

JIMMY O. YAOKASIN, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, SALVADOR M. MISON AND THE DISTRICT COLLECTOR OF THE PORT OF TACLOBAN, VICENTE D. YUTANGCO, RESPONDENTS.

G.R. No. 84111. December 22, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This petition questions the power of automatic review of the Commissioner of Customs over the decision of the Collector of Customs in protest and seizure cases.

On May 27, 1988, the Philippine Coast Guard seized 9000 bags/sacks of refined sugar, which were being unloaded from the M/V Tacloban, and turned them over to the custody of the Bureau of Customs.

The petitioner presented a sales invoice from the Jordan Trading of Iloilo (Annex A, Petition) to prove that the sugar was purchased locally. The District Collector of Customs, however, proceeded with the seizure of the bags of sugar.

On June 3 and 6, 1988, show-cause hearings were conducted. On June 7, 1988, the District Collector of Customs ordered the release of the sugar as follows:

"WHEREFORE, premises considered, subject Nine Thousand (9, 000) sacks/bags of refined sugar are hereby ordered released to Mr. Jimmy O. Yaokasin, consignee/claimant and the immediate withdrawal of Customs Guard within its bodega's premises." (p. 276, Rollo.)

On June 10, 1988, the decision, together with the entire records of the case, were transmitted to, and received by, the Commissioner of Customs (Annex H, Petition, p. 277, Rollo).

On June 14, 1988, without modifying his decision, the District Collector of Customs ordered the warehouse, wherein the bags of sugar were stored, to be sealed.

On June 19, 1988, the Economic Intelligence and Investigation Board (EIIB) filed a Motion for Reconsideration (Annex I, Petition, p. 278, Rollo), for "further hearing on the merits" (p. 279, Rollo), based on evidence that the seized sugar was of foreign origin. Petitioner opposed the motion for being merely pro forma and/or that the same was, in effect, a motion for new trial.

Hearing Officer Paul A. Alcazaren set the Motion for Reconsideration for hearing on July 13, 1988.

But before that, or on July 4, 1988, the Commissioner of Customs by "2nd Indorsement" returned to the District Collector of Customs the:

"x x x folder of Tacloban S.I. No. 06-01 (R. P. vs. 9000 bags/sacks of refined sugar, MR. JIMMY YAOKASIN, consignee/claimant), together with the proposed decision, for hearing and/or resolution of the government's motion for reconsideration x x x." (p. 437, Rollo, Emphasis Ours.)

On the same date, July 4, 1988, petitioner applied for and secured a writ of replevin from the Regional Trial Court of Leyte (CC 7627, Branch VII), through a Petition/Complaint for Certiorari, Prohibition with Replevin and Damages with Preliminary Injunction and/or Restraining Order (Annex L, Petition, p. 288, Rollo).

On July 12, 1988, respondent District Collector of Customs filed an Answer assailing the court's jurisdiction. On the same day, the District Collector and the Commissioner of Customs filed in the Court of Appeals a Petition for Certiorari and Prohibition with Application for a Writ of Preliminary Injunction and/or Restraining Order to annul the July 4, 1988 - "Order Granting Replevin with Temporary Restraining Order" (CA-G.R. SP No. 15090; p. 396, Rollo).

On July 15, 1988, the Collector of Customs reconsidered his June 7, 1988 decision, as follows:

"WHEREFORE, the undersigned hereby reconsiders his Decision, finds that the 9,000 bags/sacks of refined sugar in question are of foreign origin, smuggled into the country, and declares them forfeited in favor of the government.

"Considering the provision in the quoted Customs Memorandum Order, especially the latter part thereof prohibiting the release of the articles in question to the claimant, and considering also that the said sacks of sugar are presently stored in the bodega of claimant, and considering further that there are no facilities for storage in Tacloban City, for security reasons, the Honorable Commissioner of Customs is respectfully and earnestly urged to order the immediate transfer of the sugar from the said bodega to any Customs Warehouse, preferably in Manila and to this end to order the setting aside of such sum of money in order to affectively accomplish this purpose." (p. 11, Rollo.)

Also, on the same day, the Court of Appeals: (a) gave due course to respondent's petition; and (b) restrained Judge Pedro S. Espina, Regional Trial Court, Leyte, from further proceeding in Civil Case No. 7627, and from enforcing his Order of July 4, 1988.

It is petitioner's contention that the June 7, 1988 decision of the District Collector of Customs became final and executory, in view of the absence of an appeal therefrom by the "aggrieved party" (himself) within the 15-day period provided for in Sec. 2313 of the Tariff and Customs Code. Hence, the release of the 9,000 bags of sugar must be upheld.

On the other hand, the District Collector and the Commissioner of Customs argue that since the June 7, 1988 decision is adverse to the government, the case should go to the Commissioner of Customs on automatic review, pursuant to Memorandum Order No. 20-87, dated May 18, 1987, of former Acting Commissioner of Customs, Alexander Padilla, which provides:

"CUSTOMS MEMORANDUM ORDER

"NO. 20-87

"TO: All Collectors of Customs

and Others Concerned

"Effective immediately, you are hereby directed to implement strictly the following -

'Decisions of the Collector of Customs in seizure and protest cases are subject to review by the Commissioner upon appeal as provided under existing laws; provided, however, that where a decision of the Collector of Customs in such seizure and protest cases is adverse to the government, it shall automatically be reviewed by the Commissioner of Customs.' (PD No. 1, Annex C.)

"In view thereof, no releases in any seizure or like cases may be effected unless and until the decision of the Collector has been confirmed in writing by the Commissioner of Customs.

"For immediate and strict compliance.

"(Sgd.) ALEXANDER A. PADILLA

"Acting Commissioner of Customs"

(p. 436, Rollo; Emphasis Ours)

The memorandum order implements Section 12 (Art. IV, Part. IV, Vol. I) of the Integrated Reorganization Plan (hereafter, "PLAN") which provides:

"12. The Collector of Customs at each principal port of entry shall be the official head of the customs service in his port and district responsible to the Commissioner. He shall have the authority to take final action on the enforcement of tariff and customs laws within his collection district and on administrative matters in accordance with Chapter III, Part II of this Plan. Decisions of the Collector of Customs in seizure and protest cases are subject to review by the Commissioner upon appeal as provided under existing laws; provided, however, that where a decision of a Collector of Customs in such seizure and protest cases is adverse to the government, it shall automatically be reviewed by the Commissioner of Customs which, if affirmed, shall automatically be elevated for final review by the Secretary of Finance; provided, further that if within thirty days from receipt of the records of the case by the Commissioner of Customs or the Secretary of Finance, no decision is rendered by the Commissioner of Customs or the Secretary of Finance the decision under review shall become final and executory." (Underscoring supplied.)

In Presidential Decree No. 1, dated September 24, 1972, former President Marcos decreed and ordered that the Plan be "adopted, approved, and made as part of the law of the land." Under the 1987 Constitution, "[a]ll existing laws, decrees, executive orders, proclamations, letters of instruction, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked" (Sec. 3, Art. XVIII). While some provisions of the Plan have ceased to be operative because of subsequent reorganizations, other provisions, such as Section 12, have not been repealed by subsequent legislation.

Section 12 of the Plan applies to petitioner's shipment of 9,000 bags of sugar. Taxes being the lifeblood of the Government, Section 12, which the Commissioner of Customs in his Customs Memorandum Order No. 20-87, enjoined all collectors to follow strictly, is intended to protect the interest of the Government in the collection of taxes and customs duties in those seizure and protest cases which, without the automatic review provided therein, neither the Commissioner of Customs nor the Secretary of Finance would probably ever know about. Without the automatic review by the Commissioner of Customs and the Secretary of Finance, a collector in any of our country's far-flung ports, would have absolute and unbridled discretion to determine whether goods seized by him are locally produced, hence, not dutiable, or of foreign origin, and therefore subject to payment of customs duties and taxes. His decision, unless appealed by the aggrieved party (the owner of the goods), would become final with no one the wiser except himself and the owner of the goods. The owner of the goods cannot be expected to appeal the collector's decision when it is favorable to him. A decision that is favorable to the taxpayer would correspondingly be unfavorable to the Government, but who will appeal the collector's decision in that case? Certainly not the collector.

Evidently, it was to cure this anomalous situation (which may have already defrauded our government of huge amounts of uncollected taxes), that the provision for automatic review by the Commissioner of Customs and the Secretary of Finance of unappealed seizure and protest cases was conceived to protect the government against corrupt and conniving customs collectors.

Section 12 of the Plan and Section 2313 of the Tariff and Customs Code do not conflict with each other. They may co-exist. Section 2313 of the Code provides for the procedure for the review of the decision of a collector in seizure and protest cases upon appeal by the aggrieved party, i.e., the importer or owner of the goods. On the other hand, Section 12 of the Plan refers to the general procedure in appeals in seizure and protest cases with a special proviso on automatic review when the collector's decision is adverse to the government. Section 2313 and the proviso in Section 12, although they both relate to the review of seizure and protest cases, refer to two different situations - when the collector's decision is adverse to the importer or owner of the goods, and when the decision is adverse to the government.

The decision of the Court in the case of *Sy Man vs. Jacinto* (93 Phil. 1093 [1953]), which the petitioner invokes as precedent, is not in point. In the present case the Acting Commissioner, in issuing the memorandum circular, was directing strict compliance with an existing provision of law, which mandates automatic review of decisions of collectors in seizure and protest cases which are adverse to the government. On the other hand, in *Sy Man*, the memorandum order of the Insular Collector of Customs directed the elevation of records in seizure and forfeiture cases for automatic review even if he had not been expressly granted such power under the then existing law.

The objection to the enforcement of Section 12 of the Plan and CMO No. 20-87 on the ground that they had not been published in the Official Gazette, is not well taken. The Plan, as part of P. D. No. 1, was "adopted, approved and made as part of the law of the land" and published in Volume 68, No. 40, p. 7797 of the Official Gazette issue of October 2, 1972.

Article 2 of the Civil Code, which requires laws to be published in the Official Gazette, does not apply to CMO No. 20-87 which is only an administrative order of the Commissioner of Customs addressed to his subordinates, the customs collectors.

Commonwealth Act No. 638 (an Act to Provide for the Uniform Publication and Distribution of the Official Gazette) enumerates what shall be published in the Official Gazette besides legislative acts and resolutions of a public nature of the Congress of the Philippines. Executive and administrative orders and proclamations, shall also be published in the Official Gazette, "except such as have no general applicability." CMO No. 20-87 requiring collectors of customs to comply strictly with Section 12 of the Plan, is an issuance which is addressed only to particular persons or a class of persons (the customs collectors). "It need not be published, on the assumption that it has been circularized to all concerned" (*Tañada vs. Tuvera*, 136 SCRA 27).

WHEREFORE, the petition for review is denied for lack of merit. The temporary restraining order which we issued in this case is hereby made permanent. Costs against the petitioner.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, and Cortes, JJ., concur.

Fernan, C.J., Gutierrez, Jr., and Regalado, JJ., join J. Medialdea in his dissent.

Padilla, J., no part, Memo Order No. 20-87 was issued by then Customs Commissioner Alex Padilla who is related to him.

Medialdea, J., see dissenting opinion.

Yaokasin vs Commissioner of Customs : 84111 : December 22, 1989 : J. Medialdea : En Banc : Dissenting Opinion Normal Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt;

mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

MEDIALDEA, J.:

The present case involves two decisions of the Collector of Customs of Tacloban City on a seizure case. The first decision was rendered on June 7, 1988, ordering the release of 9,000 bags of sugar belonging to petitioner Jimmy Yaokasin which were seized by the Philippine Coast Guard and turned over to the custody of customs authorities. The second, rendered on July 15, 1988 reverses the first decision and orders the forfeiture of the sugar. Petitioner did not appeal the June 7 - decision and the Collector of Customs rendered the second decision predicated on the automatic review powers of the Commissioner in decisions adverse to the government, as embodied in Customs Memorandum Order (CMO) No. 20-87.

The memorandum was issued by then Acting Commissioner of Customs Alexander Padilla on May 18, 1987, and provides as follows:

"CUSTOMS MEMORANDUM ORDER

NO. 20-87

TO: All Collectors of Customs and Others Concerned

"Effective immediately, you are hereby directed to implement strictly the following -

'Decisions of the Collector of Customs in seizure and protest cases are subject to review by the Commissioner upon appeal as provided under existing laws; provided, however, that where a decision of the Collector of Customs in such seizure and protest cases is adverse to the government, it shall automatically be reviewed by the Commissioner of Customs.'

"In view thereof, no releases in any seizure or like cases may be effected unless and until the decision of the Collector has been confirmed in writing by the Commissioner of Customs.

"For immediate and strict compliance.

(Sgd.) ALEXANDER A. PADILLA

Acting Commissioner of Customs"

(p. 436, Rollo) (Emphasis Ours)

Petitioner disputes the validity of the memorandum, claiming instead that the law applicable to his case is Sec. 2313 of the Tariff and Customs Code of the Philippines of 1982.

The main issue in this case is whether or not the Commissioner of Customs has the power of automatic review over decisions of the Collector of Customs in seizure and protest cases.

The majority upholds the automatic review power, based on CMO No. 20-87. I disagree, based on the provisions of Section 2313 of the Tariff and Customs Code.

The facts of this case are similar to that involved in *Sy Man v. Jacinto* (93 Phil. 1093), briefly stated below:

On January 2, 1951, the Manila Port Collector of Customs ordered the seizure of the shipments of textile and a number of sewing machines, consigned to Sy Man. On June 4, 1951, he ordered the release of the articles

covered by the seizure order, upon payment of the corresponding customs duties, except the sewing machines which were declared forfeited to be sold, if saleable or otherwise, destroyed.

On June 27, 1951, Sy Man received a copy of the decision. Sy Man's counsel sought execution of the decision, based on the fact that the Commissioner of Customs could no longer review the decision after the lapse of 15 days from notification of said decision to Sy Man.

The issue centered on the power of automatic review of the Commissioner of Customs, based on his power and supervision and control over the Collector of Customs, allegedly implemented by way of the Memorandum promulgated by the Insular Collector of Customs, dated August 18, 1947, which provides that as in protest cases, decisions of the Collector of Customs in seizure cases, whether appealed or not, are subject to review by the Insular Collector (now Commissioner).

We ruled that:

(1) Since the Memorandum Order dated August 18, 1947 was never approved by the department head and was never published in the Official Gazette, as required by Sec. 551 of the Revised Administrative Code, the same cannot be given legal effect;

(2) Additionally, the Memorandum is adjudged inconsistent with law, since there is no law giving the Commissioner the power to review and revise unappealed decision of the Collector of Customs in seizure cases;

(3) Under the law then in force, governing the Bureau of Customs, the decisions of the Collector of Customs in a seizure case, if not protested and appealed by the importer to the Commissioner of Customs on time becomes final, not only to him, but also against the Government as well, and neither the Commissioner nor the Department Head has the power to review, revise or modify such unappealed decision.

In the present case, it is claimed that CMO No. 20-87 merely implements Section 12 (Part IV, Chp. I, Art. IV) of the Integrated Reorganization Plan (Plan) of former President Marcos. The Plan was prepared by the Commission on Reorganization (authorized under RA 5435) and submitted to former President Marcos for the reorganization of the Executive Branch of the government. It was adopted as law, pursuant to P.D. No. 1, issued on September 24, 1972.

Section 12 of the Plan provides in part as follows:

Part. IV - Revenue Administration

Chp. I - Department of Finance

x x x .

Art. IV - Bureau of Customs

12. x x x. Decisions of the Collector of Customs in seizure and protest cases are subject to review by the Commissioner upon appeal as provided under existing laws; provided, however, that where a decision of a Collector of Customs in such seizure and protest case is adverse to the government, it shall automatically be reviewed by the Commissioner of Customs which, if affirmed, shall automatically be elevated for final review by the Secretary of Finance; provided, further, that if within thirty days from receipt of the records of the case by the Commissioner of Customs or the Secretary of Finance, no decision is rendered by the Commissioner of Customs or the Secretary of Finance the decision under review shall become final and executory. (Emphasis ours)

As will be noted, the Plan grants the Commissioner of Customs the power to review automatically, decisions of the Collector of Customs in seizure and protest cases adverse to the government. Cases not decided by the

Commissioner within 30 days from receipt of the records become final and executory.

There is no question that P.D. No. 1/the Plan is still a valid law. However, I do not agree that this is legal authority to uphold the Commissioner's right to automatically review decisions of the Collector of Customs in seizure cases, and, in the process, allow a reversal of a decision favorable to the importer. When the Plan became law pursuant to P.D. No. 1, Section 2313 of RA 1937 (Tariff and Customs Code of the Philippines) already governed the review powers of the Commissioner of Customs. Thus, while both Section 12 of the Plan and 2313 of the Tariff and Customs Code deal with the review powers of the Commissioner of Customs, the Plan is a general law, as it concerns itself with the reorganization of the executive branch of the government in a martial law regime, whereas the Code is a special law, i.e., specifically on tariff and customs duties. Consequently, the Plan is subservient to the Code and the automatic review power granted therein can not be upheld.

Prior to subsequent amendments, Section 2313 of the Code provided as follows:

"SEC. 2313. Review by Commissioner. – The person aggrieved by the decision or action of the Collector 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 of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision." (Emphasis ours)

As will be noted, the foregoing provision does not contain any automatic review powers of the Commissioner of Customs.

On October 27, 1972, former President Marcos issued P.D. No. 34, amending the Tariff and Customs Revision Act of 1972 (earlier issued by the former Congress, martial law having been proclaimed) without any reference to the provisions of Sec. 12 of P.D. No. 1.

As amended by P.D. No. 34, Section 2313 provided as follows:

"SEC. 2313. Review by Commissioner. – The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision." (Emphasis Ours)

One notes that except for the phrase requiring a copy of the notice to be furnished to the Commissioner of Customs, no other substantial change was introduced by P.D. No. 34. Consequently, the right to elevate the case to the Commissioner of Customs remained an exclusive authority of the aggrieved party.

On June 11, 1978, P.D. No. 1464 was issued directing the consolidation and codification of the tariff and customs laws of the Philippines into a single code, to be known as the Tariff and Customs Code of 1978. The Code was subsequently codified as the "Tariff and Customs Code of 1982" pursuant to Executive Order No. 688, dated May 9, 1981, again without any reference to Section 12 of P.D. No. 1.

Throughout the various amendments/codifications of the tariff and customs laws, the review power of the Commissioner of Customs in seizure cases has remained the same, i.e., it arises only upon appeal of the aggrieved party. Hence, if no appeal is made, the decision of the Collector of Customs becomes final and executory, even as against the government.

It is therefore clear that while it was intended by the Plan to invest the Commissioner of Customs with automatic review powers over decisions of the Collector of Customs in seizure case, more importantly in cases adverse to the government, this intention was never carried out.

As a matter of fact, despite the requirement of P.D. No. 1, viz:

“x x x.

"Implementation of the Integrated Reorganization Plan as herein adopted, approved and decreed shall be carried out by Letters of Implementation which will be issued by me from time to time, or by my duly elected authorized representative.

"x x x." (Emphasis ours)

and the Plan itself.

"I. After this Plan shall have been approved, the President of the Philippines shall, in consultation with the department or agency head concerned, prepare the implementing details with the assistance of such technical groups or agencies which he may designate, and issue the necessary executive order or orders within three months after the approval of this plan; x x x." (Emphasis ours)

no Letter of Implementation as called for, was ever issued.

Private respondents contend that CMO No. 20-87 implements the Plan on the automatic review powers. I do not agree. Section 12 of the Plan/P.D. No. 1 is no longer good law, as earlier pointed out, since despite various presidential issuances and amendments on customs laws, the Commissioner of Customs was never granted any automatic review power.

The power of review of the Commissioner of Customs found in Sec. 2313 is different from the supervisory authority of the Commissioner of Customs presently embodied in Sec. 2315 of the Tariff and Customs Code, quoted below, and which gives him the authority of automatic review of the decisions of the Collector of Customs in assessment of duties adverse to the government:

"SEC. 2315. Supervisory Authority of Commissioner and of Secretary of Finance in Certain Cases. - If in any case involving the assessment of duties, the Collector renders a decision adverse to the government, such decision shall automatically be elevated to, and reviewed by, the Commissioner; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and be finally reviewed by, the Secretary of Finance: Provided, however, That if within thirty (30) days from receipt of the record of the case by the Commissioner or by the Secretary of Finance, as the case may be, no decision is rendered by either of them, the decision under review shall become final and executory: Provided, further, That any party aggrieved by either the decision of the Commissioner or of the Secretary of Finance may appeal to the Court of Tax Appeals within thirty (30) days from receipt of a copy of such decision. For this purpose Republic Act Numbered Eleven Hundred and twenty-five is hereby amended accordingly." (Emphasis Ours)

Prior to the amendment introduced by P.D. No. 34, Sec. 2315 read as follows:

"SEC. 2315. Supervisory Authority of Commissioner and of Department Head in Certain Case. -- If in any case involving the assessment of duties the importer shall fail to protest the ruling of the Collector, and the Commissioner shall be of the opinion that the ruling was erroneous and unfavorable to the Government, the latter may order a reliquidation; and if the ruling of the Commissioner in any unprotested case should, in the opinion of the department head, be erroneous and unfavorable to the government, the department head may require the Commissioner to order a reliquidation. (Emphasis ours)

"x x x."

Under the old provision, We note that the Commissioner of Customs had the right to order a reliquidation in unprotested cases of assessment of duties, where he is "of the opinion that the ruling of the Collector of Customs was erroneous and unfavorable to the government".

As amended, Sec. 2315 has been rephrased, giving the Commissioner of Customs the power of "automatic review" (not reliquidation) over adverse decisions of the Collector of Customs in cases involving assessment of duties, but must do so within a period of thirty days; otherwise, his decision becomes final and executory.

The 30-day period appears to be a response to a defect We noted in the *Sy Man* case found in the old provision of Sec. 2315 which did not prescribe a period within which a reliquidation may be undertaken. The absence of a period was "decidedly unsatisfactory and even unjust, if not oppressive" to the importer, who was willing "to abide by the decision of the Collector, to pay the amounts fixed, including the fines, and desired to get the goods released so as to be able to dispose of them", but was unable to do so because of the prolonged inaction of the Commissioner. (See *Sy Man*, supra, p. 1101)

In the *Sy Man* case, We noted two defects. The first pertained to the absence of the period found in Sec. 2315, while the second referred to a need for a provision on review and revision by the Commissioner of Customs on unappealed seizure cases, as governed by Sec. 2313. Thus,

"But if the Government deems it necessary to provide for review and revision by the Commissioner or even by the Department Head of the decisions of the Collector of Customs in an unappealed seizure cases, the Legislature may be requested to insert a section in the Revised Administrative Code similar to Section 1393 (now Section of the Customs Law) which applies to unprotested cases of assessment duties. The defect in said section however is that it does not fix the period within which the automatic review and revision or reliquidation to be ordered by the Commissioner and the Secretary of Finance must be effected. This defect should be remedied." (p. 1107)

Unfortunately, as can be seen, our legislators merely acted on the defect found in Sec. 2315 by providing for a period in cases of assessment of duties. Additionally, they invested the Commissioner with automatic review powers where an assessment was adverse to the government, thus, eliminating any possible prejudice to the government. They did not, however, provide any authority for automatic review in unappealed seizure cases, similar to that found in Sec. 2313, thus belying any intent to implement the Plan with respect to the automatic review powers.

As in the *Sy Man* case, it is now argued that the lack of automatic review causes prejudice to the government. We quote from *Sy Man*:

"It is argued that if this power of review and revision by the Commissioner of unappealed seizure cases is not conceded, then in cases where the Collector in his decision commits a blunder prejudicial to the interests of the Government, or renders a decision through fraud or in collusion with the importer, the Government cannot protect itself. The argument is not without merit; but we must bear in mind that the law is promulgated to operate on ordinary, common, routine cases. The rule is and the law presumes that in seizure cases Collectors of Customs act honestly and correctly and as Government officials, always with an eye to the protection of the interests of the Government employing them. If mistakes are committed at all more often than not they are in favor of the Government and not against it, and that is the reason why when the importer feels aggrieved by their decision, he is given every chance and facility to protest the decision and appeal to the Commissioner. Cases of erroneous decisions against the interest of the Government of decisions rendered in collusion and connivance with importers are the exception. To protect the Government in such exceptional cases, we find that in every seizure case, section 1378 (now Section 2302, Customs Law) of the Revised Administrative Code requires the Collector to immediately notify the Commissioner and the Auditor General. It may be that this requirement has for its main purpose the recording of and accounting for the articles seized so that in case of

confiscation the Commissioner and the Auditor General will know what articles have become government property. But the notice will also inform the Commissioner and the Auditor General of the seizure. If the seizure is important or unusual, the Commissioner may, if he so desires, order the Collector as his subordinate to withhold action on the seizure, or hold in abeyance, within a reasonable time, the promulgation of his decision until after he had conferred with the Commissioner or the latter had studied the case and given suggestions. At that stage of the proceedings before definite action is taken by the Collector, and a decision rendered by him, it would seem that any action by him as a subordinate is still subject to the supervisory authority and control of the Commissioner as his chief, and the latter may still influence and direct the Collector's action if he finds occasion for doing so." (Emphasis ours)

We believe that for as long as the procedure laid down in Sec. 2302 is observed, there can be no resulting prejudice to the government in unappealed seizure cases, since the Commissioner in the exercise of his supervisory authority can ask the Collector to "withhold action on the seizure or hold in abeyance within a reasonable time the promulgation of a decision, until after he has conferred with the Collector," in cases of unusual or important seizure.

As it now stands therefore, there is no law allowing automatic review in seizure cases. For this reason, CMO No. 20-87, issued supposedly in implementation of Sec. 12 of the Plan/P.D. No. 1, which has since been amended/modified, is void and of no effect, being inconsistent with law.

Assuming applicability of P.D. No. 1/Plan, CMO No. 20-87 would still not be effective since it was not published as required by Section 551 of the Revised Administrative Code (the law then in force since the 1987 Revised Administrative Code took effect on September 21, 1988), which in part provides:

"Section 551. Authority to prescribe forms and make regulations. - x x x.

"Regulations and orders shall become effective only when approved by the Department Head and published in the Official Gazette or otherwise publicly promulgated. Formal approval or publication shall not be necessary as regards circulars of information or instructions for the guidance of officers and employees in the internal administration of the affairs of the Bureau." (Emphasis ours)

Previous customs administrative orders had complied with this requirement. Thus, Customs Administrative Order Nos. 225 and 226, issued by then Commissioner of Customs Eleuterio Capapas on August 15, 1957 and December 3, 1957, respectively, were duly published in Vol. 54, No. 2, p. 300 of the Official Gazette.

CAO No. 226 deals, among others, with "protests and appeals," and implements Section 2313 of the Code. Thus, Par. VII thereof similarly gives the importer exclusive authority to elevate the case to the Commissioner, viz:

"Customs Administrative Order No. 226

December 3, 1957

PROTEST AND APPEALS: REDEMPTION OF FORFEITED ARTICLES; AND EXECUTION OF DECISIONS.

x x x.

Par. VII. The person aggrieved by the decision or action of a collector of customs in any matter presented upon protest or by his action in any case of seizure pursuant to section 2312 of the Tariff and Customs Code of the Philippines may give a written notice to the Collector of Customs of his desire to have the matter reviewed by the Commissioner of Customs." (Emphasis ours)

In contrast, CMO No. 20-87 enlarges the power of the Commissioner of Customs by investing him with automatic

powers in seizure cases, in effect amending COA No. 226. Expectedly, the memorandum must be published in accordance with Sec. 551 of the Revised Administrative Code not only for effectivity but also to fully apprise third persons. Absent such publication, the same cannot be upheld for non-compliance with Sec. 551 of the Revised Administrative Code.

For these reasons, I vote to GRANT the petition.

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