REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

Nov. 27, 1961

VICENTE M. GONZALEZ,
Petitioner,

- versus - C.T.A. CASE NO. 1135

MELECIO R. DOMINGO, as Commissioner of Internal Revenue, and ROLANDO GEOTINA, as Acting Commissioner of Customs,
Respondents.

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RESOLUTION

This is in connection with a "Motion to Dismiss" the petition for review filed by respondents on October 20, 1961 on the grounds (1) that this Court has no jurisdiction over the case and (2) that there is no cause of action against respondents.

It appears that petitioner is the registered owner of a 1958 Chevrolet automobile with Motor No. F428A, Serial No. E58C139582, 1961 Manila Plate No. H-2443.

The petitioner was notified in a letter dated August 15, 1961 (Exh. 2, p. 24, CTA rec.) sent by Diosdado Ibabao, Chief, Special Investigator of the Bureau of Treasury, Department of Finance, an agent of the respondents, to pay within fifteen days from receipt thereof the customs duties and taxes due on the said Chevrolet automobile as the duties and taxes were allegedly paid by means of a fake and/or falsified backpay certificate.

For failure to pay the duties and taxes within the time required, the respondents, through their agents, by means of a Warrant of Constructive Distraint dated August 23, 1961, seized the said automobile and placed it under constructive distraint pursuant to Section 317, in connection with Sections 350 and 351 of the National Internal Revenue Code. (Exh. 2-A, p. 25 CTA rec.) The warrant of constructive distraint was served upon the petitioner by Tirso M. Fausto, Cesar Velasco and Marcial Tiangha on August 27, 1961 (see testimony of Marcial Tiangha, t.s.n.), all agents of respondents, (Exh. 1, p. 23 CTA rec.).

On September 30, 1961, petitioner appealed to this Court.

The respondents contend that the petition for review was filed beyond the 30-day period allowed under Section 11 of Republic Act No. 1125. On the other hand, petitioner contends that the decision, which is that warrant of constructive distraint, was appealed on time as the warrant was served on him allegedly on August 30, 1961.

We find the respondents' contention to be meritorious. The decision from which appeal should be taken is that warrant of constructive distraint which was actually served on the petitioner on August 27, 1961. This is so because a warrant of constructive distraint is an action of the respondents to satisfy the payment of any tax due and required to be paid, after which issuance public sale of the property distrained always follow. (Secs. 317, 318, 319 and 320, N.I.R.C.) This action of the respondents distraining the Chevrolet sedan of petitioner for the satisfaction of customs duties and taxes in the amount of ₱5,175.00 is the appealable decision. Consequently, as the warrant of constructive distraint may also be considered an action of the Commissioner of Customs in a case of seizure, the petitioner who is the aggrieved party may appeal from that action to this Court.) (Sec. 2402, Tariff and Customs Code of the Philippines.) The petitioner has, therefore, 30 days from August 27, 1961, the date of receipt of the warrant of constructive distraint, within which to file his petition for review. But as the petition for review was filed on September 30, 1961, or beyond the 30-day period to appeal, we cannot take cognizance over this appeal for lack of jurisdiction.

Having found that we have no jurisdiction to entertain the appeal, the determination of the second ground of the motion to dismiss for lack of cause of action becomes unnecessary as it has become moot and academic.

WHEREFORE, for lack of jurisdiction, the petition for review filed by petitioner should be, as it is hereby dismissed. With costs against petitioner.

SO ORDERED.

Manila, November 27, 1961.

MARIANO NABLE
Presiding Judge

I concur in the result:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge