

HAWAIIAN-PHILIPPINE COMPANY, PETITIONER, VS. THE HONORABLE AUDITOR GENERAL OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-18440. October 25, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

From 1948 to 1960 petitioner Hawaiian-Philippine Company, in the course of its business as producer and exporter of centrifugal sugar, made numerous export shipments thereof from the port of Iloilo without utilizing any of the government wharves for the purpose. Loading was done either at petitioner's private wharf or by means of lighters which carried the sugar directly to the side of the carrying vessel. In that connection the Collector of Customs for the port of Iloilo regularly imposed upon and actually collected from petitioner "wharfage dues" during the period in question.

On September 7, 1960 petitioner sent a letter to the Collector of Customs for the port of Iloilo requesting the refund of the amounts thus collected, totalling P568,573.48. The request for a refund was based on the decision of this Court in the case of Commissioner of Customs vs. Superior Gas and Equipment Company and the Court of Tax Appeals (G. R. No. L-14115, May 25, 1960), involving the interpretation and application of section 3 of Republic Act No. 1371, which provides:

"SEC. 3. There shall be levied, collected and paid on all articles imported or brought into the Philippines, and on products of the Philippines, except coal, x x x and sugar molasses, exported from the Philippines a charge of two pesos per gross metric ton as a fee for wharfage; Provided, That in the case of logs, or flitches twelve inches square or equivalent cross-sectional area, or over, a charge of sixty centavos per cubic meter shall be collected; Provided, further, That such wharfage fee shall not be levied on articles imported or brought into the Philippines which are unloaded on private wharves."

We stated in said case:

"x x x at the time Republic Act 1371 was approved, the Government had wharves; and the discussions in the legislature showed the intention not to levy wharfage fees on merchandise unloaded at places other than Government wharves or without making use of pier facilities.

x x x

"The proviso exempting from the wharfage fee all imported merchandise on private wharves makes this intention all the more evident. In other words, the Congress at last accepted the ordinary concept of 'wharfage charge' as the 'charge for use of wharf by way of rent or compensation' or the 'money paid for landing goods upon or loading them from a wharf' or the 'fee or duty paid for the privilege of using a wharf'; and admitted that goods not landed via the Government wharves should not pay wharfage."

In a communication dated September 16, 1960 (Annex "C") the acting Collector of Customs for the port of Iloilo denied petitioner's request. Whereupon the Company, on October 3, 1960, filed a formal claim with the Auditor

General (Annex "D"), alleging that the exaction and collection of wharfage fees on its exports which had been loaded shipside and without using government wharves were null and void; that claimant paid the fees in the honest but mistaken belief that they were legal obligations; that such erroneous payment gave rise to the quasi-contract of solutio indebiti between the claimant and the Government, on the basis of which a claim for refund could be made to the Auditor General.

The Auditor General declined to act for want of authority, alleging that it was the Collector of Customs to whom the fees had been paid who had exclusive jurisdiction over said claim for refund, subject to review by the Commissioner of Customs, whose decision in turn was appealable to the Court of Tax Appeals. From the ruling of the Auditor General the claimant Company interposed the present petition for review.

The Company presents two (2) main issues for re-solution, to wit:

"(1) whether or not the petitioner was liable, under the provisions of section 14, Tariff Act of 1909, section 3, Republic Act No. 1371, and sections 2801 and 2802, Republic Act No. 1937, for the payment of the alleged 'wharfage dues' collected from it by the Collector of Customs of Iloilo for the period covering the sugarcane crop years (1948 to 1960) on export shipments in the course of which petitioner never made use of government wharfage facilities, and

"(2) whether or not petitioner has a right to seek the refund of said wharfage charges under Act No. 3083, Commonwealth Act No. 327, and Articles 2154 and 2155 of the Civil Code of the Philippines governing the quasi-contract of 'solutio indebiti'."

To buttress its claim for the return of the amount paid, petitioner relies on the case of Commissioner of Customs vs. Superior Gas & Equipment Co., supra, which was decided in the light of Republic Act No. 1371. But such reliance is misplaced. As observed by this Court in another case similar to the one under review (Victorias Milling Co., Inc. vs. The Honorable Auditor General of the Philippines, G. R. No. L-17414, November 30, 1962), "the reliance on that case is unjustified because, unlike the present cases, the issue there related to an importation (not exportation) of goods arriving in the Philippines in August of 1956, which issue fell squarely within the last proviso of the law. Hence, the wharfage charges made in connection with the merchandise imported and unloaded in a private wharf were ordered refunded pursuant to the express provision of the law exempting such importation. Any reference to exports made in the decision in that case is mere obiter."

Inasmuch as petitioner advances practically the same arguments raised in the Victorias Milling Co. case we quote from our decision therein:

"Appellant strongly contends that its action is not an ordinary claim for refund of protested payment of customs charges under Sections 1370 to 1372 of the Revised Administrative Code; rather it is based on Section 1, Act 3083 and Sections 1 and 2 of Commonwealth Act 327, in connection with Articles 2154 and 2155 of the New Civil Code. Appellant's contention, as we understand it, runs thus: (1) the wharfage fees were paid by mistake in the construction or application of Republic Act 1371 which presents a doubtful or difficult question of law (Article 2155 of the New Civil Code); (2) that since the payment was unduly delivered through mistake and the Government received it when it had no right to demand it, the obligation to return the payment arises (Article 2154, id), which obligation constitutes the quasi-contract of solutio indebiti; (3) that such a claim is a 'moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties' and therefore could be prosecuted against the Government pursuant to section 1 of Act 3083; and (4) that such a claim involves the settlement of accounts or claims cognizable by and falling under the jurisdiction of the Auditor General whose decision is appealable to the Supreme Court (Sections 1 and 2, Com. Act 327)."

Then, as in this case, petitioner's explanation for its failure to lodge its protest and claim was its alleged belief in

good faith that it was legally liable to pay the wharfage dues. And because it did not thus protest, petitioner now contends that section 1371 of the Revised Administrative Code (section 2309, Customs Code) making the protest therein provided as the exclusive remedy in such cases, is not applicable to the instant controversy, arguing that this section refers to "any case which is subject to protest."

The foregoing contention was disposed of as follows:

"Such a reasoning is unconvincing because the law refers to cases that are protestable, not protested, cases subject to protest, not the object of protest. To adopt the view of petitioner would be to place the applicability of section 1371 at the exclusive determination of those precisely intended to be bound by it. We therefore hold that the instant case comes within the purview of sections 1370 and 1371 of the Revised Administrative Code prescribing the manner of enforcing a claim against the imposition and collection of customs duties, fees or other money charge under our customs laws. And this procedure or remedy being exclusive in these matters, the Auditor General has no power to entertain the same even though presented in another form."

Again it must be noted that while under the last proviso of section 3 of Republic Act 1371, "wharfage fee shall not be levied on articles imported or brought into the Philippines which are unloaded on private wharves," no similar exemption was made with respect to goods or articles exported. The exemption was in favor of a number of articles expressly specified, without regard to whether the loading was done at private wharves or not.

In 1957 Congress passed Republic Act No. 1937, otherwise known as the Tariff and Customs Code. Section 2802 thereof provides for the payment of wharfage dues on imports and exports. Significantly section 2802 is an almost verbatim copy of section 3 of Republic Act 1371, minus the proviso exempting from the payment of wharfage dues articles imported or brought into the Philippines and unloaded at private wharves. In other words, while under section 3 of Republic Act 1371 imported goods unloaded at private wharves were exempt from the payment of wharfage fees, this exemption has been eliminated in the Tariff and Customs Code. The change is in keeping with the nature of wharfage dues, which are assessed against the cargo, not as payment per se for the actual use of government wharves.

"But when a vessel anchors at the Bay and discharges or unloads its cargo, wharfage dues are forthwith collected. x x x said dues are assessed against the cargo. This is clear from the provision of the law under which the assessment is based on the quantity, weight or measure of the cargo received by the importer and/or discharged by such vessel.

x x x

"x x x said cargo, having been unloaded amidst the safety afforded by the port is chargeable with wharfage dues. Finally, wharfage dues partake of the nature of a tax which is collected by the Government to support its operation in relation to customs affairs." (Procter & Gamble, PMC vs. Commissioner of Customs, G. R. No. L-22819, April 27, 1967)

In view of the conclusion we have reached that the amounts paid by petitioner were legally due from it as wharfage dues, we deem it unnecessary to discuss the other points raised in the petition. The ruling of the Auditor General appealed from is affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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