

**ANICIA CADIZ, PLAINTIFF-APPELLANT, VS. THE SECRETARY OF
NATIONAL DEFENSE AND THE CHIEF, GENERAL AFFAIRS OFFICE,
DEPARTMENT OF NATIONAL DEFENSE, JOHN DOE,
DEFENDANT-APPELLEES.**

G.R. No. L-25150. September 30, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from an order of the Court of First Instance of Rizal dismissing the complaint in this case, lifting a writ of replevin therein issued and ordering plaintiff herein, Anicia Cadiz, to turn over the car involved in the case to the Collector of Customs.

The subject-matter hereof is a 1962 Chrysler car, which had been imported, tax-free, pursuant to the PI-US Military Bases Agreement, by T/Sgt. John A. Cheffler, a member of the United States Air Force stationed at Clark Air Base, Pam-panga. On June 22, 1964, Cheffler sold the car to one Leonardo Alcantara, who is not tax-exempt. The ownership of the car seems to have passed subsequently to other persons, none of whom appears to be tax free. Up to now, the duties for the importation of said car have not been paid.

On April 22, 1965, upon the application of representatives of the General Affairs Administration, Department of National Defense, as duly authorized agents of the Bureau of Customs, the Collector of Customs for the Port of Manila, issued, therefore, a Warrant of Seizure and Detention in Manila Seizure Identification No. 8585, pursuant to which said car was seized from one, Carlos Robes, who was in possession thereof, by said agents of the Collector of Customs, for alleged violation of Section 2530 m-(1) to (5) in relation to Section 2301, of Republic Act 1937, and Section 190, in relation to Section 6, of Commonwealth Act No. 466, as amended, as well as the Motor Vehicle Law. Soon, thereafter, or on May 11, 1965, Anicia Cadiz - hereinafter referred to as Plaintiff - commenced, in the Court of First Instance of Rizal, the present action for replevin, against the Secretary of National Defense and the Chief, General Affairs Administration, Department of National Defense, upon the ground that she is the owner of said car. Upon the posting of P28,000 bond, the lower court issued the corresponding writ of replevin on May 12, 1965, and petitioner secured possession of the car. Presently, or on May 26 and 27, 1965, the Collector of Customs sought leave to intervene and filed a motion to dismiss and to lift the writ of replevin, upon the ground that the trial court has no jurisdiction over the case and that plaintiff has no cause of action, for failure to exhaust administrative remedies. Despite plaintiff's opposition, the lower court granted said motion and dismissed the complaint. A reconsideration of the order to this effect having been denied, plaintiff interposed present appeal.

The same should not be entertained, however, because the order appealed from has not been included in the record on appeal[1] and the same does not contain "such data as will show that the appeal was perfected on time," in violation of Section 6 Rule 41, of the Rules of Court[2]

At any rate, the issue in this case is the validity of the warrant of seizure issued by the Collector of Customs for

al-legal violation of the Revised Tariff Customs Code³ and of the provisions of the National Internal Revenue Code, and the determination of such issue is within the exclusive jurisdiction of the Court of Tax Appeals,⁴ Indeed, under circumstances practically identical to those obtaining in the case at bar, this Court held in *Acting Collector of Customs vs. Caluag*.⁵

"The petition, raising the fundamental issue of jurisdiction, is meritorious. The suit filed with respondent Judge was 'to review and nullify what-ever has already been done by respondent (herein petitioner) without and/or in excess of their jurisdiction,' namely, the issuance of the warrant of seizure and detention, and the execution thereof by the NBI agents.

xxx xxx xxx

"Respondent Calalang no doubt has the right to question the legality of the seizure action commenced by the Customs authorities. For this however she must go to the proper court, namely, the Court of Tax Appeals since its jurisdiction to re-view seizure cases necessarily includes all questions affecting the legality or illegality of a seizure. Since the Court of First Instance, was without jurisdiction to entertain the petition of respondent Calalang in the first place, it could not validly issue the ancillary writ of preliminary mandatory injunction therein applied for.

"Respondent however submits the argument, sanctioned by the trial court, that Sec. 7 of Republic Act No. 1125 is not applicable, considering that there is no decision yet of the Commissioner of Customs which can be subject of appeal to the Court of Tax Appeals. The submission is not only without merit but even argues against respondents cause. In *Acting Collector v. De la Rama*, L-26076, February 26, 1965, ruling on the same contention, We held that such absence only shows that the party affected did not exhaust administrative remedies. x x x Furthermore, some additional remedies were immediately available to respondent: (1) to secure the release of the seized car upon the filing of a sufficient bond with the Customs Collector and/or (2) to file a protest with the Custom Collector. x x x"⁶

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the plaintiff.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Dizon and Zaldivar, JJ., did not take part.

[1] *Shell Co. v. Santos*, L-21989, November 12, 1966.

[2] *Jocson v. Robles*, L-23433, February 10, 1968; *Atlas Consolidated Mining and Development Corporation v. Progressive Labor Association*, L-27125, Res. September 15, 1967; *Araneta v. Madrigal & Co., et al.*, 26227-28, October 25, 1966; *Development Bank of the Philippines v. Santos, et al*, L-26387, Res. September 27, 1966; and *Government of the Philippines v. Antonio*, L-23736, October 19, 1965.

3 Republic Act No. 1937.

4 Section 7 of Republic Act No. 1125; *Millarez v. Amparo*, L-8364, June 30, 1955; *Namarco v. Macadaeg*, L-10030, January 18, 1956; *Gov't. of the Phil. I v. Gale*, 24 Phil. 95, 99; *Commissioner of Customs v. Encarnacion*, 50 O.G. 3560.

5 L-23925, May 24, 1967.

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