

CEBU ARRASTRE SERVICE, PETITIONER AND APPELLANT, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.

G.R. No. L-7444. May 30, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from the decision of the Board of Tax Appeals affirming the decision of the Collector of Internal Revenue (later referred to as collector), denying exemption to the petitioner-appellant Cebu Arrastre Service (later referred to as cebu arrastre) from the percentage tax under section 191 of the National Internal Revenue Code, and for refund of the amount of F2,867.02 already paid.

In 1952 the Cebu Arrastre, an association of persons engaged in the handling of cargoes carried by coastwise vessels stopping at the port of Cebu, thru its counsel Atty. Jose Muana petitioned the Collector of Internal Revenue for the exemption and the refund based on the following grounds:

"(1) That they werp a group of laborers who had recently organized themselves into an arrastre service association merely for the purpose of centralizing the collection of handling" charges and making direct payment to the men in order to insure the compliance of the Minimum Wage Law requirement.

"(2) That the work of the men of the said arrastre group is under the direct supervision and control of the officers of the ships.

"(3) That the Cebu Arrastre Service is engaged solely in the loading and unloading of cargoes to and from the boats and is not engaged in the transportation business."

Acting upon the petition, the Collector referred the matter to his agent in Cebu for investigation. Mr. Ignacio Quijano, the Assistant Agent, conducted the investigation and filed his report, the pertinent portions of which are as follows:

"1. The loading and unloading of cargoes to and from the ship's holds is done by the laborers under the 'Cebu Arrastre Service Co., Inc.'

"2. The supervision of the ship's officers in the work is confined only to the proper handling of the cargoes according to their nature and to the proper placing of the cargoes inside the ship's holds.

"3. As to the laborers' actuations outside of the handling and placing of cargoes inside the ship's holds the officers of the ship have no supervision.

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"6. The 'Cebu Arrastre Service Co., Inc.' is not engaged in the transportation of the cargoes from the wharf to the bodegas of the shippers. The shippers have their own trucks or provide for the transportation of their cargoes from the wharf to their bodegas.

"7. The laborers of the 'Cebu Arrastre Service Co., Inc.' help only in the loading of the cargoes from the wharf

to the shippers' trucks, for the shippers' trucks are provided with their own 'journals'."

On the basis of said report the Collector denied the petition, holding that inasmuch as the Cebu Arrastre was engaged in the loading and unloading of vessels in port, it may be considered a stevedore within the meaning of section 191 of the Tax Code. In this connection, it may be stated that section 191 of the Tax Code imposes a tax equivalent to 3 per cent of the gross receipts on certain businesses and business entities, among them stevedores.

In his brief counsel for petitioner-appellant bitterly assails the proceedings had in this case, saying that it "has been most inquisitorial, reminiscent of the ancient and antiquated method of administering justice by which the defendant was condemned without benefit of confrontation. The guarantee and protection jealousy safeguarded by our Constitution has been completely disregarded. The report of the BIR Agent was a mere unilateral affair and its findings were arrived at without the petitioner-appellants' having had the slightest opportunity to be confronted and his side heard." We have examined the record of the proceedings and find this attack unfounded. Although the Board of Tax Appeals as an appellate board usually considers only the evidence that comes with the appeal, nevertheless, in this case a hearing was had before it, and the very same counsel Atty. Jose Muana testified on behalf of the Cebu Arrastre, his client and of which he was the president, but he failed to present any evidence or give any testimony in support of his present contention that the Cebu Arrastre is not engaged in the work of loading cargoes into the holds of the boat or unloading the same from it. But in his memorandum filed with the Tax Board, he made statements which the Tax Board liberally considered as evidence but which the Board regarded as insufficient and not entirely credible. We reproduce a portion of the decision of the Tax Board on this point:

"In its memorandum filed with us in Support of its petition for review of the case, petitioner's counsel makes some additional statements of facts wherein he avers that, 'Their work (that of the company's laborers) was simply the handling of cargoes at the wharf almost mechanically under the control and supervision of the shipping companies. In cases where boats had booms their work was simply to load on the wharf at the ships tackle by placing the cargoes in the sling and hooking unto the tackle, and unloading by unhooking the sling from the tackle and discharging the cargoes on the wharf. In rare cases where the boats have no booms, these men carry the cargoes up to the deck for the stevedores on board to store in the hold, in the case of loading, and carry cargoes from the deck which have been unloaded from the hold by the stevedores to the wharf.'

"We have here three descriptions of the kind of work performed by the laborers of petitioner corporation, of which one is widely different from the other two: one is from the investigator of the Bureau of Internal Revenue who says that the laborers in question carry cargoes to and from the pier to the hold of ships, which agrees with the description appearing on the original request to the Collector by the President and Counselor of the Corporation, the other being the contention of the same official of the Arrastre Service who, in his memorandum on appeal, would have us believe that its workingmen merely place the cargoes in the slings and then leave the ships tackle to lift and drop them into the holds or dump them on decks, there to be stowed by another set of workingmen, presumably not connected at all with the Arrastre Service Corporation. When ships are not provided with booms, cargoes are carried by the Arrastre Service laborers over planks or ladders to be dumped into the deck or into the hold, there to be stowed by another set of stevedores not related to the Corporation.

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"The question, then revolves around the facts and around the credibility of the description depicting the exact nature of the work of the laborers working under the contracts entered into by the Cebu Arrastre Co. Inc. with Cebu shipowners. We just determine therefore, which of the two conflicting versions conies nearer the reality of the situation.

"We may say at the outset that the preponderance of evidence is in favor of the version of the Assistant Agent

of the Bureau of Internal Revenue of Cebu. According to him the loading and unloading of cargoes to and from the ships holds is done by the laborers under the Cebu Arrastre Service Co., Inc. and the ships officers supervision is limited to the proper placing of the same inside the ships hold, the inference being that said 'proper placing (stowing) is being done by the corporation laborers. This is not contradicted by the version of the petitioner as given in its original petition wherein it says: The men working under the Cebu Arrastre Service are same men of 'Katubusanan sa Maraumuo' who have been handling the loading of the boats of the Aboitiz & Co. and of the Philippine Navigation Co. since 1947 up to the present.' It says also, further on: 'The Cebu Arrastre Service is dedicated itself solely to the loading and unloading of cargoes on the boats . . .' It is true that the President and Counsel corrected this description in the memorandum on appeal to the effect that laborers of the corporation do not, except on rare occasions, engage in loading or unloading the boat but limit their work on loading or unloading *pele-mele*. the slings of the boats under contract with the Arrastre Service, but in the opinion of the Board this amendment is not nearer to the truth than the original version which was corroborated by the official who investigated the case by order of the Collector of Internal Revenue.

"It is noteworthy that in the agreement entered into by the shipowners and the corporation mention is twice made of the 'arrastre service on the vessels' (but never on the piers) to be done by the laborers of the Cebu Arrastre Service Inc. Another circumstance which may help in obtaining a clear picture of the situation is that nowhere in these papers is it contended that the stevedores actually performing the stowing work belong to an organization not related to the petitioner."

We quote the following definitions of stevedores, viz:

Stevedores is "one who works at, or one who is responsible for, the unloading and loading of a vessel in port. (Webster's New International Dictionary, Second Edition (unabridged), p. 2473).

A stevedore is a person employed in loading and unloading a vessel. (The Owego, D. C. Wash., 292 F. 505, 507).

Stevedores are class of laborers at the ports whose business it is to load and unload vessels. (The Senator, 21 F. 191).

"Stevedore" is defined as "one whose occupation is to load and unload vessels in port"; in other words, a contractor or a jobber for special business ready to be employed by anybody at his line of work (Rankin vs. Merchants and Miners Transp. Co., 73 Ga. 239, 54 Am. Rep. 874).

"Stevedore" and "longshoreman", are synonymous terms when interpreted in the light of the work they perform, namely loading and unloading of vessels (Zampiere vs. Willian Spencer and Son Corporation, 185 N.Y.S. 639, 640, 194 App. Div. 576).

Under the above definitions the Cebu Arrastre admittedly engaged in the work of loading and unloading coast wise vessels calling at the port of Cebu, should be regarded as a stevedore and therefore subject to the percentage tax under section 191 of the Tax Code. But even if we applied the narrower and more specific concept of stevedore used by the Tax Board, namely, that a stevedore is one who places cargoes in the holds of ships in such a way that the boat would maintain an even keel, and that even with the movement of the boat, especially in rough weather, the cargoes would not be displaced from their original position, still, under the finding of fact made by the Tax Board that the Cebu Arrastre is engaged in this work of towing cargo either in the hold or even on the deck, appellant would be subject to the tax. We also agree with the Tax Board that the purpose for which the petitioner-appellant was organized, and the supervision exercised by the ships' officers over its work in loading and unloading vessels including the towing of cargo, has nothing to do with the tax liability of the petitioner-appellant.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs in both instances.

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

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