

**MOBIL PHILIPPINES EXPLORATION, INC., PLAINTIFF-APPELLANT,
VS. CUSTOMS ARRASTRE SERVICE AND BUREAU OF CUSTOMS,
DEFENDANTS-APPELLEES.**

G.R. No. 23139, December 17, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Four cases of rotary drill parts were shipped from abroad on S.S. "Leoville" sometime in November of 1962, consigned to Mobil Philippines Exploration, Inc., Manila. The shipment arrived at the Port of Manila on April 10, 1963, and was discharged to the custody of the Customs Arrastre Service, the unit of the Bureau of Customs then handling arrastre operations therein. The Customs Arrastre Service later delivered to the broker of the consignee three cases only of the shipment.

On April 4, 1964 Mobil Philippines Exploration, Inc., filed suit in the Court of First Instance of Manila against the Customs Arrastre Service and the Bureau of Customs to recover the value of the undelivered case in the amount of P18,493.37 plus other damages.

On April 20, 1964 the defendants filed a motion to dismiss the complaint on the ground that not being persons under the law, defendants cannot be sued.

After plaintiff opposed the motion, the court, on April 25, 1964, dismissed the complaint on the ground that neither the Customs Arrastre Service nor the Bureau of Customs issuable. Plaintiff appealed to Us from the order of dismissal.

Raised, therefore, in this appeal is the purely legal question of the defendants' suability under the facts stated.

Appellant contends that not all government entities are immune from suit; that defendant Bureau of Customs as operator of the arrastre service at the Port of Manila, is discharging proprietary functions and as such can be sued by private individuals.

The Rules of Court, in Section 1, Rule 3, provide:

"SECTION 1. Who may be parties.—Only natural or juridical persons or entities authorized by law may be parties in a civil action."

Accordingly, a defendant in a civil suit must be (1) a natural person; (2) a juridical person or (3) an entity authorized by law to be sued. Neither the Bureau of Customs nor (a fortiori) its function unit, the Customs Arrastre Service, is a person. They are merely parts of the machinery of Government. The Bureau of Customs is a bureau under the Department of Finance (Sec. 81, Revised Administrative Code); and as stated, the Customs Arrastre Service is a unit of the Bureau of Customs, set up under Customs Administrative Order No. 8-62 of November 9, 1962 (Annex "A" to Motion to Dismiss, pp. 13-15, Record on Appeal). It follows that the defendants herein cannot be sued under the first two abovementioned categories of natural or juridical persons.

Nonetheless it is urged that by authorizing the Bureau of Customs to engage in arrastre service, the law thereby impliedly authorizes it to be sued as arrastre operator, for the reason that the nature of this function (arrastre service) is proprietary, not governmental. Thus, insofar as arrastre operation is concerned, appellant would put defendants under the third category of "entities authorized by law" to be sued. Stated differently, it is argued that while there is no law expressly authorizing the Bureau of Customs to sue or be sued, still its capacity to be sued is implied from its very power to render arrastre service at the Port of Manila, which, it is alleged, amounts to the transaction of a private business.

The statutory provision on arrastre service is found in Section 1213 of Republic Act 1937 (Tariff and Customs Code, effective June 1, 1957), and it states:

"SEC. 1213. Receiving, Handling, Custody and Delivery of Articles. —The Bureau of Customs shall have exclusive supervision and control over the receiving, handling, custody and delivery of articles on the wharves and piers at all ports of entry and in the exercise of its functions it is hereby authorized to acquire, take over, operate and superintend such plants and facilities as may "be necessary for the receiving, handling, custody and delivery of articles, and the convenience and comfort of passengers and the handling of baggage, as well as to acquire fire protection equipment for use in the piers: Provided, That whenever in his judgment the receiving, handling, custody and delivery of articles can be carried on by private parties with greater efficiency, the Commissioner may, after public bidding and subject to the approval of the department head, contract with any private party for the service of receiving, handling, custody and delivery of articles, and in such event, the contract may include the sale or lease of government-owned equipment and facilities used in such service.

In *Associated Workers Union, et al. v. Bureau of Customs, et al*, L-21397, resolution of August 6, 1963, this Court indeed held "that the foregoing statutory provisions authorizing the grant by contract to any private party of the right to render said arrastre services necessarily imply that the same is deemed by Congress to be proprietary or non-governmental function". The issue in said case, however, was whether laborers engaged in arrastre service fall under the concept of employees in the Government employed in governmental functions for purposes of the prohibition in Section 11, Republic Act 875 to the effect that "employees in the Government x x x shall not strike," but "may belong to any labor organization which does not impose the obligation to strike or to join in strike", which prohibition "shall apply only to employees employed in governmental functions of the Government x x x".

Thus, the ruling therein was that the Court of Industrial Relations had jurisdiction over the subject matter of the case, but not that the Bureau of Customs can be sued. Said issue of suability was not resolved, the resolution stating only that "the issue on the personality or lack of personality of the Bureau of Customs to be sued does not affect the Jurisdiction of the lower court over the subject matter of the case, aside from the fact that amendment may be made in the pleadings by the inclusion as respondents of the public officers deemed responsible for the unfair labor practice acts charged by petitioning Unions".

Now, the fact that a non-corporate government entity performs a function proprietary in nature does not necessarily result in its being suable. If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity. This is the doctrine recognized in *Bureau of Printing, et al. v. Bureau of Printing Employees Association, et al.*, L-15751, January 28, 1961:

"The Bureau of Printing is an office of the Government created by the Administrative Code of 1916 (Act No. 2657). As such instrumentality of the Government, it operates under the direct supervision of the Executive Secretary, Office of the President, and is charged with the execution of all printing and binding, including work incidental to those processes, required by the National Government and such other work of the same character

as said Bureau may, by law or by order of the (Secretary of Finance) Executive Secretary, be authorized to undertake xxx.' (Sec. 1644, Rev. Adm. Code.) It has no corporate existence, and its appropriations are provided for in the General Appropriations Act. Designed to meet the printing needs of the Government, it is primarily a service bureau and, obviously, not engaged in business or occupation for pecuniary profit.

x x x x

"x x x Clearly, while the Bureau of Printing is allowed to undertake private printing jobs, it cannot be pretended that it is thereby an industrial or business concern. The additional work it executes for private parties is merely incidental to its function, and although such work may be deemed proprietary in character, there is no showing that the employees performing said proprietary function are separate and distinct from those employed in its general governmental functions.

"Indeed, as an office of the Government, without any corporate or juridical personality, the Bureau of Printing cannot be sued. (Sec. 1, Rule 3, Rules of Court.) Any suit, action or proceeding against it, if it were to produce any effect, would actually be a suit, a ction or proceeding against the Government itself, and the rule is settled that the Government cannot be sued without its consent, much less over its objection. (See *Metran vs. Paredes*, 4-5 Off. Gaz. 2835; *Angat River Irrigation System, et al. vs. Angat River Workers Union, et al.*, G.R. Nos. L-10943-44, December 28, 1957.)"

The situation here is not materially different. The Bureau of Customs, to repeat, is part of the Department of Finance (Sec. 81, Rev. Adm. Code), with no personality of its own apart from that of the national government. Its primary function is governmental, that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties (Sec. 602, R.A. 1937). To this function, arrastre service is a necessary incident. For practical reasons said revenues and customs duties can not be assessed and collected by simply receiving the importer's or ship agent's or consignee's declaration of merchandise being imported and imposing the duty provided in the Tariff law. Customs authorities and officers must see to it that the declaration tallies with the merchandise actually landed. And this checking up requires that the landed merchandise be hauled from the ship's side to a suitable place in the customs premises to enable said customs officers to make it, that is, it requires arrastre operations.[1]

Clearly, therefore, although said arrastre function may be deemed proprietary, it is a necessary incident of the primary and governmental function of the Bureau of Customs, so that engaging in the same does not necessarily render said Bureau liable to suit. For otherwise, it could not perform its governmental function without necessarily exposing itself to suit. Sovereign immunity, granted as to the end, should not be denied as to the necessary means to that end.

And herein lies the distinction between the present case and that of *National Airports Corporation v. Teodoro*, 91 Phil. 203, on which appellant would rely. For there, the Civil Aeronautics Administration was found to have for its prime reason for existence not a governmental but a proprietary function, so that to it the latter was not a mere incidental function:

"Among the general powers of the Civil Aeronautics Administration are, under Section 3, to execute contracts of any kind, to purchase property, and to grant concession rights, and under Section 4, to charge landing fees, royalties on sales to aircraft of aviation gasoline, accessories and supplies, and rentals for the use of any property under its management.

"These provisions confer upon the Civil Aeronautics Administration, in our opinion, the power to sue and be sued. The power to sue and be sued is implied from the power to transact private business. x x x.

x x x x x

"The Civil Aeronautics Administration comes, under the category of a private entity. Although not a body corporate it was created, like the National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. x x x"

Regardless of the merits of the claim against it, the State, for obvious reasons of public policy, cannot be sued without its consent. Plaintiff should have filed its present claim to the General Auditing Office, it being for money, under the provisions of Commonwealth Act 327, which state the conditions under which money claims against the Government may be filed.

It must be remembered that statutory provisions waiving State immunity from suit are strictly construed and that waiver of immunity, being in derogation of sovereignty, will not be lightly inferred. (49 Am. Jur., States, Territories and Dependencies, Sec. 96, p. 314; *Petty v. Tennessee-Missouri Bridge Com.*, 359 U.S. 275, 3 L. Ed. 804, 79 S. Ct. 785.) From the provision authorizing the Bureau of Customs to lease arrastre operations to private parties, We see no authority to sue the said Bureau in the instances where it undertakes to conduct said operation itself. The Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, pursuant to express legislative mandate and as a necessary incident of its prime governmental function, is immune from suit, there being no statute to the contrary.

WHEREFORE, the order of dismissal appealed from is hereby affirmed, with costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Zaldivar and Sanchez, JJ., concur.
Makalintal, J., concurs in the result.

[1] Associated Workers Union Case, *supra*.

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