

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

G.R. No. 21821. October 02, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal by the Insular Collector of Customs from a judgment of the Court of First Instance of Manila ordering the refund to the appellee of the sum of P3,871.34 collected from it as customs duties on 10,000 cases of kerosene imported from the United States. The case was tried upon the following stipulation of facts:

"Now come the parties plaintiff and defendant in this case and submit to the court the following stipulation of facts, together with the exhibits attached hereto for the decision of this case, by virtue of the appeal taken by Wise & Co. from the decision rendered by the Insular Collector of Customs on a protest, No. 12276, presented by said Wise & Co. of Manila against the assessment, collection and payment of duty upon 10,000 cases of petroleum imported by said Wise & Co. from the United States of America. The facts stipulated are as follows:

"1. That the plaintiff is a corporation duly organized under the laws of the Philippine Islands, with its principal office on Calle Juan Luna, City of Manila; and that the defendant is the Insular Collector of Customs, who at the same time acts as collector of customs for the port of Manila;

"2. That in or about the month of October, 1921, and prior to said date, Wise & Co. was the representative in the P. I. of the Texas Co., engaged among other things, in the importation of petroleum, oil, gasoline and derivatives of mineral oil for their distribution and sale in the P. I.;

"3. That the petroleum imported by the Texas Co. into the City of Manila is known by the name of petroleum Torre brand;

"4. That in or about the month of August, 1921, the Texas Co. shipped for Shanghai, consigned to Wise & Co., as managing agent of the Texas Co., 10,000 cases of petroleum Torre brand;

"5. That said shipment was made from Port Arthur, Texas, leaving said port on board the steamer England Maru, the route of which ended at Shanghai, China, and was transhipped at Shanghai to the vessel Coaxet bound for Manila, having arrived at this port on October 17, 1921; "6. That said shipment was protected by two bills of lading, one from Port Arthur, Texas to Shanghai, China (Exhibit A); and the other from Shanghai, China to Manila (Exhibit B);

"7. That the bill of lading from Port Arthur, Texas, contains the following:

" To be sent from Shanghai, China to Manila, P. I. at the risk and cost of the consignee.

" 'In transit from Port Arthur, Texas, to Manila, P. I., via Shanghai, China

"8. That the delivery to the Collector of Customs of the bill of lading by the vessel Coaxet from Shanghai to Manila, was made thru a letter dated February 28, 1922 (Exhibit B) to which an affidavit (Exhibit C) was attached;

"9. That when the 10,000 cases of petroleum arrived at the port of Manila, the Collector of Customs held that said petroleum was subject to the payment of import duties and exacted from the plaintiff Wise & Co. the payment of the sum of P3,871.34, as such duties for said 10,000 cases of petroleum;

"10. That the plaintiff Wise & Co. for the purpose of avoiding surcharges and fines in the payment of said duties paid the aforesaid amount of P3,871.34 under protest, alleging itself to be protected by section 12 of the Tariff Law of the Philippines of 1909, as amended by the Tariff Law of the United States of October 3, 1913;

"11. That the protest having been submitted to the Insular Collector of Customs, the latter, on January 30, 1923, rendered a decision in his capacity as administrator of the port of Manila, denying and overruling the protest presented by Wise & Co.;

"12. That the Insular Collector of Customs has refused and still refuses to refund to Wise & Co. the amount of P3,871.84 paid by the latter under protest as import duties on the said 10,000 cases of petroleum.

(Sgd.) "Antonio M. Opisso

"Attorney for plaintiff

"Ant. Villa-Real

"Attorney-General, attorney for the defendant"

Exhibit C which is referred to as the stipulation of facts and which was admitted in evidence without objections, reads as follows:

"The England Maru chartered by the Texas Company, arrived in Shanghai on October 7th. The bill of lading for Shanghai calls for:

"10,000 cases Kerosene branded Torre,
"58,170 cases Kerosene branded Yinfoo,
"5,000 cases Kerosene branded Sing.

"Letter No. 307 of August 15, 1921, from the Texas Company, New York, to the Texas Company, Shanghai, instructs the Shanghai office to the effect that the 10,000 cases Torre brand mentioned in bill of lading are to be transhipped to Manila. The original of this letter is hereto attached together with a copy of the bill of lading for the England Maru.

"As the England Maru was not destined to call at Manila and as the shipment of 10,000 cases from Port Arthur, Texas, to Manila was urgent, these 10,000 cases Torre brand kerosene oil were shipped to Shanghai. Application was made at the Shanghai customs that these 10,000 cases Torre brand kerosene be transhipped to Manila. This amount, less leakage, was actually transhipped to Manila on board the United States Shipping Board Emergency Fleet Cor's S/S Coaxet—Admiral Line agents, which vessel sailed from Shanghai about October 12th.

"The bill of lading to which this affidavit is attached calls for 9,979 cases Torre brand kerosene oil, which amount represents the original 10,000 cases less 21 cases found empty in transferring from the England Mara to the S/S Coaxet.

"Section 12 of the Philippine Tariff Act of 1909 as amended by the United States Tariff Act of October 3, 1913, exempts United States cargo from duty at Manila, provided such cargo is under through bill of lading, and provided that the cargo is bonded when passing through a foreign country.

"In as much as the through bill of lading was impossible on this cargo of 10,000 cases Torre Brand 'Kerosene Oil, and as the shipment amounts to exactly the same thing as a through bill of lading, this affidavit is written to assist the Texas Company (P. I.), Inc., in claiming exemption from duty in the Philippines.

"Finally it may be stated that these 10,000 cases Torre brand kerosene oil were shipped from Port Arthur, Texas, to be delivered only at Manila and nowhere else. This oil was never in any way destined for China or a China market. The brand is neither known nor registered in China, and the name itself shows it to have been destined to a Spanish speaking country. Because of an emergency and for no other reason was this cargo shipped from Port Arthur, Texas, to Manila via Shanghai.

"I hereby certify that the above is true in every detail to the best of my knowledge and belief.

(Sgd.) "E. C. Battersky

"Attorney, 'The Texas Company'

[SEAL]

"American Consulate-General

"Shanghai, China

"Subscribed and sworn to before me this 14th day of October, 1921.

(Sgd.) "Paul t. Gross

"Vice-Consul of the United States

of America at Shanghai, China"

The legal provisions involved in the case are found in article 4-C of the United States Tariff Act of 1913

(Underwood Tariff), which read:

"That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: Provided, That all articles, the growth or product of or manufactured in the Philippine Islands, from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: Provided, however, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: And provided, further, That the free admission herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as herein before defined, of the Philippine Islands into the United States shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: Provided, That direct shipment shall include shipment in bond through foreign territory contiguous to the United States: * * *"

The question for our consideration is whether the shipment referred to in the stipulation of facts and in Exhibit C is a "direct shipment from the country of origin to the country of destination." The trial court held that it, in effect, was such a shipment and we are of the opinion that the conclusions of that court are correct.

That the shipment was direct within the meaning of the law can hardly be questioned; it was transferred from one ship to another in Shanghai and was never landed or entered there. But there may be some doubt as to whether it can be said to have been shipped under a "through bill of lading." That the bill of lading issued at Port Arthur, the port of departure, was not in the form of the usual through bill of lading is conceded, but that does not necessarily signify that it may not be a through bill of lading in its legal effect.

A bill of lading of a maritime shipment is nothing but the written evidence of a contract for the carriage and delivery of goods sent by sea and no particular form for it is prescribed. According to paragraph 4 of the stipulation of facts, the goods here in question were consigned to Wise & Co., the herein plaintiff. Paragraph 7 of the stipulation states that the bill of lading contained the following clauses: "To be sent from Shanghai, China, to Manila, Philippine Islands, at the risk and expense of the consignee" and "In transit from Port Arthur, Texas, to Manila, Philippine Islands, via Shanghai, China." It would therefore seem that the bill of lading imposed on the carrier the obligation not to land the goods in Shanghai but to tranship them to Manila, though the carriage from Shanghai to Manila would be at the consignee's risk and expense. To cover this risk and expense another bill of lading was made out for the transportation from Shanghai to Manila, but this would not necessarily change the character of the first or original bill of lading as essentially a "through" bill.

But be this as it may, the purpose of requiring a through bill of lading for imports for which free entry in the Philippines is claimed, is very evidently to prevent the entry of merchandise at way ports and the commingling of it with merchandise of a foreign territory before its reshipment to its ultimate destination. From this point of view both the shipment and the bill of lading in the present case was in sufficient compliance with at least the spirit of the law if not with its letter.

The judgment appealed from is affirmed without costs.

So ordered.

Malcolm, Avancena, Villamor, and Romualdez, JJ., concur.

DISSENTING :**JOHNSON, J.,**

The decision in this case violates two provisions of the law. First, the bill was not a "through bill of lading." Otherwise, there would have been no occasion for the second "bill of lading." Second, it was not a "direct shipment" to Manila. There was a transshipment at Shanghai. The law requires that the merchandise must be by "direct shipment" and by a "through bill of lading." Neither of said conditions was complied with.

DISSENTING :**STREET, J.,**

As stated in the opinion of the court, the point in controversy in this case arises under the United States Tariff Act of 1913, which, among other things, expressly declares that the right of free admission into the Philippine Islands of articles of the growth, product, or the manufacture of the United States is expressly "conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination." The words used in this provision of the Tariff Law were apparently carefully weighed by Congress, and the manifest purpose was to discriminate in favor of direct lines established between the United States and the Philippines.

This was in furtherance of a design on the part of the American Congress to promote the upbuilding of an American merchant marine. The words "direct shipment," in the passage from which I have quoted, were, I think, used in strict contradistinction to transshipment; and it is admitted that the cargo in question was transshipped at Shanghai, China, from the England Maru to the Coaxett which brought it on to Manila.

Furthermore, the bill of lading upon which the cargo was embarked at Port Arthur, Texas, obligated the first steamer (England Maru) to convey the merchandise to Shanghai only, and an entirely new bill of lading was there issued to cover the shipment to Manila. It is unimportant that the cargo was transferred at Shanghai from the England Maru to the Coaxett, without having been disembarked and mingled with the commerce of China; nor is it important that the original bill of lading had indorsed upon its face a few words of shipping instructions to the effect that the merchandise was to be sent from Shanghai to Manila at the risk and expense of the consignee. In fact this indorsement shows that the obligation of the England Maru terminated at Shanghai and this circumstance corroborates the conclusion that the bill of lading was not a through bill of lading.

These considerations are too clear to me to permit of argument, and I cannot accept the conclusion of the court which concedes to this merchandise the right of free entry into the port of Manila. The opinion written by Mr. Justice Ostrand says that while the bill of lading issued at Port Arthur is not in the form of the usual through bill of lading, it is "a through bill of lading in its legal effect."

Conformably with this idea any foreign bottom, not pertaining to established lines between the United States and the Philippine Islands, is free to bring American cargo to any Asiatic port for transshipment to the Philippine Islands; and the same may be entered duty free in our ports in direct contravention of the United States Tariff Act, provided a few words are indorsed on the bill of lading to show that the cargo is to be transshipped at such Asiatic port to the Philippine Islands "at the risk and expense of the consignee." From this conclusion I record my disagreement, and I am of the opinion that the judgment should be reversed.

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