

ACE PUBLICATION, INC., PETITIONER, VS. THE COMMISSIONER OF CUSTOMS AND THE COLLECTOR OF CUSTOMS, RESPONDENTS.

G.R. No. L-18808. May 29, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Between the periods of March, 1959 to February, 1960, the petitioner herein, publisher of the Filipino, Especial and Hiwaga Comics and Tagalog Classics, magazines for combined literary entertainment, news items and opinions, imported several rolls and packages of newsprints for the exclusive use in the publication of the above mentioned magazines, under the provisions of Rep. Act No. 785. Considering that the respondent Collector of Customs had erroneously and/or illegally assessed and collected on said imported newsprints the aggregate amount of P86,000.00, petitioner wrote letters for the refund of the above amount to the Collector of Customs, to wit—

1. Letters dated April 18, 1959 and November 17, 1959 for refund of P5,286.95;
2. Letter dated May 11, 1959, for refund of P5,112.00;
3. Letter dated November 17, 1959, for refund of P18,934.00;
4. Letter dated February 2, 1960, for refund of P18,454.00 and P18,934.00;
5. Letter dated February 26, 1960 for refund of P19,386.00.

which were all unheeded by the respondent Collector of Customs. The inaction compelled the petitioner to bring the matter to the attention of respondent Commissioner of Customs, in a letter dated May 27, 1960. In this letter petitioner asked for a review of the alleged erroneous and/or illegal assessments and collections and to authorize the refund thereof to petitioner. This letter, likewise, did not merit any attention from the Commissioner. So, that on February 9, 1961, petitioner presented with the Court of Tax Appeals (CTA), a Petition for Review containing six causes of action, all for the refund of the various amounts paid on different dates and alleging, as basis thereof, the following:

"That the petitioner, being without any other administrative remedy aside from the steps it had already taken as hereinbefore stated, and lest its right to claim refund might lapse before any action thereon is taken by respondent, is filing this petition for review pursuant to the provisions of Sec. 306 of the Internal Revenue Code and the ruling in the case of *College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Internal Revenue*, 102 Phil., 912; 54 Off. Gaz. 7055."

Respondents, thru the Office of the Solicitor General, presented on March 2, 1961, a Motion (Ex-Parte) for Extension of Time to File an Answer, to expire on April 3, 1961. On the latter date, however, the Solicitor General presented a Motion to Dismiss instead. The Motion, although stamped by the CTA on April 3, 1961, was postmarked April 18, 1961, and received by petitioner herein on April 21, 1961, six (6) days after the scheduled hearing on April 15.

The motion to dismiss was based on the lack of jurisdiction of the CTA to take cognizance of the petition for review, it appearing in the recitals that there was no decision by either the Collector or Commissioner of Customs which should be reviewed; for although there were formal requests for refund, both respondent officials failed to act thereon, one way or another. It was also intimated that even the former law governing the Board of Tax Appeals (forerunner of the CTA), which allowed review *motu proprio*, imposed as condition precedent that there be a decision first by the official concerned, without which there could be no review.

On April 22, 1961, the petitioner, thru counsel presented an Omnibus Motion to (1) strike out Motion to Dismiss dated April 3, 1961; and (2) declare respondents in default. On May 29, 1961, the CTA handed down a resolution, dismissing the petition for review, without prejudice, the pertinent portions which are of the following tenor:

"* * The record shows that the motion to dismiss was filed by the respondents on April 3, 1961, and a copy thereof was sent by ordinary mail to counsel for petitioner at Room 211 Garcia Bldg., 636 Rizal Avenue, Manila, as per notation at the bottom left hand corner of the last page of the motion. Actually, the evidence shows (Exh. A-Motion) that said copy was mailed at the Manila post office only on April 18, 1961, and received by counsel for petitioner on April 21, 1961, that is six days after the hearing of said motion which was held on April 15, 1961. Obviously, therefore the petitioner was not in a position to file an opposition for lack of prior notice.

On the other hand it likewise appears of record that respondents acted in good faith in pressing upon the motion to dismiss for they honestly believed that a copy of the motion was sent on April 3, 1961 (see Exh. 2-Motion), that is twelve (12) days prior to the hearing of said motion.

Without however passing upon the merits of the respective contentions of both parties, this Court *motu proprio*, on the basis of the express admission contained in the basic petition that up to now no action was taken by respondents on its claim for refund (see par. 5, 6, 9, 11, 13, and 15, Petition), decide the principal issue of jurisdiction. This admission is fatally decisive on the main issue raised, inasmuch as this Court has exclusive jurisdiction to review by appeal only decisions of the Commissioner of Internal Revenue, Commissioner of Customs, and Provincial or City Boards of Assessment Appeals. Without a decision from which an appeal can be taken, the petition for review is premature, as in the case at bar. (*Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs*, 102 Phil., 850; *Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals*, 100 Phil., 850).

The pertinent provision of Sec. 7, of Rep. Act No. 1125, states—

SEC. 7. Jurisdiction.—The Court of Tax Appeals 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;* * *".

A Motion for a reconsideration of the above resolution was seasonably presented by petitioner, but which was denied on August 12, 1961, for being without merit. Hence, the instant petition. In this appeal, petitioner reiterates the issues it presented in its motion for reconsideration, to wit—

- (1) The Court of Tax Appeals erred in finding that it has no jurisdiction over appellant's Petition for Review.
- (2) The Court of Tax Appeals erred in dismissing *motu proprio*, appellant's Petition for Review; and
- (3) The Court of Tax Appeals erred in not finding that appellees' Motion to Dismiss was filed out of time.

Anent the first assigned error, petitioner contends that the CTA has jurisdiction over the case, claiming that this matter had been settled in the case of *College of Oral and Dental Surgery vs. CTA & Coll. of Int. Rev.*, supra, wherein this Court made the following observation—

"Although the filing of the claim with the Collector of Int. Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded, court action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the Matter to court (*J.J. Keipner Co., Ltd. vs. David*, 92 Phil., 945). Indeed it must be observed that under sec. 305 of the National Int. Revenue Code, the taxpayer's failure to comply with the requirements, regarding the institution of the action or proceeding in court within two years after the payment of the taxes, bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Coll. of Int. Revenue is still pending action of the latter."

Petitioner admits that no mention of par. 2, Sec. 7 of Rep. Act 1125 was made in the above decision. Nevertheless, it argues that "it logically follows as well as legally by the rules of statutory construction that the same interpretation shall be given to paragraph 2, Sec. 7 of Rep. Act 1125 (supra). To say otherwise would be to discriminate against customs taxpayers and favor internal revenue taxpayers on the matter of refund of taxes illegally assessed and collected." We find no merit in this argument. As the Solicitor General, has well stated, appellant's reasoning "is premised on a case that does not support its conclusion." For a closer scrutiny of the decision cited by appellant, shows that it did not touch on Sec. 7 of Rep. Act No. 1125, other than to say that it had no application in the case (*College of Oral and Dental Surgery*). The decision delved more on Sec. 306 of the Internal Revenue Code with greater emphasis on the Collector of Internal Revenue, not on the Commissioner of Customs, to whom the requests for refund in the case at bar, had been directed. It will be noted that said official was not made a party to the present suit. In cases of this nature, this Court has already outlined the proper procedure, to pursue—

"The appeal made available to an importer or person aggrieved by a decision or ruling of any collector of customs of the Philippines has 2 phases: first, the one provided for in Sec. 1380 of the Revised Adm. Code by which such party is given 15 days from receipt of the adverse ruling or decision of the Collector to give notice in writing to the latter signifying his desire to have the matter reviewed by the Commissioner of Customs, and the second, if still dissatisfied, his appeal could be projected to the Court of Tax Appeals pursuant to Section 7 of Act 1125 by filing with said tribunal a petition within 30 days from receipt of notice of the decision or ruling sought to be reviewed." (*Sampaguita Shoe vs. Commissioner of Customs, etc. et al.*, 56 Off. Gaz., No. 23, pp. 4032 and 4037).

That there is no decision or ruling by the Collector of Customs or Commissioner of Customs on the requests of appellant for refund, is abundantly clear from the very allegations in the petition. Pursuant, therefore, to the above ruling of this Court, the presentation of the Petition for Review with the CTA was premature, for as things stood then, there was nothing to review.

We cannot, by mere analogy, apply the interpretation given to Sec. 306 of the Internal Rev. Code to Sec. 7, par. 2 of Rep. Act No. 1125. Not only was the petition directed against the Customs officials, but it also appears that Sec. 306 has no counterpart in the Tariff and Customs Code. There is no statutory grant for importers claiming refund of duties to go directly to the CTA, without waiting the decision of the Collector of Customs or Commissioner of Customs. For one thing, the Collector or Commissioner may order the refund of the taxes in question, in which event a review would not be necessary.

Under appellant's second error, it claims that the CTA had no power to dismiss the petition for review *motu proprio*, citing *Manila Herald Pub. Co., et al. vs. Ramos, et al.*, G.R. No. L-4258, Jan. 18, 1951. The facts and issues therein, however, are entirely different from the ones at bar. Moreover, it is provided that whenever it

appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action (Sec. 2, Rule 9, New Rules). Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings (15 C. J. 852).

Having reached the above conclusions, the discussion of the last error becomes superfluous. There being want of jurisdiction, it matters not if the motion to dismiss was filed out of time or it was filed at all.

Wherefore, the resolution sought to be reviewed is hereby affirmed, without special pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Regala and Makalintal, JJ., concur.

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