

CMS ESTATE, INC., PETITIONER, VS. COMMISSIONER OF CUSTOMS AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-18773. January 31, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

On August 30, 1960 petitioner addressed a letter to the Collector of Customs of Davao City claiming that the assessment and collection of wharfage dues on shipments of logs by petitioner "were illegal and void because there is no government wharf or pier at Baganga, Davao; that the lack of written protest by petitioner is no bar to the recovery of the charges, on the other hand there was an implied protest, and that justice and equity demand that illegal taxes collected by the Government should be returned to the taxpayer even when not paid under protest, etc. The letter was forwarded to the Commissioner of Customs in Manila, for the latter to decide and for such legal action as he may deem proper to take. On December 8, 1960 the Commissioner of Customs returned the petition to the Davao Collector with the following remarks:

"As regards the last paragraph of the claim which states that henceforth, your Office refrain from exacting and collecting wharfage dues on our log exportation from Baganga, Davao,' he is hereby directed to inform the claimant in writing that the action of that Office in the assessment and collection of wharfage dues on the exportation of logs is in accordance with law and to enforce strictly the provisions of Customs Administrative Order No. 236, published in the Official Gazette of August 3, 1959, which provides that Unless particular importers and exporters and certain articles are exempted by law from the payment of wharfage fees, Collectors of Customs shall not permit the delivery of imported cargoes and the loading of products of the Philippines and other articles for exportation or reexportation on board vessels engaged in foreign trade, unless the corresponding wharfage fees thereon under Sections 2801 and 2802 of Republic Act No. 1937 are paid or deposited."

"His attention is invited to the Customs procedure provided for in Sections 2308 to 2310 of the Tariff and Customs Code that when a ruling or decision of the Collector is made whereby liability for duties, fees and other money charges is determined, the party adversely affected may protest such ruling by presenting to the said Collector at the time of payment of the amount due the Government, or within 30 days thereafter, a written protest setting forth his objections to the decision, in question together with the reasons therefor. The scope of the protest shall be limited to the subject matter of a single adjustment or to the entire content of one liquidation. The filing of a protest within the reglementary period is mandatory and a condition precedent for the recovery of customs duties, fees and other charges allegedly erroneously or illegally collected and non-compliance therewith bars and is fatal to the action. Thereafter, the decisions of the Collector of Customs becomes final and conclusive not only as against the importer or exporter but the government as well."

The above endorsement was transmitted to petitioner for his information and guidance on January 13, 1961. Petitioner received the letter and the copy of the endorsement of the Commissioner of Customs and on February 22, 1961 petitioner filed with the Court of Tax Appeals a petition for the review of the ruling of the Commissioner. Upon motion of the Commissioner of Customs, the petition for review was dismissed by the

Court of Tax Appeals. Hence, this petition for review of the dismissal.

The manner in which, a, review of the decision of the Collector may be reviewed is outlined in Section 1380 of the Revised Administrative Code, thus:

"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 the 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."

The Ruling or judgment of the Court of Tax Appeals is as follows:

"The above Quoted material allegations contained in the petition for review, clearly discloses petitioner's position. Aside from the express admissions contained therein, a careful study of the evidence on record pertinent to the issue (Annexes A, A-1 and B of the Petition), there is as yet no decision, of the respondent Commissioner of Customs from which an appeal to this Court may be taken in accordance with the provisions of Section 7(2) of. Republic Act No. 1125, which states;

"(a) 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 document marked Annex 'A', which is the 1st Indorsement dated December 9, 1960,, is not a decision but a mere opinion, or directive addressed to the Collector of Customs, Davao City, obviously in answer to a request made by the latter from the Commissioner of Customs. Annex 'A-1' is the letter of the Acting Collector of Customs of Davao 'City to the petitioner informing him of the said opinion contained 'in Annex 'A'. And Annex 'B', is another letter of the Acting Collector of Customs of Davao City, prior to Annex A-1, in reply to petitioner's, claim contained in his letter dated December 3, 1960,, advising that said claim cannot be given due course.

"Clearly, therefore, the present petition for review is premature, inasmuch as no -written protest or appeal from the action, oy decision of the Acting Collector of Customs of Bavao City was taken pursuant to the provisions of Sections 2509 and 2313 of the Tariff and Customs Code, (Liberty Motors, Inc. vs. Manahan, C.T.A. Case No. 325, January 22, 1967; Bookmark, Inc. vs. Com. of Customs, C.T.A. Case No. 627, April 6, 1959; Hatib Abdurasibvs. Com. of Customs, C.T.A. Case No. 28, November 29, 1954.) As repeatedly held by our Supreme Court, only final decisions of the Commissioner of Customs are appealable to this Court. (Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, 100 Phil., 850; Sampaguita Shoe & Slipper Factory vs. Com. of Customs, 102 Phil., 850.)

The afrove ruling of the Court of Tax Appeals is in accordance with law and We find no reason to reverse or modify it. It is hereby affirmed. With costs against petitioner. So ordered.

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

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