REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BSJ FISHING AND TRADING, INC.,
Petitioner,

- versus-

HON. NAPOLEON MORALES, in his capacity as COMMISSIONER of the BUREAU OF CUSTOMS,
Respondent.

CTA Case No. 8026

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
JUN 24 2015 10:50 AM

x- x

RESOLUTION

COTANGCO-MANALASTAS, *J.:*

For resolution is petitioner's *Motion for Reconsideration* filed on April 15, 2015 with respondent's *Comment* filed through registered mail on May 18, 2015 and received by the Court on May 29, 2015.

Petitioner moves for the reconsideration of the Court's Decision[1] dated February 3, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for failure of petitioner to perfect its appeal before the Commissioner of Customs, thus, rendering the Decision of the District Collector final and executory. Consequently, the Court has no jurisdiction to take cognizance of this case.
>
> **SO ORDERED.**"

Petitioner argues that it was erroneous for the Court to declare that the P400.00 paid by petitioner at the time of filing

[1] Docket, pp. 720-742.

its Notice of Appeal was for documentary customs stamps, hence, petitioner failed to pay the required appeal docket fee of P3,000.00 provided in paragraph 2 of Customs Administrative Order No. 2-2001 at the time of filing its Notice of Appeal. In the letter dated November 11, 2009, it is clearly stated that the amount of P400.00 was the amount assessed by the Law Division. In fact, the deficiency was immediately paid by petitioner upon notice by the Legal Service. Petitioner, citing the case of *Fedman Development Corporation vs. Agcaoili*[2] *(FDC case)*, maintains that the Commissioner of Customs (COC) acquired jurisdiction over the case because as held by the Supreme Court "where the plaintiff has paid the amount of filing fees assessed by the clerk of court, and the amount paid turns out to be deficient, the trial court still acquires jurisdiction over the case, subject to the payment by the plaintiff of the deficiency assessment." The reason being "to penalize the party for the omission of the clerk of court is not fair if the party has acted in good faith."

Despite this alleged procedural defect, petitioner argues that it was also erroneous for the Court to still believe that the case should be dismissed since the evidence presented by petitioner failed to convince the Court that the seized diesel fuel was locally purchased and that the duties and taxes due thereon were paid. After the enforcement of the Letters of Authority, petitioner had submitted evidence that the sources of its diesel fuel oil purchases for the four months prior to the date of enforcement were from Petron Corporation and O'Relyn Trading Corporation.

In his comment, respondent asserts that the arguments raised by petitioner in its motion is a complete rehash of the issues raised in its petition for review, which were extensively discussed and refuted by respondent in his memorandum and completely passed upon by the Court in its Decision.

A careful reading of petitioner's arguments shows that the same had already been thoroughly discussed and passed upon in the assailed Decision, hence, the Court will no longer discuss them anew.

Anent petitioner's argument that the COC acquired jurisdiction over the case because the insufficient filing fee of P400.00 was the amount assessed by the Law Division, thus,

---

[2] G.R. No. 165025, August 31, 2011.

petitioner should not be penalized for such omission, the Court does not agree.

The *FDC case* relied upon by petitioner and the present case do not involve similar factual milieu. The *FDC case* involved insufficient filing fees assessed by the clerk of court considering that the complaint did not specify the amounts of moral damages, exemplary damages and attorney's fees. The Court held that if the amount of docket fees paid is insufficient in relation to the amounts being sought, the clerk of court or his duly authorized deputy has the responsibility of making a deficiency assessment, and the plaintiff will be required to pay the deficiency. The non-specification of the amounts of damages does not immediately divest the trial court of its jurisdiction over the case, provided there is no bad faith or intent to defraud the Government on the part of the plaintiff. In contrast, the present case does not involve insufficiency of filing fees assessed brought about by non-specification of the amount of claim/protested amount.

Even if *We* were to apply the *FDC case*, by analogy, to this case, petitioner has not presented evidence to prove that the amount of P400.00 was indeed assessed by the Law Division. Petitioner only made an allegation to this effect. Besides, it is well-settled that the government is not bound by the errors committed by its agents[3]. Moreover, as discussed in the assailed Decision, payment of the full amount of the docket fee is an indispensable step in the perfection of an appeal. Unfortunately, petitioner paid the deficient docket fees on November 11, 2009 or beyond the 15-day period to file a written notice of appeal to the COC.

On a different note, records show that on February 4, 2015, the Court tried to personally serve the Decision dated February 3, 2015 on petitioner's counsel, Bartolome Salazar Palomar & Associates at Unit 2202 Robinsons Equitable Tower, ADB Ave., cor. Poveda St., Ortigas Center, 1605 Pasig City, which is the address of record of petitioner's counsel, but was unable to, since there was "no one to receive" the same[4]. Thereafter, on February 5, 2015, the Decision was sent by registered mail to the same address, but was likewise returned to the Court because the addressee has "moved out 2/11/15"[5]

---

[3] *Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*, G.R. No. 106611, July 21, 1994.
[4] Docket, p.718.
[5] Docket, p. 743.

based on the notation on the envelope. Moreover, the Court noted that petitioner's counsel stated a different address on the instant Motion for Reconsideration as "Unit 2003 The Taipan Place, Emerald Ave. Ortigas Center, 1605, Pasig City."

From the foregoing, it appears that petitioner's counsel changed its address without notifying the Court. Hence, as far as the records show, the address of petitioner's counsel remains to be "Unit 2202 Robinsons Equitable Tower, ADB Ave., cor. Poveda St., Ortigas Center, 1605 Pasig City".

In this connection, Section 8, Rule 13 of the Rules of Court provides that substituted service of decisions may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

If substituted service of decision was resorted to in this case, then petitioner's Motion for Reconsideration filed on April 15, 2015[6] was filed out of time considering that service is complete at the time of the delivery of the Decision to petitioner's counsel at his given address on February 11, 2015, at the latest.

To prevent failure of service of the Court's decisions, resolutions, etc. in the future, *We* admonish petitioner's counsel to notify the Court of any change in its address.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.	**CAESAR A. CASANOVA**
Associate Justice	Associate Justice

[6] Petitioner's counsel eventually received a copy of the Decision on March 31, 2015.