REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

AMPANG TAN,
Petitioner,

- versus - C.T.A. CASE NO. 92

THE COMMISSIONER OF CUSTOMS,
AND THE COLLECTOR OF CUSTOMS
FOR THE PORT OF JOLO,
Respondents.

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R E S O L U T I O N

This is an appeal from the decision of the Commissioner of Customs dated February 23, 1953, sustaining an order of the Collector of Customs for the Port of Jolo decreeing the seizure and forfeiture of 69 cases of "Camel" cigarettes belonging to petitioner. The decision of the Commissioner of Customs was appealed to the former Board of Tax Appeals, which affirmed in toto the decision of the Commissioner. (See B.T.A. Case No. 131, decided May 27, 1953.) The case was appealed to the Supreme Court but the appeal was dismissed without prejudice by resolution of said Court on March 30, 1954. The resolution of the Supreme Court dismissing the appeal became final and executory on April 29, 1954. (See Ampang Tan v. Commissioner of Customs, et al., G.R. No. L-6785, April 29, 1954.)

The appeal from the decision of the former Board of Tax Appeals having been dismissed by the Supreme Court in line with the decision in University of Sto. Tomas v. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953, wherein it was held that the provisions of Executive Order No. 401-A relating to direct appeals from decisions of the said Board to the Supreme Court were invalid, petitioner filed with the Commissioner of Customs a notice of appeal on April 19, 1954, before the creation of this Court, in order to have the case reviewed by the Court of First Instance of Manila. No action was taken on the notice of appeal for failure of petitioner to pay the corresponding filing fee of the Court of First Instance. Then on October 26, 1954, the present petition for review was filed with this Court. However, on November 26, 1954, petitioner filed a motion with the Supreme Court to have the case reinstated therein and in order that the same could be decided pursuant to Section 21 of Republic Act No. 1125. Accordingly, upon motion of petitioner, the petition for review filed with this Court was dismissed "without prejudice to whatever action the Supreme Court may take in the pending petition filed by petitioner before the said Court for the reinstatement and final adjudication on the merits by that body of G. R. No. L-6785 entitled 'Ampang Tan vs. The Commissioner of Customs, et al.'" The motion for reinstatement was denied by the Supreme Court by resolution dated February 11, 1955.

By resolution of this Court dated March 2, 1955, the petition for review filed on October 26, 1954 was reinstated "on condition that the petitioner first pay the necessary fees for the docketing of his original petition for review." The docketing fee was paid on March 8, 1955.

Respondents in their answer claim that the right of action of petitioner has prescribed and, therefore, the same should be dismissed.

When the appeal of petitioner in G. R. No. L-6785 was dismissed without prejudice by the Supreme Court Court on April 29, 1954, his remedy then was to appeal the decision of the Commissioner of Customs to the Court of First Instance of Manila. A notice of appeal was in fact filed with the Commissioner of Customs, but he failed to pay the corresponding filing fee. The appeal was not, therefore, perfected, and the Court of First Instance of Manila never acquired jurisdiction over the case. Had the filing fee been paid within the period provided by law, the Court of First Instance of Manila would have acquired jurisdiction over the case, and, upon the organization of this Court, the said case would have been remanded here, pursuant to Section 22 of Republic Act No. 1125. The payment of the full amount of the docket fee is an indispensable step in the perfection of an appeal (Lazaro v. Endencia, 57 Phil. 552), and upon failure of the appellant in a civil case to pay the said fee, the appeal is deemed abandoned (Salaveria v. Albindo, 39 Phil. 922; Alvero v. De la Rosa, 76 Phil. 428).

Petitioner attempted to prove that payment of the filing fee was tendered and was rejected. Jesus Salvador, a law-clerk in the office of counsel for petitioner, testified that he offered to pay the filing fee to the administrative officer of the Bureau of Customs on the date he filed the notice of appeal on April 19, 1954 and that the latter refused to accept it on the ground that the records of the case were still in the Supreme Court. Thereafter, according to the same witness, he went to the Clerk of Court of the Court of First Instance of Manila, who also refused to accept payment on the same ground. Basilio Tanjuan, Acting Chief of the Administrative Division of the Bureau of Customs, testified that no such tender of payment was made to him by Jesus Salvador. Joaquin Minoy, messenger of the same Bureau, testified that it was he who personally received the notice of appeal from Jesus Salvador; that no tender of payment of the filing fee was made; and that upon receipt by him of the notice of appeal, he delivered it to his superior officer, Basilio Tanjuan. The "clerk of court" of the Court of First Instance of Manila, to whom tender of payment of the filing fee was likewise made, was not presented as a witness.

From the evidence presented in regard to the filing of the notice of appeal and the alleged tender of payment of the filing fee, we are convinced that no such tender of payment was actually made and the appeal is deemed to have been abandoned. On this point, we agree with the observations of counsel for respondents, to wit:

> "Apart from the significant fact that the testimony of this witness was not corroborated, same suffers from several infirmaties. Counsel for petitioners is a veteran lawyer and reputed to be an authority on customs cases. Such being the case, it is quite odd that when his law

clerk reported to him that the clerk of the Court of First Instance of Manila refused to accept the tender of payment for the filing fee as required under Section 1385 of the Revised Administrative Code, nothing had been done about the matter. Surely, the version given by Salvador is not in keeping with the well-known resourcefulness and diligence of counsel.

"Since the value of the cigarettes in the Ampang Tan case is ₱15,580.40 and the duties and taxes involved in the Ramon Roces case amount to ₱1,556.96 only, the filing fees for the two cases could have been ₱46.00 only. Hence, it is quite unnatural that witness would have been given more than ₱150, for the filing fees, as he would want us to believe. Moreover, it is obvious that Salvador is a biased witness. Basilio Tanjuan, the acting chief of the administrative division, testified that from his messenger he received on April 11, 1954 the Notice of Appeal (Exhibit "1-A") and that he wrote the guide sheet attached thereto; that if there were any offer to pay the filing fee, he could not have refused the tender of payment for he always referred such matters of payment to the cashier of the Bureau of Customs. He testified further that he cannot recall having dealt with the person who delivered the Notice of Appeal to his messenger, Joaquin Minoy.

"Joaquin Minoy, the messenger in the Bureau of Customs, testified that he was the one who personally received the Notice of Appeal marked Exhibit "1-A" and that no offer to pay the fees has been made; and that he delivered the notice of appeal to Mr. Tanjuan.

"Adeodato Duque, law clerk in the Bureau of Customs, testified that the Notice of Appeal, marked Exhibit "1-A" was given to him by Tanjuan, thru the messenger Joaquin Minoy; that he did not give the appeal due course because it appears that there was no payment of the filing fee and neither did he receive any tender to pay the fees.

"Thus, it is manifested that a Notice of Appeal was filed but the filing fees were not paid. Neither, was there any attempt or tender to pay the same. Evidently, the petitioners are guilty of laches and they have only themselves to blame for their failure to exercise the diligence necessary in order to perfect their appeal."

Petitioner claims that this Court has jurisdiction to entertain his appeal on the ground that when the Supreme Court dismissed without prejudice his appeal in G. R. No. L-6785, the case was automatically remanded to the Board of Tax Appeals where it was left pending until the organization of this Court. Section 21 of Republic Act No. 1125 provides that all cases pending in the Board of Tax Appeals on the date of approval of said Act on June 16, 1954, shall be transferred to this Court and shall be heard by it to all intents and purposes as if they had been originally filed therein.

We can not subscribe to the view that the effect of the dismissal without prejudice by the Supreme Court of the appeal of petitioner from the decision of the former Board of Tax Appeals was to remand the case to said Board and that the case was then pending before it when this Court was organized. The case was finally decided by said Board. The subsequent appeal of the decision of the Board to the Supreme Court and the dismissal of the appeal without prejudice by the latter did not have the effect of reinstating the case in the Board. There was nothing that the Board could do about the case. If petitioner wanted to contest further the decision of the Commissioner of Customs, he should have appealed to the proper court. In a similar case, this Court held:

> " x x x it can readily be seen that the consequence of the resolution of the Supreme Court in dismissing the appeal of petitioner Ipekdjian Merchandising Co., Inc. was not to refer the case back to the Board of Tax Appeals. As far as the said Board was concerned, the case of the petitioner was already closed and terminated inasmuch as it had decided the same nearly three years ago, or more particularly on May 6, 1952. The Supreme Court, therefore, in its resolution of March 30, 1954, in effect, ruled that it did not have jurisdiction over the appeal of the petitioner, and accordingly dismissed it without depriving petitioner Ipekdjian Merchandising Co., Inc. of its right, at that time, to bring its case to the proper Court of First Instance." (Ipekdjian Merchandising Co., Inc. v. Collector of Internal Revenue, C.T.A. Case No. 107, July 26, 1955.)

Apparently, counsel for petitioner shares the same view because he filed a notice of appeal with the Commissioner of Customs on April 19, 1954 in order to have the case reviewed by the Court of First Instance of Manila. Unfortunately, he failed to perfect his appeal by paying the necessary filing fee. For failure to perfect his appeal, petitioner or his counsel is to blame.

We have decided to be very liberal in the treatment of cases dismissed without prejudice by the Supreme Court, where the dismissal was due to the invalidity of Executive Order No. 401-A relating to appeals from the decisions of the Board of Tax Appeals to the Supreme Court. In several cases decided by this Court, we expressed the view that even if no appeal was filed with the proper Court of First Instance, but where an appeal was filed with this Court within 30 days after its formal organization on July 21, 1954, we could have assumed jurisdiction over the case.

> "With the creation of this Court on June 16, 1954, a new remedy was made available to the petitioner, i.e., to 'file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.' (Section 11, Republic Act No. 1125.) Considering the circumstances of the instant case, the petitioner could have availed itself of this new remedy, and for reasons of equity, this Court by a unanimous concurrence of its members, has resolved that the thirty-day period within which to appeal to this Court in cases of similar nature, should be counted not from the receipt of respondent's decision dated November 5, 1951, or of the Supreme Court's of March 30, 1954, dismissing petitioner's appeal without prejudice, but from July 21, 1954, when this Court was already regularly functioning with the appointment of its two Judges and its Clerk of Court and with the adoption by it in the interim of the Rules and Regulations of the defunct Board of Tax Appeals for the guidance and observation of taxpayers who would like to question the decisions of the Collector of Internal Revenue." (Sta. Clara Lumber Co., Inc. v. Collector of Int. Rev., C.T.A. No. 91, Sept. 20, 1955; see also Marsman Development Co. v. Collector of Int. Rev., C.T.A. Nos. 116 & 117, Nov. 14, 1955; Lim Tio, Dy Heng & Dee Hue v. Collector of Int. Rev., C.T.A. No. 126, Jan. 31, 1956.)

The petition for review was filed with this Court only on October 26, 1954, more than three (3) months after its formal organization on July 21, 1954. And again, the docketing fee was paid only on March 8, 1955, more than four (4) months after the filing of the petition for review. We believe that petitioner, under these circumstances, by his ignorance or sheer negligence, has forfeited his right to appeal.

Finally, we wish to emphasize that the dismissal without prejudice of petitioner's appeal by the Supreme Court was not tantamount to a judicial permission to institute the necessary court action at any time petitioner may see fit. It simply means that he could institute the proper action in a court of competent jurisdiction within the period prescribed by law. (See Peralta v. Alipio, G. R. No. L-8273, Oct. 24, 1955.) Petitioner not having instituted the present proceedings within the reglementary period, this Court has no jurisdiction to entertain the same.

FOR THE FOREGOING CONSIDERATIONS, the herein petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, April 2, 1956.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I hereby certify that Associate Judge Augusto M. Luciano voted in favor of and concurs in this decision.

MARIANO NABLE
Presiding Judge

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