

COMMISSIONER OF CUSTOMS, PETITIONER, VS. ARNALDO BORRES, ET AL., RESPONDENTS.

G.R. No. L-12867. November 28, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Arnaldo Torres, et al. are the owners of eight (8) motor boats propelled by diesel and bunker fuel oil which were used and operated by them for deep-sea fishing within Philippine waters. Said vessels are of five gross tons each duly registered with the Bureau of Customs. They had been paying regularly to the Bureau of Fisheries the annual commercial fishing license required by said bureau as well as the tonnage dues, clearance and entrance fees. They had also been paying since the year 1949 the corresponding annual coastwise license fees to the Bureau of Customs.

On April 13, 1956, they sent a letter to the Collector of Customs of the port of Iloilo requesting exemption from the payment of coastwise license fees for the operation of the aforesaid five vessels but the request was denied, the collector invoking as authority an opinion of the Secretary of Justice wherein he expressed the view that vessels engaged in fishing and weighing more than five gross tons may be required to secure a coastwise license under Section 1207 of the Revised Administrative Code.

On June 23, 1956, they also wrote a letter to the Commissioner of Customs requesting the refund of P3,828.59 representing the drawbacks of the diesel and bunker fuel oil consumed in the propulsion of said five vessels pursuant to the provisions of Section 21 of the Philippine Tariff Act of 1909. The Commissioner of Customs denied the request citing as authority another opinion of the Secretary of Justice to the effect that deep-sea fishing does not constitute coastwise trade and also because the request was not made in accordance with the form prescribed by Customs Administrative Order No. 157.

Dissatisfied with this ruling, they appealed to the Court of Tax Appeals by filing a petition for review where, after due trial, said court rendered decision on August 5, 1957, reversing the ruling of the Commissioner of Customs and ordering the latter to refund the amount of P3,828.59, representing drawbacks refundable under the provisions of Section 21 of the Philippine Tariff Act of 1909, but denying the request for refund of the amount of P1,800.20 representing the annual coastwise license fees paid by them for the years from 1949 to 1957, inclusive. The Commissioner of Customs interposed the present petition for review.

Section 21 of the Philippine Tariff Act of 1909 provides as follows:

"SEC. 21. That on all fuel imported into the Philippine Islands which is afterwards used for the propulsion of vessels engaged in trade with foreign countries, or between ports of the United States and the Philippine Islands, or in the Philippine Coastwise trade, a refund shall be allowed equal to the duty imposed by law upon such fuel, less one per centum thereof, which shall be paid under such rules and regulations as may be prescribed by the Insular Collector of Customs."

It would appear that to be entitled to tax refund, the vessels must be either (1) engaged in trade with foreign

countries, or (2) engaged in trade between ports of the United States and the Philippine Islands, or (3) engaged in the Philippine coastwise trade. As there is no pretense that the vessels in question were engaged in foreign trade, the only question for determination is whether or not they can be said to be engaged in the Philippine coastwise trade, considering the fact that the vessels are operated in deep sea fishing in Philippine waters and do not carry passengers or cargo from one port to another within the Philippine area.

Petitioner contends that "coastwise trade" means trade or intercourse carried on by sea between two ports belonging to the same country (*Revesies vs. United States*, 35 F. 917,919), or "a commercial intercourse carried on between districts in the same state, between different districts in the same state, and between different places in the same district, on the sea coast or on a navigable river" (*North River Steamboat Co. vs. Livingston*, N. y. 3 Cow. 713, 747). And quoting from the Revised Philippine Merchant Marine Regulations, paragraph 103 (h), petitioner claims that coast-wise trade means the carriage for hire of passengers and/or merchandise on vessels between ports or places in the Philippine Islands." Since the vessels in question do not apply between Philippine ports or are not used to carry passengers or merchandise for hire from one port to another in the Philippines, it is contended that they cannot be considered as engaged in coastwise trade in contemplation of law.

The Court of Tax Appeals, in holding that the Vessels in question are engaged in coastwise trade and therefore may be required to secure coastwise license by the Bureau of Customs, invoked an opinion of the Secretary of Justice rendered on June 22, 1956 wherein he held that vessels engaged in deep-sea fishing may be required to secure a license for coastwise trade under Section 1207 of the Revised Administrative Code, quoting the decision of this Court in *Abueg, et al. vs. San Diego*, 44 Off. Gaz., No. 1, p. 80.

We are inclined to agree to this finding of the Court; of Tax Appeals. The ruling in the *Abueg Case*, considering the facts and the issues therein involved, fit properly to the present case. Note that in the *Abueg Case* the vessels involved were also engaged in fishing operations around Mindoro Island which were sunk and lost because they were caught by a typhoon causing thereby the death of some members of the crew. One of the questions raised by the owner of the vessels is that the case does not come under Section 30 of the Workmen's Compensation Act which provides that it "shall cover the liability of the employer towards employees engaged in the coastwise and interisland trade" in as much as, according to him, "a craft engaged in the coast wise and interisland trade is one that carries passengers and/or merchandise for hire between ports and places in the Philippine Islands."

In meeting this contention this Court made the following pronouncement: "But we do not believe that the term 'coast wise and interisland trade' has such a narrow meaning as to confine it to the carriage for hire of passengers and/or merchandise on vessels between ports and places in the Philippines, because while fishing is an industry, if the catch is brought to a port for sale, it is at the same time a trade." The inescapable conclusion is that vessels engaged in deepsea fishing and which carry their catch to a port for sale are engaged in coastwise trade.

The Court of Tax Appeals therefore did not err in holding that the operation of said vessels comes within the purview of the Philippine Tariff Act of 1909.

The claim of petitioner that the Court of Tax Appeals erred in finding that respondents have satisfied all the requirements for a tax fund is untenable because, according to respondent Antonio Montelibano, "the fish caught by the fishing vessels under our management is brought to the port of Iloilo for sale", while Pacifico Paris, then Deputy Collector of Customs of Iloilo, testified that the forms for refund were accomplished by respondents in accordance with the official requirement so much so that petitioner never questioned the sufficiency of the forms employed by them prior to the instant appeal.

We believe, however, that the Court of Tax Appeals was not correct in requiring petitioner to pay legal interest on the amount to be refunded for it is well-settled in this jurisdiction that our national government cannot be required

to pay interest on tax refunds. Thus, in the case of Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo, G. R. No. L-12127, decided on May 25, 1959, this Court held:

"We agree, however, with the Solicitor General that the Court of Tax Appeals erred in ordering the payment of interest on the amount to be refunded to respondent herein. In the absence of a statutory provision clearly or expressly directing or authorizing such payment, and none has been cited by respondent, the National Government cannot be required to pay interest, (H. E. Heacock vs. Collector of Customs, 37 Phil., 970, Marine Trading Co. vs. Gov't of the P.I., 39 Phil., 29, Sarasola vs. Trinidad, 40 Phil., 252). So much of the decision appealed from as requires the payment of interest should, therefore, be eliminated." (See also Collector of Internal Revenue vs. Sweeney, et al., Supra, p. 59.

With the modification that the government should not be required to pay legal interest on the amount to be refunded, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, Endencia Barrera, and Gutierrez David, JJ., concur.

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