal. We affirm.

The facts were stipulated. After an allegation that petitioner "is duly licensed to engage in the customs brokerage business", its main function being to obtain the clearance and release from the custody of the Bureau of Customs merchandise or goods consigned to importers who are its clients, Section 3102 of the Tariff and Customs Code was cited: "At the Port of Manila \* \* \* e. Heavy Cargo. - On any single package of import, export, transit cargo, weighing more than two (2) tons handled on a pier or wharf, the charge shall be, per ton or any fraction thereof - P13.50, Provided, that this charge shall not apply to automobiles, motor trucks and transit cargo for coastwise ports." [1] Mention was then made of an unnumbered customs memorandum order issued by the then Commissioner of Customs, Norberto Romualdez, Jr., on April 30, 1963 which, insofar as pertinent, reads thus: "The arrastre charge for 'Heavy Cargo' as prescribed under Section 3102 (e) of the Customs and Tariff Code, viz.: (e) Heavy Cargo - On any single package of import, export, transit cargo, weighing more than two (2) tons, handled on a pier or wharf, the charge shall be, per ton or any fraction thereof - P13.50, shall be applied to mean that one ton shall be equivalent to 1,000 kilos or 40 cubic feet volume, whichever is higher." [2]

The ensuing paragraphs of such a stipulation of facts follow: "That on May 7, 1963, the President of the Association of Customs Brokers, Inc. addressed a letter of protest to respondent protesting the enforcement of the said Memorandum Order under which the arrastre charges are collected based on 1,000 kilos or 40 cubic feet volume' per ton, whichever is higher; That the petitioner on May 25, 1964 filed with respondent a claim for refund of the amount of P20,658.85 representing the amounts collected by the Customs Arrastre Service from the petitioner during the period from April 30, 1963 to May 25, 1964; That petitioner, after several representations in writing to the Commissioner of Customs, received a letter from the latter dated October 26, 1964, disapproving petitioner's claim; That on February 18, 1965, the Chief of the Law Division in his 3rd Indorse-ment addressed to the Commissioner of Customs recommended the immediate repeal or abrogation of the unnumbered memorandum order under consideration. \* \* \*." [3]

The decision proceeded to set forth the issues as raised by the parties: "Petitioner assails the validity of the unnumbered Customs Memorandum Order dated August 30, 1963, for the reasons that it is contrary to law; that it contravenes established international shipping practices; and that it is void ab initio. On the other hand, respondent interposed the defense of petitioner's lack of cause of action."<sup>[4]</sup> The defense of a lack of cause of action struck a responsive chord. The decision proceeded to explain why: "It appears that petitioner did not file any protest with the Collector of Customs at the time of collection of the charges, but instead filed its claim for refund directly with the Commissioner of Customs."<sup>[5]</sup> After setting forth the pertinent provisions of the Tariff and Customs Code on the matter of refund, Sections 2308,<sup>[6]</sup> 2309<sup>[7]</sup> and 2313<sup>[8]</sup> and the decision of this Court in *Sampaguita Shoe and Slipper Factory v. Commissioner of Customs*<sup>[9]</sup> and *CMS Estate, Inc. v. Commissioner of Customs*,<sup>[10]</sup> respondent court concluded: "Under the afore-quoted provisions of law and the cases cited above, the filing of a written protest with the proper Collector of Customs within the statutory period is mandatory and a condition precedent for the recovery of customs duties, fees and other charges allegedly erroneously or illegally collected and noncompliance therewith bars and is fatal to the action."<sup>[11]</sup> Hence, its decision dismissing the petition for review.

It is thus plain, as mentioned at the outset, that the above decision calls for affirmance. The Tariff and Customs Code has indicated in a manner definite and certain how a challenged actuation of a collector of customs may be elevated to respondent Court. The party adversely affected "may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor."<sup>[12]</sup> It is stressed in the next section that the interested party who desires such a review of the action taken by the Collector "shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, \* \* \*."<sup>[13]</sup> Then, there is the explicit provision that such an aggrieved party in any matter presented by protest "may, within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner."<sup>[14]</sup> Time and time again this Court has stressed that where a provision of law speaks categorically the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.<sup>[15]</sup> So it must be in this litigation. Respondent Court then had no other choice but to dismiss the case in view of the fatal omission of petitioner.

It is to be admitted that the cases referred to by respondent Court, the *Sampaguita Shoe and Slipper Factory* decision, arising from a seizure and forfeiture proceeding, and the *CMS Estate* ruling, dealing with the collection wharfage dues, are not precisely in point. They are, however, illustrative of a principle which governs this particular situation. To make clearer however that respondent Court is not in any wise to be faulted for the decision reached, reference may be made to *Southwest Agricultural Marketing Corp. v. Secretary of Finance*.<sup>[16]</sup> That was an action to nullify an arrastre contract. One of the defenses raised was plaintiff's failure to exhaust administrative remedies, not to mention the jurisdictional defect of having filed a case with the Court of First Instance. In sustaining a lower court order dismissing the complaint, this Court in the opinion by the Chief Justice declared: "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 law therefor, namely: payment of the charges in question coupled with a written protest against said charges, 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 remedies and suggests a lack of cause of action."<sup>[17]</sup>

To the same effect is this pronouncement from an earlier decision, the opinion being penned by Justice J. B. L. Reyes. Thus: "In the absence of any decision or ruling which may be the subject of an appeal or petition for review to the Court of Tax Appeals, said court has no case to take cognizance of \* \* \*. So that the lower court correctly dismissed the petition for review of petitioner for being premature or for not stating a cause of action." [18]

WHEREFORE, the decision of respondent Court of Tax Appeals of April 29, 1967 is affirmed. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., did not take part.

---

[1] Decision of respondent Court of Tax Appeals, Annex L, Petition, paragraphs 2 and 3 of the Stipulation of Facts.

[2] Ibid, paragraph 4.

[3] Ibid, paragraphs 5 to 8.

[4] Ibid, p. 3.

[5] Ibid.

[6] Section 2308 provides: "Protest and Payment upon Protest in Civil Matters. - When a ruling or decision of the Collector is made whereby liability for duties, fees, or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made."

[7] Section 2309 provides: "Protest Exclusive Remedy in Protestable Case. - In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof."

[8] Section 2313 provides: "Review by Commissioner. - The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision."

[9] 102 Phil. 850 (1958).

[10] L-18773, January 31, 1964, 10 SCRA 164.

[11] Decision of respondent Court of Tax Appeals, Annex L, p. 5.

[12] Section 2308, Tariff and Customs Code.

[13] Section 2309, Ibid.

[14] Section 2313, Ibid.

[15] Cf. *People v. Mapa*, L-22301, Aug. 30, 1967, 20 SCRA 1164; *Pacific Oxygen & Acetylene Co. v. Central Bank*, L-21881, March 1, 1968, 22 SCRA 917; *Dequito v. Lopez*, L-27757, March 28, 1968, 22 SCRA 1352; *Padilla v. City of Pasay*, L-24039, June 29, 1968, 23 SCRA 1349; *Garcia v. Vasquez*, L-26808, March 28, 1969, 27 SCRA 505; *La Perla Cigar & Cigarette Factory v. Capapas*, L-27948 & 28001-11, July 31, 1969, 28 SCRA 1085; *Mobil Oil Phil., Inc. v. Diocares*, L-26371, Sept. 30, 1969, 29 SCRA 656; *Luzon Surety Co., Inc. v. De Garcia*, L-25659, Oct. 31, 1969, 30 SCRA 111; *Vda. de Macabenta v. Davao Stevedore Terminal Company*, L-27489, April 30, 1970, 32 SCRA 553; *Republic Flour Mills, Inc. v. Commissioner of Customs*, L-28463, May 31, 1971; *Maritime Company of the Philippines v. Reparations Commission*, L-29203, July 26, 1971.

[16] L-24797, October 8, 1968, 25 SCRA 452.

[17] Ibid, p. 456.

[18] *Caltex (Phil.), Inc. v. Commissioner of Internal Revenue*, L-20462, June 30, 1965, 14 SCRA 599, 604.

**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.