

THE ACTING COLLECTOR OF CUSTOMS, PETITIONER, VS. THE COURT OF TAX APPEALS, AND THE COMMISSIONER OF CUSTOMS, RESPONDENTS. PHILIPPINE EDUCATION CO., INC., INTERVENOR-RESPONDENT.

G. R., No. L-8811. October 31, 1957

Ponente: FELIX, J.

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FELIX, J.:

This is a petition to review a resolution of the Court of Tax Appeals dated January 22, 1955, dismissing C.T.A. Case No. 17, entitled The Acting Collector of Customs vs. The Acting Commissioner of Customs, upon motion of intervenor Philippine Education Co., Inc. The facts of the case may be briefly stated as follows:

In October, 1953, the Philippine Education Co., Inc., imported by mail from the Hillman Periodicals, Inc., of New York, New York, U.S.A., 1,463 copies of the October, 1953, issue of the magazine "Pageant" which carried on pages 16-25 thereof an article by one Laura Berquist entitled "Check Your Sex-Life Against the New Kinsey Report". After hearing and upon the recommendation of the Board of Censors of the Bureau of Customs, herein petitioner Collector of Customs rendered decision dated March 4, 1954, in Manila Seizure Identification Case No. 1307, holding that the article in question appearing in said issue of the "Pageant" magazine, which contained quotations and excerpts from the treatise of Dr. Alfred Kinsey, "The Sexual Behavior of the Human Female", violated the provisions of Section 3-(b) of the Philippine Tariff Act of 1909 which prohibits the entry of obscene and indecent reading materials in the Philippines and consequently ordered the seizure, forfeiture and burning of the 1,463 copies of the magazine. The importer of the seized article, Philippine Education Co., Inc., appealed the decision in due time to the Commissioner of Customs in conformity with the procedure established by Section 1380 of the Administrative Code, and on August 28, 1954, the Commissioner rendered judgment reversing the Collector of Customs' view by holding that the magazine "Pageant" did not contain obscene or indecent article. The Collector of Customs was, therefore, ordered to release the magazine covered by Manila Seizure Identification No. 1307 to the claimant Philippine Education Co., Inc. Upon receipt of a copy of the respondent Commissioner's decision, the Secretary of Finance directed said official to transmit the original record of the seizure case to the Court of Tax Appeals for review which directive was complied with by the Commissioner on September 15, 1954. On September 24, 1954, the Court of Tax Appeals returned the records to the Commissioner of Customs informing him that under Republic Act No. 1125, said Court is not empowered nor under legal obligation to review *motu proprio* decisions of the Collector of Internal Revenue, Commissioner of Customs or the provincial or city Boards of Assessment Appeals, unlike the defunct Board of Tax Appeals which was conferred that prerogative. It was further explained by said Court that jurisdiction to review on appeal decisions of the aforementioned officials can only be acquired by the Court upon the filing of a formal petition for review within the reglementary period by the person, association or corporation adversely affected by the decision sought to be reviewed.

On September 27, 1954, the Acting Collector of Customs filed a notice of appeal from the decision of the

Commissioner of Customs to the Court of Tax Appeals, allegedly in accordance with the provisions of Section 11 of Republic Act No. 1125 in relation to Section 7 (2) of the same Act, and a petition for review was actually filed on the same day, docketed as C.T.A. Case No. 17. Petitioner alleged, among other things, that the Commissioner of Customs erred (1) In finding that the magazine "Pageant" did not come under the category of obscene or indecent reading material within the purview of Section 3- (b) of the Philippine Tariff Act of 1909; (2) In declaring that the admission of the magazine "Pageant" was moral, practical and legal; (3) In holding that the spontaneous protests of the citizenry was directed against the admission of the "Kinsey Report" and not against the issue of the "Pageant" objected to; (4) In adopting the criterion that to determine whether a book is obscene or indecent, it must be considered as a whole and not judged from paragraphs alone which are vulgar and indecent. It was prayed that after hearing and consideration, the decision of respondent Commissioner of Customs be set aside and the copies of the aforesaid magazine be forfeited and burned pursuant to Section 1379 of the Revised Administrative Code.

The Commissioner of Customs, represented by an attorney in the Office of the Legal Counsel, Bureau of Customs, filed his answer on October 14, 1954, contending that the Collector of Customs of Manila was without authority or legal capacity to appeal under Section 11 of Republic Act No. 1125; that the Court of Tax Appeals had no jurisdiction over the subject matter because the case at bar did not involve collection of taxes; that this case, if decided in favor of petitioner, would encourage insubordination among subordinates against their superiors, and prayed that the petition be denied.

With leave of court, intervenor Philippine Education Co., Inc., filed on November 19, 1954, a motion to dismiss petition for review on the ground that the Acting Collector of Customs who filed the notice of appeal and the petition for review lacks legal capacity to prosecute the action; and that the petition states no cause of action and that the Court of Tax Appeals has no jurisdiction over the subject matter of the action as the same did not involve disputed assessment or refund of internal revenue taxes, customs duties, fees or charges. The Solicitor General who took sides with the Collector of Customs in the controversy, filed an opposition to the motion to dismiss presented by intervenor, refuting the arguments adduced therein.

On January 22, 1955, the Court of Tax Appeals issued a resolution dismissing the petition of the Collector of Customs, holding that in accordance with Section 7 of Republic Act No. 1125, the Court of Tax Appeals was conferred exclusive jurisdiction to review decisions of the Commissioner of Customs in cases involving duties, fees, seizures, fines, forfeitures or other penalties; that only persons, associations or corporations whose pecuniary and proprietary interests are adversely affected by a decision of said official may appeal to said Court; that the Commissioner of Customs is empowered under Section 1380 of the Revised Administrative Code to approve, modify, or reverse decisions of the collectors of customs in seizure cases brought under protest, and once this is done, the decision of the former becomes executory unless the owner of the seized articles appeals to the Court within the reglementary period for the review of said decision. It further stated that with the enactment of Republic Act No. 1125 creating the Court of Tax Appeals, the provisions of Section 1386 of the Revised Administrative Code authorizing the Secretary of Finance to order the removal of the records of a case to the courts for review was in effect abrogated.

From this resolution the Acting Collector of Customs, through the Solicitor General, appealed the matter to this Court maintaining' that the Court of Tax Appeals erred:

- In holding that petitioner-appellant Collector of Customs may not appeal from or petition for review decisions of the Commissioner of Customs even when expressly directed to do so by the Secretary of Finance;
- In holding that only the importer or consignee of the seized or detained article and no other may appeal or petition for review to said Court the adverse ruling of the Commissioner of Customs under Republic Act No.

1125;

- In holding that its jurisdiction is limited only to cases involving disputed assessments and payments of duties and charges of imported articles subject of detention or seizure proceedings in the Bureau of Customs;
- In holding that Republic Act No. 1125 impliedly repealed the provisions of Section 1386 of the Revised Administrative Code empowering the Secretary of Finance to remove and certify to the Court of First Instance (now Court of Tax Appeals) any matter arising out of the administration of customs laws which in his opinion should be passed upon by said Court, and in holding that the said prerogative is no longer available to said Secretary of Finance;
- In dismissing the appeal interposed by petitioner-appellant in said C.T.A. Case No. 17; and
- In failing to decide and pass upon a question of substance and transcendental importance; that the "Kinsey Report" on "The Sexual Behavior of the Human Female" contained in the seized magazine in question is indeed immoral, indecent, obscene and is consequently among the literature or printed article banned by the provisions of Section 3-(6) of the Philippine Tariff Act of 1909.

Consolidating the interrelated questions raised by petitioner-appellant, the issues left for our determination are: (a) whether the jurisdiction of the Court of Tax Appeals to take cognizance of appeals from decisions of the Commissioner of Customs is only limited to cases involving disputed assessments and payment of duties and charges subject of detention or seizure proceedings in the Bureau of Customs; and (b) whether the Collector of Customs, in his official capacity, can institute an appeal from a decision of the Commissioner of Customs to the Court of Tax Appeals, even granting that he (the Collector) was directed to do so by the Secretary of Finance.

I. The explanatory note of House Bill No. 175, that became Republic Act No. 1125, which created the Court of Tax Appeals, contains the following manifestation:

"Cognizant of the necessity of having an agency which will review tax cases and at the same time expedite the collection of taxes which is badly needed by our government, the undersigned proposes the organization by legislation of the Court of Tax Appeals".

From this manifestation, there seems to be no room for doubt as to the legislative intent in creating said Court, which we must have in mind in passing upon its jurisdiction. That is probably the reason why the respondent Court of Tax Appeals itself dismissed the appeal of the Collector of Customs holding that: only persons, associations or corporations whose pecuniary and proprietary interests are adversely affected by a decision of the Collector of Internal Revenue, Commissioner of Customs or provincial or city Board of Assessment Appeals may appeal to said Court".

It is not disputed that the decision of the Commissioner of Customs appealed from arose from the judgment reached by the Collector of Customs of the port of Manila, upon recommendation of the Board of Censors of that Bureau, declaring the article of Miss Berquist appearing in the October 1953 issue of the magazine "Pageant" as violative of the prohibition contained in Section 3-(6) of the Philippine Tariff Act of 1909.

It is not questioned either that the case at bar does not involve liability for customs duties, fees or other money charges, and if we consider this case in the light of the part of the explanatory note of said Act 1125 aforequoted, we might find the proper and logical foundation for the inference that this case may not come within the purview of the provisions thereof. Section 7 of Republic Act No. 1125 conferring jurisdiction on the Court of Tax Appeals, contains the following:

Sec. 7. Jurisdiction.—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

(1) * * *

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizures, detention or release of property affected; fines, forfeitures or other penalties in relation thereto or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) * * *

It will be noted that the final sentence of paragraph 2 of this Section 7, "or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs", comes after an enumeration of the class of cases cognizable by the Court of Tax Appeals, nameily, those involving liability for customs duties, fees or other money charges, and as contended by respondent intervenor, by the doctrine of ejusdem generis, in order that the "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs" may come within the jurisdiction of the Court, they should involve also liability for payment of money to the Government (see *Ollada vs. Court of Tax Appeals et al.*, (99 Phil., 604), penned by Mr. Justice Felix Bautista Angelo, squarely interpreting the provisions of the afore-quoted Section 7-(2) of Kep. Act No. 1125).

"The rule of ejusdem generis requires that words of general description following words of particular description be interpreted as applying to things of similar character" (Words and Phrases, Vol. 14, p. 193-194).

The Administrative Code itself in defining the meaning and scope of the phrase "seized property" as used in Chapter 39 on the Bureau of Customs, says that:

SEIZED PROPERTY means any property seized or held for the satisfaction of any administrative fine or for the enforcement of any forfeiture under the Customs law. (Sec. 1419 of the R. A. C).

a definition which is in consonance with the 'aforementioned doctrine of ejusdem generis. And this interpretation cannot be otherwise. Let us suppose, for example, that the Commissioner of Customs, against the findings of the Board of Marine Inquiry would exonerate a licensed marine officer from any responsibility incurred, according to the charges, on account of professional misconduct, intemperate habits, negligence or incapacity of the officer concerned (Sec. 1198 of the Revised Administrative Code), can the provisions of Section 1384 of the Revised Administrative Code (indicating the person who may cause the removal of a customs case into court and which provides that "if the decision of the Commissioner is adverse to the Government the case may also be removed in the manner hereinafter specified, by order of the Department Head"), be applicable to that case as counsel for the petitioner sweepingly make them applicable to the case at bar? Certainly, the answer is too obvious to deserve any denial. In said Section 1198 it is said that the appeal is to be taken to the Secretary of Finance, the Department Head, and if by reason of this provision the case of the example could not be taken to the Court of Tax Appeals, then as a corollary thereof it should be held also that there are cases wherein decisions of the Commissioner of Customs arising under the Customs Law or other law or part of law administered by the Bureau of Customs, can not be taken for review to the Court of Tax Appeals which may not have the required qualifications to pass upon such matter as those involved in the case at bar.

On the other hand and as stated before, the action of petitioner Collector of Customs was predicated on the provision of Section 3- (6) of the Philippine Tariff Act of 1909, as amended, which reads as follows:

SEC. 3. That importation or shipment into the Philippine Islands of the following articles is prohibited:

(a) * * *

(b) Articles, books, pamphlets, printed matter, manuscripts, typewritten matter, paintings, illustrations, figures or objects of obscene or indecent character or subversive of public order.

This section 3 merely prohibits the importation of printed matter of obscene or indecent character and does not provide for the seizure and destruction of such printed matter as ordered by the Collector of Customs though he was in that reversed by the Commissioner of Customs who ordered the release of the copies of the magazine to the intervenor Philippine Education Co., Inc. As regards such seizure, Section 1363 of the Revised Administrative Code enumerates the merchandise or properties subject to seizure under the Customs Law, but it contains no specific provision for the seizure of merchandise (granting that the copies of said magazine come within the general concept of the word merchandise) containing obscene or indecent reading matter. The provision of said Section 136S that comes most near to the point in controversy o? that might have a bearing on the premises, is paragraph (f) thereof, which reads as follows:

(f) Any merchandise o/ prohibited importatinn or exportation, the importation or exportation of which is effected or attempted contrary to law and all other merchandise which, in tlle opinion of the Collector have been used or intended to be used us instrument in the importation or exportation 0/ the former. (As amended toy Sec. 1, R.A. No. 454).

But nothing of record indicates that the importation of the 1,463 copies of the "Pageant" magazine in question was effected contrary to law, for said copies were brought to the Philippines in accordance with the procedure provided for cases of importation of magazines.

In support of his contention that seizures of any kind made by the Bureau of Customs come within the exclusive appellate jurisdiction of the Court of Tax Appeals, the dissenting Justice gives as an example the case of illegal importation of opium and says: "Let us suppose that opium is imported, and being of prohibited importation, the Collector of Customs seized and confiscates the same and the seizure and confiscation is approved by the Commissioner of Customs, and the importer, dissatisfied with said decision of the Commissioner, claiming that the article found by the customs authorities to be opium was not really opium, but something else or that although it is opium, nevertheless, it would be used for a legitimate purpose, where would he go or appeal for relief? Frankly, We believe this example to be absolutely beside the point for everyone knows that the seizure in question not only comes under the provision of Section 1363, paragraph (f) just quoted, but also that the unlicensed importation of opium into this country is a criminal offense penalized and covered by Article 192 of the Revised Penal Code and that in addition to the penalty prescribed therein for those found guilty of said offense, the same Penal Code prescribes, as accessory penalty, the forfeiture of the prohibited drug, and it is of common knowledge that said accessory penalty is usually imposed by Judges of Courts of First Instance where the case is originally tried. (Article 25, R.P.C.).

The dissenting Justice further cites our decisions in the 3 cases of Millarez, as Acting Collector of Customs for the port of Manila, et al. vs. Judge Rafael Amparo et al.,[1] G. R. Nos. L-8364, L-8365, and L-8351, June 30, 1955; the case of Kho Kum Commercial vs. Commissioner of Customs et al., G. R. No. L-9778, Resolution of October 11, 1955, and namarco vs. Judge Higinio Macadaeg et al.,[2] G. R. No. L-10030, January 18, 1956, all of which. refer to seizures in connection with prohibited importation of garlic, and naturally the seizures thereof made by the Bureau of Customs not only come under the aforementioned Section 1363, paragraph (f) of the Revised Administrative Code, but also involved the determination of the proprietary rights of the persons concerned. It is, therefore, evident that none of these cases have any bearing on the case at bar.

Moreover, if, as will be later shown, appeals from the decision of the Commissioner of Customs can only be taken to the Court of Tax Appeals by any "person, association and corporation adversely affected by a decision or ruling of said Commissioner" (Sec. 11, R.A. No. 1125), it would seem obvious that the appeal taken by the Collector of Customs would be a matter that falls beyond the jurisdiction of the Court of Tax Appeals to entertain. Of course, We do not maintain that the copies of the magazine objected to, if really containing indecent or obscene literature,

cannot be forfeited and destroyed, but We hold that this cannot be done or authorized by any order, resolution or decision of the respondent Court of Tax Appeals, a court that according to the explanatory note of Republic Act No. 1125, was created to review tax cases and to expedite the collection of taxes.

Finally, the title of Republic Act No. 1125 reads as follows: "An Act Creating the Court of Tax Appeals", and this law might be rendered unconstitutional if it is interpreted as including within the jurisdiction of said Court appeals from decisions of the Commissioner wherein no tax is involved, thus amplifying its jurisdiction to cases not covered by the title of the law creating the same.

We, therefore, conclude that under the terms of Section 7 of Republic Act No. 1125, the present case, which does not involve disputed assessments or payment of duties and charges subject of detention or seizure proceedings in the Bureau of Customs does not come within the appellate jurisdiction of the Court of Tax Appeals.

II. Having arrived at the foregoing conclusion concerning issue No. 1, We really need not pass upon issue No. II. Yet, as it involves an important legal question which affects a matter of Government policy, We prefer to say a few words on the same.

The records show that the Secretary of Finance took a hand in the removal of the case to the Court of Tax Appeals and which that tribunal returned to the Commissioner of Customs. As the Solicitor General asserted, it was the Secretary of Finance, sanctioned by the Revised Administrative Code, who directed the Collector of Customs to appeal from the decision of respondent Commissioner. The provisions of the Revised Administrative Code material to the instant case are the following:

SEC. 1384. BY WHOM CAUSE MAY BE REMOVED INTO COURT.—The removal of a cause into court may be had at the instance of the protesting party or, in case of seizure, at the instance of the owner or agent of the seized property. If the decision of the Commissioner is adverse to the Government, the cause may also be removed in the manner hereinafter specified, by order of the Department Head.

SEC. 1386. REMOVAL UPON ORDER OF DEPARTMENT HEAD.—Upon making' any decision which may be removed upon order of the Department Head, the Commissioner shall immediately transmit a copy of such decision to him and also to the Auditor General; and if within fifteen days thereafter the Department shall certify that in his opinion the decision ought to be revised by the Court of First Instance in the City of Manila, it shall be the duty of the Commissioner, upon notification thereof to transmit the original record to said court in the same manner as upon removal by a party other than the Government.

Undoubtedly relying on the foregoing, the Secretary of Finance, apparently dissatisfied with the ruling made by the Commissioner of Customs, directed the latter to remove the case to the Court of Tax Appeals for revision, and later sanctioned the appeal made by the Collector of Customs from the said decision. But the Secretary of Finance forgot that in the present case no liability for customs duties, fees or other money charges is involved; that the Court of Tax Appeals was created because of the need of "having an agency which will review tax cases and at the same time expedite the collection of taxes"; and that Republic Act No. 1125 creating the Court of Tax Appeals provides the following:

"SEC. 11. WHO MAY APPEAL; EFFECT OF APPEAL.—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs (Commissioner) or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

Republic Act No. 1125, which was approved on June 16, 1954, became very specific when it gave an enumeration of those who may appeal from a decision or ruling of the Collector of Internal Revenue, the Commissioner of Customs or Board of Assessment Appeals. Under this law, the right to appeal from decisions or rulings of said

officials is allowed only to persons, associations or corporations adversely affected by the same, and well knowing the connotation of the legal maxim "inclusio unius est exclusio alterius", the Government is certainly not one of them.

From another angle, it is to be noted that the appeal was brought in the name of the Acting Collector of Customs, presumably in his official capacity as he was even represented by the Office of the Solicitor General, against his superior the Acting Commissioner of Customs, also in such capacity as a Government official and who was represented by the legal Counsel of the Bureau of Customs. As suits brought for or against Government officials in their capacities as such public officials are suits for or against the Government (See *Salvador Araneta et al. vs. Hon. Magno Gatmaitan et al.*,[*] G. R. Nos. L-8895 & L-9191, prom. April 30, 1957). We, therefore, find Ourselves confronted with a precarious situation and the fallacy of an appeal by the Government against its own ruling. It may be argued, however, that the Collector of Customs was directed by the Secretary of Finance, the overall superior in said Department, to prosecute the case pursuant to Sections 1384 and 1386 of the Revised Administrative Code. But as Republic Act No. 1125 made no mention of revision of decisions or rulings adverse to the Government upon order of Department Heads, as contemplated by said sections of the Administrative Code, and as the procedure of appeals to the Court of Tax Appeals as provided by the later legislation (Rep. Act No. 1125) cannot stand side by side with the former, the provisions of the Administrative Code appertaining to removal of cases to the court for revision may be deemed repealed in so far as they may refer to cases that come within the jurisdiction of the Court of Tax Appeals.

At the deliberation of this case, the legal maxim of *Ubi jus ibi remedium* was invoked and one of the members of this Court raised the question that in cases like the one at bar in which no tax or pecuniary liability is involved, the Government must have a remedy if it is not satisfied with the decision of the Commissioner of Customs. We certainly have no quarrel on this point with the said dissenting Justice and are ready to agree with him, although We may add that in this case, the Commissioner of Customs is part of the Government and that the remedy against his decisions should be sought administratively rather than in the Judiciary. Anyway, if the provisions of the Customs Laws admittedly cover a greater field and include in their embrace not only cases in which taxes and other pecuniary liabilities are dealt with, but also others that have nothing to do with such liabilities, and if as shown before the latter cases cannot be taken to the Court of Tax Appeals, it would seem reasonable to conclude that appeals from decisions or orders of the Commissioner of Customs must be in accordance with and follow the procedure outlined in the Customs Laws that were applicable before the creation of said Court of Tax Appeals, because for all intents and purposes, the provisions of said Customs Laws shall be considered still in force and effect. Such being the case and as the popular saying goes, "there is no use of barking at the wrong tree" or better still, "of praying at the wrong altar".

In virtue of the foregoing conclusions, i.e., that the Court of Tax Appeals has no jurisdiction to entertain the appeal of the Acting Collector of Customs in this matter and of the procedural defect just pointed out, there is no need for Us to pass upon the merits of the question regarding the nature of the article contained in the issue of the magazine "Pageant" objected to.

Wherefore, the Resolution of the Court of Tax Appeals dated January 22, 1955, is hereby affirmed and the herein petition dismissed, without pronouncement as to costs. It is so ordered.

Bautista Angelo and Reyes J. B. L., JJ., concur.

Reyes, A., J., concurs in the result.

[1] 97 Phil., 282, 51 Off. Gaz., [7] 346

[2] 298 Phil., 185.

[*] 101 Phil., 1328.

CONCURRING

CONCEPCION, J., :

The issue in this case is plain and simple—may the Collector of Customs for the Port of Manila or the Secretary of Finance appeal from a decision of the Commissioner of Customs reversing a decision of said Collector of Customs holding that an article contained in a given issue of the "Pageant" is obscene and immoral and ordering the seizure, forfeiture and burning of copies of said magazine?

1. All members of this Court agree that, as an officer of the Bureau of Customs, the Collector of Customs for the Port of Manila may not appeal from a decision of his superior officer and head of said Bureau, the Commissioner of Customs (Section 81, Revised Administrative Code). Indeed, in *Luifino Lopez & Sons, Inc. vs. Court of Tax Appeals*,[*] G. R. No. L-8274 (February 1, 1957), we said, speaking through Mr. Justice Montemayor:

"Under the Customs Law, the Commissioner of Customs is the Chief of the Bureau of Customs and has jurisdiction over the whole country as regards the enforcement of the Customs Law, whereas, there are sixteen Collectors of Customs for the sixteen collection districts and principal ports of entry into which the Philippines has been divided. These Collectors of Customs are subordinates of the Commissioner of Customs over whom he has authority. Pursuant to Section 1405 of the Revised Administrative Code, when any new or unsettled question shall be determined by the Collector of Customs, he shall, if the matter is not otherwise carried upon for review in ordinary course, notify the Commissioner of his decision, submitting an adequate statement of facts involved. What is more important is the provisions of Section 1380, which we reproduce below:

'SEC. 1380. Review by Commissioner—The persons aggrieved by the decision of the collector of customs in any matter presented upon protest or by his action in any cases of seizure may, within fifteen days after notification in writing by the collector of his action or decision, give written notice to the Collector signifying his desire to have the matter reviewed by the Commissioner.'

'Thereupon, the collector of customs shall forthwith transmit all the papers in the cause to the Commissioner, who shall approve, modify, or reverse the action of his subordinate and shall take such steps and make such order or orders as may be necessary to give effect to his decision.'

"Upon this section, any person affected or aggrieved by the decision of the Collector of Customs may appeal the decision to the Commissioner of Customs. From all this, it is clear that if we followed the literal meaning and wording of Section 11 of Republic Act No. 1125, in the sense that persons affected by a decision of the Collector of Customs may appeal directly all the Court of Tax Appeals, then the supervision and control of the Commissioner of Customs over his Collector of Customs, and his right to review their decision upon appeal to him by the persons affected by said decision would, not only be gravely affected, but even destroyed. We cannot believe that that was the intention of the Legislature in passing Republic Act No. 1125." (Italics ours.)

For similar reasons we held in *Ursal vs. Court of Tax Appeals*, (101 Phil., 209) and *Ursal vs. Court of Tax Appeals and Mansueto*, L-10165 (August 30, 1957), that the City Assessor of Cebu may not appeal to the Court of Tax Appeals from a decision of the City Assessment Appeals reducing an assessment made by said official.

2. Is the appeal taken by the Acting Collector of Customs for the Port of Manila in the case at bar tantamount to

an appeal by the Republic of the Philippines? The dissent answers the question in the affirmative. The answer assumes, however, that the State is represented by said officer, not by the Commissioner of Customs. To my mind, the assumption is untenable. The Commissioner of Customs, not the Collector of Customs for the Port of Manila, is the head of the Bureau of Customs, and hence, its representative and that of the Government, as an agency of the State, in the present case. In fact, Section 1368 specifically provides that:

"In the absence of special provision, judicial actions and proceeding's instituted on behalf of the Government under the authority of the customs laws shall be subject to the supervision and control of the Commissioner."
(Italics ours.)

3. May the Secretary of Finance appeal to the Court of Tax Appeals from the decision of the Commissioner of Customs?

The pertinent part of Section 11 of Republic Act No. 1125 reads:

"Any periaon, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

It is conceded that the words "any person, association or corporation adversely affected," used in this section, do not adequately indicate that either the Collector of Customs or the Secretary of Finance may interpose the appeal therein provided. It is argued, however, that this is due "to a mere oversight," for "the one drafting the original bill may have thought that the enumeration in section 11 included the Government for the reason that the main consideration or condition for the appeal is that the appellant must be adversely affected by the appealed decision or ruling and it is clear that the Government being one of the real parties in interest is liable to be affected adversely."

I am unable to accept this view. To begin with, it is, on its face, sheer speculation, based upon a "possibility" of "mistake, oversight, etc." The presumption should be, however, that reasonable care has been exercised in the drafting of the law and that Congress meant every word thereof, unless the contrary appears clearly. Secondly, this presumption is bolstered up by the context of Republic Act No. 1125. Thus, whereas said section 11 grants to "any person, association or corporation adversely affected by a decision or ruling of the Collector (Commissioner) of Customs" the right to appeal therefrom to the Court of Tax Appeals, section 18 of the same Act provides that "any party adversely affected by any ruling, order or decision of the Court of Tax Appeals may appeal therefrom to the Supreme Court." The reference in section 11 to "any person, association or corporation"—which, admittedly, is inadequate to include the Government—when contrasted with the right of appeal, vested, in section 18, to "any party adversely affected"—which clearly includes the Government—strongly suggests that the Government was not meant to have the right referred to in said section 11.

Thirdly, the fear has been expressed that, if the right of appeal, under section 11, were not acknowledged in the Government, the same "would be powerless to have modified, changed or reversed any decision of the Commissioner of Customs who, even in all good faith, may have committed a serious error or blunder in deciding a case." This fear is, I believe, unwarranted. In fact, the language of section 11, relative to the party who may appeal, was intentionally or deliberately made distinct and different from that of section 18. What is more, this was required by the nature of the organization of our executive department.

Section 1 of Article VII of the Constitution declares that "the Executive power shall be vested in a President of the Philippines." Thus, the President is "the Executive power" itself. In other words, he is the "repository of all executive powers"[1] except such as are expressly or clearly conferred by the Constitution upon other branches of the Government. Subject to these limitations, no executive power may be vested by Congress in, or exercised by,

any other public officer—particularly in the executive branch—except as an alter ego of the President.[2] Otherwise, the former would have an executive power not possessed by the President, in contravention of the Constitution.

For this reason, the latter explicitly ordains that "the President shall have control over all executive departments, bureaus and offices" (Section 10, Article VII, subdivision 1). "Control", in turn, implies "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done * - * and to substitute the judgment of the former for that of the latter" (Mondano vs. Silvosa, 97 Phil., 143; 51 Off. Gaz., 2884). This power—insofar as bureaus and offices are concerned—is exercised by the President through the heads of the executive departments, who, as "agents" or "tools" of the Executive "shall have direct control * * * over all bureaus and offices" under existing law to the contrary notwithstanding, repeal or modify the decisions of the chief of said bureaus or offices, when advisable in the public interest." (Section 79 [c], Revised Administrative Code.) Inasmuch as the Bureau of Customs is subject to the jurisdiction of the Department of Finance (Sec. 81, Eev. Ad. Code), it follows that the Secretary of Finance may repeal or modify the decision of the Commissioner of Customs involved in the present case.

This is the reason why the right of appeal provided for in section 11 is not extended to the Government. Indeed, the latter, may, through the Department of Finance—in the exercise of its power of control, as an agent of the President—correct such errors as the Commissioner of Customs may have committed. Upon the other hand, decisions of the Court of Tax Appeals are not subject to administrative review. If adverse to the Government, the same has no other recourse, under the law, but to appeal to the Supreme Court, pursuant to section 18.

Thus, in *Ursal vs. Court of Tax Appeals*,[*] G. R. Nos. L-10123 and L-1Q355 (decided April 26, 1957), this Court, in a unanimous decision, penned by Mr. Justice Bengzon, used the following language:

"The appellant invites attention to the fact that the Court of Tax Appeals is the successor of the former Central Board of Tax: Appeals created by Commonwealth Act No. 530 and of the Board of Tax Appeals established by Executive Order No. 401-A and that said Commonwealth Act No. 530 (sec. 2) explicitly authorized the city assessor to appeal to the Central Board of Tax Appeals. Here is precisely another argument against Ms position: as Republic Act No. 1125 failed to reenact such express permission, it is deemed withheld.

"Oversight could not have been the cause of such withholding, since there were proper grounds therefor: (a) discipline and command responsibility in the executive branches; and (b) instead of being another superior administrative agency as was the former Board of Tax Appeals the Court of Tax Appeals as created by Republic Act No. 1125 is a part of the judicial system presumably to act only on protests of private persons adversely affected by the tax, custom, or assessment." (Italics ours.)

This view was quoted with approval and reiterated in our* unanimous decision in *Ursal vs. Court of Tax Appeals*, L-10185 (August 30, 1957).

Much could be said on whether or not the Court of Tax Appeals may review a decision of the Commissioner of Customs on the morality or decency of a given publication, or on matters not involving, either customs duties, fees or other money charges, or the seizure, detention or release of property affected by said duties, fees or money charges, or fines, forfeitures or other penalties imposed in relation thereto, or other matters arising under the Customs Laws, related to said duties, fees or money charges. In view of the importance of such question and considering, not only, that a determination thereof is unnecessary, owing to the flaw in the appeal taken from the decision of the Commissioner of Customs, but, also, to the fact that said question has not been elucidated by the parties as thoroughly as the nature thereof demands, I deem it best not to discuss it in the case at bar. It may not be amiss to note, however, that a similar issue was decided in the negative in the case of *Ollada vs. Court of Tax Appeals*, 99 Phil., 604, 52 Off. Gaz., [10] 4667). Despite the provision of section 7 of Republic Act No. 1125, explicitly conferring upon said Court exclusive appellate jurisdiction to review.

"(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue,"

we unanimously held in the Ollada case that not all decisions of the Collector of Internal Revenue on matters arising under the National Internal Revenue Code are appealable to the Court of Tax Appeals. I quote from our decision in said case:

"Note that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial or city Boards of Assessment Appeals. Note also that in defining the cases that may be reviewed the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code, the Customs Law and the Assessment Law. This shows that the 'other matters' that may come under the general clause should be of the same nature as those that have preceded, them, applying the rule of construction known as *ejusdem generis*. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated,. Otherwise, it should be deemed foreign or extraneous and is not included.

"The question involved in the mandamus case does not cover any disputed assessment or refund of any internal revenue tax, fee, charge or penalty imposed in relation thereto. Rather, it involves unfair competition arising from the use of simplified set of bookkeeping records required by section 334 of the National Internal Revenue Code. This has nothing to do with, any assessment or refund of any tax, fee or penalty. It cannot be pretended that for any violation of the Internal Revenue Law, Customs Law, or Assessment Law, the case may be appealed to the Court of Tax Appeals, for if such were the case, then the latter court would also have jurisdiction to review cases involving penal provisions such as those embodied in Title XI of the National Internal Revenue Code. Undoubtedly, such court does not have criminal jurisdiction." (Italics ours.)

Wherefore, I concur in the majority opinion written by Mr. Justice Felix.

Bengzon, Bautista Angelo and Reyes, J. B. L., JJ., concur.

[*] 100 Phil., 850, 53 Off. Gaz., [10] 3065

[1] Philippine Political Law, hy ginco, 10th ed. p. 240.

[2] "Planas vs. Gil, 67 Phil., 62, 77; Villena vs. Secretary of Interior, 67 Phil., 451, 464; Rodriguez vs. Montinola, 94 Phil., 964; 50 Off. Gaz., 4820.

[*] 101 Phil., 209.

DISSENTING OPINION

MONTEMAYOR, J., :

The case, the facts, as well as the issues involved in the present appeal are well stated in the learned majority opinion, penned by Mr. Justice Alfonso Felix; I am adopting it and for purposes of ready reference, it is being reproduced below:

"This is a petition to review a resolution of the Court of Tax Appeals dated January 22, 1955, dismissing C. T. A. Case No. 17, entitled the Acting Collector of Customs vs- the Acting Commissioner of Customs, upon motion of intervenor Philippine Education Co., Inc. The facts of the case may be briefly stated as follows:

"In October, 1953, the Philippine Education Co., Inc., imported by mail from the Hillman Periodicals, Inc., of New York, New York, U. S. A., 1,463 copies of the October, 1953, issue of the magazine "Pageant" which carried on pages 16-25 thereof an article by one Laura Berquist entitled 'Check Your Sex-Life Against the New Kinsey Report'. After hearing and upon the recommendation of the Board of Censors of the Bureau of Customs, herein petitioner Collector of Customs rendered decision dated March A, 1954, in Manila Seizure Identification Case No. 1307, holding that the article in question appearing in said issue of the "Pageant" magazine, which contained quotations and excerpts from the treatise of Dr. Alfred Kinsey, 'The Sexual Behavior of the Human Female', violated the provisions of Sections 3-(b) of the Philippine Tariff Act of 1909 which prohibits the entry of obscene and indecent reading- materials in the Philippines and consequently ordered the seizure, forfeiture and burning of the 1,463 copies of the magazine. The importer of the seized article, Philippine Education Co., Inc., appealed the decision in due time to the Commissioner of Customs in conformity with the procedure established by Section 1380 of the Administrative Code, and on August 28, 1954, the Commissioner rendered judgment reversing the Collector of Customs' view by holding that the magazine "Pageant" did not contain obscene or indecent article. The Collector of Customs was, therefore, ordered to release the magazine covered by Manila Seizure Identification No. 1307 to the claimant Philippine Education Co., Inc. Upon receipt of a copy of the respondent Commissioner's decision, the Secretary of Finance directed said official to transmit the original record of the seizure case to the Court of Tax Appeals for review which directive was complied with by the Commissioner on September 15, 1954. On September 24, 1954, the Court of Tax Appeals returned the records to the Commissioner of Customs informing him that under Republic Act No. 1125, said Court is not empowered nor under legal obligation to review *motu proprio* decisions of the Collector of Internal Revenue, Commissioner of Customs or the provincial or city Boards of Assessment Appeals, unlike the defunct Board of Tax Appeals which was conferred that prerogative. It was further explained by said Court that jurisdiction to review on appeal decisions of the aforementioned officials can only be acquired by the Court upon the filing of a *forma* petition for review within the reglementary period by the person, association or corporation adversely affected by the decision sought to be reviewed.

"On September 27, 1954, the Acting: Collector of Customs filed a notice of appeal from the decision of the Commissioner of Customs to the Court of Tax Appeals, allegedly in accordance with the provisions of Section 11 of Republic Act No. 1125 in relation to Section 7 (2) of the same Act, and a petition for review was actually filed on the same day docketed as C. T. A. Case No. 17. Petitioner alleged, among other things, that the Commissioner of Customs erred (1) In finding that the magazine 'Pageant' did not come under the category of obscene or indecent reading material within the purview of Section 3-(b) of the Philippine Tariff Act of 1909; (2) In declaring that the admission of the magazine 'Pageant' was moral, practical and legal; (3) in holding that the spontaneous protests of the citizenry was directed against the admission of the 'Kinsey Report' and not against the issue of the 'Pageant' objected to; (4) In adopting the criterion that to determine whether a book is obscene or indecent, it must be considered as a whole and not judged from paragraphs alone which are vulgar and indecent. It was proved that after hearing and consideration, the decision of respondent Commissioner of Customs be set aside and the copies of the aforesaid magazine be forfeited and burned pursuant to Section 1379 of the Revised Administrative Code.

The Commissioner of Customs, represented by an attorney in the Office of the Legal Counsel, Bureau of Customs, filed his answer on October 14, 1954, contending that the Collector of Customs of Manila was without authority or legal capacity to appeal under Section 11 of Republic Act No. 1125; that the Court of Tax Appeals had no jurisdiction over the subject matter because the case at bar did not involve collection of taxes; that this case, if decided in favor of petitioner, ' would encourage insubordination among subordinates against their superiors(and prayed that the petition be denied.

With leave of court, intervenor Philippine Education Co., Inc., filed on November 19, 1954, a motion to dismiss petition for review on the ground that the Acting Collector of Customs who filed the notice of appeal and the petition for review lacks legal capacity to prosecute the action; and that the petition states no cause of action and that the Court of Tax Appeals has no jurisdiction over the subject matter of the action as the same

did not involve disputed assessment or refund of internal revenue taxes, customs duties, fees or charges. The Solicitor General who took sides with the Collector of Customs in the controversy, filed an opposition to the motion to dismiss presented by intervenor, refuting the arguments adduced therein.

On January 22, 1955, the Court of Tax Appeals issued a resolution dismissing the petition of the Collector of Customs, holding that in accordance with Section 7 of Republic Act No. 1125, the Court of Tax Appeals was conferred exclusive jurisdiction to review decisions of the Commissioner of Customs in cases involving duties, fees, seizures, fines, forfeitures or other penalties; That only persons, associations or corporations whose pecuniary and proprietary interest are adversely affected by a decision of said official may appeal to said court; that the Commissioner of Customs is empowered under Section 1380 of the Revised Administrative Code to approve, modify, or reverse decisions of the collectors of customs in seizure cases brought under protest, and once this is done, the decision of the former becomes executory unless the owner of the seized articles appeals to the Court within the reglementary period for the review of said decision. It further stated that with the enactment of Republic Act No. 1125 creating the Court of Tax Appeals, the provisions of Section 1386 of the Revised Administrative Code authorizing the Secretary of Finance to order the removal of the records of a case to the courts for review was in effect abrogated.

* * * * *

"Consolidating the interrelated questions raised by petitioner-appellant, the issue left for our determination are: (a) whether the jurisdiction of the Court of Tax Appeals to take cognizance of appeals from decisions of the Commissioner of Customs is only limited to cases involving disputed assessments and payment of duties and charges subject of detention or seizure proceedings in the Bureau of Customs; and (b) whether the Collector of Customs, in his official capacity, can institute an appeal from a decision of the Commissioner of Customs to the Court of Tax Appeals, even granting that he (the Collector) was directed to do so by the Secretary of Finance."

However, to the last part or paragraph of the above quotation dealing with the issues raised in the appeal and left for our determination, I believe that there should be added the ruling of the Court of Tax Appeals to the effect that with the enactment of Republic Act No. 1125, creating said Court, the provisions of Section 1386 of the Revised Administrative Code, authorizing the Secretary of Finance to order the removal of the record of cases to the courts for review, has been abrogated, that is to say, that now, the Government supposedly can no longer appeal from the decision of the Commissioner of Customs.

In an attempt to justify the claim that the Court of Tax Appeals has jurisdiction to review only those decisions of the Commissioner of Customs "involving disputed assessments and payment of duties and charges subject of detention or seizure proceedings in the Bureau of Customs", the majority opinion cites and quotes a paragraph of the explanatory note, reading as follows:

"Cognizant of the necessity of having an agency which will review tax cases and at the same time expedite the collection of taxes which is badly needed by our government, the undersigned proposes the organization by legislation of the Court of Tax Appeals.",

which paragraph emphasizes the review of tax cases and the collection of taxes in the shortest time possible. The majority opinion, however, unfortunately overlooked and failed to cite another portion of the same explanatory note, which I quote below:

* * * "It is proposed in the attached bill to establish not merely an administrative body but a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, Customs Law and the Assessment Law."

From the above quotation it is clear that one of the purposes of the creation of the Court of Tax Appeals was to

establish a judicial body vested with exclusive appellate jurisdiction not only over strictly tax cases but also cases arising under the Customs Law, which Customs Law, found in Chapter 39 of the Revised Administrative Code and including about 282 sections, in broad and comprehensive indeed and includes seizure and forfeiture of articles or merchandise of prohibited importation. To hold as the majority opinion and the appealed resolution of the Court of Tax Appeals do that as regards controverted decisions of the Commissioner of Customs, said court may review only those involving customs duties, fees, or other money charges, is to me to take a very limited and narrow view of the appellate jurisdiction conferred upon said Tax Court. If the Legislature meant to confer and actually conferred exclusive jurisdiction over cases involving administration of the Customs Law on said court and the latter declines and refuses to review cases coming from the Commissioner of Customs that do not involve customs duties, fees, or other money charges, then what body or court will review customs cases which do not involve such customs duties, fees, or other money charges, such as seizure of articles and merchandise whose importation is expressly prohibited by law? The appealed resolution and the majority opinion fail to enlighten us. Supposing that opium is imported, and being of prohibited importation, the Collector of Customs seizes and confiscates the same, and the seizure and confiscation is approved by the Commissioner of Customs, and the importer is dissatisfied with said decision of the Commissioner, claiming that the article found by the Customs authorities to be opium was not really opium, but something else or that although it is opium, nevertheless, it will be used for a legitimate purpose, where would he go or appeal for relief?

The majority opinion next cites and quotes Section 7, paragraph 2 of Republic Act No. 1125, creating the Court of Tax Appeals and defining its jurisdiction, which for purposes of ready reference, I again quote:

"SEC. 7, Jurisdiction. The Tax Court shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

* * * * *

" (2) 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."

The majority opinion, invoking the rules of statutory construction, holds that applying the doctrine of ejusdem generis, the phrase "or other matters arising under the Customs law or other law or part of Law administered by the Bureau of Customs" refers only to customs law involving liability for customs duties, fees, or other money charges. This view of the majority opinion overlooks the fact that the phrase above-quoted is separated from not only the first part but from the rest of the paragraph by a semicolon. The same thing is true with the phrase "seizures, detention or release of property affected"; it is separated from the preceding clause "customs duties, fees or other money charges" by a semicolon. In other words, the decisions of the Commissioner of the Customs appealable to the Court of Tax Appeals is divided into four parts or classes, namely:

- "(1) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees and other money charges;
- (2) Seizure, detention or release of property affected;
- (3) Fines, forfeitures, or penalties Imposed in relation thereto; and,
- (4) Other matters arising under the Customs Law or other laws or parts of law administered by the Bureau of Customs."

It is true that there are at least two kinds of seizures and forfeitures of imported articles: First, seizure of articles or merchandise not of prohibited importation, but whose importation is made illegally, such as when concealed, misdeclared, or not declared at all for purposes of assessment. In that case, the seizure is made only to compel the

importer to make the correct declaration and to pay , the corresponding duties, including surcharges and fines. Second, where importation of the article or merchandise is absolutely prohibited, like opium, obscene or immoral literature, or literature subversive of the public order. In such a case, no amount of duties, surcharges, or fines which the importer is willing and ready to pay, can justify the release of said articles. They cannot be released but should be confiscated and destroyed or otherwise disposed of according to law. The following provisions of Section 1388 of the Revised Administrative Code, specially the second paragraph are relevant:

"SEC. 1388. Settlement of cause by payment of fine or redemption of forfeited property.—If, in any seizure case, the owner or agent shall, while the cause is yet before the collector of the district of seizure, pay to such collector the fine imposed by him or, in case of forfeiture, shall pay the appraised value of the property, or if, after removal of the cause, he shall pay to the Commissioner the amount of the fine as finally determined by him, or, in case of forfeiture, shall pay the appraised value of the property, such property shall be forthwith surrendered, and all liability which, may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.

"Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering" to redeem the same would be contrary to law."

Over both cases of seizure and forfeiture, the Court of Tax Appeals has exclusive appellate jurisdiction.

But there is really no need for resorting to the rules of statutory construction to determine the jurisdiction of the Court of Tax Appeals over seizure, detention, and forfeiture of articles of prohibited importation for the reason that the same legal question has already been passed upon by this Court. We have the three cases of Millarez as Acting Collector of Customs for the Port of Manila, et al. vs. Judge Rafael Amparo, et al.,[*] G. R. No. L-8364; Millarez as Acting Collector of Customs for the Port of Manila et al. vs. Judge Rafael Amparo, et al.,[*] G. R. No. L-8365; and Millarez as Acting Collector of Customs for the Port of Manila vs. Judge Rafael Amparo,* G. R. No. L-8351, June 30, 1955, wherein shipments, of garlic were seized and impounded by the customs authorities on the ground that at the time, garlic was of prohibited importation. The importers went to the Court of First Instance of Manila where, through petitions ex-parte, the Judge thereof issued writs of preliminary mandatory injunction ordering the release under bond of the said shipments of garlic. Upon failure to obtain dissolution on the said writs, the customs authorities came to this Tribunal. One of the grounds alleged by the customs authorities against the action of the trial court was the lack of jurisdiction over the cases for the reason that, since, the creation of the Court of Tax Appeals by Republic Act No. 1125, the Court, of First Instance of Manila had lost its appellate jurisdiction over customs cases. This court in holding that the trial court had no jurisdiction, said:

"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. In our opinion this provision necessarily has taken away the power of the Manila Court of First Instance to 'review' decisions of the Customs authorities, 'in any case of seizure' as in this case—under section 1383 et seq. of the Revised Administrative Code." (Italics supplied).

It will be noticed that in these cases, the question involved was not the amount of assessment and payment of customs duties and charges on the merchandise imported, but that the same was of prohibited importation and, therefore, was subject to seizure and confiscation.

Then we have the case of Kho Kum Commercial vs. Commissioner of Customs, et al., G. R. No. L-9778, wherein two shipments of garlic were seized and confiscated on the ground that importation was prohibited except for

seedling purposes. The customs authorities threatened to deliver the said shipments to the manager of the NAMARCO presumably for sale. To obtain redress for the alleged violation of his rights, the importer came to this Court by means of a petition for mandamus and certiorari, to stop the customs authorities from doing what they threatened to do and to allow him to effect the redemption of and the payment of the redemption price for, the two shipments. The petition was dismissed by us by the following resolution, dated October 11, 1955:

"The petition for mandamus and prohibition [with preliminary injunction filed in G. R. No. L-9778, Kho Kum Commercial vs. The Commissioner of Customs, et al., is DISMISSED. The remedy should be addressed to the Court of Tax Appeals."

Finally, we have the case of NAMARCO vs. Judge Higinio B. Macadaeg, et al.,[*] G. R. No. L-10030, January 18, 1956, wherein this same importer, Kho Kum, presumably after the two shipments of garlic referred to in the next preceding case had been delivered to the NAMARCO by the customs authorities, went to the Court of First Instance of Manila, presided by Judge Macadaeg, seeking to prohibit the sale of the said garlic. It would appear that the said court entertained the petition and issued a writ of preliminary injunction against the NAMARCO. The NAMARCO brought a special civil action of prohibition and certiorari with us to prohibit the Court of First Instance from taking cognizance of the case brought before it by the importer Kho Kum. We found that the issue involved the same one raised in the next preceding case of Kho Kum vs. The Commissioner of Customs, G. R. No. L-9778, and we made reference to our ruling in said case that the importer's remedy in the matter be addressed to the Court of Tax Appeals. In granting the writ and prohibiting the trial court from taking cognizance of the case for the reason that it was beyond its jurisdiction, we said:

"In G. R. No. L-9778, we ruled that the Kho Kum Commercial's remedy in the matter should be addressed to the Court of Tax Appeals. This ruling, which has long ago become final, is based on the law creating the Court of Tax Appeals, which grants the latter exclusive jurisdiction over cases involving decisions of the Commissioner of Customs in forfeiture cases (Sec. 7, par. (2), Kep. Act No. 1125). The import of the above ruling is that said court is the only court that can take cognizance of such forfeiture cases, the Supreme Court and the Court of First Instance included. The above ruling bars the Court of First Instance from taking cognizance of Special Proceedings No. 27886, and from granting any of the remedies prayed for therein.' (Italics supplied).

But the Court of Tax Appeals and the majority opinion would want to make a distinction. The claim is made that the Court of Tax Appeals has appellate jurisdiction over seizure of imported goods only where the assessment as well as the payment of customs duties and penalties are involved. In the first place, the law does not make any distinction. It refers to seizure, detention or release of property and it will be noticed that the word "release" is preceded by "or" and not by "and", meaning to say that not all goods seized and detained would eventually be released. Neither did we in our decisions in the cases I have just cited, make any distinction. On the contrary, those cases we decided referred to shipments prohibited by law, whose seizure and forfeiture did not at all involve any assessment, liability for customs duties or charges.

In justice to the Court of Tax Appeals, it should be stated that its appealed Eesolution was issued before the promulgation of our decisions aforecited, holding that the Tax Court under Republic Act No. 1125 has exclusive appellate jurisdiction over decisions of the Commissioner of Customs on matters arising under the Customs Law, specially, seizure, detention, or release of property affected.

Let us now consider the question regarding the legal personality of the Collector of Customs to appeal to the Court of Tax Appeals. Both the majority opinion as well as the Tax Court, specially the latter, have made extensive considerations on the irregularity and anomaly of a subordinate, like the Collector of Customs, appealing the decision of his superior, the Commissioner of Customs. From my point of view, however, there can

be no such irregularity or anomaly if we analyze the situation. I admit that the Collector of Customs as such collector, may not appeal the decision of the Commissioner of Customs. But his appeal in the present case, in his own name was but a mere formality or technicality in order to bring the case to the Court of Tax Appeals. The real appellant is not the Collector of Customs but the Government or the Republic of the Philippines, for the controversy and the dispute with respect to the seizure and confiscation of the magazines involved is between said Government and the appellee, Philippine Education. As a matter of fact, the real appellee is not the Commissioner of Customs, as appearing in the record, but the said Philippine Education.

In reality, the appeal taken by the Collector of Customs was but a mere attempt to comply with and implement the action of the Tax Court in returning the case to the Commissioner of Customs on the ground that the Tax Court had no jurisdiction to review the case *motu proprio*. It will be remembered that in that letter of the Chairman of the Tax Court, nothing was said to the effect that the Government could not appeal from the decision of the Commissioner. It merely said that the case was being returned for "whatever action you may deem proper to take in the premises". It also said that the Tax Court could acquire jurisdiction to review decisions of the Commissioner of Customs, only upon filing of a formal notice of appeal. With this insinuation, the Secretary of Finance understood that on behalf of the Government, appeal could be made, but by whom? He could not very well have the Commissioner make the appeal in the latter's name, for the reason that he, the Commissioner, would then be appealing his own decision. So, the Finance Secretary directed the Collector of Customs to make the appeal, although in reality, the aggrieved party and the real party appellant is the Government or Republic of the Philippines, making the Collector appear as the appellant, as already said, is a mere technicality and formality. The real appellant is the Republic of the Philippines. The Collector merely followed orders of his superior, the Secretary. No alleged insubordination against his other superior, the Commissioner, was intended.

One word about the reason given by the Tax Court in returning the case to the Commissioner on the ground that said court did not have the jurisdiction to review *motu proprio* the decision of the Commissioner. To review *motu proprio* means to revise something, such as, a resolution, order or decision at nobody's instance and without anybody asking, but on the sole initiative of the reviewing court or body. This was the practice after the creation of the Board of Tax Appeals and before the promulgation of Republic Act No. 1125, creating the Tax Court. The Board of Tax Appeals received copies of all decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the Provincial or City Board of Assessment Appeals, and without any petition or appeal from any of the parties involved, the Board of Tax Appeals when, the public interest so required, could review, revise, or modify any of said decisions. But this was not what the Secretary of Finance wanted the Tax Court to do when he ordered the case removed to that court. It was not a case of review *motu proprio*, because the Tax Court had no such right or jurisdiction. The Department Head on behalf of the government or the Republic of the Philippines wanted the Tax Court to review on appeal the decision of the Commissioner.

It will be remembered that under the old set-up, when the Department Head was dissatisfied with the decision of the Commissioner of Customs he did not institute or take a formal appeal to the Court of First Instance of Manila. He merely ordered the case removed to said court, and that served as an appeal and the Court of First Instance automatically acquired jurisdiction and decided the case. The Secretary in the present case most likely thought that the same procedure should be followed. Consequently, the action taken by him in having the present case removed by the Commissioner of Customs to the Court of Tax Appeals could be explained, even excused. Said removal of the case was intended as a review on appeal by the Government. It was not a case of the Collector appealing the decision of his superior, the Commissioner, because the former was not an interested party. He had officially done all his part and performed his duty, seizing and confiscating the magazines in question. The case no longer was in his hand or within his jurisdiction. He had no personal interest in the case. The ones interested were the Republic of the Philippines on one side and the importer Philippine Education Company on the other;

and those were the real parties in interest before the Commissioner of Customs, and now before the Court of Tax Appeals.

As to the perfection of the appeal by the Government within the legal period, there is no doubt that the original removal of the case to the Tax Court was effected long before the expiration of the thirty-day period provided by law for appeal. Since that removal was intended as, and was really an appeal from the Commissioner's decision, the appeal should therefore be regarded as having been perfected within the legal period.

Finally, we come to the last part of the appealed resolution of the Tax Court and the majority opinion regarding the alleged lack of right or authority of the Department Head or the Government to appeal from a decision of the Commissioner of Customs. To me, this is by far the more important question involved in the present appeal. Before the creation of the Tax Court, whenever the Secretary of Finance was dissatisfied with any decision of the Commissioner of Customs in any case involving protest or seizure, said Secretary representing the Government had the authority to have the decision reviewed by the Court of First Instance of Manila. The reason for this authority given the Department Head was because he did not interfere with or supervise the way or manner the Commissioner decided cases before him. Said Commissioner made his decisions as an absolutely independent agent, according to his own conviction and his own appreciation of the facts and law involved. That was why the Secretary, not infrequently, was dissatisfied with the Commissioner's decision, and so directed that it be reviewed on appeal by the Court of First Instance. At the same time, this also goes to show the policy of the Government that customs cases involving liability of an importer for customs duties, fees, or other money charges, and seizures, detention or release of property imported, in which private parties as well as the Government are interested, when necessary, should eventually and finally be decided by the courts and not by administrative officials. This, presumably, was to avoid any suspicion that the Government, through its Customs officials and the Department Head who has supervision over them, tends to decide such cases in its favor and against private parties; and also in instances, though perhaps rare, to stay the hand of corruption influencing administrative decisions in favor of private parties and against the interests of the public.

This right of the Government or the Department Head to appeal decisions of the Commissioner of Customs is truly and extremely important. Without it, the Government and the Department Head would be powerless to have modified, changed, or reversed any decision of the Commissioner who, even in all good faith, may have committed a serious error or blunder in deciding a case.

After all, the Commissioner is but an administrative official. He may not be a lawyer or versed in the law. At least, he is not a judicial official bound by rules of judicial procedure and principles of legal jurisprudence. Cases of great importance, involving hundreds of thousands of pesos in customs duties, fees, and other money charges, or seizure, detention, or release of books, pamphlets and other money charges, or seizure, detention, or release of books, pamphlets and other literature which may be highly subversive of public order, come before him. If he makes a mistake in his decision, be it in utmost good faith, and worse of course if otherwise, the Government may lose tremendously from the financial point of view, or else would be powerless to prevent the release of and the flooding of the country with what may turn out to be Communistic literature and propaganda, advocating acceptance of a foreign ideology, and the overthrow of the present Government through violence. I repeat that that was the reason why the Government was given the right to appeal in the first place.

Can we now presume or by implication hold that without any valid reason whatsoever, advanced or even suggested, this important right and authority of the Government to appeal has been abolished with the mere creation of the Tax Court? I do not believe so. From the quotations made from the explanatory note when Republic Act No. 1125 as a bill was introduced, and the discussions among the members of the Legislature, we gather that the only purpose of the creation of the Tax Court was to expedite the collection of taxes by creating a

body to review by appeal not only tax cases but among others, those involving seizure and forfeiture. Nothing, absolutely nothing was said in that explanatory note or the discussions, not even in the law (Republic Act 1125), affecting, much less abolishing this right of the Government to appeal.

In support of its theory that under Republic Act 1125, the Government may not now appeal from any decision of the Commissioner of Customs, the Tax Court in its appealed resolution declares that the philosophy of the law seems to be that once said official has rendered a decision on a matter within his jurisdiction and in the discharge of the duties imposed upon him by law, the presumption is that he has done it well and in accordance with his best judgment. But that philosophy and that very same presumption could exist and obtain and possibly did, before the creation of the Court of Tax Appeals, and yet despite all this alleged philosophy of the law and presumption, the law itself protected the Government against any wrong decision of the Commissioner by clearly and specifically providing for its appeal to the courts.

"SEC. 1384. By whom cause may be removed into court.—The removal of a cause into court may be had at the instance of the protesting party or, in case of seizure, at the instance of the owner or agent of the seized property. If the decision of the Commissioner is adverse to the Government, the cause may also be removed in the manner hereinafter specified, by order of the Department Head," (Revised Administrative Code).

"Sec. 1386. Removal upon order of Department Head—Upon making any decision which may be removed upon the order of the Department Head, the Commissioner shall immediately transmit a copy of such decision to him and also to the Auditor General; and if within fifteen days thereafter the Department Head shall certify that in his opinion the decision ought to be revised by the Court of First Instance in the City of Manila, it shall be the duty of the Commissioner, upon notification thereof to transmit the original record to said court in the same manner as upon removal by a party other than the Government." (Revised Administrative Code).

Has the creation of the Tax Court under Republic Act 1125, radically and completely changed conditions so that now the Commissioner of Customs is more administration minded and tends to decide for the Government and against private parties, or uses better judgment and discretion, or is more versed in the law and in the appreciation of facts? „No, the situation and conditions have not changed; they are still the same. The promulgation of Republic Act 1125 did not and could not change them. What is more, the lawmakers in discussing and approving said law did not intend to contemplate, any diminution, much less abolition of this all important right of the Government to appeal.

But the Tax Court through two of its three members says that it is of the belief that with its creation, the Secretary of Finance can no longer exercise the prerogative of appealing under Section 1386 of the Revised Administrative Code, for that would practically be requiring said Court to follow the old procedure under Section 1387 of said Code. But to me, that was exactly what the Legislature intended. With the enactment of Republic Act 1125, it sought to transfer the jurisdiction, the tax and Seizure cases, and the corresponding procedure previously given to the Court of First Instance of Manila to the Court of Tax Appeals. The main reason for the change was to expedite the determination of said cases, because the Court of First Instance of Manila had many other cases, just as important to hear and decide and as a result, some of the cases took several years to decide, whereas the Tax Court had nothing else to do but hear and decide those cases. Besides, perhaps the Legislature thought that three, members composing the Tax Court could decide more cases and possibly more correctly, considering their number, their specialty and their preparation.

The only source of doubt about the right of the Government to appeal is that it is not expressly mentioned in Section 11 of Republic Act 1125 among those entitled to appeal. But I am fully convinced that that was due to a mere oversight or inadequacy in phraseology. The one drafting the original bill may have thought that the

enumeration in Section 11 included the Government for the reason, that the main consideration or condition for the appeal is that the appellant must be adversely affected by the appealed decision or ruling, and it is clear that the Government being one of the real parties in interest, is liable to be affected adversely. And it will be noticed that in the second paragraph of Section 18, in mentioning those who may appeal from a decision of the Tax Court, the phrase used in Section 11, "any person, association or corporation adversely affected etc." is not repeated but just the short, court phrase "any party adversely affected," is used. In other words, there is no uniformity in phraseology to express the same idea, leaving an opening or possibility for mistake, oversight, etc.

But one thing, under Section 18, the Government is expressly allowed to appeal a decision of the Tax Court to the Supreme Court. But under the supposed philosophy of the law expounded in the appealed resolution, as I have previously discussed, there would and should be no need for said appeal by the Government to the Supreme Court for the reason that as far as said Government is concerned, the members of the Tax Court, like the Commissioner of Customs, are all officers of the Government and appointed by it, and so "once these officials have rendered a decision on a matter within their jurisdiction and in the discharge of the duties imposed upon them by law, the presumption is that they have done it well and in accordance with their best judgment." The trouble is that the whole aforementioned philosophy at best, is founded on a mere presumption, and evidently, the Legislature was not willing to risk the interests of the Government on a mere presumption of the correctness of the decision of its own officers.

Summing up, I hold that the Court of Tax Appeals has appellate jurisdiction over decisions of the Commissioner of Customs in cases involving seizure, forfeiture, and confiscation, even when not embracing or connected with customs duties, fees or other money charges; that the Government may appeal such decision of the Commissioner to the Tax Court; that the real party appellant in such an appeal is the Government or Republic of the Philippines, and the title of the appeal wherein the Collector of Customs appears as the appellant, is but a technical error that does not affect the validity or propriety of the appeal; and that the Government appeal in the present case should be considered as perfected on time. Therefore, the appealed resolution should be set aside and the case should be remanded to the Court of Tax Appeals for further proceedings.

Paras, C. J., Padilla and Endencia, JJ., concur.

[*] 97 Phil., 282, 51 Oft. Gaz.

[*] 98 Phil., 185.

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