COMPANIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 21241. April 07, 1924

Ponente: AVANCEÃ‘A, C.J.

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AVANCEÃ‘A, C.J.:

On March 6, 1923, the appellant paid under protest to the Insular Collector of Customs at Manila the sum of P1,427.26 under the provisions of section 14 of the Act of Congress of the United States of August 5, 1909, entitled "An Act to raise revenue for the Philippine Islands, and for other purposes." This action is brought to recover of the defendant Insular Collector of Customs the sum of P1,427.26 alleged to have been illegally collected. The judgment appealed from absolves the defendant from the complaint.

The appellant contends that section 14 of the Act of Congress of August 5, 1909, was repealed by section 11 of the Jones Law, passed by the same Congress.

The Act of Congress of August 5, 1909, in its sections 13 and 14, says literally as follows:

"EXPORT DUTIES

"SEC. 13. That upon the exportation to any foreign country from the Philippine Islands, or the shipment thereof to the United States or any of its possessions, of the following articles, there shall be levied, collected and paid thereon the following export duties: Provided, however, That all articles the growth and product of the Philippine Islands coming directly from said Islands to the United States or any of its possessions for use and consumption therein, shall be exempt from any export duties imposed in the Philippine Islands:

352. Abaca (hemp), gross weight, one hundred kilos, seventy-five cents.

353. Sugar, gross weight, one hundred kilos, five cents.

354. Copra, gross weight, one hundred kilos, ten cents.

355. Tobacco, gross weight:

> (a) Manufactured or unmanufactured, except as otherwise provided, one hundred kilos, one dollar and thirty cents.
>
> (b) Stems, clippings, and other wastes of tobacco, one hundred kilos, fifty cents.

"WHARFAGE

"SEC. 14. That there shall be levied and collected upon all articles, goods, wares, or merchandise, except coal, timber and cement, the product of the Philippine Islands, exported through ports' of entry of the Philippine

Islands, or shipped therefrom to the United States or any of its possessions, a duty of one dollar per gross ton of one thousand kilos, as a charge for wharfage, whatever be the port of destination or nationality of the exporting vessel: Provided, That articles, goods, wares, or merchandise imported, exported, or shipped in transit for the use of the Government of the United States, or of that of the Philippine Islands, shall be exempt from the charges prescribed in this section."

Section 11 of the Jones Law is as follows:

"SEC. 11. That no export duty shall be levied or collected on exports from the Philippine Islands, * * *."

It is claimed that this section 11 of the Jones Law impliedly repealed section 14 of the Act of Congress of August 5, 1909. In our opinion it did not.

An implied repeal rests only on the presumption of the intention to repeal. This presumption arises when the new and the old law are absolutely incompatible. There is no such incompatibility between section 11 of the Jones Law and section 14 of the Act of Congress of August 5, 1909. What is prohibited in section 11 of the Jones' Law is the collection of export duties upon articles exported from the Philippine Islands. Section 14 of the Act of Congress of August 5, 1909, refers to wharfage and not to export duties. A lengthy discussion is made in the appellant's brief to the effect that the wharfage duties referred to in section 14 of the Act of Congress of August 5, 1909, are in fact export duties. Whatever may be the merit of the points of view of the appellant, the same are not, however, abstractly speaking, applicable to the case before us. The question at issue concerns two Acts enacted by the Congress of the United States. In the Act of August 5, 1909, section 13 was written under the caption of "Export Duties" and section 14 under the caption of "Wharfage." Evidently, according to this, the Congress has considered both things, export duty and wharfage duty, as different. So much so that in the Tariff Law of 1913 of the same Congress, section 13 of the Act of August 5,1909, was expressly repealed and yet section 14 was preserved.

On the other hand, section 11 of the Jones Law is a general provision, while section 14 of the Act of August 5, 1909, is a special one. The rule is that a general law does not repeal another special one unless it is so expressly provided, or they are incompatible. Moreover, it must not be forgotten that the Jones Law was enacted to fix, in general terms, the powers of the Philippine Legislature and it is easy to conceive that in enacting this law the Congress had not in mind the idea of repealing any other special law on a determinate matter.

Although the negative form in which section 11 of the Jones Law was written creates a stronger inference in favor of the intention to repeal than if it had been in the affirmative form, yet the question, in the last analysis, is, What is the intention of the law? And such circumstance ceases to have any influence when otherwise, as in the instant case, such an intention does not appear, but on the contrary it rather appears that there was not such intention.

Furthermore, it is not proper to discuss the question whether this wharfage duty can be collected, when the articles exported did not pass through any wharf of the Government because it would be an abstract question in this case, inasmuch as there is no proof, nor does it appear in the agreed statement of facts, that the articles upon which the defendant collected the duty of P1,427.26 ever passed through any wharf of the Government.

The judgment appealed from is affirmed with the costs against the appellant. So ordered.

Street, Ostrand, Johns, and Romualdez, JJ., concur.

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DISSENTING

JOHNSON, J., with whom concurs ARAULLO, C. J.:

I dissent. The only question before the court for decision is whether section 14 of the Federal Tariff Act of 1909 can stand with section 11 of the Jones Law, or whether the former must yield to the latter. The language of the Jones Law on the subject of export duties is clear and emphatic. The unqualified declaration is "that no export duty shall be levied or collected on exports from the Philippine Islands."

The manifest purpose of this provision of the organic law was to foster and encourage, and not stifle or impede trade and commerce. The interpretation to be placed upon laws relating to trade, industry and commerce should tend to aid and not to handicap business. This provision of the Jones Law was intended to stimulate export trade. The utter incompatibility between the two provisions is made manifest from a comparison of their terms:

Section 14, Tariff Act of

Section 11, Jones Law

1909

(1916)

" * * * there shall be

" * * * no export duties

levied and collected upon all

shall be levied or collected on

merchandise * * * exported

exports from the Philippine

from the Philippine Islands

Islands

* * * a duty of

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one dollar a ton * * *."

By no process of reasoning can one reach the conclusion that Congress intended anything different from the plainly expressed idea contained in the above quotation from the Jones Law. The tax collected by the Insular Collector of Customs is clearly an export duty. The 1909 Tariff Act qualifies it as such, and it is levied specifically upon all merchandise exported from the Philippine Islands; but, apart from the language of the statute itself, it is a fundamental proposition, and so held by this court, that any tax which accrues by reason of the exportation of merchandise is an export duty (Smith, Bell & Company vs. Rafferty, 40 Phil., 691, citing with approval Crew Levick Co. vs. Pennsylvania, 245 U. S., 292).

Mere language cannot be availed of to accomplish that which is directly prohibited by statute, and export taxes or burdens placed upon exportation of merchandise, under the guise of occupation taxes, such as duties upon bills of lading and the like, have uniformly been held invalid. (Brown vs. State of Maryland, 12 Wheat., 419; Low vs. Austin, 13 Wall., 29; Cook vs. Commonwealth of Pennsylvania, 7 Otto, 566; Waring vs. Mayor of Mobile, 8 Wall., 110; People ex rel. Burke vs. Wells, 208 United States, 14; Cook vs. Commonwealth of Pennsylvania, 97 United States, 566; Howe Machine Co. vs. Gage, 10 Otto, 676; Western Union Telegraph Co. vs. State of Texas, 105 U. S., 460; Fairbank vs. United States, 181 United States, 283-4; Income Tax Cases, 157 United States, 427.)

Section 4 of the Tariff Act of October 3, 1913, repealed section 13 of the Tariff Act of 1909, under which specific duties were levied upon the exportation of hemp, sugar, copra and tobacco. If this had remained on the statute books, it would necessarily, by implication, have been repealed by section 11 of the Jones Law. Having been previously repealed, however, there was no statute in force in the Philippine Islands authorizing an export tax at the time of the enactment of the Jones Law in 1916, except section 14 of the Tariff Act of 1909.

Clearly, the provisions of section 11 of the Jones Law were not solely prospective, but were intended to operate, and did operate, upon any law then existing and repugnant thereto. As section 14 of the 1909 Tariff Act falls within this classification, it must be deemed repugnant to the latter law, and consequently yield thereto.

It is mere specious reasoning to say that the duty is a mere charge for wharfage when the law provides that a "duty" shall be levied and collected. It cannot possibly be so held. No duty on exports can be justified by the plea that the money so collected might be used for the construction of wharves (Cannon vs. City of New Orleans, 87 U. S., 577; Keokuk Northern Line Package Co. vs. City of Keokuk, 95 U.S., 80).

It is manifest that the prohibition of all export duties contained in section 11 of the Jones Law is applicable to the tax levied under section 14 of the Tariff Act of 1909, and that consequently the latter provision has been repealed.

The judgment appealed from should be revoked.

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