REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SANTOS CO, for and in behalf of MOYONG ALIDANI and OMAR ALONZO, Claimants,
Petitioner,

- versus -

C.T.A. CASE NO. 2783

THE ACTING COMMISSIONER OF CUSTOMS,
Respondent.

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

R E S O L U T I O N

Respondent's "Answer With Motion To Dismiss" was filed with this Court on May 18, 1976. It assails our jurisdiction to entertain petitioner's appeal on the ground that it was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

In support of his motion, respondent alleges as follows:

> "5. The petition for review dated April 1, 1976 and received by this Court on the same date is filed beyond the reglementary period of 30 days. Even as stated in the petition, copy of the decision appealed from dated November 21, 1975 was received by petitioner on November 24, 1975. A motion for reconsideration was filed on November 28, 1976 or after a period of 4 days. On January 30, 1976 an Order of the Commissioner of Customs was issued denying petitioner's motion for reconsideration, copy of which was received by petitioner on March 5, 1976. The instant petition for review was filed on April 1, 1976 or after a period of 27 days

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> hence, the petition wasfiled beyond the 30-day period or after a period of 31 days." (pp. 2-3, Answer with Motion To Dismiss, pp. 36-37, CTA rec.)

However, in his opposition to the motion to dismiss, petitioner claims that respondent is merely availing of a legal technicality. He contends and argues that he was not aware when the Order of the Commissioner denying his request for reconsideration was received; and that the date of receipt of said Order of denial, which is March 5, 1976, was a mere calculation on his part since the said date of receipt was not recorded.

We cannot accept petitioner's repudiation of the verified allegations contained in his petition for review. If the allegatioh relative to the date of receipt of the Order denying his motion for reconsideration is inaccurate and uncertain, then he should not have admitted under oath the aforesaid dates; otherwise petitioner could easily disregard, ignore, and violate the fundamental rules of procedure and give credence to his conflicting allegations. We cannot sanction such a norm of conduct. Thus, it was held:

> "The object of the pleadings being to draw lines of battle between the litigants and

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> to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently, take a position contradictory to, or inconsistent with, his pleadings, as the facts therein admitted are to be taken as true for the purpose of the actioh." (The Mentholatum Co. Inc. v. Mangaliman, et al., 72 Phil. 524, 529 citing Sutherland's Code Pleading, Practice and Forms, Sec. 83; 46 CJ, Sec. 121, pp.122-124.)

The facts alleged in the petition for review clearly show that on November 24, 1975, petitioner received the decision of respondent Commissioner of Customs which affirmed the decision of the Collector of Customs in Seizure Proceedings No. 14492; on November 28, 1976, or four (4) days after such receipt, he filed a motion for reconsideration; on March 5, 1976, he received the Order of the Commissioner of Customs denying his motion for reconsideration; and on April 1, 1976 or after the lapse of twenty-seven (27) days from receipt of said order, he filed his appeal to this Court.

Counting the period of four (4) days that elapsed from receipt by petitioner of respondent's decision to the filing of his motion for reconsideration and the period of twenty-seven (27) days from receipt by him of the order of denial to the filing of the appeal in this Court, gives a total period of 31 days for perfecting his appeal. This is beyond the 30-day period required under Sec. 11 of Republic Act No. 1125. (See Compania Maritima vs. The Acting Commissioner of Customs, CTA Case No. 2492, October 14, 1975.) Thus, our Supreme Court held as follows:

> "Under Section 11 of Republic Act No. 1125, any person adversely affected by a decision, or ruling of the Collector of Internal Revenue, may file an appeal in the Court of Tax Appeals within 30 days after the receipt of such decision or ruling. In the case at bar, since petitioners had filed their appeal (petition for review and refund) beyond the aforementioned 30-day period, the respondent Court of Tax Appeals had acquired no jurisdiction to entertain said appeal, and the dismissal of the same was proper." (Allison J. Gibbs and Esther K. Gibbs, petitioners vs. The Collector of Internal Revenue and Court of Tax Appeals, respondents, L-13453, February 29, 1960, 107 Phil. 232).

WHEREFORE, petitioner's appeal to this Court is hereby dismissed for lack of jurisdiction, without pronouncement as to costs.

SO ORDERED.

Quezon City, September 29, 1976.

ESTANISLAO R. ALVAREZ
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

AMANTE FILLER
Associate Judge

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