

THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 10211. December 03, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

In the year 1912 the Manila Railroad Company, being the owner of a steamship called the Hondagua, caused certain repairs to be made thereon in the city of Hongkong, China. In the latter part of that year, and immediately after the completion of the repairs, the Hondagua came to the Philippine Islands and an attempt was made by the railroad company to induce the Philippine Government to permit the steamship to be entered in Philippine waters without the payment of import duties on the repairs made in Hongkong. The effort went for nought as the appraisers of the Bureau of Customs were of the opinion and held that, at the time the repairs to the ship were made in Hongkong, adequate facilities existed in the Philippine Islands for the making of those repairs and that they were, therefore, dutiable. The decision of the appraisers was protested, the matter was appealed to the Insular Collector of Customs for decision, and the judgment of his appraisers was affirmed. Appeal was taken from his decision to the Court of First Instance of Manila, where it was affirmed. This appeal is from the judgment of affirmance.

The appellant bases its claim that the repairs to the steamship should come in free of duty on two grounds: The first one is found in section 8, paragraph 200, and section 11, paragraph 348, of the Tariff Act of Congress, and the second in the provisions of section 10 of Act No. 1510 and Act No. 1566 of the Philippine Commission.

So much of section 8 and of paragraph 200 as is pertinent to the inquiry in which we are now engaged is as follows:

"SEC. 8. That the rates of duties to be collected on articles, goods, wares, or merchandise imported into the Philippine Islands, or going into said Islands from the United States or any of its possessions except as otherwise provided in this Act, shall be as follows:

* * * * *

"200. Boats, launches, lighters, and other water craft, set up or knocked down, imported into the Philippine Islands, and cost of repairs made in foreign countries to vessels, or to parts thereof, documented for the Philippine coastwise trade or plying exclusively in Philippine waters and for which repairs adequate facilities are afforded in the Philippine Islands, fifty per centum ad valorem.

"Provided, That upon proof satisfactory to the Collector of Customs that adequate facilities are not afforded in the Philippine Islands for such repairs, the same shall be subject to the provisions of paragraph three hundred and fortyeight of this Act."

That part of section 11 and paragraph 348 as is pertinent reads as follows:

"SEC. 11. That the following articles shall be free of duty upon the importation thereof into the Philippine Islands upon compliance with regulations which shall be prescribed in accord with the provisions of each paragraph:

* * * * *

"348. Repairs to vessels documented in the Philippine Islands or regularly plying in Philippine waters, made in foreign countries, upon proof satisfactory to the collector of customs that adequate facilities for such repairs are not afforded in the Philippine Islands."

There are two questions raised under the sections just quoted: One by the appellant and the other by the appellee. That raised by the appellee is to the effect that the judgment of the Insular Collector of Customs as to whether or not adequate facilities for repairs to ships exists in the Philippine Islands is conclusive and cannot be made the subject of inquiry. That raised by the appellant is in substance that the judgment of the Insular Collector of Customs is not conclusive but subject to inquiry, and that it was conclusively demonstrated on the trial by the evidence of the appellant that adequate facilities for such repairs did not exist in the Philippine Islands at the time such repairs were made.

We are of the opinion that the government is wrong in its contention, while the appellant's claim must be sustained in part and disallowed in part. The judgment of the Insular Collector of Customs as to whether adequate facilities for the repairs mentioned in the law exist in the Philippine Islands is not conclusive but is subject to review by the courts. The appellant is wrong in its statement that it was demonstrated on the trial that adequate facilities for such repairs did not exist in the Philippine Islands. We have examined with care the evidence on that subject and we find that it is vague, uncertain and inconclusive. Indeed, it is doubtful if it can be stated that any of the evidence presented by the appellant on that subject really went to the point.

The appellant is more successful, however, in presenting the second ground of its appeal, namely, that which refers to Acts Nos. 1510 and 1566. Act No. 1510 is entitled "An Act granting to the Manila Railroad Company a concession for railway lines in the Island of Luzon, and providing in respect of proceedings, for condemnation of land by public service corporations." It grants a franchise to the Manila Railroad Company and, after fixing the rights of the company under that franchise, formulates the obligations of the company to the government arising by reason of the concessions granted. One of the considerations on which the company's promises and obligations rested was the privileges conferred by section 10 of that Act. It provides:

"All material imported into the Philippine Archipelago for the construction and equipment of the railways undertaken by the grantee pursuant to authority conferred by this concessionary contract or grant shall be admitted free of duty, under such rules and regulations as shall be prescribed by the Philippine Government: Provided, That this provision shall not extend or apply to any portion of such lines, or to any material or supplies therefor, after the same shall be constructed and equipped: Provided further, That if any material so admitted free of duty shall not in fact be used for the construction and equipment of said railroads the duty shall become payable thereon whenever it is ascertained that it has been used or disposed of or is held for other purposes: And provided further, That this exemption shall extend to port charges upon vessels whose entire cargo consists of material for the construction or equipment of the railways, and to such proportion of the prescribed port charges on other vessels as the tonnage of material for such construction or equipment may bear to the tonnage of the entire cargo of the vessels."

By a subsequent act of the Philippine Commission the franchise of the Manila Railroad Company was extended and additional concessions granted for railroad lines in the Island of Luzon. That Act was No. 1905, and by paragraph 2 of section 1 thereof the provisions of section 10 of Act No. 1510 were specifically extended and made applicable to the additional lines of railroad with the same force and effect as if they had been included in the original concession. In addition to the provisions of Act No. 1510, already quoted, which are pertinent to the

matter under discussion, we have Act No. 1566, entitled "An Act regulating the free' entry of certain railroad material imported into the Philippine Islands." Section 1 of said Act is as follows: "All material imported into the Philippine Archipelago for the construction and equipment of the railroads granted concessions by Acts Numbered Fourteen hundred and ninety-seven and Fifteen hundred and ten, which material shall, in fact, be so used, shall be admitted free of duty under the following rules and regulations."

This Act, in subsequent sections, establishes certain rules and regulations for the admission free of duty of the materials named in the Act. Among them are sections 4 and 8, which read as follows:

"In case the Insular Collector of Customs shall be in doubt as to whether any article sought to be imported free of duty under this Act is entitled to said exemption, he may submit the question in writing to the Supervising Railway' Expert, who shall thereupon examine the same, and certify to the insular Collector of Customs whether the expenditure by the railroad for said article will, in his opinion, be allowed as a proper item in the cost of construction under section one, subsection numbered nine of Act Numbered Fourteen hundred and ninety-seven, and section four, paragraphs (c) and (d) of Act Numbered Fifteen hundred and seven, in case the road is one upon which interest on bonds is guaranteed by the Government; or, in case of nonguaranteed roads, the Supervising Railway Expert shall certify to the Insular Collector of Customs whether, in his opinion, said article is a proper charge against the construction and equipment of a railroad.

"Whenever free entry is requested for any materials or articles which, in the opinion of the Insular Collector of Customs, are not entitled to exemption from duty under the teitns of this Act, that officer is authorized, after making due examination and appraisalment and ascertaining the amount of duties found to be due on said materials or articles, to' admit the same without payment of the duties, and to deliver the same to the railway company or its representatives, notifying them, in writing, that said materials or articles are found to be dutiable, that the duties thereon amount to a certain sum, stating the same, that the same have been passed and delivered without payment of the duty, in accordance with this section, and that due report of his decision and the amount of duties found to be due will be made to the Governor-General, in order that the question of their dutiability may be adjusted and decided by him in conformity with subsection numbered nine of section one of Act Numbered Fourteen hundred and ninety-seven. It shall thereupon become the duty of the Insular Collector of Customs promptly to notify the Governor-General in writing of the above facts and to hold the free entry and invoice and all other papers connected with the case in his office subject to the orders of the Governor-General'and until final adjustment of the question is had. Nothing in this section contained shall be construed to alter or amend the rights of the. Insular Auditor under the Accounting Act or any amendment thereto, or under any other Act of the Philippine Commission."

From these quotations it will be seen that all for the construction and equipment of the southern lines of the Manila Railroad Company, on the bonds issued for which the government guaranteed the interest, were expressly admitted free of duty into the Philippine Islands, and that, in case of doubt as to the right to free entry, the matter was to be referred to the supervising railway expert or to the Governor-General for final determination.

We are of the opinion that the repairs made to the vessel must be admitted free of duty under these Acts. It seems that the ship in question was purchased by the railroad company as one of the agencies or instrumentalities made use of in the construction of its southern lines in the interest of efficiency and economy, it being used to transport railroad material, both for construction and equipment, as well as railroad laborers, from one point to another in the Philippine Islands which could not be so quickly or economically transported by any other means. It is undoubted, from the record in this case, that the steamship became an instrument or agency in the construction, if not the equipment also, of the railroad, in the same general class as a locomotive engine used in the construction work, or a steam shovel, or a pneumatic drill, or other tool, apparatus, implement, or mechanism used in railroad

construction. Customs Administrative Circular No. 539, promulgated in 1909, established rules and regulations under section 19 of Act No. 355 and section 5 of Act No. 1566 of the Philippine Commission regulating the free entry of materials and construction or equipment supplies to be used in the construction and equipment of the southern lines of the Manila Kailroacj Company ana other lines. Paragraph 7 thereof specifies the materials which are entitled to free entry under the provisions of Act tfo. 1566. It provides:

"The following specified materials are entitled to free entry under the provisions of Act No. 1566 of the Philippine Commission:

"(a) All materials used in surveying, including engineering instruments, tools, books, stationary, tents, kitchen utensils and stoves, drafting tables and drafting supplies, cots, chairs, blankets and bedding, surgical instruments and supplies, medicines, harness, saddles, and other equipment usually employed in railway surveys, excluding, however, subsistence and commissary supplies and clothing and persona] effects of employees.

"(b) All material for the general and local cjffices of construction administration, including office furniture and fixtures, stationery and supplies, testing machines, and like material and equipment.

"(c) All construction material, including wagons, carts, scrapers, graders, dump carts, push cars, steam or gas traction or hoisting engines, trucks, pumps, pipe, pipe tools and fittings, pile drivers, steam shovels, steel rails and fastenings, telegraph instruments and wire, insulators, poles and other like supplies, sawmill machinery, ties, timber for bridges, water tanks and buildings, sashes, doors, blinds, and mill work, roofing material, cement, plaster, lime, paint, varnish, and other similar building material, steel and iron bridges, turntables, roof trusses, and structural iron of all kinds, frogs, switches and crossings, interlocking and signal apparatus, shop machinery and tools, hand tools of all kinds and descriptions, hardware, oil, coal and waste used on construction trains, ships or launches, horses, mules, and draft animals, including hay, grain, and forage for same, and all necessary material and supplies used wholly on railroads built under concessionary contracts or grants.

" (d) All material for equipment of railroads built under concessionary grant or contract or by any railroad specially granted exemption by law, said material xor equipment consisting of motive power and rolling stock for use in construction of railroads and for equipment of same to enable it to properly operate mileage constructed under its concessionary contract or grant."

From this circular it will be seen how far the interpretation of the words "material for construction and equipment" found in Acts Nos. 1510 (sec. 10) and 1566 (sec. 1) has gone. While it may be doubtful whether the courts, in dealing with the same subject-matter at first hand, would have been quite so liberal, nevertheless, such interpretation having been given by the officers charged with the administration of the Acts referred to and that interpretation having been followed consistently for several years, it ought not, at this time, to be changed, even though the courts might consider that such interpretation was broader than they themselves might originally have adopted. Accepting such interpretation, we find that the principle which governs it comprehends and includes every agency, apparatus, instrument, tool or implement, including machinery imported into the Philippine Archipelago, which is necessary for the efficient and economical construction of the railroad in question. The ship, the repairs to which are in controversy here, has been accepted by the officials of the Philippine Government as one of the instrumentalities used in the construction of appellant's southern lines and the purchase price thereof has been included in the bonds issued for such construction. Not only this, but the ship falls clearly within the list of articles which, according to the accepted interpretation of the customs officials, have for several years been admitted free of duty under Acts Nos. 1510 and* 1566. It is an implement, an agency, an instrument used in the construction of said railroad, and, as such, if otherwise dutiable, could have been entered in Philippine waters from a foreign country free of import duties. We do not feel justified in holding that the repairs to a ship, which

has been found to be an instrumentality in the construction of appellant's southern lines, and, as such, could enter and remain in Philippine water free of government exactions, should be separated from the ship itself and set apart as something subject to import duties. We think it will be admitted that the materials going into necessary Repairs to a locomotive engine used on a work train in the construction of the railroad would not be subject to import duties on their introduction into this country. It would seem that, if the engine itself may be admitted free of duty, all materials necessary to keep it in repair would also be exempt from import duties. We believe that, so far as the comparison may properly go, the same may be said of the ship in question.

The Government argues that because of the admitted fact that the Hondagua has been used by the Manila Railroad Company for the carrying of passengers and freight for hire and has at times held itself out as a common carrier of freight and passengers, it can no longer be said to be an instrumentality used in the construction of the Manila Railroad Company's southern lines but has become a moneymaking enterprise, and is, therefore, no longer entitled to the benefits of Act No. 1510. We are unable to give this argument the weight to which the Government seems to think it entitled. It is true that the evidence discloses that the ship in question, when not in use for railroad construction purposes, has carried freight and passengers for hire. But it is to be remembered that the record also shows, as we have already pointed out, that the purchase price of the ship was made an item entering into the cost of construction for which bonds were issued on which the Government guaranteed the payment of interest to the extent provided in the Act referred to; and that the receipts derived from the use of the ship as a common carrier were, under the direction of the Government, credited to the construction account, thereby reducing indirectly the amount for which the Government might become responsible under the law. We are of the opinion that, under the circumstances disclosed, the use of the ship by the railroad company in the manner and for the purposes specified in the objection of the Government, does not warrant the withdrawal of those privileges which Acts Nos. 1510 and 1566 confer. We think it cannot be successfully maintained that the use of the ship for the carrying of freight and passengers at times when it was not in use for the purposes for which it was originally designed, together with the fact that the proceeds of its activities were applied to the reduction of the indebtedness concerning which the Government had some responsibility, is less beneficial to the Government and therefore, should be punished by the withdrawal of the privileges described, than if it stood idle during such period without attempt on the part of its owner to earn sufficient to cover its daily expenses or to reduce the sum for the interest on which the Government might ultimately be required to respond.

The judgment of the Court of "First Instance is reversed and the cause remanded with instructions that the decision of the Insular Collector of Customs refusing to admit the repairs, which are the subject matter of this proceeding, free of duty be set aside and the Insular Collector of Customs be instructed to permit the entry of such repairs free of duty.

Arellano, C.J., Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

Judgment reversed; case remanded with instructions.

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