

PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION, PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. 22819. April 27, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

In 1958 two shipments of caustic soda were consigned to Procter & Gamble Philippine Manufacturing Corporation from San Francisco, California, U.S.A., on board the vessels Bronxville and Banggai. From said vessels, which were then anchored outside the breakwater in Manila Bay, the caustic soda was unloaded onto lighters of the Atlantic Gulf & Pacific Co. The lighters were towed by tug-boats also of the Atlantic Gulf & Pacific Co. to Procter & Gamble's private wharf at Estero Vitas, Tondo, Manila from where the caustic soda was finally transferred to warehouses belonging to Procter & Gamble.

On those two shipments, the Collector of Customs of Manila levied and collected a total sum of P720.00 as wharfage dues imposed under Section 2802 of the Tariff and Customs Code.[1] Procter & Gamble formally protested said collection on the ground that it did not use a Government wharf or facility to unload the merchandise in question. The Collector of Customs of Manila denied the protests. Whereupon Procter & Gamble appealed to the Commissioner of Customs who sustained the Collector's decision. It then appealed to the Court of Tax Appeals and said court also upheld the decision of the Commissioner of Customs. A motion for reconsideration having been denied, Procter & Gamble petitioned this Court to review the Tax Court's decision.

At issue is whether or not Procter & Gamble is liable for the payment of wharfage dues imposed in Section 2802 of the Tariff and Customs Code on the two shipments of caustic soda which were not unloaded on a Government wharf.

Section 2802 of the Tariff and Customs Code has for its origin Section 14 of the Philippine Tariff Act of 1909 which we quote hereunder:

"SEC. 14. That there shall be levied and collected upon all articles, goods, wares and merchandise 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 copper, lead, zinc, iron, and steel metals, refractory gold ores, and sugar molasses, the products of the Philippines, exported through ports of entry of the Philippines, 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, irrespective of the port of destination or nationality of the exporting vessel. In the case of logs, or flitches twelve inches square or equivalent cross-sectional area, or over, a charge of thirty cents per cubic meter shall be collected.

"All 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 Philippines, shall be exempt from the charge prescribed in this section."

Section 14 imposed wharfage dues only on exports^[2] and were held to be payable although the subject merchandise were loaded from a private wharf.^[3] In 1909 our legislators knew that there was no Government wharf existing and it was found safe to assume that the Government intended to collect wharfage fees, even without the use of Government owned wharves, in order to raise funds for the acquisition and construction of wharves throughout the islands.

In 1955 Congress enacted Republic Act 1371, imposing in Section 3 thereof wharfage dues on imports and exports. We quote Section 3 hereunder:

"SEC. 3. There shall be levied, collected and paid on 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."

Interpreting Section 3, this Court stated in *Commissioner of Customs v. Superior Gas & Equipment Co.*^[4] that the intention of Congress was not to levy wharfage fee on merchandise unloaded at places other than Government wharves or without making use of pier facilities and the proviso exempting from the wharfage fee all such imported merchandise makes this intention all the more evident.

Later, however, in 1957 Congress passed Republic Act 1937, otherwise known as the Tariff and Customs Code which in Section 2802 thereof provides for the payment of wharfage dues on imports and exports. Section 2802 states:

"SEC. 2802. Schedule of Dues. - There shall be levied, collected and paid on 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."

Section 2802 is an almost verbatim copy of Section 3 of Republic Act 1371 minus the proviso-

"x x x That such wharfage fee shall not be levied on articles imported or brought into the Philippines which are unloaded on private wharves."

Procter & Gamble maintains that the interpretation of wharfage dues in *Commissioner of Customs v. Superior Gas & Equipment Co.*, *supra*, that wharfage dues are compensation or rental for the use of a wharf, and no wharfage dues shall be collected where no Government wharf is used, shall be applied in this case because Section 2802 of the Tariff and Customs Code, the law applicable herein, was derived from Section 3 of Republic Act 1371. As a matter of fact, it adds, Section 2801 of the Tariff and Customs Code adopted the definition of "wharfage dues" provided for in Section 1(b) of Republic Act 1371.

On the other hand, the Commissioner of Customs and the Court of Tax Appeals are of the opinion that Section 2802 should be given an interpretation different from that enunciated in *Commissioner of Customs v. Superior Gas & Equipment Co.*, *supra*, on Section 3 of Republic Act 1371 for the reason that Section 2802, unlike Section 3, does not provide for an exemption from wharfage dues on goods unloaded on private wharves. Counter to this

argu-ment, Procter & Gamble contends that the afore-stated exemption clause is merely a surplusage and therefore its presence in or absence from the law will not alter the meaning of "wharfage dues". It moreover avers that the Tariff and Customs Code, a codification of existing tariff and customs laws, is presumed to have incorporated pertinent laws without change and any modification introduced therein was merely to simplify the language of the law but not to change its meaning.

It should be noted that the Tariff and Customs Code levies charges on the different activities of a vessel engaged in foreign trade. For coming to the Philippines from a foreign port or for going to a foreign port from the Philippines, one pays tonnage dues.[5] For entrance into or departure from a port of entry, harbor fees are collected.[6] Wharfage dues are assessed against the cargo discharged by a vessel engaged in foreign trade.[7] Berthing charges are levied on a vessel coming or mooring within specified places or waters of a port.[8]

A vessel ordinarily enters a harbor and lays anchor or moors in a port to load, to unload or both. In doing so, the vessel derives benefit from port facilities provided and maintained by the Government. For this reason, they are in fairness made to contribute a share in said Government undertaking by payment of berthing charges and harbor fees.[9] Similarly, cargoes discharged to a Philip-pine port from a vessel engaged in foreign trade derive benefit from port facilities provided and maintained by the Government; said cargoes should also share the cost of providing and keeping a safe port, in the form of wharfage dues. Accordingly, a vessel that anchors at Manila Bay to seek protection from a storm is not charged wharfage dues by the Bureau of Customs, although it may have to pay harbor fees and berthing charges. But when a vessel anchors at the Bay and discharges or unloads its cargo, wharfage dues are forthwith collected. For, as stated, said dues are assessed against the cargo discharged. This is clear from the provision of the law under which the assessment is based on the quantity, weight or measure of the cargo received by the importer and/or discharged by such vessel. And wharfage dues on the cargo are distinct from harbor fees or berthing charges on the vessel, so much so that different sections of the law cover them.

Since in the present case, the vessels involved called on port to unload, as they in fact did, some car-go, said cargo, having been unloaded amidst the safety afforded by the port, is chargeable with wharfage dues. Finally, wharfage dues partake of the nature of a tax which is collected by the Government to support its ope-ration in relation to customs affairs.

In view of the above conclusion, We deem it unneces-sary to discuss the other points raised by Procter & Gam-ble.

WHEREFORE, the decision appealed from is affirmed. With costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, and Sanchez, JJ., concur.
Castro, J., took no part.

[1] Republic Act 1937.

[2] Victorias Milling Co., Inc. v. Auditor General, L-17414, November 30, 1962.

[3] Philippine Sugar Centrals Agency v. Collector of Customs, 51 Phil. 131.

[4] L-14115, May 25, 1960.

[5] Secs. 3201-3204, RA 1937.

[6] Secs. 2701-2703, RA 1937.

[7] Secs. 2801-2802, RA 1937.

[8] Secs. 2901-2908, RA 1937.

[9] Luzon Stevedoring Corporation v. Court of Tax Appeals, L-21005, Oct. 22, 1966.

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