COURT OF TAX APPEALS
QUEZON CITY

SWEET LINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2705

HON. ROLANDO G. GEOTINA,
Commissioner of Customs,
Respondent.

2/22/77

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D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of the Port of Cebu which denied the protest of petitioner Sweet Lines, Inc., against the assessment and collection of 7% compensating tax and 10% customs duty on its importation of a foreign vessel from Italy.

It appears that sometime in 1973, petitioner, a shipping company engaged in coastwise and inter-island trade, purchased from Naples, Italy, the vessel S/S "Caralis", renamed M/S "Sweet Home". The said vessel arrived on its own motive power at the Port of Cebu on January 15, 1974 and for this importation, petitioner was assessed by the Collector of Customs of the Port of Cebu 7% compensating tax and 10% customs duty in the total amount of ₱1,394,281.00.

On February 11, 1974 petitioner paid the assessment under Official Receipt No. 163855. However, on February 13, 1974 it filed a formal protest with the Collector of Customs and sought the refund of the amount paid by it, claiming that under Presidential Decree No. 215 dated June 16, 1973 the imported vessel is exempt from 10% customs duty and 7% compensating tax. On May 30, 1974, after proper hearing, the Collector of Customs of the Port of Cebu denied petitioner's protest and this decision, on appeal by petitioner, was affirmed by the Commissioner of Customs on March 25, 1975.

A copy of the Commissioner's decision was received by petitioner on April 3, 1975 and on April 18, 1975, it sent, by registered mail, its petition for review to this Court. Said petition was actually received on May 8, 1975, but since no docketing fee was enclosed (or remitted) together with the said petition, the Clerk of Court of this Court, on May 9, 1975, sent a letter to petitioner's counsel informing him that since the appeal was not brought in accordance with the provisions of Republic Act No. 1125 and the Rules of the Court of Tax Appeals, specially with respect to the payment of the docket and filing fees, the said petition for review cannot be given due course. On May 28, 1975 the docketing fee on petitioner's petition was paid.

From the pleadings and memoranda submitted by the parties, the only issue raised is whether or not the imported vessel in question is exempt from 7% compensating tax and 10% customs duty under Presidential Decree No. 215.

Apperently, a very important question in regard to the filing of the appeal has been overlooked, and this is the failure of petitioner to pay the docketing fee on time. This question is jurisdictional and the Court can take cognizance of it motu proprio.

From the facts, it is clear that petitioner received the decision of the Commissioner of Customs on April 3, 1975. On April 18, 1975 it sent by registered mail its petition for review which was actually received on May 8, 1975. However, said petition was not accompanied by the corresponding docketing fee and it was only on

May 28, 1975, after the period for appeal expired on May 3, 1975, when the said fee was paid in this Court. Obviously, the docketing fee was paid out of time and the appeal was not perfected within the statutory period of 30 days provided in Section 11 of Republic Act No. 1125.

Well-settled is the rule that the docketing fee must be paid within the reglementary period of 30 days in order to perfect the appeal; otherwise, the same must be dismissed. Below are some of the judicial pronouncements on this matter:

> 1. Pursuant to Section 8 of Republic Act No. 1125 authorizing this Court to promulgate rules and regulations for the conduct of the business of the Court, the Rules of the Court of Tax Appeals was promulgated on September 10, 1955 (published in the Official Gazette, September 1955, Vol. 51, No. 9). Section 3 of Rule 5 of the aforesaid Rules provides that "no appeal shall be received for filing by the Clerk of this Court unless the petitioner submits proof of payment of the docketing fees". The docket fee for this petition was sent by mail only on July 8, and was received by said clerk on July 14, 1965 after the period for appeal expired on June 12, 1965. It was obviously out of time.
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> Interpreting Section 2 of Rule 40 of the Rules of Court promulgated by the Supreme Court, which is the counterpart of Section 3 of the Rules of this Court as regards docket fees, the Supreme Court held in the cases of Valdez v. Acumen (L-13536, Jan. 29, 1960) and Dacudao v. Dueñas (L-14355, May 20, 1960) that if the appellate court docketing fee is paid beyond the reglementary period, the appeal should be dismissed. There seems to be no valid reason

for departing from this interpretation cloak as it is with authority. (Mindanao Lumber Co. vs. Comm. of Internal Revenue, CTA Case No. 1666, (Res.) Aug. 30, 1967).

2. . . . 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 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 (Salavaria vs. Albindo, 39 Phil. 992; Alvero v. de la Rosa, 76 Phil. 428). (Tan vs. Comm. of Customs, CTA Case (Res.) No. 92, April 2, 1956; Ramon Roces, Inc. vs. Comm. of Customs, CTA Case (Res.) No. 93, April 5, 1956)[1]

Having reached the conclusion that the docketing fee has not been paid within the reglementary period, and, therefore, the instant

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1 Both cases affirmed in G.R. No. L-10940, Sept. 25, 1959, 106 Phil. 233.

appeal should be dismissed for lack of jurisdiction, we deem it unnecessary to pass upon the merits of this case.

WHEREFORE, let this petition for review be, as it is hereby, dismissed.

SO ORDERED.

Quezon City, February 22, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge