

**LUZON STEVEDORING CORPORATION, PETITIONER-APPELLANT, VS.
COURT OF TAX APPEALS AND COMMISSIONER OF CUSTOMS,
RESPONDENTS-APPELLEES.***G. R. No. L-21005. October 22, 1966*

Ponente: SANCHEZ, J.

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Disputed by petitioner is the government's right to the sum of, P9,506.92 collected as berthing or mooring charges for its tugboats and barges, from August 20, 1957 to July 20, 1959 .

Petitioner, a domestic corporation in the lighterage business, hauled bunker fuel, gasoline and other petroleum products for the Caltex Refinery in Bauan, Batangas. For this purpose, it used tugboats and barges which moored at the privately owned Caltex pier in Bauan. This pier is in the port of Batangas , a national port.[1]

The amount of P9,506.92 is broken down as follows:

	1957-----P1,638.98
1958-----	4,781.40
1959-----	3, 086 54
P9,506.92	

Of this total, the berthing fees paid for barges from August 1957 to June 30, 1959, amounted to P7,837.72.[2]

Received by the customs collector for the port of Batangas on August 4, 1959 was petitioner's written protest against the collection of P9,506.92. That protest was dismissed. Petitioner elevated the matter to respondent Commissioner of Customs. It suffered the same fate. A review was sought from the Court of Tax Appeals.[[3]] That court voted to dismiss the petition for review, with costs. Hence, the present appeal.

1. Petitioner assails the government's right to impose the berthing or mooring charges aforesaid. Argument advanced is that such charges are improper. Reason: the Caltex pier to which petitioner's vessels moor is private, not government-owned.

The controlling statute is Section 2901 of the Tariff and Customs Code, which textually reads:

"Section 2901. Definition. - Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any port in the Philippines; or for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin river or canal under the jurisdiction of any port of the Philippines. The owner, agent, operator or master of the vessel is liable for this charge."

Adverting to the terms of the law, it is quite apparent that the government's right to collect berthing charges is not planted upon the condition that the pier be publicly owned. The statute employs the word pier - without more. Nothing there said speaks of private or public pier. Where the law does not exact the nature of ownership as a condition, that condition should not be read into the law. We are not to indulge in statutory construction. Because the law is clear. Our plain duty is to apply the law as it is written.[4]] So applying, we rule that berthing or mooring charges here were properly collected.

2. But we look in retrospect at the philosophy behind the right to impose berthing or mooring charges. And we find that reason exists for their imposition. Note that berthing or mooring charges are assessed (a) against a vessel mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any port in the Philippines; (b) for mooring or making fast to a vessel so berthed; or (c) for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any port of the Philippines. It thus results that a vessel which as much as come within any slip, channel, basin, river or canal under the jurisdiction of any port in the Philippines is subject to the charge. It is unnecessary that that vessel be moored to a pier or to a berthed vessel. But why? Because port facilities afford benefits to the vessels mentioned in the statute; and the maintenance and development of the port, and the purchase, conditioning and replacement of the equipment thereof - all to enable such vessels to make use of a pier or wharf - are the concern of the government.[5] Petitioner's vessels enjoy the benefits of such governmental undertaking. Petitioner should thus contribute thereto.

Again, we say that berthing or mooring charges are here appropriately collected under the law.

3. Not much need be said on petitioner's other point that respondent Commissioner of Customs is estopped from requiring written protest as a condition precedent to refund.

By Section 2308 of the Tariff and Customs Code, such "written protest" must be filed within thirty days after payment. Otherwise, by the next succeeding provision, Section 2309, "the action of the Collector shall be final and conclusive against him." [6]

The verbal protest urged upon us was supposedly made with the local customs collector at the port of Batangas as early as August, 1957. That official, according to petitioner, entertained the protest in the sense that he agreed to take up the matter with the Commissioner of Customs. But this allegation of verbal protest was denied in paragraph 3 of the answer to the petition for review.

The situation here presented would not create estoppel. Besides, the government is not bound by the mistakes of its agents. [7] At all events, the requirement that protest be in writing must be for some purpose. One is that verbal protest breeds uncertainty. For, human memory suffers from frailty. Verbal protest therefore will be unavailing to petitioner.

The net result is that the protest in so far as it refers to payments of berthing charges (for tugboats and barges) prior to July 5, 1959 cannot be considered. As aforesaid, written protest was only lodged on August 4, 1959. And those made from July 5, 1959 to July 20, 1959 (for tugboats alone) are not refundable either. Because the law enjoins collection thereof.

We, accordingly, affirm the judgment under review. Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., Zaldivar and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

Makalintal, J., no part.

[1] Section 701, Tariff and Customs Code.

[2] On June 20, 1959 , barges were expressly included in the statute providing for berthing or mooring fees. Republic Act No. 2369, amending Sec. 2906, Tariff and Customs Code.

[3] CTA Case No. 1146,;Luzon Stevedoring Corporation, petitioner, versus Commissioner of Customs, respondent".

[4] 50 Am. Jur., pp. 205-207.

[5] Republic Act 2695.

[6] Emphasis supplied.

[7] Koppel [Phil.] Inc. vs. Collector, G.R. No. L-10550, September 19, 1961; Central Azucarera de Tarlac vs. Collector, et al., G.R. No. L-11092, September 30, 1958 .

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