

THE ACTING COLLECTOR OF CUSTOMS OF THE PORT OF MANILA, PETITIONER, VS. HON. HERMOGENES CALUAG, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV, SITTING AT QUEZON CIT...

G.R. No. 23925. May 24, 1967

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BENGZON, J.P., J.:

An American military personnel assigned in the Philippines, Robert A. Gibson, purchased for \$2,700.00 at the United States sometime in March 1956, a Chevrolet two-door station wagon. Shipped to the Philippines, the car was landed in Manila on September 11, 1956.

On September 12, 1956, it was registered by Gibson, in his name, with the Motor Vehicle's Office in Quezon City. A certificate of registration was issued with the statement of its exemption from payment of registration fees, for the reason that the Chief of the MVO had received an official communication from United States military authorities to the effect that said car was owned by Gibson and used in connection with his duties. A special plate number was issued for the car. Said registration was renewed the following year by Gibson, in the same office.

On September 11, 1957, Gibson informed the MVO Chief in writing that the same car was no longer used officially and requested to be allowed to pay its registration fees and that private number plates be issued to him. Stamped on said letter was the following: "Subject to duties and taxes when sold or transferred in the Philippines to non-exempt persons".[1]

Subsequently, the car became the subject of a series of transfers. On September 12, 1957, a registration certificate and the corresponding private plates were issued by the Cavite City MVO agency to one Bonifacio Alinsod with address at 471 España Ext., Q.C. On October 29, 1957, Alinsod sold the car for P6,500.00 to one Silverio Espiritu. On November 30, 1957, Espiritu sold it to Maximo Calalang. A month later, this sale was registered at the MVO Pasig agency and a certificate of registration and private plates were issued to Maximo Calalang. On December 6, 1957, the car was sold to one Felisa San Jose, although the sale's registration was made only on February 13, 1959. Felisa San Jose remained in possession of the car up to March 19, 1963, when she sold the same to Concepcion S. Calalang. Parenthetically, this last purchaser is the spouse of former purchaser Maximo Calalang and has the same address as that given by previous buyer Alinsod.

The sale last made was presented for registration to the MVO Pasig agency, but that office refused on the ground that the car in question was among those included in the master list of "hot cars", i.e., motor vehicles brought into this country by tax-exempt persons or entities, and subsequently transferred to non-tax-exempt persons or entities, for which the import taxes have not been paid. As the registrant failed to submit proof of payment of the advanced sales or the compensating taxes due on said car, registration was not allowed.

Pursuant however to a preliminary mandatory injunction writ issued by the Court of First Instance of Rizal at Quezon City, in a suit Concepcion S. Calalang instituted,[2] the registration certificate and plates were later issued

by the MVO Pasig agency, for 1963. And in 1964, because of an amended preliminary mandatory injunction writ, a new registration certificate was issued in Concepcion S. Calalang's favor.

On July 22, 1964, the Chief of the Registration Division of the Land Transportation Commission[3] certified to the Collector of Customs of Manila that the car in question was originally imported tax-free by one Robert A. Gibson and is registered in the name of Concepcion S. Calalang. Acting thereon and finding that the advanced sales or compensating taxes due on the car have not been paid, the Acting Collector of Customs issued a warrant of seizure and detention, Identification Warrant No. 8235, dated July 30, 1964. Said warrant was forwarded for execution to the Law Enforcement Command of the Bureau of Customs. No execution, however, could be made by the latter as Concepcion S. Calalang refused to surrender the car. So the warrant was referred to the National Bureau of Investigation. And on August 13, 1964, NBI agents, armed with a copy of the said warrant of seizure and detention, seized the car from Concepcion S. Calalang's house in Quezon City and brought the same to the NBI office in Manila.

The next day, August 14, Concepcion S. Calalang filed in the Court of First Instance of Rizal, Quezon City branch, a petition for certiorari, mandamus and prohibition, with preliminary mandatory injunction, against inter alia the Acting Collector of Customs for Manila, to review his actuations and to recover the car (Civil Case No. Q-8198). Said official filed an opposition to the prayer for preliminary injunction and a motion to dismiss the petition for lack of jurisdiction. After a preliminary hearing, the court denied the motion to dismiss and granted the preliminary mandatory injunction writ applied for.

Asserting said court's lack of jurisdiction, the Acting Collector of Customs instituted the present action before Us for certiorari and prohibition with preliminary injunction. As prayed for, We issued preliminary injunction, restraining until further orders the enforcement of the trial court's preliminary mandatory injunction and further proceedings in the case therein.

The petition, raising the fundamental issue of jurisdiction, is meritorious. The suit filed with respondent Judge was "to review and nullify whatever has already been done by respondents [herein petitioner] without and/or in excess of their jurisdiction,"[4] namely, the issuance of the warrant of seizure and detention, and the execution thereof by the NBI agents.

Statute[5] as well as jurisprudence[6] are very clear, however, that it is the Court of Tax Appeals, and not the Court of First Instance, that has jurisdiction to review the actuations of the Customs authorities in regard to "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." So We ruled in *Millarez v. Amparo*, 97 Phil. 282, 284-285:

"Republic Act No. 1125, section 7, effective June 16, 1954 gave the Court of Tax Appeals exclusive appellate jurisdiction to review on appeal, decisions of the Commissioner of Customs, involving 'seizure, detention or release of property affected x x x or other matters arising under the Customs Law or other law administered by the Bureau of Customs'. In our opinion this provision necessarily has taken away the power of the Manila court of first instance to 'review' decisions of the Customs authorities, 'in any case of seizure' - as in this case - under section 1383 et seq. of the Revised Administrative Code.[7]

"Consequently the respondent judge had no authority to entertain the complaints of Serree Investments, Lim Hu and Fructuoso Nepomuceno, which, although entitled Mandamus and Certiorari were in reality petitions to review the actuations of the proper customs authorities, now exclusively reviewable by the Court of Tax Appeals (R.A. 1125). Furthermore, conceding that the complaints were strictly mandamus or certiorari civil actions, still they were groundless, the petitioners having an adequate remedy by appeal, as stated, to the Court of Tax Appeals. Neither certiorari nor mandamus, it will be recalled, is available where relief by appeal is

provided. Therefore, the complaints having no merit, issuance of the preliminary mandatory injunctions was clearly erroneous, and the challenged writs should be annulled."

Needless to state, also, the provisions of the Revenue Code levying the taxes sought to be collected here -advanced sales tax or compensating tax - are being implemented by the Customs authorities[8] and hence are part of Customs law.[9]

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 review 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 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 respondent's cause. In *Acting Collector v. De la Rama*, L-20676, February 26, 1965, ruling on the same contention, We held that such absence only shows that the party affected did not exhaust administrative remedies. There being administrative remedies available, i.e., appeal to the Commissioner of Customs first,[10] certiorari would not be proper. 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[11] and/Or (2) to file a protest with the Customs Collector.[12] All these available remedies heavily weigh against the propriety of certiorari which can only issue in the absence of any other plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, the petition herein is granted and the Court of First Instance of Rizal is declared without jurisdiction in Civil Case No. Q-8198 therein, and its orders and preliminary injunction writ therein issued are hereby annulled. The preliminary writ of injunction here-tofore issued by Us is made permanent. Costs against respondent Calalang.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Pursuant to the last paragraph of Sec. 183(b) and the last paragraph of Sec. 190(g) of the National Internal Revenue Code.

[2] Civil Case No. Q-7165, for mandamus with preliminary mandatory injunction to compel the Registrar of the MVO Pasig agency to issue registration certificate and license plates in her favor.

[3] Formerly the Motor Vehicle's Office.

[4] Par. 19 of Petition in Civil Case No. Q-8198; Rollo, P. 32.

[5] Sec. 7, Republic Act 1125 and Sec. 2402, Tariff and Customs Code.

[6] *Millarez v. Amparo*, 97 Phil. 282; *Namarco v. Macadaeg*, 98 Phil. 185; *Acting Collector v. De la Rama*, L-20676, Feb. 26, 1965; and *Commissioner v. Cloribel*, L-20266 Jan. 31, 1967.

[7] Now Sec. 2402 of the Tariff and Customs Code.

[8] Sec. 6, National Internal Revenue Code.

[9] *Leuterio v. Commissioner*, 101 Phil. 223.

[10] Sec. 2313, Tariff and Customs Code.

[11] Sec. 2301, *Ibid.*

[12] Sec. 2308, *Ibid.*

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