

WIL WILHEMSEN, INC., DOING BUSINESS UNDER THE NAME AND STYLE OF BARBER LINES AND COMPANIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFFS-APPELLANTS, VS. TOMAS BALUYUT, DOING BUSINE...

G.R. Nos. L-27350-51. May 11, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a direct appeal from the decision of the Court of First Instance of Manila rendered in two consolidated cases, namely, Civil Case No. 57875 and Civil Case No. 57257, respectively filed by Wil Wilhemsen, Inc. and Compania General de Tabacos de Filipinas, both against Tomas Baluyut, owner and operator of Derham Bonded Warehouse, for the return of several empty cargo vans placed in the latter's warehouse. Whether or not plaintiffs, herein appellants, should pay storage fees and other incidental charges for the storage of their vans was resolved by the trial court in the following dispositive portion of the decision, thus:

"WHEREFORE, judgment is rendered, dismissing the complaints, with costs against plaintiffs in the two cases.

"On the counterclaim of defendant in the two cases, judgment is rendered -

(1) In Civil Case No. 58257, ordering plaintiff Compania General de Tabacos de Filipinas to pay defendant the sum of P529.25, as storage, handling and transfer charges for sea van No. 365257; and the sum of P500.00, as and for attorney's fees; and

(2) In Civil Case No. 57857, ordering plaintiff Wil Wilhemsen, Inc., to pay defendant the sum of P12,523.47, as storage, handling and transfer charges for its sea vans; and the sum of P1,500.00, as and for attorney's fees.

"SO ORDERED.

"Manila, Philippines, December 27, 1966."

As recited by the trial court in its decision, the facts are as follows:

"Jointly tried are Civil Case No. 57875, entitled Wil Wilhemsen, Inc., plaintiff, vs. Tomas Baluyut, defendant and Civil Case No. 58257, entitled Compania General de Tabacos de Filipinas, plaintiff, vs. Tomas Baluyut, defendant. In both cases, plaintiffs had obtained from the Court writs of replevin for the seizure of empty cargo vans which the sheriff actually seized from the custody of defendant as owner and operator of Derham Bonded Warehouse.

"The complaints disclose that plaintiff Wil Wilhemsen, Inc. is the owner of some and the lawful lessee of the other empty cargo vans, while plaintiff Compania General de Tabacos de Filipinas is entitled to the possession of one empty cargo van, being shipping agent for the Maersk Lines. These empty cargo vans were used by plaintiffs to facilitate the carriage and safe storage of merchandise loaded on their vessels for delivery from foreign ports to the port of Manila, among others.

"After the merchandise had arrived at the port of Manila and the cargo vans had been emptied of their contents, they were left along Muelle de San Francisco Stalag.

"On April 20, 1964, the Bureau of Customs issued the following:

MEMORANDUM TO -
All Shipping Companies
And others Concerned:

Considering the expected heavy arrivals of ships in the port of Manila, and with the view to creating more spaces for incoming cargoes, all empty vans should be removed by their owners from the Customs Zones within ten (10) days from the time they are emptied of their contents.

In this connection, sea vans remaining beyond the 10-days period herein mentioned may be transferred upon application with the proper customs officials to warehouses and shall be subject to the usual warehousing charges, including transfer, handling and storage fees, which shall be borne by their respective owners.

All concerned shall be guided accordingly.

For the Collector of Customs:
(Sgd.) FELICIANO BELMONTE, JR.
Acting Deputy Collector for Operations'
(Exhibit "2")

"On July 16, 1964, defendant, as operator of Customs Bonded Warehouse No. 144 at 60, 13th St., Port Area, Manila, applied to the Surveyor of the Port, Bureau of Customs, for the transfer of certain empty sea vans found along Muelle de San Francisco Stalag or storage in order to ease cargo congestion at the piers. The request was based on the Memorandum Order No. 19, 1964, of the Collector of Customs, and the Memorandum Order of Acting Deputy Collector for Operations, dated April 20, 1964 (Exhibit "2"). The application was recommended for approval by the Surveyor of the Port and by the Superintendent of Pier 5.

"On July 17, 1964, the Macondray Co., Inc. wrote a letter to the Surveyor of the Port, which reads as follows:

'Surveyor of the Port
Bureau of Customs
Manila

HAULING OF EMPTY CONTAINERS

Dear Sir:

The present is to inform you that we have contracted Integrated Services Inc. to haul all of our empty containers from the pier area which have exceeded the ten (10) days free storage period.

ISI will begin hauling these containers today.

We understand authority has been given to Derham Bonded Warehouse and other bonded warehouses, to haul these overstaying containers and we, therefore, request that such authority be cancelled insofar as our containers are concerned.

Yours very truly,

MACONDRAY & CO., INC.

(Sgd.) E. Chuidian
Chief of Operations
Shipping Division'
(Exhibit "19")

"On the said letter, a notation appears reading:

'Atty. Mapa, Pier 5

In view of the assurance that ISI will transfer their vans, there is no need to transfer Macondray vans to Derham.

Please be guided accordingly.'

(Sgd.) Orbos'
(Exhibit "19-A")

"On July 20, 1964, the Bureau of Customs issued -

'CUSTOMS ADMINISTRATIVE ORDER NO. 22-64 Series of 1964.

TO: Collectors of Customs, Chiefs of Division, Manila Customhouse, Shipping Agents, Customs Brokers, Customs Arrastre Service, Customs Bonded Warehouse Operators, Owners of Empty Sea Vans, and All others concerned:

SUBJECT: CLEARING THE MANILA CUSTOMS ZONE AND OTHER PORTS OF EMPTY SEA VANS.

In order to make available at all times adequate space in the South Harbor, Port of Manila, and all other ports of entry throughout the country, for the loading and unloading of cargoes and the proper storage thereof, it is desirable and necessary that all empty sea vans must be removed from the pier premises by their respective owners or shipping agents concerned within ten (10) calendar days after said vans have been completely emptied of all their contents. Towards this end, and in order that sea van owners or shipping agents concerned may know the latest status of their vans and thereby be more able to take appropriate steps for their removal from the customs zone, it is hereby directed that the Arrastre Service shall cause to be posted each morning in a conspicuous location in its main office a list of all sea vans which have been emptied during the previous day, giving the name of the discharging vessel and its registry number, the vans' marks and numbers, and their present specific locations. Said service shall also keep and maintain accurate and up-to-date records of all empty sea vans in its possession, which record shall be open to inspection by the vessel's agents during regular office hours. It shall furthermore make available at all times sufficient personnel, equipment and tools for loading empty vans on board carrying vessels or vehicles for transferring the same out of the customs zone as efficiently and as expeditiously as possible.

No storage fees shall be charged against empty sea vans during the ten (10) day-period abovementioned; provided, however, that after the lapse of said period a storage fee of P1.00 per ton (or per 40 cubic feet) per day shall be imposed on such empty vans remaining in the pier premises until they are finally taken out of the customs zone in accordance with sub-paragraph (4) hereof; x x x

4. Customs Bonded Warehouse operators, upon approval of a previous application therefor, are authorized to remove or transfer all such overstaying empty sea vans from the customs zone to their own respective warehouses. All expenses incidental to said transfer, including warehouse storage fees thereon are chargeable

against the sea van owners or others concerned. The storage fees to be collected by customs bonded warehouses in such cases shall be in conformity with the rates prescribed in Customs Memorandum Order No. 130-63, dated December 13, 1963. x x x.'

(Exhibit "9")

"On July 21, 1964, the Derham Bonded Warehouse operated by defendant, sent out a general notice hereinafter reproduced, as follows:

'TO ALL CONCERNED:

On July 20, 1964, the superintendent, Wharfinger and Chief Warehouses, Atty. Pedro Mapa, notified us to stop the transfer of empty sea vans to our bodega. We complied immediately. On July 21, 1964, Atty. G. O. Orbos, the Harbor Superintendent ordered us to transfer again all empty sea vans. The said order is, as follows:

'TO ATTY. MAPA

In view of the desire of the Collector of Customs to have vans at San Francisco St., removed please have Atty. Baluyut, DERHAM BONDED WAREHOUSE, transfer empty sea vans. Disregard previous hold orders if those who requested it did not show interest in bringing them out.

(Sgd.) G. O. ORBOS
Harbor Superintendent'

In view of this order we are notifying all concerned, that if your empty sea vans could not be located at Muelle San Francisco, they may be in our warehouse. Inasmuch as we do not know the owners of these empty vans, we furnished Atty. P. Mapa, Atty. Orbos, and Mr. de Leon, the Pier Superintendent of Pier 5, a list of numbers of all empty sea vans transferred to our warehouse.

Please be guided accordingly.

DERHAM BONDED WAREHOUSE

By:

CUSTOMS STOREKEEPER'

(Exhibit "7")

"On August 11, 1964, plaintiff Compania General de Tabacos de Filipinas sent a demand letter to the defendant which reads, as follows:

'My dear Mr. Baluyut:

Mr. Fortunato Baluyut of Tabacalera Shipping Department, general agents in the Philippines for the Maersk Line, has advised me in my capacity as counsel for the Maersk Line that you have seized Maersk Line cargo van No. 36257 and have refused to return the same thru him to the Maersk Line unless warehousing charges are previously paid.

"To start with, Atty. Mapa and Atty. Orbos of the Bureau of Customs thru communication dated June 23, 1964, have granted the Compania General de Tabacos de Filipinas in its capacity as general agents of the Maersk Line, authority to remove a number of cargo vans including the cargo van aforementioned. Hence, you had no right to remove the same.

'Assuming, however, for the sake of argument only, that you had any right to remove this cargo van nevertheless

you have forfeited any right to collect any storage dues under the provisions of Customs Memorandum Order No. 130-63 dated December 13, 1963, the pertinent portion of which we copy for your information hereinbelow:

“That warehouse operators are hereby required to send written notices to consignees at the addresses indicated in the inward manifests and other documents regarding the storage of their cargoes in the warehouse on the day following receipt of such cargoes. A copy of said notice shall be furnished each to the Collector of Customs and the Harbor Superintendent. For failure to do so, the warehouse operator shall not be entitled to collect storage charges (only) on the pertinent cargoes, aside from immediate suspension or revocation as contemplated in the second portion of the penultimate paragraph hereof. The warehouse operator shall exert every efforts to verify from all available documents the names and addresses of the consignees for the purpose of sending the corresponding notices.”

"In a letter dated September 1, 1964, defendant replied; stating:

'xxx xxx xxx

'One thing more, please do not use the word 'seized' because I did not transfer these empty vans without the authority of the Customs officials.

'As to this van with No. 36257, you are asking me to release, I am sorry to tell you that this van is not transferred to my warehouse, hence I cannot deliver it to you.

(Exhibit "1" or Exhibit "D")

"Found in the Derham Bonded Warehouse were 145 empty cargo vans belonging or leased to plaintiff Wil Wilhemsens, Inc. The empty cargo vans of plaintiff Compania General de Tabacos de Filipinas found in that warehouse bears the number 365257, not 36257, written in the letter of demand (Exhibit "C").

"The empty cargo vans could not immediately be identified, as they did not have identifying marks or carry the names of their owners. They had only serial numbers. Defendant had to make a list of the empty sea vans transferred to this warehouse the previous day, by their serial numbers. The list so prepared was presented to the Harbor Superintendent who initialed it and then the same was taken to the Superintendent of Pier 5. That list of empty sea vans, noted or approved by the Harbor Superintendent and the Superintendent of Pier 5, was posted in their respective offices and also in the bulletin board of defendant so that anybody claiming for empty sea vans could consult their offices and be informed of their whereabouts. When the owner identified their empty sea vans by their serial number they would secure the authority of the Bureau of Customs to withdraw them. And when empty sea vans were withdrawn it was only then that defendants came to know the owners of the empty sea vans stored in his warehouse."

In resume, the trial court held that the transfer of appellants' empty cargo vans to the warehouse of appellee was done by authority of Customs Memorandum of April 20, 1964 and Customs Administrative Order No. 22-64, and that the said objects were lawfully detained by appellee in his warehouse pending the payment of storage charges. The court noted that Customs Memorandum Order No. 130-63 relied upon by appellants, which requires appellee as warehouse operator to send written notices to consignees, contemplates of consignable cargoes. In the case of cargo vans, it was reasoned out that once these were emptied, their ownership could not be easily identified, as they did not carry the names and addresses of the consignees of the merchandise removed therefrom. As observed further, the empty cargo vans were not delivered to the consignees of the merchandise they contained but were left for future use to carry and store other goods to be loaded on board appellants' vessels. Finally, since no written notice is required with respect to the impounded cargo vans, there is no more need of the concurrent requirement in Customs Memorandum Order No. 130-63 that the warehouseman shall exert every effort to verify from all available documents the names and addresses of the consignees for the purpose of sending the

corresponding notices.

Accordingly, the complaints were dismissed while appellee's counterclaim for actual damages and attorney's fees was granted. Notice was filed by appellants of their intention to appeal directly to this Court. In their brief, they assigned the following errors:

- THE TRIAL COURT ERRED IN ORDERING PLAINTIFF WIL WILHEMSEN TO PAY DEFENDANT TOMAS BALUYUT IN THE SUM OF P12,523.17 AS STORAGE, HANDLING AND TRANSFER CHARGES.
- THE TRIAL COURT ERRED IN ORDERING PLAINTIFF COMPANIA GENERAL DE TABACOS DE FILIPINAS TO PAY DEFENDANT TOMAS BALUYUT THE SUM OF P259.25 FOR THE STORAGE, HANDLING AND TRANSFER CHARGES FOR ONE (1) SEA VAN.
- THE LOWER COURT ERRED IN REQUIRING PLAINTIFFS WIL WILHEMSEN AND COMPANIA GENERAL DE TABACOS DE FILIPINAS TO PAY TOMAS BALUYUT P2,000.00 AS AND FOR ATTORNEY'S FEES.

Considering that this appeal has been taken directly from the decision of the trial court, We shall limit Ourselves only on questions of law, for this manner of appeal presupposes a waiver to dispute the factual findings below which are deemed to have been admitted.[1]

Noticeably, the assignment of errors convey a general disavowal of the judgment, hence the sole issue tendered is whether or not the said judgment is legally valid. We also find in the respective briefs that among the contentions, the central focus lies on the choice of law as attested to by the difference of opinion as to what customs regulation is applicable on the given state of facts.[2] Contrary to appellants' understanding, the opinion of the trial judge supportive of his conclusion suffers no confusion. We affirm the decision.

Appellants argue that appellee operator of Derham Bonded Warehouse seized the empty cargo vans owned by the shipping agents of Wil Wilhemsen, Inc. and Compania General de Tabacos de Filipinas, under authority of Customs Memorandum Order No. 130-63, and what gave rise to appellee's forfeiture of his right to collect storage charges was his failure to comply with the appurtenant requirement to send written notices to the aforesaid agents regarding the storage of their cargo vans. We find the argument untenable. A simple comparison between the regulations respectively relied upon by both parties in the light of the circumstances will supply the answer to the problem.

So far as pertinent, Memorandum Order No. 130-63 provides, thus:

xxx xxx xxx

"Pursuant to Sections 711, 1901 and 1909 of the Tariff and Customs Code, and in order to establish a uniform rate which shall be charged by customs public bonded warehouses on cargoes transferred thereto under flexible and/or selective systems or for deposit under warehousing entries, and to prevent the commission of unfair practices or collection of excessive charges in the operation of said warehouse, the following rules and rates are hereby prescribed:

1. The free storage period provided for in Section 3002 of the Tariff and Customs Code shall apply to cargoes stored in customs public bonded warehouse, the same to be counted also from the day after the cargo of the vessel from which such articles were landed have been officially declared as discharged; provided that if the transfer was at the request or with the consent of the importer, owner, consignee or his/its broker, the warehouse operator may charge storage fees during said period at the rate agreed upon in writing by the parties concerned, and Provided, further that if no rate was agreed upon the applicable rates provided for in the immediate succeeding paragraph shall apply.

2. For storage beyond the free storage period, the warehouse operator shall charge a storage fee of P0.50 per ton a day.
3. For handling in and out at the warehouse the fee is fixed at a flat rate of P2.00 per ton.
4. For discharging cargo from lighters and placing same on trucks or trailers, a flat rate of P2.00 per revenue ton shall be charged by the warehouse operator.
5. For hauling or trucking fixed fee of P3.00 per ton shall be charged.

xxx xxx xxx

6. On any single package weighing more than 2,000 kilos there shall be a heavy lift charge of:

xxx xxx xxx

7. (etc.)

"The foregoing rates of charges shall be subject to the following rules and regulations:

1. That warehouse operators are hereby required to send written notices to consignees at the addresses indicated in the inward manifests and other documents regarding the storage of their cargoes in the warehouse on the day following receipts of such cargoes. A copy of said notice shall be furnished each to the Collector of Customs and the Harbor Superintendent. For failure to do so, the warehouse operator shall not be entitled to collect storage charges (Only) on the pertinent cargoes, aside from immediate suspension or revocation as contemplated in the second portion of the penultimate paragraph hereof. The warehouse operator shall exert every effort to verify from all available documents the names and addresses of the consignees for the purpose of sending the corresponding notices.

2. That whenever the importer, consignee or his/its broker or representative is actually ready, willing and able to take delivery of his/its cargoes stored in the warehouse, but no delivery could be effected and the delay in the delivery is due to no fault of the importer, consignee or his authorized representative, the operator shall not be entitled to collect any storage charge from the time the demand for the delivery of such cargo is made. The time and date of the demand for the delivery must be duly noted by the customs storekeeper in his logbook." (Italics supplied).

xxx xxx xxx

In general, the thrust of the memorandum is elementary enough, yet, what remains worth stressing is the aim which purports to regulate and establish a wholesome conduct of warehousing business by prescribing the reasonable rates for storage and handling services and guidelines to bar excessive fees. Few things need only be noted in particular. The memorandum employs the words "importer, owner or consignee" of cargoes. In the usual course of things apart from variant conditions, We infer that reference is being made to the clientele of shippers of merchandise or those for whose account or benefit the shipment is made, as distinguished from the carrier or its agent who actually facilitates the transport of the commodities. Also, the use of the term "pertinent cargoes", to Our mind suggests no less than such goods or commodities which are normally stored in a warehouse for safekeeping to prevent loss or damages and to preserve their commercial value until withdrawn by the importer, owner or consignee.

The requirement that the warehouse operator shall notify in writing the consignees regarding the storage of their cargoes on the day following receipt of such cargoes is in consonance with the objective of the customs authorities to level the warehousing fees chargeable by the warehouseman. The notice would certainly give the consignee the opportunity to claim and withdraw his merchandise at the shortest time possible, thus enabling him to reduce storage expenses which will otherwise accumulate thru the passage of days if he is not duly notified.

The germ of the issue now is whether the memorandum and the principles We have just noted are applicable to the circumstances at bar. We do not think so. The present controversy exemplifies a situation that is both peculiar and specifically made the subject of a different regulation.

We agree with the trial court that this case falls within the application of Customs Memorandum of April 20, 1964 which was cited earlier in the narration of facts. Since this memorandum was substantially and formally reiterated in Customs Administrative Order No. 22-64, We shall then refer only to the latter for the sake of unity. From its subject-heading which reads -- "CLEARING THE MANILA CUSTOMS ZONE AND OTHER PORTS OF ENTRY OF EMPTY VANS" -- it is evident that the regulation was issued in conjunction with the so-called "flexible cargo system," initiated by port authorities specifically to ease the piers from congestion or threat of congestion by designating the cargoes lying idle in the piers to be transferred to bonded warehouses outside of the piers (t.s.n., February 24, 1966, 77; July 8, 1966, 25).

As plainly worded in the administrative order, it becomes necessary for all empty sea vans to be removed from the pier premises by their owners or shipping agents within ten days after the vans have been completely emptied of all their contents in order to make available at all times adequate space in all ports for the loading and unloading of cargoes. Furthermore, to insure an accurate assessment and expeditious collection of storage fees on overstaying empty sea vans, the same order includes some procedures, among which, involve the participation of customs bonded warehouses, to wit:

xxx xxx xxx

"4. Customs Bonded Warehouse operators, upon approval of a previous application therefore, are authorized to remove or transfer all such overstaying empty sea vans from the customs zone to their own respective warehouses. All expenses incidental to said transfer, including warehouse storage fees thereon, are chargeable against the sea van owners or others concerned. The storage fees to be collected by customs bonded warehouses in such cases shall be in conformity with the rates prescribed in Customs Memorandum Order No. 130-63, dated December 13, 1963. To secure the necessary authority for effecting such transfer, customs bonded warehouse operators in Manila and suburbs may at anytime during the whole year, submit their application for such purpose to the Office of the Harbor Superintendent, Port of Manila, for consideration and approval. For ports of entry other than Manila, the customs bonded warehouse operators may, in like manner, submit their applications to the Collector of Customs in said port for appropriate action.

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"8. All Customs Bonded Warehouses are hereby directed to submit to the Collector of Customs a weekly report of empty vans within their custody. Among other things, such report should contain the owners or shipping agent concerned of such vans; the quantity, marks, and numbers, dimensions or weight of said vans, and the date as to when they have taken such vans in their custody."

There is no doubt that the transfer of appellants' cargo vans to appellee's warehouse was in compliance with the authority conferred to warehouse operators to assist in the execution of the policy of the arrastre service to clear the customs premises. Such performance is by authority of a special order from a regulative body and not so much a pursuit of the usual conduct in the warehousing business. So far as the obligation of the warehouseman is concerned, We have examined entirely the administrative order and find no requirement similar to that found in

Memorandum Order No. 130-63 whereby the owners of the impounded vans should be notified in writing. All that is required of the warehouseman is to submit a report or inventory of empty vans in his custody to the Collector of Customs who shall post a notice regarding the same for the information of all those concerned. Memorandum Order No. 130-63 is significant in this case only so far as it prescribes the rates of warehouse charges even to the objects in question.

In one respect, the two customs regulations under consideration are in *pari materia* so far as both operates under the flexible cargo system. It is a principle in statutory construction however, that where two statutes are of equal theoretical application to a particular case, the one specifically designed for said case must prevail over the other.[3]

Finally, We consider appellants' attempt to characterize the vans as cargoes. They define cargoes to constitute all goods, wares and merchandise aboard ship which do not form part of the ship's store. The definition is fair enough. We may even add that in commercial usage, a cargo refers to the "lading of a ship or vessel and signifies that which is intended to be disposed of at the port of destination or call, having a mere transitory connection with the ship.[4] Appellants' own witness, Eduardo Chuidian, Executive of Macondray & Co., however, admits that a cargo van in particular "is a container or containers of various sizes x x x used in general for the protection of cargo being shipped x x x. They protect the cargo from wear and tear in handling and are used by vessels for that purpose." (t.s.n. November 22, 1965, pp. 33-34, emphasis supplied). Evidently, this admission is not in harmony with any of the definitions adverted to. Consequently, We conclude that the cargo vans do not fall under the class of pertinent cargoes contemplated in Memorandum Order No. 130-63. Rather, these are more properly considered as property of the carrier or its agent which form part of their equipment or facilities for storage and transport of cargoes whether on land or on board their vessels.

We find that Customs Administrative Order No. 22-64 is the applicable regulation and that appellee operator of Derham Bonded Warehouse had complied with the directives of the same.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby affirmed.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Santos, and Fernandez, JJ., concur.

[1] *Justo v. Hernando*, 89 Phil. 268 (1915); *Aballe v. Santiago*, L-16307, April 30, 1963, 7 SCRA 925; *De Comilang v. Deleneza*, L-18897, March 31, 1964, 10 SCRA 598; *People v. Sollano, Jr.*, L-29570, October 29, 1971, 42 SCRA 104; *Encinares v. Catighod*, L-29764, November 29, 1973, 54 SCRA 140.

[2] Cf. *Ramos v. Pepsi-Cola*, L-22533, February 9, 1967, 19 SCRA 289.

[3] Cf. MARTIN, *Handbook on Statutory Construction*, 1970, 135.

[4] 70 Am. Jur. 2d. 593.

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