

AMPANG TAN, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS AND COLLECTOR OF CUSTOMS FOR THE PORT OF JOLO, RESPONDENTS.

G.R. No. L-10940. September 25, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from resolutions of the Court of Tax Appeals, dismissing the above-entitled cases on the ground that the appeals filed by petitioners against the decisions of the Commissioner of Customs were not perfected within the time prescribed by law.

In the first case, Ampang Tan vs. Commissioner of Customs, G. R. No. L-10940, it appears that in his decision dated February 23, 1953, the Commissioner of Customs sustained an order of the Collector of Customs for the Port of Jolo, decreeing the forfeiture and seizure of sixty-nine cases of "Camel" cigarettes. The decision of the Commissioner was appealed to the defunct Board of Tax Appeals, which affirmed the decision of said Commissioner in toto. The case was then appealed to the Supreme Court, but we dismissed the case without prejudice, pursuant to our decision in the case of *U.S.T. vs. Board of Tax Appeals*, 93 Phil., 376; 49 Off. Gaz., [6] 2245.

April 19, 1954, petitioner Ampang Tan filed a petition for review of the decision of the Commissioner of Customs, with the Court of First Instance of Manila, but no action was taken thereon because petitioner failed to follow up the said notice of appeal by the payment of the filing fee in said court. Subsequently, on November 26, 1954, the petitioner filed a motion with the Supreme Court for the reinstatement of the case and in order that the same could be decided pursuant to Section 21 of Republic Act No. 1125, but this motion for reinstatement was denied by the Supreme Court on February 11, 1955.

But the Court of Tax Appeals in its resolution dated March 2, 1955, reinstated the petition for review filed on October 26, 1954, on condition that the petitioner pay the docketing fee on his petition for review. The docketing fee was paid on March 8, 1955.

The question at issue is: Did petitioner Ampang Tan perfect an appeal from the decision of the Commissioner of Customs within the time prescribed? The Court of Tax Appeals held that it is true that on April 19, 1954, the petitioner filed a notice of appeal with the Court of First Instance of Manila, but the filing fee in said court was never paid until March 8, 1955. Under the above circumstances, the Court of Tax Appeals held, the appeal was not perfected in time and the Court of First Instance never acquired jurisdiction over the case for failure of petitioner to pay the full amount of the docketing fee essential to perfect an appeal, citing the case of *Lazaro vs. Endencia*, 57 Phil., 552.

In the Court of Tax Appeals attempt was made by petitioner herein to prove that offer of payment of the docketing fee was made, but the Court of Tax Appeals found that the evidence submitted to that effect can not be believed.

In the other case, *Ramon Roces, Inc. vs. Commissioner of Customs*, G. R. No. L-10942, parallel proceedings took place. The decision of the Collector of Customs of Jolo was affirmed by the Commissioner of Customs on October 6, 1952. The case was appealed to the Board of Tax Appeals, which affirmed the decision on October 23, 1952. Against this decision appeal was made to the Supreme Court, but this Court dismissed the appeal without prejudice on April 29, 1954, relying on its ruling in the case of *U.S.T. vs. Board of Tax Appeals*, *supra*. After dismissal of the appeal by the Supreme Court, the petitioner *Ramon Roces, Inc.* filed a notice of appeal with the Commissioner of Customs for a review of the latter's decision by the Court of First Instance, but as in the other case no payment of the docketing fee in court was ever made. On October 26, 1954, petition for review was filed before the Court of Tax Appeals, but this was dismissed without prejudice to whatever action the Supreme Court may take on petitioner's motion of November 26, 1954, to have this case decided by said Tribunal on its merits. On March 2, 1955, the Court of Tax Appeals issued a resolution reinstating the petition for review provided the petitioner first pay the docketing fee. Subsequently, the Court of Tax Appeals dismissed the petition for review. The decision cites the case of *Ampang Tan vs. Commissioner of Customs*, wherein it was found that no payment of docket fee in the Court of First Instance was made when a petition for review of the decision of the Commissioner was filed by the petitioner on April 19, 1954.

Both cases were presented jointly before this Court. In this Court no attempt was made to insist that the payment of the docketing fee was made with the Commissioner of Customs upon the filing of the notice of appeal therein. But it is argued that when this Court dismissed the cases without prejudice, such dismissal should have no effect upon the pendency of the appeal prosecuted before the Board of Tax Appeals, and that when this Board was declared non-existent the cases should have been considered transferred to the Court of First Instance.

This argument rests on the theory that the Board of Tax Appeals was a validly constituted body, which it never was. But if we follow appellant's argument that appeal to the Board of Tax Appeals was validly prosecuted, we come face to face with the fact that in both of the cases the Board of Tax Appeals itself had confirmed the decisions of the Commissioner of Customs *in toto*.

The fact that the petitioner (themselves) presented their notice of appeal with the Commissioner of Customs for the review of the latter's decisions by the Court of First Instance. This shows that they themselves considered the Board of Tax Appeals never to have existed, and that steps necessary to perfect an appeal must again be made before the cases may be reviewed by the Court of First Instance. Sufficient time was given them to perfect their appeals, by presenting the required notice of appeal to the Commissioner of Customs and paying the docketing fee in the Court of First Instance. Having failed in respect to the latter, the appeals have never been perfected, for which reason the Court of Tax Appeals correctly held that it is without jurisdiction to consider the appeals.

We find no error in the dismissal of the appeals by the Court of Tax Appeals and we affirm its resolutions to that effect, with costs against petitioners. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, and Barrera, JJ., concur.

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