

SERREE INVESTMENT, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. 15935. May 23, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This petition for review seeks to set aside the resolution of the Court of Tax Appeals in C.T.A. Case No. 526, dismissing petitioner's appeal therein on grounds here to be later mentioned.

On 28 August 1954, petitioner imported from Hongkong 75 packages of garlic. Seizure and forfeiture proceedings were, however, instituted against said shipment for alleged violation of Central Bank Circulars Nos. 44 and 45. During the pendency of said proceedings or, more particularly, on 10 September 1954, petitioner filed with the Court of First Instance of Manila a case for certiorari and mandamus. Because a preliminary injunction was issued on 11 September 1954 by said court against the Collector of Customs, the latter elevated the case to the Supreme Court. Meanwhile, the Collector of Customs rendered decision, dated 24 November 1954, declaring the questioned shipment forfeited. On 29 December 1954, petitioner, through counsel, sent by ordinary mail a letter addressed to the Collector of Customs, which reads:

"With reference to your decision in the above-entitled seizure identification ordering 'that the claimant be required to pay in cash the amount of P17,706.00 covered by the bond, and if said amount is not paid within 30 days from the date of the demand for payment, action should be filed in court to effect collection thereon', please be reminded that the said bond has been filed by the Serree Investment Co. pursuant to a writ of preliminary mandatory injunction issued by the Court of First Instance of Manila, dated September 11, 1954 in Civil Case No. 23933 entitled 'Serree Investments Co. vs. Rogaciano Millarez' which is a petition for certiorari and mandamus with preliminary injunction filed on September 10, 1954.

"Considering therefore that the civil case is still pending and that the subject matter of said civil case is the declaration of invalidity of Central Bank Circulars Nos. 44 and 45, we respectfully request that action on the above-entitled decision be held in abeyance until the civil case is terminated.

"For the same reason, we reserve our right to appeal from the above-mentioned decision to the Commissioner of Customs in the event that the civil case is not decided in our favor." (*Italics supplied*).

On 30 June 1955, this Court held that the Court of First Instance of Manila had no jurisdiction to entertain the action of the petitioner, the matter being exclusively within the province of the Court of Tax Appeals (*Millarez vs. Amparo*, 97 Phil., 282; 51 Off. Gaz. 3464).

Acting upon the belief that petitioner's letter of 29 December 1954 (*supra*) amounted to a notice of appeal, the Collector of Customs forwarded the records to the Commissioner of Customs for review. The Commissioner, however, dismissed the appeal on the ground that the letter of counsel containing petitioner's reservation to take an appeal was received only on 3 January 1955 or nineteen (19) days after receipt by counsel of the decision of the Collector and, therefore, beyond the 15-day period prescribed by law. In petitioner's appeal to the Court of

Tax Appeals, the former urged that, although not registered, the date of ordinary mailing (not receipt by the Bureau of Customs) should determine the date of the filing thereof. Without, however, deciding on this question, the Tax Court dismissed the appeal on the ground that the letter sent by petitioner to the Collector of Customs was not equivalent to the notice of appeal required by Section 1380 of the Revised Administrative Code.

We find said holding of the Tax Court correct. Section 1380 of the Code aforementioned provides:

"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."

The matter here in issue is not a question of terminology only. As correctly pointed out by the lower court, the petitioner simply requested in its letter of 29 December 1954 that action on the decision of the Collector "be held in abeyance until the civil case is terminated," at the same time reserving its right to appeal the said decision to the Commissioner of Customs "in the event that the civil case is not decided in (its) favor." There is obviously quite a difference between a mere reservation to take an appeal and an actual notice of appeal under Section 1380 of the Administrative Code, especially considering the time elapsed between the reservation and the decision of the Court. In the former case, the reserving party withholds a definite decision on whether to really interpose an appeal or not and only indicates, at the most, a probable action at some future time. Upon the other hand, a notice of appeal is an explicit announcement of the party's intention to have the case reviewed. In the case before us, even the reservation to appeal was subjected to the further condition that petitioner would exercise the right only if and when the civil case for certiorari and mandamus would finally be decided against it. In truth, it would seem inconsistent to say that petitioner was both asking the Collector to hold the decision in abeyance and, at the same moment, appealing therefrom. There is reason to believe, therefore, that petitioner, at the date of its letter, did not deem it as yet necessary or practical to perfect an appeal.

Petitioner's letter in question not being the notice of appeal contemplated under Section 1380 of the Revised Administrative Code, it is inconsequential whether or not petitioner's reservation was deemed given within the 15-day period provided in the Administrative Code.

Wherefore, the resolution appealed from is affirmed and the instant petition for review dismissed, with costs against petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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