

## SILVER SWAN MANUFACTURING COMPANY, INC., PETITIONER, VS. THE COMMISSIONER OF CUSTOMS AND COURT OF TAX APPEALS, RESPONDENTS.

*G.R. No. 17435. June 29, 1963*

Ponente: CONCEPCION, J.

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### CONCEPCION, J.:

Petition for review of a resolution of the Court of Tax Appeals granting a motion to dismiss of respondent Commissioner of Customs and dismissing a petition filed by the Silver Swan Manufacturing Company, Inc., with said Court.

The main facts are set forth in the aforementioned resolution from which we quote:

"The petitioner, a corporation duly organized under the laws of the Philippines with offices located at 209 A. del Mundo St., Grace Park, Caloocan, Rizal, was granted tax exemption in the manufacture of soy sauce by the Secretary of Finance pursuant to the provisions of Republic Act No. 901 (Annexes 'A' & 'B', Petition). The grant commenced August 27, 1957, and limited the materials to be imported only to cellulose bands, soy beans, monosodium glutamate, and preservatives. (See Annex '3', and par. 5, Petition for Review).

"At various times between March 5 and September 30, 1957, the petitioner imported raw materials for use in its manufacture of soy sauce, on which it paid duties and taxes on the dates indicated below:

Date of Payment

Articles

Duties

Paid

Import Tax

Paid

Customs

O.R. No.

1. 3/ 5/57 Soy Beans

P295.43

Pl,857.35

55900

2. 3/ 6/57 Soy Beans

354.63

2,216.52

56132

3. 4/16/57 Soy Beans

422.59

2,435.67

61699

4. 4/17/57 Cellulose Bands

372.02

593.66

61908

5. 5/14/57 Sodium Benzoate

194.96

527.62

52225

6. 5/14/57 Cellulose Bands

15.39

27.01

52226

7. 6/21/57 Cellophane Paper

760.50

309.96

71856

8. 8/ 2/57 Soy Beans

11,469.00

4,624.00

53912

9. 8/22/57 Vinyl Bags

353.00

545.00

58693

10. 9/16/57 White Beans

949.00

1,705.00

64300

11. 9/30/57 Soy Beans

2,849.00

1,204.00

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\_\_\_\_\_

P18,035.52

P16,045.81

\_\_\_\_\_  
\_\_\_\_\_

(Annex 'C' Petition for Review)

"On October 28, 1958, the petitioner, thru its counsel, filed with the respondent a written request for refund of the sums of P18,035.52 and P6,045.81 paid as customs duties and special import tax on its importations. (Annex A, Petition.) The request was based upon the theory that the Secretary of Finance has no right to grant a limited exemption<sup>1</sup>. (Par. 7, Petition.) Accordingly, said request was referred to the Secretary of Finance, who, in a 2nd Indorsement of January 2, 1959 (p. 7, Annex 'W, Petition), disallowed the claims for refund of the amounts paid on items Nos. 1 to 9 which were imported from March 23, 1957 to July 25, 1957, and cleared from customs custody prior to August 27, 1957 (the date when the grant was made effective); and the amount paid on item No. 10 (white beans), for not being included in the list of raw materials granted tax exemption. He allowed only the claims for the refund of the respective amounts of P2,849.00 and P1,204.00 paid as duties and special import tax on item No. 11 (Annex 'E', Petition for Review).

"In a letter dated January 22, 1960, to which was attached a copy of the said 2nd Indorsement, the respondent Commissioner of Customs advised the petitioner that only the amount of P4,053.00 out of your (petitioner's) total claim has been authorized by the Secretary of Finance to be refunded to that company. And on February 2, 1960, the petitioner filed before this Court his petition for review, which the respondent seeks to dismiss on the grounds afore-stated."

The grounds upon which said motion to dismiss was predicated were: 1) that Court of Tax Appeals had no jurisdiction over the case, and 2) that the petition of the Silver Swan Manufacturing Company, Inc., in said Court, for a review of the movant's decision, states no cause of action.

The Court of Tax Appeals overruled the first contention, but sustained the second, and, accordingly, dismissed the aforementioned petition. Said the Court of Tax Appeals in this connection:

"It is also contended by the respondent that 'the petition for review states no cause of action, hence it should be dismissed,' under Section 1 (f), Rule 8, of the Rules of Court. The reason advanced is that the petitioner failed to comply with the procedural law on refund and exhaust all the administrative remedies provided for in Sections 1370, 1371, 1372, 1373, 1379 and 1380 of the Revised Administrative Code (now Sections 2308, 2309, 2310, 2311, 2312 and 2313 of the Tariff & Customs Code). As provided for in the cited provisions of the Revised Administrative Code, the importer or person who wants a refund of customs duties paid must comply with the following procedural remedies, to wit: (1) The importer or person who is adversely affected by any ruling or decision of the Collector in cases involving liability for duties, fees, or other money charge (excepting fixing of fines in seizure cases) may file a written, protest with the Collector at the time when payment is made, or within 30 days thereafter, setting forth his objections to the ruling or decision in question together with the reasons therefor. But no protest shall be received or considered unless payment of the amount claimed to be due has first been made (Sec. 1370, Revised Administrative Code, now Sec. 2308, Tariff & Customs Code); (2) In any protestable case, the party interested adversely to the Government is required to make protest, if he desires to have the action of the Collector reviewed; otherwise such action shall be final and conclusive, unless the matter be correctable for manifest error in the manner prescribed in Section 1300 of the Revised Administrative Code, now Section 1707 of the Tariff & Customs Code. (Section 1371, ID, now Section 2389, Tariff & Customs Code); (3) The protest shall indicate the particular decision or ruling objected to, the ground or grounds relied upon, and its scope must be limited to a single adjustment or independent transaction. (Section 1372, ID., now Section 2310, Tariff & Customs Code); (4) Upon filing of the proper protest in a protestable case, the Collector shall re-examine the matter and render his decision accordingly (Section 1379, ID., now Section 2312, Tariff & Customs Code) ; (5) Within fifteen days after notification in writing by the Collector of his action or decision, the aggrieved party may file a written notice with the Collector of his desire to have the case reviewed by the Commissioner (Section 1380, ID., now Section 2313, Tariff & Customs Code); and (6) Within thirty days after receipt of the decision of the Commissioner of Customs, the aggrieved party, if he so desires, may file his petition for review with this Court. (Section 11, Republic Act No. 1125).

"Undoubtedly, the present case is a protestable case within the provisions of Section 1370 of the Revised Administrative Code, for it is a civil matter involving the determination of duties, fees, or money charge. However, the petitioner did not file a written protest with the Collector at the time of making payment or within 30 days thereafter, stating the particular portion of the ruling or decision objected, and the ground or grounds relied upon. Likewise, he did not signify to the Collector, within fifteen days after modification of the action or decision, his desire to have the case reviewed by the Commissioner of Customs. Consequently, for petitioner's failure to exhaust the administrative remedies provided for by law. It is proper for this Court to dismiss the appeal (see *Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs*, 102 Phil., 860, January 14, 1958). - As impliedly stated in the case of *Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals*, 100 Phil., 850; 53 Off. Gaz., No. 10, p. 3065, and restated in the case of *Sampaguita Shoe & Slipper Factory vs. Commissioner of Customs*, supra, the doctrine of exhaustion of administrative remedies as formulated in

Sections 1370, 1371, 1373, 1379 and 1380 of the Revised Administrative Code (now Sections 2308 to 2313 inclusive of the Tariff & Customs Code) is a condition sine qua non before one can resort to the Courts because it is 'indeed a sound rule for it provides for a policy of orderly procedure which favors a preliminary administrative shifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance (citing *United States vs. Sing Tuck*, 194 U.S. 161, 48 L.Ed. 917, 24 St. Ct. 621; *Oklahoma Pub. Welfare Commission vs. State*, 136 Okla. 654, 105 P(d) 547, 130 ALR 873). 'Respondent's contention that the petition for review states no cause of action is well taken.'"

It is urged by petitioner that these findings of the Court of Tax Appeals are erroneous, for the protest mentioned in Section 1370 of the Revised Administrative Code could not possibly be intended to be required when, as in the case at bar, the exemption from taxation—and, hence, the only ground upon which the protest could have properly been made in this case—did not come into existence until after the duties and taxes in question had been paid. Respondent argues, however, that petitioner could have made the payments under protest, invoking its application for exemption filed on February 7, 1957—or almost a month before the first payment had taken place—with the request that action on the protest be held in abeyance until after said application had been passed upon. A similar issue was raised in *Stonehill Steel Corporation vs. Commissioner of Customs*, 103, Phil, 170, decided on March 24, 1958, in which we held:

The Court of Tax Appeals dismissed the appeal on two grounds: First, the petitioner herein failed to comply with the provisions of Sections 1370-1373 and 1380 of the Revised Administrative Code; and second, that under Republic Act No. 901, petitioner is not entitled to refund for the reason that the exemption provided in Republic Act No. 901 refers only to the period after the passage of said Act.

"With regard to Sections 1370-1373 and 1380 of the Revised Administrative Code, said sections apparently refer to a ruling or decision of a collector of customs wherein liability for customs duties, fees, or other money charges is determined, in which case, the party adversely affected by such ruling, after paying the amount of the assessment, may make a protest and the Collector shall re-examine the matter, and should he overrule the protest and sustain his previous ruling, the party aggrieved is required to appeal said ruling to the Commissioner of Customs, within 15 days after notification, otherwise the ruling of the Collector becomes final and conclusive. After examining the aforecited sections of the Administrative Code, we are inclined to agree with counsel for petitioner that said sections, referring as they do to assessments made by a Collector of Customs of customs duties, fees, or other money charges, cannot refer to a case of refund, and that consequently, it was not necessary for the petitioner to appeal from the denial by the Collector of its petition for refund, to the Commissioner of Customs, within 15 days. ,

"It is hard to imagine a case of a petition for refund being filed with the Collector of Customs. Supposing that a collector commits mistake in the classification of merchandise imported and makes an illegal or erroneous assessment. The party aggrieved files a protest but pays the amount assessed on it, and upon considering the protest the Collector realizes his mistake and finds that he had collected an amount more than he should, and amends or changes his original assessment. In that case, all that he has to do is to pay or return to the aggrieved party the excess amount and the case is finished. But supposing that the Collector insists in his original erroneous assessment and the aggrieved party appeals his ruling to the Commissioner of Customs who, discovering the mistake in the classification of the merchandise, modifies the ruling of the Collector, and decides that there was an excess amount illegally uncollected by the Collector. In that case, his ruling or decision would also provide for refund to the aggrieved party and the case will then be terminated. But these two cases or examples above-mentioned really refer to assessments protested by the aggrieved party, and they are covered by Section 1370-1373 and 1380. The law apparently has not provided for a case like the present wherein an assessment was validly made and the amount voluntarily paid by the importer, and naturally, no protest was made, but that a law passed years later provided for some sort of exemption for the payment of customs duties, and invoking said new law, the importer who had previously paid customs duties voluntarily and without protest now asks for refund of said duties covered by the exemption. This part of the Customs Law

would appear to need clarification, and the Commissioner of Customs or Hie Department Head might possibly call the attention of the Legislature."

The Court of Tax Appeals erred, therefore, in holding that petitioner has no cause of action for want of the protest provided for in Section 1370 of the Revised Administrative Code. This, notwithstanding, we find no merit in the present appeal, because the certificate of tax exemption granted petitioner herein was subject to the qualification that "the exemption shall commence August 27, 1957, the date your request for reconsideration which served as basis of this decision was received in this Department, and because, of the articles entitled to said exemption, only those covered by the last item among those enumerated above had been "cleared from customs' custody" after said date.

Petitioner assails the validity of the aforementioned qualification upon the ground that the Secretary of Finance has no authority to impose it, for section 4 of Republic Act No. 901 provides:

"The benefits of exemption of new and necessary industries from the payment of all taxes under this Act shall, upon the approval of the application for exemption by the Secretary of Finance, retroact as of the date of the filing of the application for exemption."

It appears, however, that on February 7, 1957, petitioner applied for tax exemption as manufacturer of soy sauce and Worcestershire sauce, which was disapproved in its entirety. A reconsideration was sought by petitioner in a communication dated August 27, 1957. Acting thereon, the Secretary of Finance, in a letter dated October 15, 1957, granted the request for exemption "in respect to the manufacture of soy sauce only," but not as regards "the manufacture of Worcestershire sauce \* \* \* as the same does not qualify for tax exemption under Republic Act No. 901."

It should be noted, also, that the reconsideration "in respect to the manufacture of soy sauce only" was granted in view of the representations made, not in the application filed on February 7, 1957, but in the aforementioned petition for reconsideration dated August 27, 1957. Neither communication is before us, but the tenor of said letter of October 15, 1957, indicates that there were "representations" or new facts set forth in the aforementioned petition for reconsideration of August 27, 1957, which induced the Secretary of Finance to regard the same as the "basis" for his final "decision" and, accordingly, as a new application, and to grant the exemption as regards "the manufacture of soy sauce only" effective from the date of said petition for reconsideration. Under the circumstances, we are not prepared to hold that the Secretary of Finance had violated said Section 4 of Republic Act No. 901 or otherwise exceeded his authority in acting as he did.

Wherefore, with the modification adverted to above, regarding the applicability of Section 1370 of the Revised Administrative Code to the present case, the resolution appealed from is hereby affirmed, in all other respects, with costs against petitioner appellant, Silver Swan Manufacturing Company, Inc. It is so ordered.

Padilla, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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