REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTONIO COLAO,
Petitioner,

- versus - C.T.A. CASE NO. 3106

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - x

GOLDEN LANE SOCIETA A
RESPONSIBILITA LIMITATA,
Petitioner,

- versus - C.T.A. CASE NO. 3107

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - x

11/29/84

D E C I S I O N

Originating in Customs District III, Manila International Airport, Bureau of Customs, as Seizure Identification No. 1441-76, with petitioner Antonio Colao, an Italian national, as claimant, this appeal involves the seizure of various jewelries listed in Inventory Report dated March 17, 1976, which were turned over to the Customs District by the Metropolitan Police Command or "Metrocom" for brevity. Seizure proceedings were instituted against said jewelries by the Customs authorities for violation of Section 2505; Section 2530, paragraph (m), sub-paragraphs 1, 2 and 5; Section 2530, paragraph (f), all of the Tariff and Customs Code as amended by Presidential Decree No. 34, in relation to Central Bank Circular No. 247 as amended.

The pertinent facts as found by the District Collector of Customs who received the evidence are: Petitioner Antonio Colao, together with Mr. and Mrs. Romulo Lombardi, arrived at the Manila International Airport on November 26, 1975 on board a PAL-KL flight from Europe. Among the articles brought in by petitioner Colao were assorted jewelries, now subject matter of this appeal. Without submitting a baggage declaration nor making any declaration of these jewelries before the airport Customs authorities as required by Customs law and regulations, Colao was able to clear his baggage and to bring out with him said jewelries.

It appears that, subsequently, petitioner Antonio Colao had been the subject of surveillance, and his activities had been closely watched by military agents. It was reported that Antonio Colao, together with Mr. and Mrs. Romulo Lombardi, went to the house of Mrs. Marietta Santos at Forbes Park, Makati, Metro Manila, and the afore-said jewelries were shown and offered for sale to Mrs. Santos. The jewelries were also shown and offered for sale to the Cojuangcos, the Yulos, and the Katigbaks of the same subdivision. However, as soon as Colao and companions had left the gate of Forbes Park, a group of Metrocom agents headed by Lt. Nestor Sanares apprehended them, after which they were brought to Fort Bonifacio for investigation. Found in the possession of Antonio Colao were the assorted jewelries now subject matter of these proceedings.

On March 17, 1976, the Metropolitan Police Command, or Metrocom, represented by its Commanding Officer, turned over the jewelries to the District Collector of Customs of the Manila International Airport for seizure proceedings. Seizure proceedings were thus instituted against said jewelries by the Customs authorities for violation of Section 2505; Section 2530, paragraph (m), sub-paragraphs 1, 2 and 5; Section 2530, paragraph (f), all of the Tariff and Customs Code as amended by Presidential Decree No. 34, in relation to Central Bank Circular No. 247 as amended, in the case entitled "Republic of the Philippines vs. Various Jewelries listed in Inventory Report dated March 17, 1976 and April 17, 1976, respectively, Antonio Colao, claimant", Seizure Identification No. 1441-76.

In a decision dated March 19, 1979, the Collector of Customs of the Manila International Airport declared the forfeiture of the jewelries in favor of the Republic of the Philippines to be disposed of in the manner prescribed by law. Copy of said decision was received by petitioner Antonio Colao on April 20, 1979.

On May 7, 1979, petitioner Colao filed his notice of appeal before respondent Commissioner of Customs. The required customs stamp of ₱10.00 as filing fee was not however affixed to the notice of appeal. Meanwhile, on

July 26, 1979, petitioner Golden Lane Societa A Responsibilita Limitata (Golden Lane for short) filed with respondent Commissioner of Customs its motion for intervention.

On October 5, 1979, respondent Commissioner of Customs issued an Order dismissing petitioner Colao's appeal for the latter's failure to affix the customs stamp of ₱10.00 as required by law. Copy of said order was received each by petitioner Colao and by petitioner Golden Lane on November 29, 1979.

On December 12, 1979, petitioner Colao filed with respondent Commissioner of Customs his motion for reconsideration of the latter's order of dismissal, contending, allegedly, excusable negligence. And on its part, petitioner Golden Lane filed also with respondent on December 13, 1979, an Omnibus Motion adopting petitioner Colao's motion for reconsideration.

On April 24, 1980, however, respondent Commissioner of Customs issued an Order denying for lack of merit petitioners' motion for reconsideration. Copies of said order were received by petitioner Antonio Colao and petitioner Golden Lane on May 15, 1980.

Hence, the present joint petition for review filed before this Court on June 11, 1980 by petitioner Antonio Colao and petitioner Golden Lane.

Instead of answering the joint petition for review, respondent filed on August 25, 1980 a motion to dismiss the appeal based on lack of jurisdiction on the ground that the decisions of the Collector of Customs of the Manila International Airport and the Commissioner of Customs had become final and executory.

In a Resolution dated April 12, 1982, this Court deferred the determination of the jurisdictional question raised in respondent's motion to dismiss and to consider the same submitted together with the principal issue on the merits of the case, it appearing that the jurisdictional ground raised by respondent did not appear to be indubitable at that time.

The issues here presented are therefore: (1) whether or not this Court has jurisdiction over this case; and (2) whether or not there was violation of the Tariff and Customs Code.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case <u>ex mero motu</u>. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of the entire proceedings. (Commissioner of Internal Revenue vs. Leonardo S. Villa and

The Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 4, and cases cited therein.)

In invoking lack of jurisdiction of this Court over the case on the ground that the decisions of the Collector of Customs of the Manila International Airport and Commissioner of Customs had become final and executory, respondent argues:

> <u>Decision of the Collector of Customs has become final and executory.</u>
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> Section 2313 of the Tariff and Customs Code provides:
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> > "Review by Commissioner. - The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision." (As amended by P.D. No. 34)
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> Additionally, par. VII, CAO No. 226 dated December 3, 1957 of the Bureau of Customs provides:
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> > "The person aggrieved by the decision or action of a

> Collector of Customs in any matter presented upon protest or by his action in any case of seizure pursuant to Section 2312 of the Customs Law of the Philippines may give a written notice to the Collector of Customs of his desire to have the matter reviewed by the Commissioner of Customs. Such notice of appeal must be filed in triplicate within fifteen (15) days including Sundays and legal holidays, from receipt by the aggrieved party or his authorized representative of written notification of the action or decision sought shall be subject to a filing fee of ₱10.00 in customs stamp and shall, together with the records of the case, be forthwith transmitted by the Collector to the Commissioner of Customs."

It is not disputed by the parties that the decision of the Collector of Customs dated March 19, 1979 was received by petitioner on April 20, 1979. Petitioners, therefore, had 15 days from April 20, 1979 or up to May 5, 1979 within which to appeal to respondent Commissioner of Customs. It is a condition precedent, however, that a ten-peso customs stamp be affixed to the notice of appeal, such stamps being in the nature of filing fee. Petitioners filed their notice of appeal on May 7, 1979 (Exh. "2"), two (2) days after the reglementary period of fifteen (15) days within which to appeal the Collector's decision and without affixing the aforesaid customs stamp as required by Customs Administrative Order No. 226 in relation to Section 3301 of the Tariff and Customs Code. Such failure is fatal to their appeal and, consequently, the appealed decision had became final and executory.

So it has been held that:

> "The stamp requirement is in the nature of a docket fee and failure to pay the docket

> fee for appeals on time is fatal." (Lipat v. Comm. of Customs, C.T.A. Case No. 1442, Oct. 26, 1966)
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> "The period of 15 days prescribed by law for an appeal in cases of forfeiture is not a matter of procedure which the court may ignore. The provisions of customs law, like those of the internal revenue code, are not directory but mandatory, x x x. It is beyond the power of the courts to extend the period for appeals." (Chan Kian v. C.T.A., et al., G.R. No. L-12184, May 26, 1959)
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> "The period of 15 days prescribed by law for an appeal in cases of forfeiture is not a matter of procedure which the courts may ignore. The provisions of the Customs Law, like those of the internal revenue code, are not directory merely but mandatory. The period for an appeal is fixed by law at 15 days in order that penalties for violation of the laws or rules on importation should be decided promptly and expeditiously as delays therein may result in the clogging of customs warehouses with merchandise illegally imported. It is beyond the power of the courts to extend the period of appeal." (Shanghai Ting Ting Soy Factory vs. Court of Tax Appeals and the Collector of Customs, 47 OG., 8661)

The assailed decision having become final and executory, the Commissioner of Customs had no other recourse but to dismiss the appeal.

Likewise, the decision of the Commissioner of Customs had become final and executory.

Under Section 11, Republic Act No. 1125, as amended, creating the Court of (Tax) Appeals, "any person, association or corporation adversely affected by a decision or ruling of the x x x Commissioner of Customs may file an appeal in the Court of Tax Appeals within 30 days after receipt of such decision or ruling" (underscoring supplied).

The record of this case shows that the appealed Order dated October 5, 1979 (Exh. "3") of the Commissioner of Customs denying petitioners' appeal was received by both of them on November 29, 1979 (Exhs. "3-A" & "3-B"). This fact, petitioners admit. Their joint petitions for review in CTA Cases Nos. 3106 and 3107 so allege (pp. 4-5, par. 7), thus:

> "7. In the meantime, however, petitioner Colao received on November 29, 1979, a copy of the order of the respondent Commissioner, dated October 5, 1979 (Annex "B", hereof), dismissing the appeal on the ground that petitioner failed to affix the ₱10.00 customs stamp on the appeal on time. Said petitioner filed on December 12, 1979 a motion for the reconsideration of the order, on the ground that the failure to affix the ₱10.00 customs stamp on the appeal at the time it was filed by the complainant was due to excusable mistake and negligence.
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> 8. In the meantime also, petitioner Golden Lane, as owner of the jewelries, filed a motion for intervention with the respondent, dated July 26, 1979. No action was taken on said motion for intervention. On November 29, 1979, counsel for the intervenor received a copy of the order of the respondent Commissioner denying the appeal on the ground that although an appeal was filed within the 15-day period, the ₱10.00 customs stamp was affixed out of time (Annex "C" hereof). Intervenor then filed an Omnibus Motion, dated December 12, 1979, wherein it adopted the motion for reconsideration filed by the claimant Colao and in the alternative prayed that his motion for intervention and supporting memorandum be considered as an independent claim."

Petitioners had 30 days from November 29, 1979 or up to December 29, 1979, within which to file their petition for review before the Court of Tax Appeals. On December 12, 1979, after a lapse of 13 days, they filed their motions for reconsideration of the above Order, which was denied by the Commissioner of Customs per resolution dated April 24, 1980. Copies of said Order were received by petitioners on May 15, 1980 (Exhs. "6" & "6-A"). (This fact is admitted by private respondents as per their allegations in page 1 of their petition for review, in CTA Cases No. 3106 and 3107). Petitioners, therefore, had 17 days from May 15, 1980 (after deducting the 13 days that have elapsed when they filed their motions for reconsideration) within which to file their appeal before the Court of Tax Appeals or up to June 1, 1980. Petitioners filed their appeal only on June 11, 1980, which was ten (10) days beyond the reglementary period of 30 days. Consequently, the assailed Order has become final and executory as of June 2, 1980 (Eduardo Sales vs. Commissioner of Customs, CTA Case - Jan. 31, 1967, infra).

The thirty-day period prescribed by Section 11 of RA 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue (in this case the Commissioner of Customs) should file his appeal with the Tax Court, is a jurisdictional requirement, and the failure of a taxpayer to take such step within the prescribed period bars his appeal and renders the questioned decision final and executory (Surigao Electric Co. vs. CTA, 57 SCRA 528; Acting Commissioner vs. Joseph, et al., 5 SCRA 895; Republic vs. Kim Tian Teng Sons & Co., Inc., 16 SCRA 584; Republic vs. del Rosario, 105 Phil. 277; Uy Ham vs. Republic, G.R. 13809, Oct. 20, 1959; underscoring supplied).

In North Camarines Lumber Co., Inc. vs. Collector of Internal Revenue (G.R. L-12353, Sept. 30, 1969; 6 Velayo's Digest 419), this Honorable Court declared that for the Tax Court to have jurisdiction over any case, the party seeking redress must first invoke its exercise in the manner and within the time prescribed by law. Thus Section 7 of RA 1125 which enumerates the specific cases falling within the jurisdiction of the Court of Tax Appeals, must be read together with Section 11, which fixes the time for invoking said jurisdiction.

Indeed, as contended by respondent, this issue is not one of first impression. Aside from the cases cited by respondent, supra, in C.B. Antolin Enterprises, et al., vs. Commissioner of Customs, C.T.A. Case No. 1435, January 14, 1965, where the factual setting is similar to that in the case at bar, this Court unequivocally established the rule that failure to comply fully with the stamp requirement as mandated under Paragraph VII of Customs Administrative Order No. 226, is fatal and this Court cannot acquire jurisdiction over the case. Because of its controlling effects on the present case, we will quote at length from the decision.

> But it is respondent's theory that, even granting arguendo that the petitioner's appeal was filed within the reglementary period prescribed by law, nevertheless, the failure of the petitioners to comply with the requirements of Paragraph VII of Customs Administrative Order No. 226 dated December 3, 1957, which reads as follows:
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> > "The person aggrieved by the decision or action of a collector of customs in any matter presented upon protest or by his action in any case of seizure pursuant to section 2312 of the Tariff and Customs Code of the Philippines may give a written notice to the Collector of Customs of his desire to have the matter reviewed by the Commissioner of Customs. Such notice of appeal must be filed in triplicate within fifteen (15) days, including Sundays and legal holidays, from receipt by the aggrieved party or his

> authorized representative of written notification of the action or decision sought to be reviewed. The notice of appeal shall be subject to a filing fee of ₱10 in customs stamp and shall, together with the records of the case, be forthwith transmitted by the Collector to the Commissioner of Customs."

made the decision of the Collector final, executory and unappealable.

From the above-quoted administrative order, it can be gathered that in order to perfect an appeal to the Commissioner of Customs, the following requisites should be complied with, to wit: (1) filing of a written notice of appeal within fifteen days from the receipt of the Collector's decision or action in any case of seizure and (2) payment of the filing fee of ₱10.00 in customs stamps. As has been shown above, the petitioners were able to file their written notice of appeal to the Commissioner of Customs within the reglementary period of fifteen days. However, they paid a filing fee of only ₱10.00 for all of the fifteen seizure cases covered by this case.

To our mind, this failure to comply fully with Paragraph VII of Customs Administrative Order No. 266 is fatal in the sense that we cannot take cognizance of Seizure Identification Nos. 1610, 1631, 1634, 1646, 1654, 1685, 1701, 1703, 1785, 1803, 1807, 1809, 1810 and 1812. It seems already well-settled that the payment of the full amount of the docket fee is an indispensable step in the perfection of an appeal (Lazaro vs. 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. 922; Alvero vs. de la Roxas, 76 Phil. 428; Ampang Tan vs. Commissioner of Customs, C.T.A. Case No. 92, April 2, 1956).

Invoking interest of justice, petitioners however contend that their failure to affix the ten-peso customs stamp on their appeal at the time it was filed was an honest mistake or accident. Petitioners' position on this point calls to mind Alfredo E. Lipat vs. Commissioner of Customs, C.T.A. Case No. 1442, October 26, 1966, the factual setting of which is identical to that in the instant appeal, and where this Court disposed of the same contention in clear and unambiguous terms, in the following wise:

> The 15-day period mentioned in the foregoing excerpt has been interpreted as not merely procedural but jurisdictional, not directory but mandatory, and unextendible by Courts. Said the Supreme Court in Chan Kian vs. The Court of Tax Appeals and the Collector of Customs (G.R. No. L-12184, May 29, 1959):
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> > "The petition admits that a copy of the decision of the Collector of Customs was furnished the petitioner on October 24, 1955. But he claims that he believed from the notice received from the Collector of Customs that the period within which he should appeal was 30 days from the date of demand for payment; that his failure to appeal within 15 days was due to an honest mistake. This is the gist of the brief filed in his behalf by his counsel. It is argued in support of this claim that a rule of procedure may be overlooked if it does not involve a public policy and when a lapse in procedure arises from an honest mistake or an unforseen event not prejudicial to the adverse party. We find no merit in this argument. The period of 15 days prescribed by law for an appeal in cases of forfeiture is not a matter of procedure which courts may ignore. The provisions of the customs law, like those of the internal revenue code, are not directory merely but mandatory. The period for an appeal is fixed by law at 15 days in order that penalties for violations of the laws or rules on importation may be promptly enforced. Questions involving forfeiture should be decided promptly and expeditiously, as delays therein may result

> in the clogging of customs warehouses with merchandise illegally imported. It is beyond the power of the courts to extend the period for appeal. The Commissioner of Customs and the Court of Tax Appeals acted correctly in dismissing the appeal of the petitioner, as it was not filed within the period of 15 days prescribed by law."

Again, the settled rule in this jurisdiction is that tardiness of one day in the filing of an appeal is sufficient to bar an appeal (Juan G. de Rodriguez vs. Hon. Enrique A. Fernandez, et al., G.R. No. L-10823, May 28, 1957).

> "We do not agree that 'the ends of justice would be better subserved' by allowing an appeal presented 'only one day late.' There is no basis in fact, law, or reason for such conclusion. On the contrary, these considerations militate against it: (1) The orderly administration of justice would suffer a drawback if the period for perfecting appeals be rendered uncertain, as it would be, by sanctioning such transgression of the deadline. (2) The appealed decision is presumed by law to be just and correct, and therefore the denial of the appeal does not necessarily imply an injustice to the appellant. (3) The right to appeal is a purely statutory right, and he who wants to exercise it must comply with the statute." (Leoncia Reyes vs. The Court of Appeals and Enrique Bautista, No. 48960, June 29, 1943, 74 Phil. 238.)

Lastly, it is not denied that the appeal of the petitioner had no customs stamp of ₱10.00 as required by Customs Administrative Order No. 226 when it was filed. The necessary stamps were sent to the Bureau of Customs only on May 15, 1961 with a request that same be attached to the notice of appeal. To our mind, the stamp requirement is in the nature of a docket fee and good authority is to the effect that failure to pay the docket fee for appeals on time is fatal (Adriano Valdez, vs. Rodrigo Ocumen, et al., G.R. No. L-13536, Jan. 29, 1960).

We find no valid and cogent reason to modify, much less depart, from the conclusion reached in Lipat vs. Commissioner of Customs, as expressed in the above-quoted opinion of the Court there, and the same should resolve the identical problem now brought before us in these proceedings.

To this end, and bearing in mind that the customs stamp requirement is in the nature of a docket fee, failure to pay such fee within the 15-day period for filing the appeal did not confer jurisdiction on the Commissioner of Customs to take cognizance of these proceedings. (See Ampang Tan vs. Commissioner, 106 Phil. 233; Ramon Roces vs. Commissioner, 106 Phil. 233.) There having been no valid appeal from the decision dated March 19, 1979 of the Collector of Customs of the Manila International Airport to respondent Commissioner of Customs, it follows that this Court has no jurisdiction to take cognizance of this case. Having arrived at this conclusion, we deem it unnecessary to pass upon the question of whether or not the order of the Commissioner of Customs dated October 5, 1979 had become final and executory, and the issue of whether or not there was violation of the Tariff and Customs Code.

WHEREFORE, the joint petition for review is hereby dismissed at petitioners' costs.

SO ORDERED.

Quezon City, Metro Manila, November 29, 1984.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge