

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. SUPERIOR GAS AND EQUIPMENT CO. AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-14115. May 25, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

The Customs Commissioner has brought up for review the order of the Court of Tax Appeals requiring him to refund the sum of P2,400.00 which his office had collected as wharfage fees.

In August 1956, the steamship "Chi Chung" arrived in Manila, from Formosa, carrying 1,200 metric tons of industrial salt consigned to Superior Gas & Equipment Co., (Sugeco for short). With official permit, the cargo was discharged and delivered shipside, within the harbor sea wall but outside the breakwater, into four lighters of the Luzon Stevedoring Co. for final unloading at the private wharf of Atlantic Gulf & Pacific Co. at Punta, Sta. Ana, Manila. There the shipment was transferred by means of a derrick to trucks owned by Sugeco.

Before taking its cargo, Sugeco was required to pay and did pay—upon demand of the customs authorities, the sum of P2,400;00 as wharfage fee on August 23, 1956. After protesting the payment in vain, Sugeco resorted to the Tax Court, contending that its importation should not pay wharfage fees because it made no use of the facilities of government wharves or piers, the cargo having been discharged through the private wharf of Atlantic Gulf Co.

As stated, the Tax Court sustained Sugeco's contention.

This appeal hinges on the interpretation of Section 3 of Republic Act No. 1371—the law in August, 1956—levying a charge of two pesos per metric ton "as a fee for wharfage" upon all articles imported into the Philippines; but with the proviso that no such fee shall be levied on articles imported "which are unloaded on private wharves."

As the section imposes wharfage fees upon goods imported as well as upon goods exported, the petitioner-appellant invokes this court's decision under the Tariff Act of 1909[1] upholding the collection of "wharfage" fees upon sugar which was loaded for exportation from a wharf owned, by a private individual. This decision shows, petitioner claims, that even if not loaded from a Government wharf, goods exported (or imported) shall pay wharfage fees. For one thing, as to importations unloaded on private wharves, this claim squarely contradicts the exemption in the proviso to sec. 3 above-mentioned.

Distingue tempora et concordabis jura,[2] says the old legal maxim. We have two laws enacted at different times, under dissimilar circumstances. At the time the Tariff of Act of 1909 was approved—in the first years of American occupation—the Government had no wharves of its own; therefore, the wharfage fee imposed by it could not have meant charges for the use of Government wharves, which was the generally accepted idea[3]; so this Court in view of the surrounding circumstances believed and held (in the Sugar Centrals case) that the charges were payable even if no Government wharf be used, because they were meant to be used as a trust fund "for the purpose of acquiring and constructing wharves by the Government of the Philippine Islands."

However, 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. Here are portions of the Congressional Record:

"Mr. Tible: The bill as amended imposes wharfage fees. Now, what will the ship pay for wharfage fee if it loads off the coast and does not avail itself of port facilities?"

"Mr. Moreno: There is no wharfage fee on vessels, there is only a wharfage fee on merchandise, if the vessel is loading merchandise. Where there are no piers or wharves, naturally it will not have to pay anything, but it would be violating customs rules."

"Mr. Tible: But there are ships that load and unload merchandise off the coast."

"Mr. Moreno: That would be smuggling."

"Mr. Tible: In that case what would be the fee that the ship would pay?"

"Mr. Moreno: There is no such provision because to unload off the coast is illegal."

"Mr. Tible: That is actually being done."

"Mr. Moreno: Assuming that it is being done, it is being done illegally."

"Mr. Tible: But this is done with the consent of port authorities."

"Mr. Moreno: In that case there are other fees chargeable, but certainly it will not be charged wharfage fee because there is no wharf or pier facility required." (*Italics Ours.*) Congressional Record, House of Representatives, Vol. II No. 69, p. 2862.)

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"[4]; and admitted that goods not landed via the Government wharves should not pay wharfage.

Our attention is invited to the circumstance that Republic Act 1937 approved June 22, 1957, amended Republic Act 1371 by eliminating the proviso which expressly exempted from the wharfage fee all imported articles "unloaded on private wharves." Whatever the effect of such elimination may be, we do not regard it to be material in this case, inasmuch as Sugeco's importation, and the assessment and collection of the tax occurred before the passage of said Republic Act 1937.

The refunding order should be, and is hereby affirmed.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

Endencia, J., took no part.

[1] *Sugar Central Agency vs. Insular Coll. of Customs*, 51 Phil., 134.

[2] Distinguish times and you will harmonize laws.

[3] Cf. 94 *Corpus Juris Secundum* p. 570.

[4] See Vol. 94, *Corpus Juris Secundum* 570.

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