

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PETITIONER, VS. ACTING COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-24247. May 13, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The lone question tendered for resolution is whether a vessel, engaged in foreign trade, which berths at a privately-owned wharf or pier is liable to the payment of berthing fees under section 2903 of the Tariff and Customs Code which reads:

"Ports without cargo shed. - Every vessel engaged in foreign trade which berths at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any national port in the Philippines without cargo sheds, or which makes fast to any vessel lying at such wharf or pier, for the purpose of discharging and/or loading cargo shall pay a berthing fee of three centavos per registered gross ton of the vessel for the first twenty-four hours, or part thereof, exceeding three hours: Provided, That the maximum charge shall not exceed three hundred pesos per day."

The petitioner, contending that it was exempt from the payment of such fees, asked for a refund of what it had paid. The Collector of Customs of the port of Cagayan de Oro denied the claim for refund. So did the Commissioner of Customs. A resort to the Court of Tax Appeals likewise proved unavailing.

Hence the present recourse.

In June, 1961 the vessels Rita Maersk and Effie Maersk docked at the Bugo pier at the port of Cagayan de Oro, for doing which the Collector of Customs of the port levied and assessed on them the sum of P379.25 as berthing fees. The petitioner Compañia General de Tabacos de Filipinas, as agent of the ships, protested the imposition and collection of the fees on the ground that the Bugo pier is owned and operated by the Philippine Packing Corporation, and that under section 2903 berthing fees are assessable only against a vessel berthing at a Government pier or wharf. It maintains that such charges can be collected only if the Government affords pier and wharf facilities in the port.

To begin with, berthing charges are assessed against, a vessel "for mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf . . . or for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin or river or canal under the jurisdiction of any port of the Philippines." [1] They are like wharfage dues in the sense that they are imposed for the use of the wharf regardless of the ownership thereof, the only difference between the two being that while berthing charges are assessed against the vessel, [2] wharfage dues are assessed against the cargo. [3] In an early case, [4] this Court noted that the old Customs Tariff Law of November 15, 1901 "has been construed . . . to mean that the Government of the Philippine Islands is entitled to levy and collect a duty of \$1 per gross ton 'as a charge for wharfage' upon all articles, goods, wares and merchandise exported, through the ports of entry of the Philippine Islands, and that construction has been acquiesced in and accepted, and the money paid without any protest or objection for

twenty-six years, for many years of which the Government never even owned or operated a wharf." [5] This was held significant because "the very fact that Congress has not seen fit to repeal or change the law is a very potent argument in favor of sustaining that construction." [6] The Court could rightly conclude, therefore, that wharfage dues are collectible regardless of the fact that shipment is made from a private wharf. That is still good law. [7] And as berthing fees are identical to wharfage dues in policy the same rule must perforce apply with respect to them.

Is this a governmental imposition from which there is no conceivable benefit to be derived by those on whom it falls? As noted in *Philippine Sugar Centrals Agency*, the money derived from wharfage dues (and we may add, from berthing charges) constitutes a trust fund for the purpose of acquiring and constructing wharves by the Government. The Government maintains bodies of water in navigable condition and is to support its operations in this regard that dues and charges are imposed for the use of piers and wharves regardless of their ownership. Otherwise stated, these dues and charges are in the nature of taxes which are collected by the Government to support its operations in relation to customs affairs. [8]

Indeed, the issue is not one of first impression. In *Luzon Stevedoring Corporation vs. Court of Tax Appeals and Commissioner of Customs*, [9] where the factual setting is similar to that in the case at bar, this Court, speaking through Mr. Justice Conrado V. Sanchez, unequivocally sustained the Government's right to collect berthing charges even if the pier be privately owned, in the following words:

"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 a 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. * * * *

"It thus results that a vessel which as much as comes 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 pier or wharf -- are the concern of the government. [10] Petitioner's vessels enjoy the benefits of such governmental undertaking. Petitioner should thus contribute thereto."

ACCORDINGLY, the decision dated January 28, 1965 of the Court of Tax Appeals is affirmed, at petitioner's cost.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Angeles, JJ., concur.
Concepcion, C.J., in the result.

[1] Tariff and Customs Code, sec. 2901.

[2] Id.

[3] Id., sec. 2801.

[4] *Philippine Sugar Centrals Agency v. Collector of Customs*, 51 Phil. 131 (1927).

[5] Id. 143.

[6] Id. at 148.

[7] See, e.g., *Hawaiian-Philippine Co. v. Auditor General*, L-1840, Oct. 25, 1967; *Procter & Gamble PMC v. Commissioner of Customs*, L-22819, April 27, 1967.

[8] Cf. *Procter Gamble PMC v. Commissioner of Customs* *supra*, note 7.

[9] L-21005, October 22, 1966, 18 SCRA 436, 438-439.

[10] Republic Act 2695.

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