

**JOSE ARNEDO, VICTORIANO FRANCISCO, JUAN DIONISIO, MANUEL MARIANO AND REMIGIO LARA, PETITIONERS, VS. VICENTE ALDANESE, AS COLLECTOR OF CUSTOMS FOR THE PORT OF MANILA, RESPONDENT.**

*G. R. No. 45230. October 31, 1936*

Ponente: ABAD SANTOS, J.

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**ABAD SANTOS, J.:**

This is a petition for a writ of mandamus to compel the respondent, as Collector of Customs for the Port of Manila, to allow the importation free of duty of five (5) bags of rice from Hongkong, and to release the same to the herein petitioners.

The petition alleges that on April 23, 1936, the President of the Commonwealth of the Philippines issued Proclamation No. 58, declaring therein that a state of emergency exists in view of the serious shortage of rice in the Philippines; that by virtue of the said proclamation and of Customs Administrative Order No. 317, the petitioners, being distressed individuals directly affected by the aforesaid rice shortage, imported five bags of rice from Hongkong, for their own use and that of their respective families; that the petitioners filed with the Bureau of Customs the import entry covering the aforesaid importation, together with their respective affidavits, as required by Customs Administrative Order No. 317, declaring the said rice to be free of duty under paragraph 354 of the Philippine Tariff Act of 1909, as amended by Act No. 4198 of the Philippine Legislature; that the respondent has refused and still refuses to admit the aforesaid importation free of duty under the aforesaid paragraph 354 of the Philippine Tariff Act of 1909 as amended; that the petitioners have no plain, speedy and adequate remedy to have the aforesaid importation admitted into this port free of duty other than this action.

In his answer the respondent alleges that the petitioners are well-to-do persons and are not distressed individuals within the meaning of paragraph 354 of the Philippine Tariff Act of 1909, as amended by Act No. 4198; that Act No. 4198, which amends paragraph 354 of the Philippine Tariff Act of 1909, has for its object to prevent the monopoly and hoarding of, and speculation in, food materials, during the existence of an emergency by reason of the causes therein provided, and contemplates the creation of a government agency to carry out its provisions and accomplish its purpose; that pursuant to the provisions of Act No. 4198, and in order to prevent monopoly of, and speculation in, rice, His Excellency, the President of the Philippines, by a Proclamation No. 58, of April 23, 1936, designated the National Rice and Corn Corporation, an organization operated not for profit, as a relief organization for the purpose of importing rice, free of duty, in such quantities as may be necessary to relieve the situation thereby precluding other entities and individuals from importing rice, free of duty, under the provisions of Act No. 4198, that the consignment of five bags of rice imported by the petitioners are of the growth and produce of the Republic of China, and are subject to the payment of import duties under paragraph 215 of the Philippine Tariff Act of 1909, as amended by Act No. 3918; that the petitioners refused to pay the import duties assessed under paragraph 215 of the Philippine Tariff Act of 1909, as amended by Act No. 3918, on the shipment of rice referred to in the petition; that the petitioners have an ordinary action at law to enforce their claim pursuant

to sections 1370, 1371, 1380 and 1383 of the Administrative Code; and that the adjudication of the controverted issues raised in this proceeding involves the taking of evidence and the making of findings touching on controverted facts, and the petition should, therefore, have been presented in the Court of First Instance of Manila.

The first question presented for our determination is whether, upon the facts alleged in the petition, the writ of mandamus is the proper remedy available to the petitioner.

The circumstances and conditions under which the writ of mandamus will issue in this jurisdiction are well denned by statute. (Code of Civil Procedure, sections 222, 515.) The remedy is available only where there is no other plain, speedy and adequate remedy in the ordinary course of law. The right to appeal from the decision of a subordinate officer to a superior one within the executive department of the government has been held to constitute a plain, speedy and adequate remedy within the meaning of the statute. Where such remedy is afforded, the writ of mandamus will not issue. "When a plain, adequate and speedy remedy is afforded by and within the executive department of the government, the courts will not interfere until at least that remedy has been exhausted." (Lamb vs. Phipps, 22 Phil., 456, 491V)

The decision of the respondent requiring the payment of import duties on the rice sought to be imported by the petitioners was not final but appealable to the Secretary of Finance who has the power to reverse or modify the same. (Revised Administrative Code, section 79 [c].)

Without passing upon the merits of the other questions raised by the pleadings, we conclude that the petitioners are not entitled to the relief sought by them, because they have another plain, speedy and adequate remedy in the ordinary course of law. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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