REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

RE: PROTEST AGAINST ARBITRARY LEVY OF IMPORT DUTIES ON GOODS COVERED BY ENTRY NO. 1304-C.

YU TIONG & COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 134

COMMISSIONER OF CUSTOMS,
Respondent,

x- - - - - - - - - - - - - - - - - -x

RESOLUTION

This is in connection with the "Motion to Dismiss" filed on June 2, 1955, by counsel for respondent Commissioner of Customs, on the ground that the appeal or petition for review of the decision of the latter was filed by the petitioner before this Court beyond the 30-day period prescribed by Republic Act No. 1125.

It appears from the records of this case that on April 2, 1955, the petitioner Yu Tiong & Company received a copy of the decision of respondent Commissioner of Customs in Customs Protest No. 31, Port of Cebu entitled "Re Protest Against Arbitrary Levy of Import Duties on Goods Covered by Entry No. 1304-C, Yu Tiong & Company, Protestant-Appellant."

On April 21, 1955, the petitioner, not being satisfied with the said decision, sent to this Court by registered mail from Cebu its notice of appeal.

On May 16, 1955, the petitioner through counsel sent to this Court by registered mail from Cebu its petition for review of the decision of respondent Commissioner of Customs

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in Customs Protest No. 31 Port of Cebu. The said petition for review containing an assignment of errors allegedly committed by the respondent bears the title of "Appeal".

From the facts above stated which are uncontrovertible, it can readily be seen therefore that the notice of appeal of the petitioner was actually filed within thirty (30) days from receipt of the decision of the respondent Commissioner of Customs subject of the present appeal, but the petition for review or "Appeal" as petitioner's counsel denominates it, was submitted to this Court beyond the 30-day period prescribed by section 11 of Republic Act No. 1125.

The only question to be resolved in this incident is, therefore, whether or not the "Notice of Appeal" which was filed by the petitioner on April 21, 1955, was a sufficient compliance of the requirement of section 11 of Republic Act No. 1125 limiting the period of appeal by the person, association or corporation adversely affected by a decision of the Commissioner of Customs to thirty (30) days from receipt of such decision.

Counsel for the respondent contends that it is the petition for review that should have been filed by petitioner with this Court within thirty (30) days from receipt of respondent's decision and that a mere notice of appeal cannot stop the period of thirty (30) days after which the decision of respondent may become final and executory. Counsel further contends that a mere notice of appeal does not specify the findings and conclusions contained in respondent's decision that are allegedly contrary to the evidence and law. Counsel concludes by saying that since the petition for review or "Appeal" of petitioner's counsel was filed beyond the 30-day period fixed by section 11 of Republic Act No. 1125, this Court lacks jurisdiction to hear and decide the present case.

We have carefully considered the contention of respondent's counsel, and are of the opinion that it is meritorious. Pursuant to section 8 of Republic Act No. 1125, this Court, by its resolution of July 21, 1954, adopted in the interim for the guidance and observance of party litigants, the Rules and Regulations dated February 7, 1952 of the defunct Board of Tax Appeals. Rule 9 of the said Rules and Regulations provides as follows:

> "Within thirty (30) days from notice of an order or decision issued by the Collector of Internal Revenue, the Commissioner of Customs, or Provincial or City Board of Assessment Appeals in the cases enumerated in Section 8 of Executive Order No. 401-A, the aggrieved party may file with the Board of Tax Appeals (Court of Tax Appeals) a written petition for the review of such order or decision." (Underscoring supplied)

Conformably to the above-quoted rule, we hold that petitioner Yu Tiong & Company failed to perfect its appeal within the time prescribed by section 11 of Republic Act No. 1125. The petitioner should have filed, not only its notice of appeal, but also its petition for review, within thirty (30) days after it received a copy of the decision of the Commissioner of Customs, or more particularly, on or before May 2, 1955. After May 2, 1955, the decision of respondent Commissioner of Customs became final and executory, and therefore not appealable. Moreover, after the lapse of the 30-day period fixed in section 11 of Republic Act No. 1125 from the date of receipt of the questioned decision or ruling, this Court automatically losses jurisdiction to review by appeal decisions of the Collector of Internal Revenue, Commissioner of Customs and the Provincial or City Boards of Assessment Appeals.

As in other civil cases and special proceedings, when the law provides a certain period within which the aggrieved party may appeal, it is to be understood that all the necessary acts for the perfection of such appeal would be done by the appellant within the period given such as the filing of the notice of appeal, the record on appeal itself and the appeal bond. As was decided by the Supreme Court in Salva vs. Judge Palacio et al, S.C. G.R. No. L-4247, January 30, 1952, "failure to file the appeal bond within the reglementary period is fatal, although the notice of appeal and the record on appeal may have been filed within such period." It has been held that the filing of a record on appeal on time necessarily implies the filing of a notice of appeal and is equivalent thereto (Lopez vs. Lopez, 43 O.G. 2040; Pablo vs. Enage et al, 53 Phil. 328, 330; Luengo vs. Herrero 17 Phil. 29), the reason being that the act of perfecting an appeal is more expressive of the intention to appeal than the filing of notice to do so (Peralta vs. Solon 43 O.G. No. 12, pp. 5050).

Moreover, if we adopt a contrary rule, and consider the filing of the mere notice of appeal within thirty (30) days from receipt of the decision appealed from as a sufficient compliance of section 11 of Republic Act No. 1125, without requiring the filing of the petition for review within the same period of time, a glaringly absurd consequence would result. The aggrieved party, by the simple expedient of filing only the notice of appeal within thirty days from receipt of the decision, can arrogate to himself the power to determine the period of time for filing the petition for review which may be one year, two years or any number of years. In fact, if such aggrieved party, after filing the notice of appeal, decides not to file the petition for review, the decision which is the subject of the notice of appeal will never become final and executory.

WHEREFORE, finding the "Motion to Dismiss" of counsel for respondent well-founded and meritorious, the same is hereby granted.

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

SO ORDERED.

Manila, Philippines, June 24, 1955.

~~AUGUSTO M. LUCIANO~~
~~Associate Judge~~

MARIANO NABLE
Presiding Judge