

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

G.R. No. 10624. March 24, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the Manila Railroad Company imported a locomotive into the Philippine Islands for the purpose of equipping its railroad. The locomotive arrived on the steamship Fernando Poo on the 11th of February, 1914. An application for free entry was made on the proper customs form and said locomotive was passed free of duty under section 10 [section 1, No. 10] of Act No. 1510. The locomotive was assembled and given its trial trip on the 28th of April, 1914. On the 1st of May, 1914, it was put into regular service, running on the Manila-Antipolo run until the 15th of June, 1914. From that date until the day of the hearing of the protest, it has been used continuously on the Manila-San Pablo-Lucena run.

In September, 1914, the Insular Collector of Customs ordered a reliquidation of said locomotive (entry) and assessed duty thereon under paragraph 191-a of the Philippine Tariff Law of 1909. Against that assessment the plaintiff protested, after having paid the duties imposed, under protest. After hearing the plaintiff on said protest, the Honorable B. Herstein, Insular Collector of Customs, denied said protest. From that decision the plaintiff appealed to the Court of First Instance where, after hearing the evidence adduced by the respective parties, the Honorable James A. Ostrand, judge, rendered the following decision:

"The evidence shows that the locomotive is a Kitson-Meyer engine purchased for service on the Antipolo hill section and for banking purposes on the Calamba-San Pablo and Luta-Batangas sections. It arrived in Manila February 11, 1914, and was then passed free of duty under railway free entry No. 601. On the 1st of May it was put into regular service on the Manila-Antipolo branch, where it remained until June 15. From that date until the day of the hearing of the protest in this case it was used on the Manila-San Pablo-Lucena run. In the month of September the defendant ordered the reliquidation of the entry of the locomotive and assessed duties thereon, which were paid under protest, and which gave rise to the present case.

"The plaintiff claims the right of free entry for the locomotive under paragraph 10 of section 1 of Act No. 1510, which reads as follows:

" '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 vessel.'

"The defendant maintains that the lines on which the locomotive has been running since its importation have for some time been in full commercial operation and therefore must be considered 'constructed and equipped' within the meaning of the paragraph quoted. It is argued that if a different interpretation is placed upon the law the railroad company could keep its lines partly under construction indefinitely in order to avoid payment of duties.

"Though the matter is not free from doubt, the court is of the opinion that the plaintiff's protest should have been sustained. The railway lines on which the locomotive is being used are parts of the lines provided for in Act No. 1510 as amended by Act No. 1905, and a time limit is there fixed for their completion. They are treated as a whole system rather than as separate lines independent of each other; the railroad company is under no obligation to commence or complete construction at any particular point before commencing or completing other sections, and the only limitation as to time of completion refers to the system as a whole. Rolling stock given free entry and originally put into service on one section may, undoubtedly, later on be transferred to another section of the system and may be used on any section or line of the same without liability to reliquidation or assessment for customs duties; its use cannot very well be confined to any special section of the system. It would seem to follow logically that no matter whether the rolling stock is purchased for the equipment of a particular section, the construction of which is already completed, or whether it is expressly designated as for the use of the whole system, including the incomplete parts thereof, it should be admitted free of duty if put into service before the expiration of the time limit fixed for the equipment of the lines and if necessary for the proper handling of the traffic of the system. This does not, of course, apply to importation for replacing original equipment, and some little difficulty may, perhaps, be experienced in properly classifying the importations with reference to this point, but such difficulties are by no means insurmountable and are not nearly as serious as those presenting themselves if the contention of the defendant is carried to its logical conclusions. The time limit fixed for construction and equipment would prevent the railroad company from enjoying the privilege of free entry indefinitely. (In this connection see penultimate paragraph of Commission Resolution No. 14, April 4, 1910.)

"The court takes judicial notice of the fact that neither one of the railroad systems designated as 'northern lines' and 'southern lines' and described in paragraph 5 of section 1 of Act No. 1905 have as yet been fully constructed, and that the five years' extension of the time for the construction and equipment had not expired at the time the locomotive in question was placed in service.

"Wherefore, the decision of the Insular Collector of Customs hereinbefore mentioned is hereby reversed, and it is ordered that the customs duties paid for the locomotive in question be refunded to the plaintiff. No costs will be allowed. So ordered."

From said decision of the Court of First Instance the defendant appealed to this court and made several assignments of error.

Without giving our conformity to all of the reasoning of the court a quo, and without discussing at this time the assignments of error presented by the appellant, we find that the lower court has stated the facts correctly and has arrived at a correct conclusion under the law. Therefore, without prejudice to the writing of a decision hereafter in which may be discussed the facts and the law more in extenso, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., dissents.

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