

PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION, PETITIONER-APPELLANT, VS. COMMISSIONER OF CUSTOMS, RESPONDENT-APPELLEE.

G.R. No. L-24173. May 23, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, by petitioner Procter & Gamble Philippine Manufacturing Corporation, from a decision of the Court of Tax Appeals, affirming that of respondent Commissioner of Customs, which denied petitioner's claim for refund P1,434.00, paid as wharfage dues on three (3) shipments of palm oil and coconut fatty alcohol unloaded at its private wharf.

Two issues are raised in this appeal, namely: (1) whether wharfage dues are collectible, under sections 2801 and 2802 of Republic Act No. 1937, on goods unloaded at private wharves; and (2) if the first issue is decided in the affirmative, whether said wharfage dues are covered by the tax exemption provided in Republic Act No. 901.

The first issue has already been settled in the affirmative in L-22819, between the same parties,[1] under substantially identical facts. Speaking through Mr. Justice J.P. Bengzon, this Court held:

"At issue is whether or not Procter & Gamble is liable for the payment of wharfage dues imposed in Section 2802 of the Tariff and Customs Code on the two shipments of caustic soda which were not unloaded on a Government wharf.

"Section 2802 of the Tariff and Customs Code has for its origin Section 14 of the Philippine Tariff Act of 1909 which we quote hereunder:

'Sec. 14. That there shall be levied and collected upon all articles, goods, wares and merchandise except coal, lumber, creosoted, and other pressure treated materials as well as other minor forest products, cement, guano, natural rock asphalt, the minerals and ores of copper, lead, zinc, iron, and steel metals, refractory gold ores, and sugar molasses, the products of the Philippines, exported through ports of entry of the Philippines, or shipped therefrom 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, irrespective of the port of destination or nationality of the exporting vessel. In the case of logs, or flitches twelve inches square or equivalent cross-sectional area, or over, a charge of thirty cents per cubic meter shall be collected.

'All articles, goods, wares, or merchandise imported, exported, or shipped in transit for the use of the Government of the United States, or of that of the Philippines, shall be exempt from the charge prescribed in this section.'

Section 14 imposed wharfage dues only on export and were held to be payable although the subject merchandise were loaded from a private wharf 1909 our legislators knew that there was no Government wharf existing and it was found safe to assume that the Government intended to collect wharfage fees, even without

the use of Government owned wharves, in order to raise funds for the acquisition and construction of wharves throughout the islands.

"In 1955 Congress enacted Republic Act 1371, imposing in Section 3 thereof wharfage dues on imports and exports. We quote Section 3 hereunder:

'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, lumber, creosoted and other pressure treated materials as well as other minor forest products, cement, guano, natural rock asphalt, the minerals and ores of base metals (e.g., copper, lead, zinc, iron, chromite, manganese, magnesite and steel), 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.'

Interpreting Section 3, this Court stated in *Commissioner of Customs vs. Superior Gas & Equipment Co.* that the intention of Congress was not to levy wharfage fee on merchandise unloaded at places other than Government wharves or without making use of pier facilities and the proviso exempting from the wharfage fee all such imported merchandise makes this intention all the more evident.

"Later, however, in 1957 Congress passed Republic Act 1937, Otherwise known as the Tariff and Customs Code which in Section 2802 thereof provides for the payment of wharfage dues on imports and exports. Section 2802 states:

'SEC. 2802. Schedule of Dues. - There shall be levied, collected and paid on all articles imported or brought into the Philippines, and on products of the Philippines except coal, lumber, creosoted and other pressure treated materials as well as other minor forest products, cement, guano, natural rock asphalt, the minerals and ores of base metals (e.g., copper, lead, zinc, iron, chromite, manganese, magnesite and steel), 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.'

Section 2802 is an almost verbatim copy of Section 3 of Republic Act 1371 minus the proviso –

'x x x That: such wharfage fee shall not be levied on articles imported or brought into the Philippines which are unloaded on private wharves.'

"Procter & Gamble maintains that the interpretation of wharfage dues in *Commissioner of Customs v. Superior Gas & Equipment Co.*, supra, that wharfage dues are compensation, on rental for the use of a wharf, and no wharfage dues shall be collected where no Government wharf is used, shall be applied in this case because Section 2802 of the Tariff and Customs Code, the law applicable herein, was derived from Section 3 of Republic Act 1371. As a matter of fact, it adds, Section 2801 of the Tariff and Customs Code adopted the definition of 'wharfage dues' provided for in Section 1(b) of Republic Act 1371.

"On the other hand, the Commissioner of Customs and the Court of Tax Appeals are of the opinion that Section 2802 should be given an interpretation different from that enunciated in *Commissioner of Customs v. Superior Gas & Equipment Co.*, supra, on Section 3 of Republic Act 1371 for the reason that Section 2802, unlike Section 3, does not provide for an exemption from wharfage dues on goods unloaded on private wharves. Counter to this argument, Procter & Gamble contends that the aforesaid exemption clause is merely a surplusage and therefore its presence in or absence from the law will not alter the meaning of 'wharfage dues'. It moreover avers that the Tariff and Customs Code, a codification of existing tariff and customs laws, is presumed to have incorporated pertinent laws without change and any modification

introduced therein was merely to simplify the language of the law but not to change its meaning.

"It should be noted that the Tariff and Customs Code levies charges on the different activities of a vessel engaged in foreign trade. For coming to the Philippines from a foreign port or for going to a foreign port from the Philippines, one pays tonnage dues. For entrance into or departure from a port of entry, harbor fees are collected. Wharfage dues are assessed against the cargo discharged by vessel engaged in foreign trade. Berthing charges are levied on a vessel coming or mooring within specified places or water, of a port.

"A vessel ordinarily enters a harbor and anchors or moors in a port to load, to unload or both. In doing so, the vessel derives benefit from port facilities provided and maintained by Government. For this reason, they are in fairness made to contribute a share in said Government undertaking by payment of berthing charges and harbor fees. Similarly, cargoes discharged to a Philippine port from a vessel engaged in foreign trade derive benefit from port facilities provided and maintained by the Government; said cargoes should also share the cost of providing and keeping a safe port, in the form of wharfage dues. Accordingly a vessel that anchors at Manila Bay to seek protection from a storm is not charged wharfage dues the Bureau of Customs, although it may have to harbor fees and berthing charges. But when a vessel anchors at the Bay and discharges or unloads its cargo, wharfage dues are forthwith collected. For, as stated, said dues are assessed against the cargo discharged. 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. And wharfage dues on the cargo are distinct from harbor fees or berthing charges on the vessel, so much so that different sections of the law cover them.

"Since in the present case, the vessels involved called on port to unload, as they in fact did, some cargo, 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."

Petitioner herein has not adduced any reason, and we find none, to warrant a reversal or modification of the foregoing view, which is hereby reiterated.

As regards the second issue, section 1 of Republic Act No 901 reads:

"Any person, partnership, company or corporation who or which, subsequent to the approval of this Act (June 20, 1953), shall engage in a new and necessary industry shall be entitled to exemption until December thirty-one, nineteen hundred and fifty eight from payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry x x x."

The issue hinges[2] on whether or not the phrase "all taxes," as used in the above provision, embraces "wharfage dues." Petitioner maintains that it does, upon the theory that, according to American decisions, the word "tax" when used alone includes customs levies or import entries, and that "customs" are "taxes levied upon goods or merchandise imported or exported" or "the duties, toll, tribute or tariff payable upon merchandise imported or exported." [3] The views set forth in said decisions and authorities are not, however, controlling in the Philippines, the laws of which must necessarily be construed in accordance with the intent of its own makers, as such intent may be deduced from the language of each law and the context of other local legislation related thereto.

Our Constitution provides that "the Congress x x x may not deprive the Supreme Court x x x of its jurisdiction to review, revise, reverse, modify or affirm on appeal certiorari, or writ of error x x x final judgments and decrees of inferior courts" in, inter alia, "all cases involving the legality of any tax, impost assessment, or toll, or any penalty imposed in relation thereto," [4] and that "Congress may be law authorize the President x x x to fix x x x tariff rates, import or export quotas, and tonnage and wharfage dues." [5] Thus, our fundamental law distinguishes between taxes, on the one hand, and "imposts" - that is to say, tariff rates or duties imposed for the importation of goods - on the other. Similarly, the Constitution does not consider "wharfage dues" as part of "tariff rates" or

customs duties.

And neither does our Tariff and Customs Code.[6] Customs duties are governed by Book I, Title I, of said Code, under the headings "tariff Law" and "Import Tariff," respectively, whereas wharfage dues are collectible pursuant to Book II thereof, Title VII of said book, under the caption "Fees and Charges Collectible by the Bureau of Customs." Indeed, said Code regards customs duties, taxes and wharfage charges as three (3) distinct and separate concepts. For instance, Section 1604 thereof provides:

"Treatment of fractions in the liquidation. - In determining the total amount of duties, taxes, surcharges, wharfage and/or other charges to be paid on entries, a fraction of a peso less than fifty centavos shall be disregarded, and a fraction of a peso amounting to fifty centavos or more shall be considered as one peso. In case of overpayment or underpayment of duties, taxes, surcharges, wharfage and/or other charges paid on entries, where the amount involved is less than five pesos, no refund or collection shall be made."

Moreover, wharfage dues are charged, not for the use of any wharf. Like "harbor fees, berthing charges, storage charges and the net income from the share of arrastre charges," wharfage fees are imposed to

"to form a special fund to be known as 'Port Works Fund,' for the study, investigation, field surveys, research, planning, development, construction, improvement, maintenance, and repair of ports, port facilities and port areas, warehouses, sheds and offices, buoys, lighthouses and other aids to navigation including the purchase, maintenance, rental charges and replacement of necessary equipment."

Upon the other hand, revenue derived from customs duties form part of the general funds of the Government.

Again, tariff rates on customs duties are prescribed only for, goods imported into the Philippines, whereas wharfage fees are "assessed against the cargo of a vessel engaged in the foreign trade, based on the quantity, weight or measure received and/or discharged from said vessel." [8] In fact, even in connection with "taxes," as distinguished from customs duties or charges for the importation of foreign goods, this Court declared, in *Plywood Industries, Inc. vs. Aranas*, [9] that the exemption prescribed in Republic Act No. 901, is limited a) to "internal, revenue" taxes b) Which are "directly payable" in respect of a new and necessary industry. In that case it was held that a domestic corporation engaged in the manufacture of plywood panels and veneer sheets was not exempt from the payment of forest charges for logs cut from a forest concession, even though said logs were admittedly necessary for the manufacture of plywood panels and veneer sheets. We then reiterated our view in *Collector of Internal Revenue vs. Lacson*, [10] to the effect that:

"The exemption provided for in Republic Act No. 901 is limited to those taxes directly payable by the manufacturer in respect to the manufacture of veneer and plywood. Forest charges arising from the operation of a forest concession for the purpose of obtaining lumber used in the manufacture of the plywood and veneer do not come within the purview of the exemption. While logs and lumber are necessary for the manufacture of plywood, the operation of the forest concession to obtain the required lumber is not indispensable. The manufacturer can get his supply from the other forest concessionaires who are liable for forest charges, although it would be more profitable for it to operate its own lumber mills and have its own forest concessions.

Similarly, assuming that palm oil and coconut fatty alcohol are necessary for petitioner's industry, it is not indispensable therefor that said products be imported. Hence, the wharfage dues in question are not directly imposed upon said industry. Like the forest charges involved in the *Plywood Industries* case, the wharfage dues in question are, at best, an indirect levy upon petitioner's industry, and, hence, not covered by its exemption. At any rate, it is obvious that wharfage dues are not "internal revenue" taxes.

WHEREFORE, the decision appealed from should be as it is hereby affirmed, with costs against petitioner herein.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] On April 27, 1967.

[2] On the assumption, made by the Commissioner of Customs, that petitioner has been granted tax exemption under the provisions of Republic Act No. 901.

[3] *Steward Machine Co. v. Davis*, 301 U.S. 548, 81 L. ed. 1279; *General Mut. Ins. Co. v. U.S.*, 119 F. Supp., 353; and *In re Rosenthal Bros.*, 235 F. 315.

[4] Article VIII, Sec. 2[2], Const. of the Phil.

[5] Article VI, Section 22[2] of the Constitution.

[6] Republic Act No. 1937.

[7] As provided in Act No. 3592, as amended by Commonwealth Act No. 130 and Republic Acts Nos. 1216 and 2695.

[8] Section 2801 of Rep. Act no. 1937.

[9] L-16466, March 31, 1964.

[10] L-12945, April 29, 1960, 58 Off. Gaz. 889.

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