

THE ATLANTIC, GULF AND PACIFIC COMPANY, PLAINTIFF AND APPELLEE, VS. THE UNITED STATES, DEFENDANT AND APPELLANT.

G.R. No. 3221. September 11, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that by Act No. 22, as amended by Acts Nos. 101 and 199 of the Philippine Commission, said Commission appropriated the sum of one million dollars for the improvement of the port of Manila. Later the Insular Government of the Philippine Islands, represented by the chief engineer of the Division of the Philippines, entered into a Contract with the Atlantic, Gulf and Pacific Company, under the conditions of which the said company bound itself to furnish the plant and material necessary for the performance of the said port work. Said contract entered into by the said engineer with the company was approved by William H. Taft, as Civil Governor of the Philippine Islands, on the 12th day of August, 1901.

Before entering into the contract the United States Government in the Philippine Islands advertised for bids for the performance of the said port improvements. In this advertisement certain "Specifications and general instructions for bidders" were inserted. This advertisement and these specifications were attached to and formed a part of the contract finally entered into between the said plaintiff and defendant.

The first subdivision of the said advertisement was entitled "Specifications.—General instructions for bidders."

Paragraph (1) under this head provided as follows:

"(1) The necessary plant and material, as approved by the chief engineer of the Division of the Philippines, in writing, will be admitted free of duty."

The second subdivision of said advertisement was entitled "General conditions."

Paragraph (32) under this head provided as follows:

"(32) The decision of the chief engineer of the Division of the Philippines, as to quality and quantity, shall be final."

The fourth subdivision of said advertisement was entitled "Specifications for the work."

Paragraph (60) under this head provided as follows:

"(60) The decision of the United States officer in charge of the work shall be final and conclusive upon all matters relating to the work, and upon all questions arising out of these specifications, during the progress of the work, until final payment is made, and from his decision there shall be no appeal."

On the 30th of December, 1901, the said plaintiff brought into the Philippine Islands certain commissary supplies, including beans, common salt, vinegar, cornstarch, jelly, ginger, tomato catsup, and other edibles. On or about the same time the company presented to the Collector of Customs a proper entry document or declaration for such

articles, which were liquidated on or about the 18th day of December, 1902, and this liquidation was paid under protest on or about the latter date. The company after having paid the duty on these imports, under protest, ap-pealed to the Collector of Customs, alleging, among other things, that the Collector of Customs had no authority to collect duty upon such imports, for the reason that under its contract with the Government it was relieved from the necessity of paying duty on all "necessary plant and material" essential to the work when such "necessary plant and material" was approved by the chief engineer of the Division of the Philippines, in writing. The company set forth in its protest other grounds upon which to base its appeal, but under the view we take of the case we deem it unnecessary to consider them in the decision in this case.

The Collector of Customs overruled the appeal of the plaintiff, from which decision the company appealed to the Court of Customs Appeals. That court, Judges Crossfield and Roxas sitting, reversed the decision of the Collector of Customs and ordered a refund of the duties paid upon said imports. From that decision of the Court of Customs Appeals the Collector of Customs appealed to this court.

The Court of Customs Appeals reversed the decision of the Collector of Customs upon the ground that under the contract entered into between the said company and the Government the former was entitled to bring into the Philippine Islands, free of duty, all the materials which the chief engineer of the Division of the Philippines might certify were necessary for the improvement of the port, and that from his decision, in writing, there was no appeal.

An examination of the said advertisement, specifications, etc., above quoted, discloses the fact that the Government agreed to admit free of duty "all necessary plant and materials," as approved by the chief engineer of the Division of the Philippines, in writing, but a more careful examination of said advertisement and specifications discloses the fact that the decision of the said chief engineer of the Division of the Philippines was not final and nonappealable except upon questions relating to quality and quantity of the "necessary plant and material" and to matters relating to the work, and upon all questions arising out of these specifications during the progress of the work. The phrase "upon all questions arising out of these specifications during the progress of the work" clearly has no relation to that part of said advertisement, specifications, etc., as found in paragraph (1) above quoted, for the reason that it is found in a separate and distinct part of said specifications and under a separate and distinct head, entitled "Specifications for the work."

Therefore, it is our opinion, and we so hold, that it was not the intention of the United States Government in the Philippine Islands, in making said contract, to make the written approval of the chief engineer final and nonappealable in relation to importations by said company, relating to the free importation of the same. Said specifications clearly provide that the decision of the said chief engineer shall be final only in matters relating to the quality and quantity of the material used in the construction of said port improvements and; in "matters relating to the work and to all questions arising out of the specifications for the work." Therefore, we are of the opinion, and so hold, that, notwithstanding the written approval of the chief engineer to the effect that the said articles should be admitted free of duty, the Collector of Customs had a perfect right to consider that question and to examine the materials imported by said company for the purpose of ascertaining whether or not the same were "necessary plant and material" for the improvement of the port. The Collector of Customs was fully justified in examining the imports of said company for the purpose of ascertaining whether or not such imports were "necessary plant and material" for the improvement of the port. He had a right to decide whether beans, vinegar, ginger, catsup, etc., were really "necessary plant and material" for the improvement of the port.

Of course the plaintiff had a right to appeal from the Collector of Customs to the Court of Customs Appeals, and finally to this court, upon the question whether or not such importations were, in fact, "necessary plant and material," imported for the purpose of carrying out the contract with the Government.

After a full consideration of all the facts, it is our conclusion:

- (1) That the decision in writing of the chief engineer of the Division of the Philippines was not final upon questions relating to "necessary plant and material;"
- (2) That the Collector of Customs was fully justified in examining into that question and deciding, subject to appeal, whether such importations were or not "necessary plant and material;" and
- (3) That said commissary supplies, including beans, salt, vinegar, catsup, etc., are not "necessary plant and material" for the improvement of the port, and therefore are subject to duty under the tariff laws in force in the Philippine Islands.

The decision of the Collector of Customs, therefore, should have been affirmed, and it is so ordered.

The parties to this appeal mutually agreed that cases Nos. 653, 654, and 655 should be governed by the decision in this case (No. 656). Therefore, it is hereby ordered that judgment in conformity with the foregoing be entered in said appeals Nos. 653, 654, and 655.

It is further ordered that the above-entitled cause, as well as causes 653, 654, and 655, be remanded to the Court of First Instance of the city of Manila, with instructions that a judgment be entered affirming the decision of the said Collector of Customs, in accordance with the conclusions herein.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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