

VICTORIAS MILLING CO., INC., PETITIONER VS. THE HONORABLE AUDITOR GENERAL OF THE PHILIPPINES, RESPONDENT.

G.R. No. 17414. November 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

Victorias Milling Co., Inc. appeals from the decision of the Auditor General refusing, for lack of jurisdiction, to pass upon its claim for refund of wharfage fees paid by said Company to the Government allegedly by mistake, in connection with its exportation and importation business.

It appears from the pleadings filed in this case that for the period from June 18, 1955 to June 30, 1957, the Victorias Milling Co., Inc., exported sugar and in turn imported various products from abroad for use in its business, coursed through the ports of Cebu, Iloilo and Manila. For said undertakings (exportations and importations), the collectors of customs of said ports imposed and collected from the Company wharfage fees in the aggregate amount of P422,664.11 itemized in appellant's brief (p. 4) as follows:

Exports

Imports

Total Exports and Imports

Annex "A"—Iloilo

P407,087.51

P490.87

P407,578.38

Annex "B"—Cebu

2,061.68

none

2,061.68

Annex "C"— Manila

12,913.32

110.73

13,024.05

Totals

P422,062.51

P601.60

P422,664.11

The earliest payment of such fees was made on June 21, 1955 and the last on June 27, 1957.

One year later, or on June 30, 1958, the Court of Tax Appeals rendered a decision in the case of Superior Gas and Equipment Co. vs. Commissioner of Customs,[1] holding specifically provides that "wharfage fee shall not be levied that in view of Section 3 of Republic Act 1371,[2] which on articles imported or brought into the Philippines which are unloaded on private wharves", importations discharged and delivered without the use of government wharves are likewise exempt from the wharfage charge. Encouraged by this ruling, herein appellant on October 7, 1958, sent letters to the collectors of customs of Cebu, Iloilo and Manila claiming for the refund of the aforesaid collected charges on the ground that its export and import shipments were loaded and unloaded at shipside, without using government wharves.

The claims for refund were separately denied by the collectors of customs concerned, for the reason that no formal protest against the collection of the fees having been presented within 30 days from payment thereof, the same were already barred. Claimant tried to file a notice to appeal to the Commissioner of Customs, but the collector (of the port of Cebu) refused to accept it on the ground that since there was no formal protest, the Company can not appeal to the Commissioner.

Unsuccessful in this direct action the Company, on February 14, 1959, filed a claim for refund with the Auditor General, alleging that the exaction and collection of wharfage fees for its exportations and importations which were loaded and unloaded at shipside and effected without using government wharves, are null and void; that claimant, in the honest belief that they were due obligations, paid the fees; that such erroneous payment of fees gave rise to the quasi-contract of solutio indebiti between the claimant and the Government, which could be the basis for a claim for refund from the latter, through the Auditor General.

In a letter dated July 19, 1960, the Auditor General declined to act on the Company's claim on the ground that under Sections 1370 and 1372 of the Revised Administrative Code, as reproduced in the Tariff and Customs Code, the Collector of Customs of the port to whom the fees were paid has the exclusive jurisdiction over the said claim, subject to review by the Commissioner of Customs, whose decision, in turn, is appealable to the Court of Tax Appeals. The Auditor General also declared that while the jurisdiction of his office comprehends all debts and claims of any sort due from or owing to the Government, the same is understood to exclude claims for refund

of national internal revenue taxes and customs dues, fees and charges which, by specific provision of law, fall within the jurisdiction of other bodies. Thereupon, the claimant Company interposed the present appeal.

Appellant strongly contends that its action is not an ordinary claim for refund of protested payment of customs charges under Sections 1370 to 1372 of the Revised Administrative Code; rather it is based on Section 1, Act 3083 and Sections 1 and 2 of Commonwealth Act 327, in connection with Articles 2154 and 2155 of the New Civil Code. Appellant's contention, as we understand it, runs thus: (1) the wharfage fees were paid by mistake in the construction or application of Republic Act No 1371 which presents a doubtful or difficult question of law (Art. 2155 of the New Civil Code); (2) that since the payment was unduly delivered through mistake and the Government received it when it had no right to demand it, the obligation to return the payment arises (Art 2154, id), which obligation constitutes the quasi-contract of solutio indebiti; (3) that such a claim is a "moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties" and therefore could be prosecuted against the Government pursuant to Section 1 of Act 3083; and (4) that such a claim involves the settlement of accounts or claims cognizable by and falling under the jurisdiction of the Auditor General whose decision is appealable to the Supreme Court (Sections 1 and 2, Com. Act 327).

To begin with, let it be noted that almost the entire amount claimed (P422,062.51 out of P422,664.71) represents wharfage dues paid in connection with the Company's exports, and only P601.60 is for imports. Section 3, Part II of Republic Act No. 1371 reads thus:

"PART II.—WHARFAGE CHARGES

"SEC. 3. There shall be levied, collected and paid in all articles imported or brought into the Philippines, and on products of the Philippines, except coal, lumber, creosoted and other pressure treated materials as well as other minor forest products, cement, guano, natural rock asphalt, the minerals and ores of base metals (e.g., copper, lead, zinc, iron, chromite, manganese, magnesite and steel), and sugar molasses, exported from the Philippines, a charge of two pesos per gross metric ton as a fee for wharfage: Provided, That in the case of logs, or flitches twelve inches square or equivalent cross-sectional area, or over, a charge of sixty centavos per cubic meter shall be collected. Provided, further, That such wharfage fee shall not be levied on articles imported or brought into the Philippines which are unloaded on private wharves."

This legal provision is neither doubtful nor difficult of construction or application because it clearly provides that wharfage charges are to be paid on all products exported from the Philippines, except those specifically mentioned in the law, and on all imports, except those unloaded on private wharves. When therefore petitioner paid the wharfage fees on its exports (which have not been shown as among those exempted in the law), it made no mistake but correctly complied with the law, even if it be admitted that they were loaded (not unloaded) from private wharves, it must be for this reason that no protest was lodged against the payment of the wharfage fees.

But petitioner invokes the case of *Superior Gas and Equipment Company vs. Commissioner of Customs* (108 Phil., 225) decided on May 25, 1960, long after the payment of the wharfage dues in question (last payment was June 30, 1957) to buttress its claim for the refund or return of the amount paid. The reliance on that case is unjustified because, unlike the present case, the issue there related to an importation (not exportation) of goods arriving in the Philippines in August 1956, which issue fell squarely within the last proviso of the law quoted above. Hence the wharfage charges made in connection with the merchandise imported and unloaded in a private wharf were ordered refunded pursuant to the express provision of the law exempting such importation. Any reference to exports made in the decision in that case is mere obiter.

Moreover, in the *Superior Gas* (Sugeco for short) case, there was a timely protest and claim made pursuant to Sections 1370 and 1371 of the Revised Administrative Code. Here there is none. Petitioner's explanation for its

failure to lodge such protest and claim in this case is its alleged belief in good faith that it was legally liable to pay the wharfage fees. And because it did not thus protest, it now contends that Section 1371 of the Revised Administrative Code making the protest therein provided as the exclusive remedy in such cases, is not applicable to the instant controversy, arguing that this section refers to "any case which is subject to protest". Such a reasoning is unconvincing because the law refers to cases that are protestable, not protested, cases subject to protest, not the object of protest. To adopt the view of petitioner would be to place the applicability of Section 1371 at the exclusive determination of those precisely intended to be bound by it. We therefore hold that the instant case comes within the purview of Sections 1370 and 1371 of the Revised Administrative Code prescribing the manner of enforcing a claim against the imposition and collection of customs duties, fees or other money change under our customs laws. And this procedure or remedy being exclusive in these matters, the Auditor General has no power to entertain the same claim even though presented in another form.

Having come to this conclusion, it becomes unnecessary to discuss the other points raised by petitioner in its brief.

The ruling of the Auditor General appealed from is affirmed, with costs against the petitioner. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Later affirmed by the Supreme Court in G. R. No. L-14115, promulgated on May 25, 1960 (108 Phil., 225.)

[2] Approved effective June 18, 1955.

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