REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

RAMON MUYCO,
Petitioner,

- versus - C.T.A. CASE NO. 54

COLLECTOR OF CUSTOMS OF ILOILO
and COMMISSIONER OF CUSTOMS,
Respondents.

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Oct. 12, 1955

# RESOLUTION

On September 2, 1955, when this case was called for hearing on the merits, the Court, motu proprio called the attention of the parties to the question of whether or not it has jurisdiction to hear and decide the case. In view of this question of jurisdiction which must first be resolved, the hearing of the case was postponed to September 17, 1955, and the parties were given up to the same date within which to submit their memoranda on the said question.

On September 6, 1955, the respondent filed a formal "Motion to Dismiss" on the ground that the petition for review was filed beyond the 30-day period within which to appeal as prescribed by section 11 of Republic Act No. 1125. On September 17, 1955, the petitioner filed his memorandum in support of the contention that this Court has jurisdiction over the instant appeal, and on the same day, the motion to dismiss of the respondent was submitted for resolution without any oral argument.

It appears from the pleadings filed by the parties that on November 15, 1954, the petitioner, Ramon Muyco, received the copy of the decision of respondent Commissioner of Customs in Iloilo Protest No. 2 which is the subject of the present appeal. On the thirtieth day after the receipt of the said decision, or more specifically on December 15, 1954, the petitioner sent by registered mail to this Court from Iloilo City his "Appeal" which is substantially and in reality a mere notice of appeal. A money order in the amount of ₱24.00 was attached to the "Appeal" (Notice of Appeal) as payment for the docketing fee.

On February 1, 1955, the petitioner herein sent by registered mail to this Court his petition for review of the decision of respondent Commissioner of Customs, dated November 2, 1954, a copy of which, as stated above, was received by the petitioner on November 15, 1954. The only question now before us is whether or not the petitioner has perfected his appeal to this Court within the reglementary period so as to enable this Court to acquire jurisdiction to entertain the instant petition for review.

Section 11 of Republic Act No. 1125, which is applicable to the case at bar, provides in part as follows:

> "SEC. 11. Who may appeal; effect of appeal. - Any person, association, or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. x x x x "

Interpreting and applying the above provision of law to the case at bar, we believe and so hold that we have no jurisdiction over the instant case. The petitioner herein received the copy of respondent's decision on November 15, 1954. Therefore, the 30-day period within which to appeal to this Court from the said decision expired on December 15, 1954. Inasmuch as the petitioner sent to this Court his petition for review only on February 1, 1955, or more than two (2) months after the receipt of the decision appealed from, the same was undoubtedly filed out of time. The decision of the Commissioner of Customs was already final and unappealable when the petitioner herein filed his petition for review.

We note that on December 15, 1954, or within thirty (30) days after the receipt of the decision of the Commissioner of Customs, the petitioner filed his notice of appeal which he denominated as "Appeal". To our mind, the petitioner should have filed his petition for review within the same period of time, and not merely his notice of appeal. The filing of the said notice of appeal did not perfect the appeal, nor suspend the running of the 30-day period within which to appeal to this Court.

That a notice of appeal is not the equivalent of an appeal is further reinforced by section 18 of Republic Act No. 1125. The first paragraph of that section provides that no judicial proceeding against the Government involving matters arising under the National Internal Revenue Code, the Customs Law or the Assessment Law shall be maintained until and unless <u>an appeal</u> has been previously filed with this Court. However, in the case of an appeal from an order or decision of this Court to the Supreme Court, the second paragraph of the same section requires the filing with this Court of a <u>notice of appeal</u> and with the Supreme Court a <u>petition for review</u>. It seems clear that where the law requires the filing of an appeal, as in Section 11 of Republic Act No. 1125, it simply means that a formal appeal, and not merely a notice of appeal, be filed.

In the cases of Yu Tiong & Company vs. Commissioner of Customs, C.T.A. Case No. 134, June 24, 1955 and City Assessor of Cebu vs. Consuelo Noel, C.T.A. Case No. 159, September 13, 1955, it was held that the filing of a notice of appeal is not a sufficient compliance with the requirement of section 11 of Republic Act No. 1125 that an appeal in the Court of Tax Appeals should be filed by the person adversely affected by the decision of the Commissioner of Customs within thirty (30) days after the receipt of such decision.

WHEREFORE, finding the decision of respondent Commissioner of Customs dated November 2, 1954, final, executory and unappealable, the motion to dismiss the petition for review filed by the respondent on September 6, 1955, is hereby granted.

Let this case be dismissed, as it is hereby dismissed, for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, October 12, 1955.

ROMAN M. UMALI
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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