

**SY MAN, DOING BUSINESS UNDER THE NAME AND STYLE OF
“UNITED CHINA IMPORT TRADING”; PETITIONER AND
APPELLEE, VS. ALFREDO JACINTO, COMMISSIONER OF CUSTOMS,
AND MELECIO FABROS, COLL...**

G.R. No. L-5612. October 31, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal by respondents Alfredo Jacinto, Commissioner of Customs and Melecio Fabros, Collector of Customs for the Port of Manila (hereafter to be referred to as Commissioner and Collector, respectively), from a decision of the Court of First Instance of Manila, granting a petition for a writ of certiorari, prohibition and mandamus against them. The appeal involves only questions of law. The facts of the case are contained in a portion of the decision appealed from, which we quote:

"On January 2, 1951, the Collector of Customs for the Port of Manila ordered the seizure of two shipments of textile and a number of sewing machines, consigned to the petitioner.

"On June 4, 1951, the Collector of Customs for the Port of Manila, after due hearing, rendered a decision, the dispositive part of which reads as follows:

" 'Wherefore, for all the foregoing, it is ordered and decreed that the articles covered by Seizure Identification No. 1006 be, as they are hereby delivered to the importer after payment of the necessary customs duty, sales tax and other charges due thereon, in addition to a fine of One hundred fifty-five pesos (P155) representing five (5) times the difference in duty of the printed paper in sheets, except the sewing machines which are hereby declared forfeited to the Government of the Republic of the Philippines to be sold at public auction in conformity with law if found saleable, otherwise, to be destroyed.

" 'The Surveyor of the Port shall return the original of this decision showing action taken.'

"On June 27, 1951, the herein petitioner (appellee) received a copy of the aforesaid decision of the Collector of Customs for the Port of Manila.

"On July 12, 1951, counsel for the petitioner (appellee) sent a letter to the Collector of Customs for the Port of Manila, asking for the execution of the decision, in view of the fact that it had become final and could no longer be reviewed by the Commissioner of Customs after the lapse of fifteen days from the date of notification thereof was given to the herein petitioner who did not appeal from said decision to the Commissioner of Customs within the aforesaid period of time.

"On August 21, 1951, counsel for the petitioner sent another letter to the Collector of Customs, reiterating the request contained in his letter of July 12, 1951, and urging that the goods which were found not to have been imported in violation of law, be released to the petitioner under the terms and conditions of the aforementioned decision of June 4, 1951.

"On August 24, 1951, the Collector of Customs for the Port of Manila sent a letter to petitioner's attorneys, informing them that their letter of July 12, 1951, was endorsed to the Commissioner, of Customs on July 13, 1951, 'requesting information whether the merchandise covered by Seizure Identification No. 1006 may now be delivered to the owner upon showing that the decision has become final and executory after fifteen (15) days from the receipt of a copy of the same by the claimant,' to which no reply had been received from the Commissioner of Customs." (pp. 64-66, rec.)

The petition of Sy Man above mentioned sought (1) to declare null and void that portion of the Memorandum Order promulgated by the Insular Collector of Customs dated August 18, 1947, which provides that as in protest cases, decisions of the Collector of Customs in seizure cases, whether appealed or not, are subject to review by the Insular Collector (now commissioner); that such decisions and their supporting papers be submitted to his office, and that pending action by him on such decisions, final disposal of the goods involved shall not be made; and (2) to order the Collector to deliver to the petitioner the shipments of textiles covered by Seizure Identification No. 1006 pursuant to its decision of June 4, 1951, claimed to be final and executory.

As already said, the trial court granted the petition and ordered the Commissioner and the Collector to execute the decision of the latter dated June 4, 1951, on the ground that said decision had already become final.

For purposes of clarification, it should be stated that before the year 1947, the Bureau of Customs had one chief and one assistant chief, known respectively as Insular Collector of Customs and Insular Deputy Collector of Customs (section 1138, Revised Administrative Code). The Insular Collector and the Insular Deputy Collector acted as the Collector of Customs and Deputy Collector of Customs for the Port of Manila (section 1152, Revised Administrative Code). Pursuant to Republic Act No. 51, authorizing the Chief Executive to reorganize the different executive departments, bureaus and offices, the President issued Executive Order No. 94 signed on October 4, 1947.

Under sections 51 and 52 of said order, the designation of Insular Collector of Customs was changed to that of Commissioner of Customs, and the position of Deputy Collector of Customs was changed to that of Collector of Customs for the Port of Manila.

It is the contention of the appellants that the Commissioner as head of the Bureau of Customs and the chief executive and administrative officer thereof under section 550, Revised Administrative Code, and also by virtue of section 1152 of the same Code has supervision and control over the Collector, and that by reason of said supervision and control, he may motu proprio review and revise decisions of the Collector in seizure cases even when not appealed by the importer. Under that theory, the Commissioner of Customs promulgated his Memorandum Order of August 18, 1947. For reference, we reproduce said order.

"DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA

August 18, 1947

MEMORANDUM ORDER

To all Collectors of Customs at Sub-Ports:

It has been observed that in seizure cases some Collectors of Customs merely submit to this Office reports of their seizures and the subsequent final disposition they made of the articles seized. They do not transmit the records of the proceedings and their decisions thereon in due form, as required by Sections 1380 and 1381 of the Revised Administrative Code.

As in protest cases, decisions of Collectors of Customs in seizure cases, whether appealed or not, are subject to review by the Insular Collector. To this end, it is necessary that such decisions and their supporting papers be submitted to this Office. Pending action by the Insular Collector on such decisions, final disposition of the goods involved shall not be made, except upon previous authority from this Office, or except in cases where such goods are perishable in nature or liable to deterioration in which case the same may be disposed of with the least possible delay in accordance with the provisions of Section 1399 of the Revised Administrative Code.

Where the articles seized are subject to forfeiture under section 1363 of the Revised Administrative Code and a fine is imposed in lieu of forfeiture under Section 1365 of the same code, the decision thereon in due form and all the supporting papers shall be transmitted to this office for confirmation or such other action as may be deemed proper. Pending receipt of such confirmation the decision shall not be given effect.

All concerned shall be guided accordingly.

ALFREDO DE LEON

Insular Collector of Customs"

The petitioner-appellee, however, equally claims that when a decision of the Collector in a seizure case is not appealed by the importer to the Commissioner within 15 days as provided for in Section 1380, Revised Administrative Code, then said decision becomes final not only as to said importer but as to the Government as well, so that thereafter nothing remains to be done except the execution of the decision of the Collector, that is to say, the release of the goods seized, if not forfeited to the Government and the payment of the amounts mentioned and ordered in the decision.

We are given the impression and we realize that this is the first time that the Courts have been called upon to interpret the law on this point and to determine whether or not this supposed power of revision by the Commissioner of unappealed decisions of the Collector in seizure cases, is supported by law, and for this reason we have exerted and exercised extra effort and care in examining the law on the subject.

As we understand it, when merchandise or goods are imported through any of the ports of the Philippines, under normal circumstances, said goods are assessed for purposes of payment of customs duties, fees and other money charges. If the importer is satisfied with the assessment he pays the amount assessed and withdraws the goods. Failure to protest renders the action of the Collector conclusive against the importer. (See sections 1370 and 1371, Revised Administrative Code). If dissatisfied he pays the amount of the assessment anyhow and then files a protest under section 1372, Revised Administrative Code, and the Collector re-examines the matter thus presented. (Section 1379, Revised Administrative Code.)

However, when the property imported is subject to forfeiture under the customs laws (section 1363, Revised Administrative Code), the goods are seized, a warrant for their detention is issued, the owner or his agent is notified in writing and after giving a hearing with reference to the offense or delinquency which gave rise to the seizure, the Collector in writing makes a declaration of forfeiture or fixes the amount of the fine to be imposed or takes such other appropriate steps he may deem proper. (Sections 1374, 1375, 1379 [paragraph 2], Revised Administrative Code.)

Both under protest and seizure cases the person aggrieved by the decision of the Collector may appeal to the Commissioner within 15 days. (Section 1380, Revised Administrative Code). Because of its importance to this case, and for purposes of reference, we are reproducing said section.

"SEC. 1380. Review by Commissioner.—The person aggrieved by the decision of the collector of customs 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 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."

If the person aggrieved by the decision of the Collector in a seizure case does not make such appeal, the decision evidently becomes final, at least as to him. That was the reason why petitioner-appellee, in the belief that because he failed or did not choose to appeal from the decision of June 4, 1951, the same had become final, asked the court that the same be executed, that is to say, that he be allowed to pay the amounts fixed in the decision and that the merchandise be released, with the exception of the sewing machines which were declared subject to forfeiture. The Commissioner, however, as already stated, believes that the decision of the Collector in a seizure case tho unappealed does not become final as against the Government as long as it has not been reviewed and acted upon by him. He does not state the period if any within which he may or has to make such revision. In other words, the appellants' claim seems to be that he (the Commissioner) may hold without action an unappealed seizure case, the decision of which is already final as to the importer, indefinitely, for months if not for years, as for instance, when there are too many such cases to study and decide, or there are other matters that have preference to this attention and action, a period of time without limit.

From the standpoint of the importer, such a rule or theory is decidedly unsatisfactory and even unjust, if not oppressive. He is willing to abide by the decision of the Collector; he wants to pay the amounts fixed and stated in the decision, including the fines, and desires to get the goods released so as to be able to dispose of them. The Commissioner, however, relying exclusively on his power of supervision and control, as head of the Bureau of Customs, over Collectors of Customs as his subordinates in, that bureau, and presumably on his Memorandum Order of August 18, 1947, contends that the seizure case involving goods seized way back on January 2, 1951, and decided by the Collector on June 1, 1951, tho unappealed by the importer and thereby binding on him, is still unfinished business as far as the Government is concerned, because he (the Commissioner) has not yet gotten around to act upon it. For that matter, we understand that up to the present, the latter part of 1953, the Commissioner has not yet taken any action, approving, reversing or modifying the decision of the Collector of Customs. As we have already had occasion to say, said rule or procedure claimed for the Government would appear to be unsatisfactory, intolerable if not oppressive to importers.

As regards the Memorandum Order of August 18, 1947, by the Insular Collector of Customs to Collectors of Customs, we are afraid that appellants cannot find support and comfort therein. We are given to understand by the parties or at least appellants do not deny appellee's assertion that said memorandum order was never approved by the department head and was never published in the Official Gazette. Section 551 of the Revised Administrative Code provides that every chief of bureau shall prescribe forms and make regulations or general orders not inconsistent with law to carry into full effect the laws relating to matters within the bureau's jurisdiction. But to become effective said forms and regulations must be approved by the Department head and published in the Official Gazette or otherwise publicly promulgated. Because of this failure of approval by the department head and of publication, the memorandum order of August 18, 1947 has therefore no legal effect. Moreover, a form or

regulation promulgated by a Bureau Chief must not be inconsistent with law. Therefore, if the law does not give the Commissioner the power to review and revise unappealed decisions of the Collector of Customs in seizure cases, then the memorandum order even if duly approved and published in the Official Gazette, would equally have no effect for being inconsistent with law.

Let us now see if there is any law giving authority to the Commissioner of Customs to review and revise unappealed decisions in seizure cases. In cases involving assessment of duties, even when the importer fails to protest the decision of the Collector of Customs, the Commissioner may order a reliquidation if he believes that the decision of the Collector was erroneous and unfavorable to the Government; and the Department Head in his turn if he believes that the decision of the Commissioner in any unprotested case of assessment of duties is erroneous and unfavorable to the Government, may require the Commissioner to order a reliquidation or he may direct the Commissioner to certify the case to the Court of First Instance of Manila. We are reproducing said section 1393.

"SEC. 1393. Supervisory authority of Commissioner and of Department Head in certain cases.—If in any case involving the assessment of duties the importer shall fail to protest the decision of the collector of customs and the Commissioner shall be of the opinion that the decision was erroneous and unfavorable to the Government, the latter may order a reliquidation; and if the decision of the Commissioner in any unprotested case should, in the opinion of the Department Head, be erroneous and unfavorable to the Government, the Department Head may require the Commissioner to order a reliquidation or he may, if in his opinion the public interest requires, direct the Commissioner to certify the cause to the Court of First Instance of Manila, in the manner provided in section one thousand three hundred and eighty-six hereof, there to be reviewed by the court as other customs cases removed thereto.

"Except as in the preceding paragraph provided, the supervisory authority of the Department Head over the Bureau of Customs shall not extend to the administrative reversal of the decisions of the Commissioner in matters removable into court."

It will be noticed that the section is entitled "supervisory authority of the Commissioner and of the Department Head in certain cases." We find no similar legal provision in seizure cases. The logical inference is that the lawmakers did not deem it necessary or advisable to provide for this supervisory authority or power of revision by the Commissioner and the Department Head on unappealed seizure cases; and it is highly possible that up to and until 1947, when the memorandum order of August 18th of that year was issued, it was not the practice of the Bureau of Customs to have unappealed seizure cases sent up by Collectors to the Commissioner's office for review and revision. This we may gather from the memorandum order itself, where the Commissioner observes that in seizure cases some collectors of customs merely submit to him their reports of their seizure and the subsequent final disposition thereof without transmitting the records of their proceedings, and he therein asserts the right of the Commissioner of Customs to review decisions of Collector of Customs in seizure cases though unappealed. If that right and that practice had existed from the beginning, it is not likely that Collectors would disregard and ignore it, to the extent that it was necessary to remind them of it by means of a memorandum order.

Moreover, under section 1380 of the Revised Administrative Code above reproduced, it would seem that in a seizure case, the Collector transmits all the papers in the cause to the Commissioner only when and after the importer notifies him in writing signifying his desire to have the matter reviewed by the Commissioner. The section does not say that without the notice of appeal, the Collector is called upon to transmit the papers of the case to the Commissioner. If this be true, then legally, a case of seizure unappealed ends right in the office of the Collector, without prejudice of course to the Collector subsequently making a report of his action to the Commissioner. Furthermore, section 1388 of the Revised Administrative Code provides thus:

"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."

If under the above provisions, in a seizure case the owner or agent may, while the cause is yet before the collector, pay the fine imposed, or in case of forfeiture, pay the appraised value of the property, and thereafter such properties shall be surrendered and all liability which may attach to said property by virtue of the offense causing the seizure is to be deemed discharged, the conclusion to be drawn is that it is within the power and right of an importer, owner or agent to end the case in the office of the Collector, thereby precluding any intervention by the Commissioner in the way of reviewing and revising the decision of the Collector. Again, under section 1389 immediately following which reads—

"SEC. 1389. Right of protest in such cases.—Where payment is made or redemption effected as allowed under the preceding section, the party making payment or effecting the redemption may, if lie desires to test the validity of the proceedings, make formal protest at the time of making such payment or affecting such redemption, or within fifteen days thereafter, and make claim for the repayment of the whole or any part of the sum so paid by him, whereupon the proceedings shall take the same course as in ordinary cases of protest against customs duties and charges generally."

the importer or owner of goods seized, after payment is made or redemption effected, is allowed if he desires to test the validity or correctness of the decision of the Collector, to appeal the same to the Commissioner of Customs presumably, to decrease the amount of his liability or annul the seizure altogether and have all the amounts paid by him refunded. The inference follows that by making payment and redeeming the property seized under the decision of the Collector of Customs, the owner may terminate the case right there, altho notwithstanding his payment he still has the right to have the case elevated to the Office of the Commissioner of Customs. It would seem that the elevation of the case and the transmittal of the papers thereof to the Commissioner lies within the owner's exclusive power and discretion. This argues against the pretended power of the Commissioner of automatic review and revision of decisions of Collectors in unappealed seizure cases.

It is argued that if this power of review and revision by the Commissioner of unappealed seizure cases is not conceded, then in cases where the Collector in his decision commits a blunder prejudicial to the interests of the Government, or renders a decision through fraud or in collusion with the importer, the Government cannot protect itself. The argument is not without merit; but we must bear in mind that the law is promulgated to operate on ordinary, common, routine cases. The rule is and the law presumes that in seizure cases Collectors of Customs act honestly and correctly and as Government officials, always with an eye to the protection of the interests of the Government employing them. If mistakes are committed at all more often than not they are in favor of the Government and not against it, and that is the reason why when the importer feels aggrieved by their decision, he is given every chance and facility to protest the decision and appeal to the Commissioner. Cases of erroneous decisions against the interest of the Government of decisions rendered in collusion and connivance with importers are the exception. To protect the Government in such exceptional cases, we find that in every seizure case, section

1378 of the Revised Administrative Code requires the Collector to immediately notify the Commissioner and the Auditor General. It may be that this requirement has for its main purpose the recording of and accounting for the articles seized so that in case of confiscation the Commissioner and the Auditor General will know what articles have become government property. But the notice will also inform the Commissioner and the Auditor General of the seizure. If the seizure is important or unusual, the Commissioner may, if he so desires, order the Collector as his subordinate to withhold action on the seizure, or hold in abeyance, within a reasonable time, the promulgation of his decision until after he had conferred with the Commissioner or the latter had studied the case and given suggestions. At that stage of the proceedings before definite action is taken by the Collector, and a decision rendered by him, it would seem that any action by him as a subordinate is still subject to the supervisory authority and control of the Commissioner as his Chief, and the latter may still influence and direct the Collector's action if he finds occasion for doing so.

But if the Government deems it necessary to provide for review and revision by the Commissioner or even by the Department Head of the decisions of the Collector of Customs in unappealed seizure cases, the Legislature may be requested to insert a section in the Revised Administrative Code similar to Section 1393 which applies to unprotested cases of assessment duties. The defect in said section however is that it does not fix the period within which the automatic review and revision or reliquidation to be ordered by the Commissioner and the Secretary of Finance must be effected. This defect should be remedied.

In conclusion, we find and hold that under the present law governing the Bureau of Customs, the decision of the Collector of Customs in a seizure case if not protested and appealed by the importer to the Commissioner of Customs on time, becomes final not only as to him but against the Government as well, and neither the Commissioner nor the Department Head has the power to review, revise or modify such unappealed decision. We also find and hold that the memorandum order of the Insular Collector of Customs of August 18, 1947, is void and of no effect, not only because it has not been duly approved by the Department Head and duly published as required by section 551 of the Revised Administrative Code but also because it is inconsistent with law. For the foregoing reasons, the decision appealed from is hereby affirmed. No pronouncement as to costs.

Paras, C.J., Pablo, Jugo and Bautista Angelo, JJ., concur.

CONCURRING

REYES, J.:

Without denying the power of the Commissioner of Customs at his own instance to review, alter or revoke the decision of a collector of customs in seizure cases—a power reasonably to be inferred from section 1152 of the Revised Administrative Code, which places all collectors of customs "under the supervision and control of the Commissioner"—I vote for the execution of the decision of the Collector of Customs for the port of Manila which the Commissioner has not chosen to alter or revoke, it appearing that, though the said decision was brought to his attention on July 30, 1951, he has not "up to the present, the latter part of 1953," taken any action thereon.

Bengzon and Padilla, JJ., concur.

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