

**ASSOCIATED SUGAR, INC., BACOLOD-MURCIA MILLING CO., INC.,
TALISAY-SILAY MILLING CO., INC., MA-AO SUGAR CENTRAL CO.,
INC., AND FINANCING CORPORATION OF THE PHILIPPINES,
PETITIONE...**

G.R. No. L-30391. November 25, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the legality of wharfage dues in the sum of P904,236.38 collected by the Commissioner of Customs from the five petitioners in connection with their exportation of sugar which was shipped from two private wharves.

There is no dispute as to the facts. On various dates between 1959 and 1966 the petitioners shipped raw sugar to the United States on board ocean-going vessels. The shipments were loaded at the Sto. Niño Wharf located in Bacolod City and the wharf of the Philippine Bulk Corporation at Pulupandan, Negros Occidental. The wharves were of private ownership. No government port facilities were utilized.

The Collector of Customs for the Port of Iloilo levied and collected on the said shipments wharfage dues in the sum of P904,236.38 pursuant to sections 2801 and 2802 of the Tariff and Customs Code. The petitioners paid the wharfage dues under protest. The Collector of Customs dismissed their protest.

The petitioners appealed. The Commissioner of Customs affirmed the Collector's decision. On February 16, 1967, the petitioners filed with the Court of Tax Appeals a petition for the review of the Commissioner's decision. The Commissioner answered the petition.

Later, he filed a motion to dismiss the petition on the ground of lack of cause of action. The Tax Court in its order of December 28, 1968 dismissed the case. The petitioners appealed to this Court.[*]

The petitioners contend that the Tax Court erred in rendering summary judgment on a motion to dismiss and in applying the ruling that wharfage dues are collectible on shipments of cargoes which are loaded in a harbor for exportation without the use of any government facilities (*Procter and Gamble PMC vs. Commissioner of Customs*, L-22819, April 27, 1967, 19 SCRA 883, 63 O.G. 10602; *Luzon Stevedoring Corp. vs. CTA*, 124 Phil. 1013; *Victorias Milling Co., Inc. vs. Auditor General*, 116 Phil. 1139).

The appellants assail the wharfage fees in question on the theory that wharfage is a charge or rent for the use of a wharf or for the use of government facilities in a port. Since in exporting their sugar they used pri-vate wharves and did not use any government facilities, they contend that they should not be held liable for wharf-age dues.

That theory is not tenable under sections 2801 and 2802 of the Tariff and Customs Code, Republic Act No. 1937, as amended. The ordinary connotation of wharfage is that it is a charge assessed for the use of a wharf for freight handling or ship dockage. Thus, wharfage has been defined as money paid for landing goods upon or loading

them from a wharf (Old Dominion S.S. Co. vs. City of New York, D.C.N.Y., 286 Fed. 155, 156).

But that is not the meaning of wharfage under the Tariff and Customs Code. Wharfage is used in a different sense in that Code. It can be inferred from sections 2801 and 2802 of the Code, as amended, that wharfage dues can be collected even if no wharf is used in the loading or unloading of exported or imported cargoes, such as when the loading or unloading takes place offshore or in midstream by using lighters (meaning at shipside).

In *City of Sacramento vs. The New World*, 4 Cal. 41, 44, cited in 45 Words and Phrases, Per. Ed., p. 51, it was held that the definition of wharfage is not to be confined to the charge for landing at a wharf. The term "wharfage" is generally applied to a charge for landing the goods, whether upon an artificial erection or a natural landing.

The Tariff and Customs Code provides:

"SEC. 2801. Definition.- Wharfage due is the amount assessed against the cargo of a vessel engaged in foreign or coastwise trade, based on the quantity, weight or measure received and/or discharged by such vessel. The owner or consignee of the article, or agent of either, is the person liable for such charge." (As amended by P.D. Nos. 34 and 441.)

"SEC. 2802.- Schedule of Dues.- There shall be levied, collected and paid as wharfage dues, on all articles imported or brought into the Philippines, a charge of eight (P8.00) pesos per gross metric ton; on articles exported from the Philippines, a charge of four (P4.00) pesos per gross metric ton and on domestic articles transported at national ports, a charge of one (P1.00) peso per gross metric ton: x x x x x x x x.

"Provided, further, That in case the articles imported into or exported from or transported within the Philippines are loaded or unloaded offshore, in midstream, or in private wharves where no loading or unloading facilities are owned and maintained by the government, the wharfage fees shall be fifty (50%) percent of the rates provided for herein. (As amended by P.D. Nos. 34 and 441.)

That same definition in section 2801 is found in section 3(p-1) of the Local Tax Code, Presidential Decree No. 231, as amended by Presidential Decree No. 426, which provides that wharfage is a fee assessed against the cargo of a vessel engaged in or based on the quantity, weight or measure received and/or discharged by such vessel.

As thus defined, a wharfage fee may be collected even if no wharf is used. It is a charge against the cargo and not for the use of a wharf. In that sense, the term "wharf-age" is a misnomer. The appropriate term would be cargo fees or charges.

The said definition is a repudiation or abandonment of the meaning of wharfage as "a charge or rent for the temporary use of a wharf" (8 Words and Phrases Judicially Defined, p. 7435; *Aboitiz Shipping Corp. vs. City of Cebu*, 121 Phil. 425, 428), or of the statement of Justice Johnson that wharfage is a payment for services rendered by a wharf (51 Phil. 154).

The Tariff and Customs Code abrogated the provision in section 3 of Republic Act No. 1371 that exempted from the wharfage fee all imported articles unloaded on private wharves (*Com. of Customs vs. Superior Gas and Equipment Co. and Court of Tax Appeals*, 108 Phil. 225).

It is evident that the concept of wharfage dues in section 2801 was taken from the decision of this Court in 1927 in *Philippine Sugar Centrals Agency vs. Insular Collector of Customs*, 51 Phil. 131, which is almost identical to this case.

In that *Philippine Sugar Centrals Agency* case, the plaintiff shipped at the port of Pulupandan, Negros Occidental centrifugal sugar consigned to the United States. As in this case, the sugar in that case was loaded from the private wharf of the Ma-ao Sugar Central. The Collector of Customs assessed and collected wharfage dues on the said

sugar. The plaintiff paid the wharfage dues under protest.

It filed an action for the recovery of the wharfage dues. The law in force at that time was the Philippine Tariff Act of 1909 which imposed on all articles exported through ports of entry of the Philippines, or shipped there-from to the United States or any of its possessions, a duty of one dollar per gross ton of one thousand kilos as a charge for wharfage.

This Court upheld the legality of the wharfage dues even though the sugar was shipped from a private wharf. It noted that since 1901 a charge for wharfage was collected on exports although there were no piers or wharves and export cargoes were brought to the sides of the vessels by means of lighters.

That ruling was reiterated in *Victorias Milling Co., Inc. vs. Auditor General*, 116 Phil. 1139, a case decided under section 3 of Republic Act No. 1371 and in two *Procter and Gamble* cases, *infra*, and also in *Philippine Iron Mines, Inc. vs. Commissioner of Customs*, L-23359, *Caltex (Phil.), Inc. vs. Acting Commissioner of Customs*, L-23679 and *Bislig Bay Lumber Co., Inc. vs. Commissioner of Customs*, L-25400, all decided on October 31, 1969, 30 SCRA 60.

So, that is a settled matter. We have to follow it because of the rule of *stare decisis et non quideta movere*.

Wharfage fees are collectible on export or import cargoes even if a private wharf is used or even if the loading or unloading takes place at shipside because the "said cargoes should also share the cost of providing and keeping a safe port". They partake of the nature of a tax which is collected by the Government to support its operation of the customs service. (*Procter and Gamble PMC vs. Commissioner of Customs*, L-22819, April 27, 1967, 19 SCRA 883.)

Wharfage dues are charged, not for the use of any wharf but for a special fund known as the Port Works Fund, as provided in Act No. 3592, as amended by Commonwealth Act No. 130 and Republic Acts Nos. 1216 and 2695 (*Procter and Gamble PMC vs. Commissioner of Customs*, L-24173, May 23, 1968, 23 SCRA 691, 698).

It is noteworthy that berthing fees are collectible even if the tugboats and barges are moored at a privately owned pier in a port of entry because as long as they are moored inside the port they enjoy the facilities thereof (*Luzon Stevedoring Corp. vs. CTA*, 124 Phil. 1013).

Appellants' contention, that to collect wharfage charges from an exporter for the use of his own private wharf amounts to a deprivation of property without due process of law, is not correct. It is incorrect because it is premised on the erroneous assumption that under the Tariff and Customs Code a wharfage fee is a compensation for the use of a wharf.

As shown above, that common acceptance of wharfage is not used in this jurisdiction. Here, wharfage is a charge against the cargo which is loaded or unloaded in the safety and security of the port. That concept of wharfage has prevailed in this country since 1901 as shown by Justice Johns in the *Philippine Sugar Centrals Agency* case.

The Tax Court erroneously categorized its dismissal resolution as a summary judgment. Actually, it was a judgment on the pleadings. The Commissioner admitted the ultimate facts alleged in appellants' petition for review. Only a purely legal issue was raised. And that issue had been set at rest in the cases already cited.

We find no merit in petitioners' appeal. The Tax Court's dismissal resolution is affirmed. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

Guerrero, J., on leave.

[*]The Solicitor General argues that the petition for review was not filed on time because the Tax Court erroneously granted to the petitioners an extension of twenty days within which to file their motion for reconsideration (p. 9, Brief). The thirty-day period for filing that motion is not extendible. We have opted to decide the case on the merits instead of dismissing it due to a procedural technicality.

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