REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABOITIZ SHIPPING CORPORATION,
Owner and Operator of M/V
Concarrier II,
Petitioner,

- versus - C.T.A. CASE NO. 3041

COMMISSIONER OF CUSTOMS,
REPRESENTING THE REPUBLIC OF
THE PHILIPPINES,
Respondent.
x - - - - - - - - - - - - - - - - x

D E C I S I O N

The jurisdiction of this Court to take cognizance of this case is being questioned by respondent Commissioner of Customs on the ground that petitioner's appeal was filed beyond the thirty-day period prescribed in Section 11 of Republic Act No. 1125. A critical analysis of the jurisdictional facts and the law involved in this case justifies the position taken by respondent and so must be sustained.

There is no dispute that on October 4, 1979 petitioner received a copy of the decision of respondent Commissioner of Customs dated August 31, 1979 holding the M/V Concarrier II, a vessel owned and operated by petitioner, liable for a fine of ₱10,000.00 for alleged violation of Sections 908, 2515 and 2521 of the Tariff and Customs Code, as

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amended.

On November 5, 1979, petitioner sent to this Court its petition for review and the docketing fee through the FAR Corporation, a duly registered private corporation engaged in messengerial and express delivery service, which petition for review was actually received in this Court on November 12, 1979.

During the hearing on September 5, 1980, respondent orally moved for the dismissal of this case on the ground of lack of jurisdiction, contending that the appeal of petitioner was filed beyond the thirty-day period prescribed in Section 11 of Republic Act No. 1125, Respondent pointed out that the only modes of filing pleadings recognized by law are by personal delivery and by registered mail and, in this case, the sending of the petition for review to this Court through the FAR Corporation is by personal delivery, the said corporation being acting as agent of petitioner. Thus, the filing of petitioner's petition for review was effected not on November 5, 1979, when said pleading was delivered by petitioner to FAR Corporation to be sent or delivered to this Court, but on November 12, 1979 when the said petition was actually delivered to this Court by the messenger of FAR Corporation.

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For its part, petitioner, through its counsel, claimed that the last day for filing its petition for review, counted from receipt of the Commissioner's decision on October 4, 1979, fell on a Sunday, November 4, 1979, and so it sent its petition for review to this Court through the FAR Corporation on the next succeeding working day, Monday, November 5, 1979. And the reason why said petition for review was sent through the FAR Corporation and not through the post-office by registered mail was that, as explained by petitioner's counsel in open court, the said petition was finished only after 5 p.m. on November 5, 1979, when the post-office at Davao City was already closed.

In justifying that its petition for review was filed on time, petitioner argued that the delivery of the same together with the docketing fee to the FAR Corporation on November 5, 1979, which corporation is, admittedly, duly registered with the Securities and Exchange Commission and authorized to engage in messengerial and express delivery service, should be considered as delivery to the Court.

In further support of its oral argument during the hearing, petitioner, in its memorandum filed on

September 30, 1980, stressed that the sending of its petition for review through the FAR Corporation could substitute for the sending thereof by registered mail at the post-office because under its charter, Republic Act No. 6171, the FAR Corporation is under the supervision of the Postmaster General and is allegedly performing a semi-governmental function in regard to its messengerial and express delivery service.

Indeed, petitioner's cause lacks merit. In the first place, it appears indubitable that, since there are 31 days in the month of October, the last day for the perfection of petitioner's appeal here, counted from October 4, 1979 (date of receipt of respondent's decision), was on Saturday, November 3, 1979, and not on Sunday, November 4, 1979, as averred by petitioner. This being so, petitioner should have already filed its petition for review on November 3, 1979, considering that, although it was a Saturday, it was neither a legal nor a special holiday, and this Court, just like on any regular Saturdays, which are work days, had an assigned personnel on duty to receive and record pleadings on the said day. That petitioner must wait until November 5, 1979, and after 5 p.m. at that, to finish the preparation of its petition for review and then send the same to this Court by private express delivery service because of its erroneous impression that the last day for the filing of its appeal to this Court fell on Sunday, November 4, 1979, hardly commends approbation. For the matter of determining the last day for the filing of the appeal in this case is so simple and elementary that one, especially represented by a counsel, cannot be expected to fail.

In the second place, even on the proposition that, under the circumstances of this case, petitioner had until November 5, 1979 to finally file its appeal to this Court, said appeal could not validly be deemed perfected on said date because the same was not sent by registered mail at the post-office but through the messengerial and delivery service of a private corporation. The law on the filing of pleadings, as found in Section 1, Rule 13, of the New Rules of Court, reads:

> SECTION 1. Filing with the Court, defined. - The filing of pleadings, appearances, motions, notices, orders and other papers with the Court as required by these rules shall be made by filing them personally with the clerk of the court or by sending them by registered mail. In the first case, the clerk shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post-office

> stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

The foregoing provisions of law seem implicitly indicative that the date of mailing shall be considered as the date of filing only when the pleading is sent by registered mail at the post-office. As a matter of fact, the exclusiveness of the rule has been plainly rendered apparent when the Supreme Court made the interpretation that even the sending of pleadings by ordinary mail does not constitute filing until the same are actually delivered into the custody of the clerk or the Judge.

> Sending of pleadings, motions and other papers to the Court by ordinary mail does not constitute filing until said pleadings, motions, and papers are actually delivered into the custody of the clerk or the judge. But when the pleadings, motions or any other papers, payments or deposits are sent to the Court by registered mail, the date of mailing, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment or deposit in the court. (See Henning v. Western Equipment, et al., 62 Phil. 971; Caltex (Phil.) Inc. v. Katipunan Labor Union, 52 O.G. 6209) /See also Comments on the Rules of Court by Moran, 1979 Ed., vol. I, p. 418./

Verily, the messengerial and express delivery service of the FAR Corporation can neither be

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considered as the same, nor as a substitute for, the registered mail service of the post-office, albeit said corporation is subject to the supervision by the Postmaster General. In fact, such private function or service can hardly be treated as similar to the postal ordinary mail service because of the absence, among others, of the postage and stamp requirement on the matter being sent or delivered. And just to rationalize on the fact that even the sending of pleadings by ordinary mail through the post-office cannot be the same as the sending thereof by registered mail with the same postal agency, gives sufficient reason to reject the pretension that the sending through the FAR Corporation, which is a private entity, can be considered as a substitute for the postal registered mail.

In the case at bar, the sending of petitioner's appeal through the FAR Corporation should, to our mind, constitute filing by personal delivery. And since in this mode of filing, the rule that the date of mailing is the date of filing is not applicable, the said appeal was deemed filed only on the date it was actually delivered and received in this court, i.e., on November 12, 1979, and not on November 5,

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1979 when said appeal was delivered by petitioner to FAR Corporation for actual delivery to this Court.

Consequently, the appeal of petitioner, therefore, was perfected out of time because from October 4, 1979 to November 12, 1979 more than thirty (30) days, as prescribed under Section 11 of Republic Act No. 1125, have elapsed.

The requirement of Section 11 of Republic Act No. 1125 which reads:

> "Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or City Board of Assessment Appeals <u>may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling</u>. (Underlining supplied.)

is jurisdictional and non-extendible, and non-compliance therewith deprives this Court of jurisdiction to entertain the petitioner's appeal. (See Commissioner of Internal Revenue vs. Western Pacific Corporation, L-18804, May 27, 1965, 14 SCRA 105; Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue, L-23501, May 16, 1967, 20 SCRA 50; Surigao Electric Co., Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, 57 SCRA 253; Compania Maritima vs. Acting Commissioner of Customs, C.T.A. Case No. 2492, Oct. 14, 1975.)

WHEREFORE, the petition for review of petitioner is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, November 26, 1981.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

Did not take part
AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

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