

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF THE PHILIPPINE ISLANDS LIMITED; AND STANDARD VACUUM OIL COMPANY, PLAINTIFFS-APPELLEES, VS. DELGADO BROTHERS, INC. AND ALFREDO V....

G.R. No. L-5439. December 29, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by the defendants, Delgado Brothers, Inc. and Alfredo V. Jacinto, the latter in his capacity as Commissioner of Customs at the port of Manila, the dispositive part which read as follows: "Premised upon the above considerations, the Court hereby declares that the defendant Delgado Brothers, Inc., is not entitled to collect 'checking charges' from the plaintiffs on the cargoes of bulk petroleum products involved in this cases; and the defendant Alfredo V. Jacinto, in his capacity as Commissioner of Customs, is hereby ordered to refund to plaintiff Caltex (Philippines) Inc., the sum of P13,824.92; to plaintiff The Shell Company of Philippine Islands Limited the sum of P9,416.00, without interest. No special pronouncement as to costs."

In their notice of appeal, the defendants expressly manifested their intention to appeal to the Supreme Court on question of law, with the result that under section 3 of Rule 42 of the Rules of Court, no other issues shall be allowed. Accordingly, we are to decide this case upon the factual findings contained in the appealed decision, the full text of which is quoted below:

"This is an action instituted by the plaintiffs to recover certain deposits of money made by them with the defendant Commissioner of Customs.

"The plaintiff Caltex (Philippines) Inc., (hereinafter called Caltex) and the defendant Delgado Brothers, Inc. (hereinafter called Delgado Brothers), are domestic corporations domiciled in the City of Manila. The plaintiffs The Shell Company of Philippine Islands Limited and the Standard-Vacuum Oil Company (hereinafter called Shall and Stanvac, respectively), are foreign corporations duly licensed to transact business in the Philippines, and have their principal place of business in the City of Manila. The defendant Alfredo V. Jacinto is the duly appointed and acting Commissioner of Customs.

"On October 21, 1950, after public bidding, the defendants Delgado Brothers and the Bureau of Customs executed the "Arrasta Contract,' or 'Management Contract,' marked plaintiffs' Exhibit 'AA' and defendants' Exhibit '2'.

"From the month of July to September, 1951, the plaintiffs imported into the Philippines bulk petroleum products consisting of kerosene, gasoline, diesel oil and fuel oil the cargo was brought in tankers, and prior to their arrival the plaintiffs secured from the Commissioner of Customs permits for shipside delivery, which were in turn processed by Delgado Brothers.

"The plaintiffs were required, however, by the defendants to deposit with the Commissioner of Customs: Caltex, the sum of P13,824.92; Shell, P9,416; and Stanvac, P17,416, for and as 'checking charges'

(sometimes also known as ‘shipping charges’), and the plaintiffs, under protest, made the deposits with the Commissioner of Customs.

“There is practically no dispute as to the essential facts.

“Delgado Brothers contend that they are entitled to collect ‘checking charges’ for ‘checking services’ rendered by them to the plaintiffs. The latter, on the other hand, contend that Delgado Brothers did not render any ‘checking services,’ and that, even assuming that they did, under the provisions of paragraphs 2, 5 and 17 of the said ‘Management Contract’ and under the communication of the Collector of Customs to Delgado Brothers of April 12, 1951, the plaintiffs are under no obligation to pay Delgado Brothers any ‘checking charges.’

“As to how the cargo of bulk petroleum products consigned to each of the plaintiffs was discharged at the port of Manila, the evidence shows that it came in tankers; that upon their arrival, representatives of the plaintiffs, after securing the necessary permits, boarded the tankers, and took the ullage specific gravity and temperature of the cargo to ascertain if the cargo had arrived intact as reported from the last port of departure of the tankers; that the cargo was pumped later into lighters; that upon completion of the pumping operations, the lighters were sealed and towed to plaintiffs’ oil installations at Pandacan, Manila, and that upon arrival of the lighters in Pandacan, the cargo was pumped into plaintiffs’ shore-tanks where the plaintiffs took soundings, specific gravity and temperature.

“Some checkers of Delgado Brothers also took the ullage, specific gravity and temperature of the cargo on board the tankers and the lighters only. No checker of Delgado Brothers took soundings, specific gravity, or temperature in the shore-tanks of the plaintiffs in Pandacan.

“It is plaintiffs’ contention that the taking of the ullage, specific gravity and temperature by Delgado Brothers’ checkers on board the tankers and the lighters was not, and could not, be accurate, regardless of who was the person who took the measurements, whether the defendants or the plaintiffs themselves, or any other person, and the plaintiffs base their contention on the following factors: (a) a tanker is not always on an even keel or level plane; (b) it rolls or pitches slowly; (c) it is usually inclined toward the stern to facilitate the transfer of the oil or the discharge of the oil into lighters; and (d) it lists from one side to the other, which affects the level of the oil in the tanker.

‘Rafael del Pan, a witness for the defendants, stated, on cross-examination, that in the taking of the ullage, specific gravity and temperature of bulk petroleum products on board a tanker or a lighter, the difference may be as much as five per cent (5%), or even greater, while the percentage of errors in the measurements taken in a shore-tank—which is built on solid and permanent foundations—‘ could be very much less.’

“After considering the factors testified to by the witness Emerson Sanderson and Rafael del Pan, both marine surveyors, who were presented as expert witnesses by the plaintiffs and the defendants, respectively, the Court is of the opinion that it can not be denied that the measurement taken in bulk petroleum products inside a shore-tank necessarily have to be, and are, more accurate than the measurements taken on board a tanker or a lighter. As stated by witness Emerson Sanderson, a shore-tank is built on solid and permanent foundations whereas a tanker or a lighter is floating on water and is subject to the movements of the sea and is not always on an even keel or level plane. And this is borne out by the difference of over five thousand long tons between the measurements taken by Delgado Brothers’ checkers of certain cargo of the plaintiffs Caltex and Stanvac on board tankers and lighters and the measurements of the same cargo taken by the companies in their shore-tanks at pandacan. The companies’ measurements are 5,630.430 long tons, more than Delgado Brothers’ measurements taken on board the tankers and the lighters. Delgado Brothers’ ‘records of shipside deliveries on bulk petroleum products,’ marked defendants’ Exhibits ‘9’ and ‘10’, show a total of 75,079.972 long tons of bulk petroleum products consigned to, and discharged for, the plaintiffs’ Caltex and Stanvac, but the measurements of the same cargo taken by these two companies in their shore-tanks at their Pandacan installations, which measurements were checked by officers of the Bureau of Customs, show that the

companies received a total of 80,710.486 long tons, that is 5,630.434 long tons more than the records of shipside deliveries of the defendant Delgado Brothers call for.

“The evidence also shows that in determining the amount of the specific tax and duties due the Government on the cargoes of bulk of petroleum products involved in this case, the Bureau of Customs relied exclusively on the measurements taken in plaintiffs’ shoretanks at their Pandacan installations, which measurements were checked by officers of the Bureau of Customs.

“Taking into consideration the foregoing, and the fact that the measurements taken on board a tanker or a lighter cannot be accurate, or, at least, as accurate as the measurements taken in a shore-tank, which is built on solid and permanent foundations (plaintiffs’ Exhibit ‘DD’), the Court is of the opinion that the defendant Delgado Brothers is not entitled to collect ‘checking charges’ from the plaintiffs for the following reasons: the Bureau of Customs made no use of the measurements taken by Delgado Brothers’ checkers, but relied exclusively on the measurements taken by plaintiffs in their shoretanks at their Pandacan installations; the said measurements taken by Delgado Brothers’ checkers on board the tankers and lighters were inaccurate and were of no use to the Bureau of Customs for the determination of the specific tax and duties due on each cargo; and to sustain a claim for compensation for services rendered, the service must have been of some utility or benefit to the person against whom the claim for compensation is made.

“On the other hand, the defendants rely on their contract with the Bureau of Customs, especially paragraphs 17 and 23 of the ‘Management Contract’ which read as follows:

“17. It is further understood and agreed that the CONTRACTOR shall be entitled to and shall make the following charges to the public for the receiving, handling, and custody and delivery of merchandise and the services rendered in conjunction therewith, as hereinafter designated.

“23. There shall be collected on all import cargo falling under Customs Administrative Order No. 113, and other subsequent Customs Administrative Orders relative to shipside delivery, charges as follows.....0.60.”

“The evidence, however, shows that Delgado Brothers did not receive, or handle, or take into their custody, and later deliver to the plaintiffs the cargoes of bulk of petroleum products in question, and no service was rendered by the defendants in connection therewith. It is evident that, under the foregoing provisions of paragraph 17 and 23 of the ‘Management Contract’, Delgado Brothers are not entitled to collect ‘checking charges’ from the plaintiffs.

“Furthermore, using the language of the ‘Management Contract’, the defendant Delgado Brothers did not have ‘the exclusive right or privilege’ of ‘recording or checking’ plaintiffs’ cargoes of bulk of petroleum products involved in this case, and they are not therefore entitled to collect ‘checking charges’. Paragraphs 2 and 5 of the ‘Management Contract’ read as follows:

“2. During the period while this agreement remains in force and effect, the CONTRACTOR shall be, and the BUREAU does hereby appoint the CONTRACTOR, sole management of the Arrstre Service at the Port of Manila, subject always, however, to the terms, conditions, restrictions, supervisions and provisions in this agreement contained, with the exclusive right or privilege of receiving, handling, caring for and delivery of all merchandise, imported and exported, upon or passing over, the Philippine Government owned wharves and piers in the Fort of Manila, and also, the recording or checking of all merchandise which may be delivered to the Port of Manila at shipside, except coal, lumber and firebricks in quantity, case crude oil, and kerosene and gasoline in lots of over ten thousand cases or its equivalent, and whole cargoes of one commodity when consigned to one consignee only as hereinafter provided, and in general to furnish lighting and water services and other incidental services, in order to undertake such work, and with full power to fix the number and salaries of, and to appoint and dismiss, all officers, employees and laborers, temporary and permanent, which

may be necessary, and to do all acts and things which said CONTRACTOR may consider conducive to the interest of the Arrastre Service.'

"'5. It is understood and agreed that the CONTRACTOR shall make a complete and detailed checking by marks and numbers of all cargo handled in the Port of Manila, whether onto or over wharves or piers, or delivered at shipside, except coal, lumber and firebricks in quantity, case crude oil and kerosene and gasoline in lots of over ten thousand cases, or its equivalent, and entire cargoes when of one commodity and consigned to one consignee only.'

"The evidence further shows that each cargo of petroleum products involved in this case was all consigned to one person, either to the plaintiffs Caltex, or Shell, or to Stanvac, and that the equivalent of the said cargo reduced to cases, was more than ten thousand cases.

"Under the foregoing exemptions established by paragraphs 2 and 5 of the 'Management Contract' the Court is of the opinion, and so holds, that the plaintiffs are under no obligation to pay any checking charges to Delgado Brothers, the cargo falling within the two exceptions set forth in paragraphs 2 and 5 of the 'Management Contract'.

"In the opinion of the Court, there is no conflict between the provisions of paragraphs 2 and 5, on the one hand, the provisions of paragraph 23 of the 'Management Contract' on the other.

"Paragraph 23 of the contract provides, in general, that 'there shall be collected on all import cargo falling under Customs Administrative Order No. 137 (old series), as amended by Customs Administrative Order No. 113, and other subsequent Customs Administrative Orders relative to shipside delivery, charges as follows.....0.60', and paragraphs 2 and 5 of the contract establish two exceptions, or limitations to the 'exclusive right to privilege' of the arrastre contractor of 'recording or checking' shipside deliveries or cargo of bulk of petroleum products under certain conditions, to wit: first, that if the cargo consists of coal, lumber and firebricks in quantity, case crude oil and kerosene and gasoline in lots or over ten thousand cases or its equivalent, or, second, if the entire cargo consists of one commodity and is consigned to one consignee only, the arrastre contractor (the defendants Delgado Brothers Inc.) will not have the ' exclusive right or privilege' of 'recording or checking' the said cargo.

"But in any event, even if the provisions of said paragraph 2, 5 and 23 of the 'Management Contract' are in conflict, pursuant to the well-known rule of statutory construction that in the event of a conflict between general and special provisions in a contract, the special provisions shall prevail over that of paragraph 23. (Sec. 60, Rules of Court; Hibberd vs. Estate of McElvay, 25 Phil. 164, 167).

"The next question for determination by the Court is the effect of the agreement of July 1, 1951, entered into between the Bureau of Customs and Delgado Brothers, which set aside and annulled, and declared of no force and effect, the provisions contained in paragraphs 2 and 5 of the 'Management Contract' of October 21, 1950.

"As heretofore already stated, the said 'Management Contract' of October 21, 1950, was entered into and executed by Delgado Brothers and the Bureau of Customs after public bidding, and is effective until December 31, 1955. The agreement of June 1, 1951, was executed and entered into by Delgado Brothers and the Bureau of Customs without public bidding. Is the said agreement valid?

"Without going into the question of whether or not the said 'Management Contract' could be altered or amended by the contracting parties before the date of its expiration (December 31, 1955), if the interest of third parties are adversely affected, a very important point on which the Court makes no pronouncement, it is the opinion of the Court that the said agreement of June 21, 1951, executed and entered into without previous public bidding, is null and void, and can not adversely affect the rights of third parties, —(and the plaintiffs three of such

third parties)—and of the public in general. The Court agrees with the contention of counsel for the plaintiffs that the due execution of a contract after public bidding is a limitation upon the right of the contracting parties to alter or amend it without another public bidding, for otherwise what would a public bidding be good for if after public bidding, the contracting parties may alter or amend the contract, or even cancel it, at their will? Public biddings are held for the protection of the public, and to give the public the best possible advantages by means of open competition between the bidders. He who bids or offers the best terms is awarded the contract subject of the bid, and it is obvious that such protection and best possible advantages to the public will disappear if the parties to a contract executed after public bidding may alter or amend it without another previous public bidding.

“In taking a view in favor of the plaintiffs, the Court took into consideration not only the evidence adduced but also the detrimental effect upon the consuming public if the view were otherwise, for, if the plaintiffs were to be made to pay any ‘checking charge’, they will most likely have to raise the price of the bulk of petroleum products in order to maintain a marginal level for profit. For any such increase in price, the consuming public will ultimately have to bear the brunt.

“The foregoing considerations dispose of the essential questions involved in this case. For the reason, the Court abstains from discussing the other questions raised by the parties.

“Presmised upon the above considerations, the Court hereby declares that the defendant Delgado Brothers, Inc., is not entitled to collect ‘checking charges’ from the plaintiffs’ on the cargoes of bulk of petroleum products involved in this case; and the defendant Alfredo V. Jacinto, in his capacity as Commissioner of Customs, is hereby ordered to refund to Caltex (Philippines) Inc, the sum of P13,824.92; to plaintiff The Shell Company of Philippine Islands Limited the sum of P9,416.00; and to plaintiff Standard-Vacuum Oil Company the sum of P17,416.00, without interest. No special pronouncement as to cost.”

Merely reiterating the reason given by the trial court in deciding adversely against the defendants, we need only point out that, although under paragraph 23 of the “Arrastre Contract” in favor of Delgado Brothers, Inc., there shall be collected on all import cargo falling under Customs Administrative Order No. 137 (old series), as amended by Customs Administrative Order No. 113, and other subsequent Customs Administrative Orders relative to shipside delivery, charges in the amount of P0.60, under paragraph 17 the contractor is entitled to make charges to the public “for the receiving, handling, and custody and delivery of merchandise and services rendered in conjunction therewith,” said paragraph specifying the schedule of arrastre charges on imported cargo, lighter deliveries, export cargo, transit cargo, heavy cargo and shipside charges. In view of the finding of the court a quo that Delgado Brothers, Inc. “did not receive, or handle, or take into their custody, and later deliver to the plaintiffs the cargoes of bulk of petroleum products in question, and no service was rendered by the defendants in connection therewith,” no checking charges are due to said contractor under paragraph 17 of the “Arrastre Contract”. Paragraphs 25 and 17 must of course be taken in conjunction with each other.

Under the theory of Delgado Brothers, Inc., however, the applicable provisions are contained in paragraphs 2, 5 and 23 of the “Arrastre Contract. But in paragraph 2 there is an exemption in favor of “coal, lumber and firebricks in quantity, case crude oil and kerosene and gasoline in lots or over ten thousand cases or its equivalent, and whole cargoes of one commodity when consigned to one consignee only”; and in paragraph 5 there is also an exemption in favor of coal, lumber and firebricks in quantity, case crude oil and kerosene and gasoline in lots or over ten thousand cases, or its equivalent, and entire cargoes when of one commodity and consigned to one consignee only.” Since the trial court found that “each cargo of petroleum products involved in this case was all consigned to one person, either to the plaintiffs Caltex, or to Shell, or to Stanvac, and that the equivalent of the said cargo reduced to cases, was more than ten thousand cases,” the plaintiffs are still excused from paying any checking charges to the Delgado Brothers, Inc., Appellants, however, argue that paragraph 2 merely means that,

with respect to shipside deliveries of cargo mentioned therein, Delgado Brothers, Inc., is not vested with the exclusive right or privilege, but the same is dependent upon the Commissioner's continuing supervision and specific directions, as the checking of all cargoes delivered shipside continues to be an indispensable function for all importations into the Port of Manila. The weakness of this contention is that the supervision of the Commissioner of Customs is distinguished from the right of the contractor to collect checking charges, if the imported cargo is exempt under the provision of paragraph 2. Moreover, the construction given by the trial court is supported by the fact that, in the amendment of paragraph 23 of the "Arrastre Contract" made on June 1, 1951, it had to be expressly provided that with regards to crude oil, kerosene, gasoline and other liquid petroleum products in bulk pumped shipside directly to lighters or tanks, and entire cargoes vessels consisting of one commodity only and consigned to one consignee, the shipside delivery charge shall be per ton of 40 cu. ft. or 1000 kilos....P0.40," and that "all other provisions as in this Management Contract, and all regulations or orders of the Bureau of Customs contrary or in conflict with the provisions as in this paragraph contained, are hereby declared of no force and effect." The effect is to cancel the exemptions provided for in paragraphs 2 and 5 of the "Arrastre Contract" of October 21, 1950. Our conclusion is furthermore in line with the admitted fact, under the former arrastre contracts, charges of kind sought to be collected by Delgado Brothers, Inc., had ever been imposed; and no valid reasons have been advanced for departing from the general policy.

The charges to be collected by Delgado Brothers, Inc., are for checking; and yet the measurements taken by it on board the tankers and lighters redounded to the benefit neither of the plaintiffs' nor of the Government; because the checking made by the plaintiffs in their shore-tanks at Pandacan and verified by the officers of the Bureau of Customs was adopted by the Government for the purpose of assessing the tax due from the plaintiffs, and rightly so, since the plaintiffs' computation exceeded those of Delgado Brothers, Inc. by more than 5,000 long tons. The measurements made by Delgado Brothers, Inc. could not have been solely for the purpose of enabling it to collect charges.

This leads us to the ruling in appealed decision that the amendment of June 1, 1951 is null and void, for the reason that it was done without public bidding. We may add to what was pointed out by the trial court that, although the "Arrastre Contract" (paragraph 45) authorizes the parties to alter or amend any of the terms thereof, said authority must be considered as being subject to the requirement of previous public bidding, a formality observed before contract of October 21, 1950 was awarded to Delgado Brothers, Inc. The "Arrastre Contract" is not an ordinary agreement involving merely the parties therein, as the same affects the public in general, particularly as to the rates of and exemptions from the arrastre charges.

Wherefore, the appealed decision is affirmed and it is so ordered with costs against the appellant Delgado Brothers, Inc.

Paras, C.J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ. concur

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