

ABOITIZ AND CO., INC., VISAYAN COCONUT GROWERS, INC., LU DO AND LU YM CORP., FEDERAL MARKETING CORP., OVERSEAS COMMODITY CORP., SOUTHERN PRODUCTS IMPORT AND EXPORT CORP., INTERN...

G.R. No. L-29466. May 18, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the legality of the arrastre and checking charges which the Collector of Customs of Cebu collected on export cargo. Also in issue are the jurisdiction of the Court of First Instance and the Court of Tax Appeals to entertain that question, whether the petitioners had exhausted their administrative remedies, and whether the action is an unwarranted suit against the State.

Legal background. - The Tariff and Customs Code, Republic Act No. 1937, in Title VII of its Book II (Customs Law), which title deals with the fees, dues and charges collectible by the Bureau of Customs, contains Part 5 which specifies the arrastre rates chargeable at the Ports of Manila, Cebu, Zamboanga, Davao, Iloilo and other ports (Secs. 3101 to 3108).

Arrastre refers to the handling of cargo on the wharf or between the establishment of the consignee or shipper and the ship's tackle. (*Compañia Maritima vs. Allied Free Workers Union*, L-28999, May 24, 1977, 77 SCRA 24, 26). "Arrastre charge is the amount which the owner, consignee, or agent of either, of article or baggage has to pay for the handling, receiving and custody of the imported or exported article or the baggage of the passengers" (Sec. 3101, Tariff and Customs Code).

Sections 3102, 3104 and 3106 of the Tariff and Customs Code provide for the arrastre charges collectible on export cargo which is loaded in the Ports of Manila, Zamboanga and Iloilo, respectively.

In contrast, sections 3103 and 3105 of the Code, as originally enacted, inexplicably do not contain any provisions as to the arrastre charges on export cargo which is shipped from the Ports of Cebu and Davao, respectively, although the two sections fix the arrastre charges for handling import cargo. (Customs Administrative Order No. 23-70, 66 O. G. 11053, fixes the arrastre charges, including those for export cargo, collectible at the Port of San Fernando.)

In the case of the Port of Davao, the Secretary of Finance in 1960 directed that the arrastre charges for export cargo loaded in the Port of Iloilo, as provided in section 3106(b), should be collected in the Port of Davao (Exh. 3 and 9).

For the Port of Cebu, the Secretary of Finance in his first indorsement of March 18, 1965 adopted the recommendation of the Commissioner of Customs (who was "amazed" because section 3103 does not provide for the arrastre charges for handling export cargo in the Port of Cebu) that the arrastre charges for export cargo which is loaded in the Port of Iloilo should also be collected on export cargo which is loaded in the Port of Cebu (Exh. 4

and 5).

The deficiency (call it a hiatus valde deflendus) in sections 3103 and 3105 (as to the arrastre charges on export cargo) could have been easily cured by means of amendatory legislation. But, instead of resorting to that simple expedient, the Commissioner of Customs and the Secretary of Finance chose to fill that deplorable gap by means of an administrative regulation.

Thus, on September 2, 1965, the Acting Commissioner of Customs, with the approval of the Secretary of Finance, issued Customs Administrative Order (CAO) No. 1-66 (62 O. G. 1759). It should be stressed that in CAO No. 1-66 arrastre charges for export cargo loaded in the Ports of Cebu and Davao are provided for. That order was issued pursuant to section 551 of the Revised Administrative Code and sections 608 and 3108 of the Tariff and Customs Code.

The arrastre charges for handling export cargo at the Port of Iloilo were incorporated into the management contract executed between the Bureau of Customs and Cebu Port Terminal, Inc. dated October 19, 1966 (Exh. 2 and 5). That contractual provision is the point of controversy in this case.

Customs Administrative Order (CAO) No. 15-70 dated September 7, 1970, issued by the Acting Commissioner of Customs and approved by the Acting Secretary of Finance, also pursuant to the legal provisions cited above, went farther than CAO No. 1-66 (66 O.G. 9434).

CAO No. 15-70 inserted in section 3103 (which, as already noted, governs the collection of arrastre charges in the Port of Cebu) provisions for the collection of checking charges, arrastre charges on export cargo, transit cargo and heavy cargo, pier lighting service, hire of auto-trucks, and water service. Those provisions are not found in section 3103 as originally enacted.

So, CAO No. 15-70 also supplied the deficiencies of the original enactment and increased the rates of arrastre charges. That was effected by the Commissioner of Customs and the Secretary of Finance by virtue of their power to make all rules and regulations necessary for the enforcement of the Tariff and Customs Code.

In the instant case, petitioners' contention is that the deficiency of section 3103, as to the arrastre charges for handling export cargo at the Port of Cebu, should be supplied by a statutory enactment and not by administrative regulations and that, in the absence of proper legislation, arrastre charges cannot be collected for handling export cargo in the Port of Cebu. That contention arose under the facts now to be stated.

Factual background. - The Cebu Customs Arrastre Service, which was managed by the Collector of Customs of Cebu, collected arrastre and checking charges on products (principally copra) exported from Cebu beginning July 12, 1966. For general cargo, the arrastre charge was P2.80 per ton of 1,000 kilos or 40 cubic feet. The minimum charge for general cargo was P1.40. For twelve particular classes of merchandise (automobiles, coffee, flour, wood furniture, etc.), the arrastre charges were specified. The checking charge was P0.55 per ton for shipside deliveries.

On November 5, 1966, the arrastre work was turned over to Cebu Port Terminal, Inc. which announced that it was going to collect the same arrastre and checking charges imposed by the Cebu Customs Arrastre Service.

As already stated, on October 19, 1966, Cebu Port Terminal, Inc. entered into a management contract with the Commissioner of Customs. In that contract, it was designated as sole manager of the arrastre service at the Port of Cebu under the supervision of the Bureau of Customs. The arrastre charges are specified in paragraph 17(b) of the management contract which was approved by the Secretary of Finance (Exh. 2). We have previously noted that, with respect to the arrastre charges on export cargo, those provided for the Port of Iloilo in section 3106 were

made a part of that management contract in view of the fact that arrastre charges for export cargo for the Port of Cebu are not provided for in section 3103 of the Tariff and Customs Code.

After that contract was cancelled, or on February 13, 1967, the Bureau of Customs again took over the arrastre service. (Since May 1, 1977, the Philippine National Oil Company [PNOC] has been in charge of the arrastre service in the Port of Cebu.)

On July 30, 1966, twelve export firms filed in the Court of First Instance of Cebu a petition for certiorari against the Collector of Customs of Cebu as arrastre operator. The petition is really an injunction suit assailing the legality of the arrastre and checking charges on exports from the Port of Cebu. The plaintiffs contended that the charges were not authorized by section 3103 of the Tariff and Customs Code. An amended complaint was filed later for the purpose of impleading Cebu Port Terminal, Inc. as arrastre operator. A preliminary injunction was issued.

That injunction against the collection of arrastre and checking charges was lifted in the lower court's order of January 10, 1967.

The trial court in its decision dated May 17, 1967 declared illegal, for lack of statutory authorization, the collection of arrastre and checking charges on export cargo and ordered the defendants to refund the charges collected from the plaintiffs or petitioners. The defendants or respondents appealed.[*]

The appellants contend that the lower court erred in not dismissing the petition for lack of jurisdiction, nonexhaustion of administrative remedies, and because of state immunity from suit and in holding that the arrastre charges in question were devoid of legal basis.

From the factual and legal background of this case, it is manifest that the appeal should be sustained on the grounds of lack of cause of action, or failure to exhaust administrative remedies, and lack of jurisdiction, meaning that the subject matter of the action falls within the exclusive jurisdiction of the Tax Court.

The record shows that, in spite of the silence of the law, respondent Collector of Customs imposed the arrastre charges in question in consonance with the directive of the Commissioner of Customs and the Secretary of Finance.

Instead of directly going to court, the petitioners should have appealed to the Secretary of Finance, through the Commissioner of Customs, or, they should have exhausted their administrative remedies (Sec. 79[c], Revised Administrative Code; Secs. 608, 712, 2308 et seq. and 3501, Tariff and Customs Code; *Acting Collector of Customs vs. Caluag*, L-23925, May 24, 1967, 20 SCRA 204; *Collector of Customs vs. Torres*, L-22977, May 31, 1972, 45 SCRA 272).

If a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination (*Allied Brokerage Corporation vs. Commissioner of Customs*, L-27641, August 31, 1971, 40 SCRA 555, 561; *Pestanas vs. Dyogi*, L-25786, February 27, 1978, per Santos, G. S., J.; *Pineda vs. Court of First Instance of Davao*, 111 Phil. 643).

As to the jurisdictional issue, section 7(2) of Republic Act No. 1125 provides that the Tax Court has exclusive appellate jurisdiction to review by appeal the "decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges" and "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs". (See sec. 2402, Tariff and Customs Code).

There is no doubt that the collection of arrastre charges under the Tariff and Customs Code falls within the appellate jurisdiction of the Tax Court. It is settled that the Tax Court is vested with exclusive appellate

jurisdiction to review the decisions of the Commissioner of Customs in cases arising under the Customs Law, like the instant case, and that the Court of First Instance cannot, by means of certiorari, prohibition or mandamus, review the said decisions (Daud vs. Collector of Customs of the Port of Zamboanga City, L-24003, November 28, 1975, 68 SCRA 157; General Travel Service, Ltd. vs. David, L-19259, September 23, 1966, 18 SCRA 59, 67; Pacis vs. Averia, L-22526, November 29, 1966, 18 SCRA 907; Commissioner of Customs vs. Cloribel, L-20266, January 31, 1967, 19 SCRA 234; Pacis vs. Geronimo, L-24068, April 23, 1974, 56 SCRA 583).

Hence, the trial court should have dismissed the certiorari or injunction case, not only on the ground of lack of cause of action (nonexhaustion of administrative remedies), but also on the ground of palpable lack of jurisdiction. That was what the Court of First Instance of Manila did in Southwest Agricultural Marketing Corporation vs. Secretary of Finance, L-24797, October 8, 1968, 25 SCRA 452, a case strikingly similar to the instant case.

The Southwest case involves the arrastre charges collectible on export cargo loaded in the Port of Davao. As already shown, the Port of Davao is in the same situation as the Port of Cebu insofar as arrastre charges for handling export cargo are concerned because the Tariff and Customs Code does not contain any provisions for the collection of arrastre charges on cargo exported from the Port of Davao. The Tariff and Customs Code contains provisions for the collection of arrastre charges on cargo exported only from the Ports of Manila, Zamboanga and Iloilo.

In the Southwest case, it appears that Gustavo A. Suarez, as arrastre contractor for the Port of Davao, was authorized by the Secretary of Finance in a communication dated September 30, 1960 to collect on export cargo loaded in the Port of Davao the arrastre charges provided for the Port of Iloilo by section 3106(b) of the Tariff and Customs Code. That authorization was made because, as repeatedly shown above, the Code is silent as to the arrastre charges collectible on cargo exported from the Ports of Davao and Cebu. Suarez required Southwest Agricultural Marketing Corporation to pay the said arrastre charges which had been made a part of his management contract.

Challenging the legality of the collection of the said arrastre charges, in view of the silence of the Tariff and Customs Code on the matter, Southwest Agricultural Marketing Corporation filed an action in the Court of First Instance of Manila against Suarez and the Secretary of Finance to restrain the collection thereof.

Defendants Suarez and Secretary of Finance filed a motion to dismiss on the ground that the case was within the jurisdiction of the Tax Court. The Manila court dismissed the action. Southwest Agricultural Marketing Corporation appealed.

It was held that, since the legality of the arrastre charges depends upon whether or not they are sanctioned by the Tariff and Customs Code, it was a case calling for the interpretation of the Code which is administered by the Bureau of Customs. Consequently, the case was within the Tax Court's exclusive appellate jurisdiction (Millarez vs. Amparo, 97 Phil. 282).

As to the contention in that case that the appellate jurisdiction of the Tax Court could not be invoked because there was as yet no decision of the Commissioner of Customs, this Court disposed of it by observing that the plaintiff did not exhaust its administrative remedies and its failure to do so "suggests a lack of cause of action".

The instant case is governed by the controlling and decisive ruling in the Southwest case. Here, it is obvious that the petitioners prematurely sought a judicial review of the Collector's imposition of arrastre charges on export cargo without giving the Commissioner of Customs and the Secretary of Finance an opportunity to redress their grievance. Moreover, the proper forum to pass upon the legality of the said arrastre charges is the Tax Court, a

circumstance which strengthens the view that the petitioners should have exhausted their administrative remedies because, before the appellate jurisdiction of the Tax Court can be invoked, there should be an appealable decision of the Commissioner of Customs.

WHEREFORE, the lower court's decision is reversed. Petitioners' complaint is dismissed with costs against them.

SO ORDERED.

Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

Fernando, J., (Chairman), concurs with the observation that a decision of the Commissioner of Customs is directly appealable to the Court of Tax Appeals. An appeal to the Secretary of Finance is however justifiable under the doctrine that the latter is on alter ego of the President.

[*] On May 20, 1968 the twelve plaintiffs, the Associated Labor Union, the Collector of Customs of Cebu, the Deputy Commissioner of Customs and the Deputy Special Commissioner on Port Administration, assisted by Solicitor Augusto Amores, entered into an agreement whereby during the pendency of the case the copra exporters would pay to the Cebu Customs Arrastre Service the sum of forty centavos per ton of copra loaded for export as cash advance to defray the cost of labor, without prejudice to the outcome of this case; that, should the government win, then the copra exporters would pay the deficiency arrastre charges, and that should the government lose, then the payments made by the copra exporters would be considered as payment for the cost of labor without the government's obligation to make the reimbursement (Annex 1 of the Solicitor General's Brief).

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