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that adjudication should not only be fair and just. It must appear to be so. A judge is human, but he is expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so. When a litigant is therefore an individual for whom he does not cherish kindly thoughts, he is called upon to show greater care lest inadvertently he finds himself unable to resist the prompting of his emotions. Perhaps of no government official is the truism that a public office is a public trust more applicable. He dispenses justice for the community. He is its instrument to assure that every one be given his due. He speaks and acts for the state, not for himself. His personal feelings must not get the better of him. So he must not for a moment forget.

WHEREFORE, Judge Nicolas Superable, Jr., is hereby admonished, with the warning that repetition of such conduct as did mar his actuation as a member of the judiciary would be more severely dealt with. Attorneys Camilo Superable and Angel Superable are exonerated.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano, Teehankee and *Barredo, JJ.*, concur.

Reyes, J.B.L., J., is on official leave.

[G.R. No. L-19337. September 30, 1969]

ASTURIAS SUGAR CENTRAL, INC., petitioner, *vs.* COMMISSIONER OF CUSTOMS and COURT OF TAX APPEALS, respondents.

SYLLABUS

1. POLITICAL LAW; TARIFF AND CUSTOMS LAWS; ADMINISTRATIVE CONSTRUCTION, WEIGHT OF.— Considering that the Bureau of Customs is the office charged with implementing and enforcing the provisions of our Tariff and Customs Code, the construction placed by it should be given controlling weight.

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2. ID.; ID.; PERIOD PRESCRIBED TO EXPORT, NON-EXTENDIBLE AND MANDATORY.— In the light of the well established rule that exemptions from taxation are not favored, and that tax statutes are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, the court is of the opinion that the one-year period with which to export imported containers prescribed in Section 23 of the Philippine Tariff Act of 1909 is non-extendible; compliance therewith is mandatory.

3. ID.; ID.; JUTE BAGS WITHIN THE MEANING OF THE WORD "CONTAINERS."— The words "jute bags" are included in the phrase "cylinders and other containers" mentioned in Administrative Order No. 389, for the reason that the Philippine Tariff Act of 1909 and the Tariff and Customs Code, speak of "containers" in general, and the enumeration following said word merely serves to give example of containers and do not specify the particular kinds thereof.

APPEARANCES OF COUNSEL

Laurea, Laurea & Associates for petitioner.

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Esmeraldo Umali and *Solicitor General Sumilang V. Bernardo* for respondents.

DECISION

CASTRO, *J.*:

This is a petition for review of the decision of the Court of Tax Appeals of November 20, 1961, which denied recovery of the sum of ₱28,629.42, paid by the petitioner, under protest, in the concept of customs duties and special import tax, as well as the petitioner's alternative remedy to recover the said amount minus one per cent thereof by way of a drawback under Sec. 106(b) of the Tariff and Customs Code.

The petitioner Asturias Sugar Central, Inc. is engaged in the production and milling of centrifugal sugar for export, the sugar so produced being placed in containers known as jute bags. In 1957 it made two importations of jute bags. The first shipment consisting of 44, 800 jute bags and declared under entry 48 on January 8, 1957, entered free of customs duties and special import

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tax upon the petitioner's filing of Re-exportation and Special Import Tax Bond No. 1 in the amounts of ₱25,088 and ₱2,464.50, conditioned upon the exportation of the jute bags within one year from the date of importation. The second shipment consisting of 75,200 jute bags and declared under entry 243 on February 8, 1957, likewise entered free of customs duties and special import tax upon the petitioner's filing of Re-exportation and Special Import Tax Bond No. 6 in the amounts of ₱42,112 and ₱7,984.44, with the same conditions as stated in bond no. 1.

Of the 44,800 jute bags declared under entry 48, only 8,647 were exported within one year from the date of importation as containers of centrifugal sugar. Of the 75,200 jute bags declared under entry 243, only 25,000 were exported within the said period of one year. In other words, of the total number of imported jute bags only 33,647 bags were exported within one year after their importation. The remaining 86,353 bags were exported after the expiration of the one-year period but within three years from their importation.

On February 6, 1958 the petitioner, thru its agent Theo. H. Davies & Co., Far East, Ltd., requested the Commissioner of Customs for a week's extension of Re-exportation and Special Import Tax Bond No. 6 which was to expire the following day, giving the following as the reasons for its failure to export the remaining jute bags within the period of one year: (a) typhoons and severe floods; (b) picketing of the Central railroad line from November 6 to December 21, 1957 by certain union elements in the employ of the Philippine Railway Company, which hampered normal operations; and (c) delay in the arrival of the vessel aboard which the petitioner was to ship its sugar which was then ready for loading. This request was denied by the Commissioner per his letter of April 15, 1958.

Due to the petitioner's failure to show proof of the exportation of the balance of 86,353 jute bags within one year from their importation, the Collector of Customs of Iloilo, on March 17, 1958, required it to pay the amount of ₱28,629.42 representing

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the customs duties and special import tax due thereon, which amount the petitioner paid under protest.

In its letter of April 10, 1958, supplemented by its letter of May 12, 1958, the petitioner demanded the refund of the amount it had paid, on the ground that its request for extension of the period of one year was filed on time, and that its failure to export the jute bags within the required one-year period was due to delay in the arrival of the vessel on which they were to be loaded and to the picketing of the Central railroad line. Alternatively, the petitioner asked for refund of the same amount in the form of a drawback under Section 106(b) in relation to Section 105(x) of the Tariff and Customs Code.

After hearing, the Collector of Customs of Iloilo rendered judgment on January 21, 1960 denying the claim for refund. From his action, appeal was taken to the Commissioner of Customs who upheld the decision of the Collector. Upon a petition for review the Court of Tax Appeals affirmed the decision of the Commissioner of Customs.

The petitioner imputes three errors to the Court of Tax Appeals, namely:

"1. In not declaring that force majeure and/or fortuitous event is a sufficient justification for the failure of the petitioner to export the jute bags in question within the time required by the bonds.

"2. In not declaring that it is within the power of the Collector of Customs and/or the Commissioner of Customs to extend the period of one (1) year within which the jute bags should be exported.

"3. In not declaring that the petitioner is entitled to a refund by way of a drawback under the provisions of Section 106, par. (b), of the Tariff and Customs Code."

1. The basic issue tendered for resolution is whether the Commissioner of Customs is vested, under the Philippine Tariff Act of 1909, the then applicable law, with discretion to extend the period of one year provided for in Section 23 of the Act. Section 23 reads:

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"Sec. 23. That containers, such as casks, large metal, glass, or other receptacles which are, in the opinion of the collector of customs, of such a character as to be readily identifiable may be delivered to the importer thereof upon identification and the giving of a bond with sureties satisfactory to the collector of customs in an amount equal to double the estimated duties thereon, conditioned for the exportation thereof or payment of the corresponding duties thereon within one year from the date of importation, under such rules and regulations as the Insular Collector of Customs shall provide."[1]

To implement the said Section 23, Customs Administrative Order 389 dated December 6, 1940 was promulgated, paragraph XXVIII of which provides that "bonds for the re-exportation of cylinders and other containers are good for 12 months without extension," and paragraph XXXI, that "bonds for customs brokers, commercial samples, repairs and those filed to guarantee the re-exportation of cylinders and other containers are not extendable."

And insofar as jute bags as containers are concerned, Customs Administrative Order 66 dated August 25, 1948 was issued, prescribing rules and regulations governing the importation, exportation and identification thereof under Section 23 of the Philippine Tariff Act of 1909. Said administrative order provides:

"That importation of jute bags intended for use as containers of Philippine products for exportation to foreign countries shall be declared in a regular import entry supported by a surety bond in an amount equal to double the estimated duties, conditioned for the exportation or payment of the corresponding duties thereon within one year from the date of importation."

It will be noted that Section 23 of the Philippine Tariff Act of 1909 and the superseding Sec. 105(x) of the Tariff and Customs

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[1] This section was superseded by Sec. 105(x) of the Tariff and Customs Code which took effect on July 1, 1957. Section 105(x) provides:

"Large containers (e.g. demijohns, cylinders, drums, casks and other similar receptacles of metal, glass or other material) which are, in the opinion of the Collector of Customs, of such a character as to be readily identifiable may be delivered to the importer thereof upon identification and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within one year from the date of acceptance of the import entry."

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Code, while fixing at one year the period within which the containers therein mentioned must be exported, are silent as to whether the said period may be extended. It was surely by reason of this silence that the Bureau of Customs issued Administrative Orders 389 and 66, already adverted to, to eliminate confusion and provide a guide as to how it shall apply the law,[2] and, more specifically, to make officially known its policy to consider the one-year period mentioned in the law as non-extendible.

Considering that the statutory provisions in question have not been the subject of previous judicial interpretation, then the application of the doctrine of "judicial respect for administrative construction,"[3] would, initially, be in order.

"Only where the court of last resort has not previously interpreted the statute is the rule applicable that courts will give consideration to construction by administrative or executive departments of the state."[4]

"The formal or informal interpretation or practical construction of an ambiguous or uncertain statute or law by the executive department or other agency charged with its administration or enforcement is entitled to consideration and the highest respect from the courts, and must be accorded appropriate weight in determining the meaning of the law, especially when the construction or interpretation is long continued and uniform or is contemporaneous with the first workings of the statute, or when the enactment of the statute was suggested by such agency."[5]

The administrative orders in question appear to be in consonance with the intention of the legislature to limit the period within which to export imported containers to one year, without extension, from the date of importation. Otherwise, in enacting the Tariff and Customs Code to supersede the Philippine Tariff Act of 1909, Congress would have amended Section 23 of the

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[2] Margruder *v.* W.B. & A. Realty Corp., 316 U.S. 69; Skidmore *v.* Swift & Co., 323 U.S. 134; see 2 Am. Jur. 2d 61, 63.

[3] In applying this doctrine courts often refer generally to the "administrative practice," a term taken to include any formal or informal act of the administrative agency by which it construes, interprets, or applies the law (2 Am. Jur. 2d 69).

[4] Ahlers *v.* Farmers Mut. Ins. Co., 264 NW 894.

[5] 2 Am. Jur. 2d, 66-67.

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latter law so as to overrule the long-standing view of the Commissioner of Customs that the one-year period therein mentioned is not extendible.

"Implied legislative approval by failure to change a long-standing administrative construction is not essential to judicial respect for the construction but is an element which greatly increases the weight given such construction."[6]

"The correctness of the interpretation given a statute by the agency charged with administering its provision is indicated where it appears that Congress, with full knowledge of the agency's interpretation, has made significant additions to the statue without amending it to depart from the agency's view."[7]

Considering that the Bureau of Customs is the office charged with implementing and enforcing the provisions of our tariff and customs code, the construction placed by it thereon should be given controlling weight.

"In applying the doctrine or principle of respect for administrative or practical construction, the courts often refer to several factors which may be regarded as bases of the principle, as factors leading the courts to give the principle controlling weight in particular instances, or as independent rules in themselves. These factors are the respect due the governmental agencies charged with administration, their competence, expertness, experience, and informed judgment and the fact that they frequently are the drafters of the law they interpret; that the agency is the one on which the legislature must rely to advise it as to the practical working out of the statute, and practical application of the statute presents the agency with unique opportunity and experiences for discovering deficiencies, inaccuracies, or improvements in the statute; . . ."[8]

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[6] 2 Am. Jur. 2d, 70, footnote 11, par. 2.

[7] 2 Am. Jur. 2d 70, footnote 11, par. 3; see also Phil. Sugar Centrals Agency *v.* Collector of Customs, 51 Phil. 131, cited in Cia. Gen. de Tabacos de Filipinas *v.* Actg. Commissioner of Customs, 23 SCRA 600, wherein this Court held that the very fact that Congress has not seen fit to repeal or change the law is a very potent argument in favor of sustaining a construction given to it by courts.

[8] 2 Am. Jur. 2d, 69-70.

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If it is further considered that exemptions from taxation are not favored,[9] and that tax statutes are to be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority,[10] then we are hard put to sustain the petitioner's stand that it was entitled to an extension of time within which to export the jute bags and, consequently, to a refund of the amount it had paid as customs duties.

In the light of the foregoing, it is our considered view that the one-year period prescribed in Section 23 of the Philippine Tariff Act of 1909 is non-extendible and compliance therewith is mandatory.

The petitioner's argument that force majeure and/or fortuitous events prevented it from exporting the jute bags within the one-year period cannot be accorded credit, for several reasons. In the first place, in its decision of November 20, 1961, the Court of Tax Appeals made absolutely no mention of or reference to this argument of the petitioner, which can only be interpreted to mean that the court did not believe that the "typhoons, floods and picketing" adverted to by the petitioner in its brief were of such magnitude or nature as to effectively prevent the exportation of the jute bags within the required **one-year** period. In point of fact nowhere in the record does the petitioner convincingly shown that the so-called fortuitous events or force majeure referred to by it precluded the timely exportation of the jute bags. In the second place, assuming, ***arguendo,*** that the one-year period is extendible, the jute bags were not actually exported within the one-week extension the petitioner sought. The record shows that although of the remaining 86,353 jute bags 21,944 were exported within the period of one week after the request for extension was

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[9] Com. of Int. Rev. *v.* Visayan Electric Co., 23 SCRA 715, 726, citing Esso Standard Eastern Inc. *v.* Actg. Comm. of Customs, 18 SCRA 488; Farm Implement & Machinery Co. *v.* Com. of Customs, 24 SCRA 905.

[10] Esso Standard Eastern, Inc. *v.* Actg. Com. of Customs, *supra;* La Carlota Sugar Central *v.* Jimenez, L-12436, May 31, 1961; Phil. Int'l Fair, Inc. *v.* Collector, L-12928 & L-12932, March 31, 1962.

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filed, the rest of the bags, amounting to a total of 64,409, were actually exported only during the period from February 16 to May 24, 1958, long after the expiration of the one-week extension sought by the petitioner. Finally, it is clear from the record that the typhoons and floods which, according to the petitioner, helped render impossible the fulfillment of its obligation to export within the one-year period, assuming that they maybe placed in the category of fortuitous events or force majeure, all occurred prior to the execution of the bonds in questions, or prior to the commencement of the one-year period within which the petitioner was in law required to export the jute bags.

2. The next argument of the petitioner is that granting that Customs Administrative Order 389 is valid and binding, yet "jute bags" cannot be included in the phrase "cylinders and other containers" mentioned therein. It will be noted, however, that the Philippine Tariff Act of 1909 and the Tariff and Customs Code, which Administrative Order 389 seeks to implement, speak of "containers" in general. The enumeration following the word "containers" in the said statutes serves merely to give examples of containers and not to specify the particular kinds thereof. Thus Sec. 23 of the Philippine Tariff Act states, "containers such as casks, large metals, glass or *other receptacles,*" and Sec. 105(x) of the Tariff and Customs Code mentions "large containers," giving as examples "demijohn, cylinders, drums, casks and *other similar receptacles* of metal, glass or *other materials.*" (Italics supplied) There is, therefore, no reason to suppose that the customs authorities had intended, in Customs Administrative Order 389, to circumscribe the scope of the word "container," anymore than the statutes sought to be implemented actually intended to do.

3. Finally, the petitioner claims entitlement to a drawback of the duties it had paid, by virtue of Section 106(b) of the Tariff and Customs Code,[11] which reads:

[11] Which is a substantial reproduction of Sec. 22 of the Philippine Tariff Act of 1909, the law in force at the time the importations of the jute bags in question were made.

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"Sec. 106. Drawbacks: . . .

"b. On Articles Made from Imported Materials or Similar Domestic Materials and Wastes Thereof.— Upon the exportation of articles manufactured or produced in the Philippines, including the packing, covering, putting up, marking or labeling thereof, either in whole or in part of imported materials, or from similar domestic materials of equal quantity and productive manufacturing quality and value, such question to be determined by the Collector of Customs, there shall be allowed a drawback equal in amount to the duties paid on the imported materials so used, or where similar domestic materials are used, to the duties paid on the equivalent imported similar materials, less one per cent thereof: *Provided,* That the exportation shall be made within three years after the importation of the foreign material used or constituting the basis for drawback . . ."

The petitioner argues that not having availed itself of the full exemption granted by Sec. 105(x) of the Tariff and Customs Code due to its failure to export the jute bags within one year, it is nevertheless, by authority of the above-quoted provision, entitled to a 99% drawback of the duties it had paid, averring further that Sec. 106(b) does not presuppose immediate payment of duties and taxes at the time of importation.

This contention is palpably devoid of merit.

The provisions invoked by the petitioner (to sustain his claim for refund) offer two options to an importer. The first, under Sec. 105(x), gives him the privilege of importing, free from import duties, the containers mentioned therein as long as he exports them within one year from the date of acceptance of the import entry, which period, as shown above, is not extendible. The second, presented by Sec. 106(b), contemplates a case where *import duties are first paid,* subject to refund to the extent of 99% of the amount paid, provided the articles mentioned therein are exported within three years from importation.

It would seem then that the Government would forego collecting duties on the articles mentioned in Section 105(x) of the Tariff and Customs Code as long as it is assured, by the filing of a bond, that the same shall be exported within the relatively short period of one year from the date of acceptance of the import entry.

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Where an importer cannot provide such assurance, then the Government, under Sec. 106(b) of said Code, would require payment of the corresponding duties first. The basic purpose of the two provisions is the same, which is, to enable a local manufacturer to compete in foreign markets, by relieving him of the disadvantages resulting from having to pay duties on imported merchandise, thereby building up export trade and encouraging manufacture in the country.[12] But there is a difference, and it is this: under Section 105(x) full exemption is granted to an importer who justifies the grant of exemption by exporting within one year. The petitioner, having opted to take advantage of the provisions of Section 105(x), may not, after having failed to comply with the conditions imposed thereby, avoid the consequences of such failure by being allowed a drawback under Section 106(b) of the same Act without having complied with the conditions of the latter Section.

For it is not to be supposed that the legislature had intended to defeat compliance with the terms of Section 105(x) thru a refuge under the provisions of Section 106(b). A construction should be avoided which affords an opportunity to defeat compliance with the terms of a statute.[13] Rather courts should proceed on the theory that parts of a statute may be harmonized and reconciled with each other.

"A construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.

"In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, 'ut res magis valeat

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[12] 25 C.J.S. 530-531; U.S. *v.* Passavert, 169 U.S. 16; U.S. *v.* Whidden, 28 F. Cas. No. 10, 670 cited in 25 C.J.S. 530; Tidewater Oil *v.* U.S., 171 U.S. 210, 219; U.S. Code Congressional News, Vol. 2, p. 3577 (85th Congress, 2nd Session).

[13] State *v.* Lipkin, 84 SE 340, LRA 1915F, 1018, cited in 50 Am. Jur. 366.

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quam pereat,' that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided, under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory."[14]

ACCORDINGLY, the judgment of the Court of Tax Appeals of November 20, 1961 is affirmed, at petitioner's cost.

Concepcion, C.J., Dizon, Zaldivar, Fernando, Capistrano, Teehankee and *Barredo, JJ.*, concur.

Makalintal and *Sanchez, JJ.*, did not take part.

Reyes, J.B.L., J., is on official leave.

[G.R. No. L-21551. September 30, 1969]

FERNANDEZ HERMANOS, INC., petitioner, *vs.* COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, respondents.

[G.R. No. L-21557. September 30, 1969]

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* FERNANDEZ HERMANOS, INC. and COURT OF TAX APPEALS, respondents.

[G.R. No. L-24972. September 30, 1969]

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* FERNANDEZ HERMANOS, INC. and the COURT OF TAX APPEALS, respondents.

[G.R. No. L-24978. September 30, 1969]

FERNANDEZ HERMANOS, INC., petitioner, *vs.* THE COMMISSIONER OF INTERNAL REVENUE, and HON. ROMAN A. UMALI, COURT OF TAX APPEALS, respondents.

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[14] 50 Am. Jur. 358-359.