

MAN SHUNG LOONG CO., ET AL., PETITIONERS, VS. MELECIO FABROS, COLLECTOR OF CUSTOMS OF THE PORT OF JOLO, ET AL., RESPONDENTS.

G.R. No. 37850. September 06, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioners herein instituted these mandamus proceedings against the collector of customs of the port of Jolo and the Insular Collector of Customs, to compel, the former to issue in their favor new warrants for various sums of money representing payments made by them in excess of import duties, with legal interest thereon, and the latter to abstain from executing any act tending to prevent the former from issuing and delivering the aforementioned new warrants to the herein petitioners.

In view of the failure of the counsel for both parties to agree on the material facts involved in the case, it was necessary to commission the clerk of the Court of First Instance of Sulu to receive all the evidence presented therein. Counsel for the petitioners later filed an amended petition wherein his allegations were made to conform with the facts established according to him, which petition, as amended, was admitted at the instance of said attorney.

The facts which, in our opinion, have been established, may be summarized as follows:

In the years 1930 and 1931, the herein petitioners who were then merchants, imported sugar from Singapore, Strait Settlements, through the Jolo customhouse. They then applied for immediate delivery to them of said sugar by depositing an amount estimated as sufficient to cover the import duties thereon. The collector of customs of Jolo granted their request. Inasmuch as the duties chargeable thereon could not then and there be determined due to a recent amendment of the law applicable thereto, which required that computation of the duties in question should be based upon the degree of polarization of the sugar, and inasmuch as such computation could not be made without first sending a sample thereof to the Bureau of Science in Manila where polarization had to be determined by means of a polariscope, the aforesaid collector of customs, through the cashier of his office, made a tentative liquidation of said duties, after which the herein petitioners deposited the estimated amount and the sugar was delivered to them. After the required test had been made by the Bureau of Science, the collector of customs of Jolo made a final liquidation of the duties payable by the herein petitioners and found that their deposit was not sufficient to cover the same. Consequently, said petitioners remained indebted to the Government in the sum of P8,656.20 in the form of unpaid duties. The aforementioned respondent demanded payment of the sum owing by the petitioners herein but they refused alleging that the first liquidation was final and conclusive, and that, inasmuch as more than one year had already elapsed from the date thereof, they were no longer under obligation to pay, and whatever action the Government might have had against them had already prescribed in accordance with section 1287 of the Administrative Code.

Between the months of January and July, 1932, the petitioners herein again imported merchandise from foreign

countries and upon their arrival at Jolo, the said petitioners applied for immediate delivery thereof under a tentative liquidation. The collector of customs refused to grant their petition unless payment was first made of the import duties, owed by them to the Government. In view of this attitude, the petitioners herein instituted mandamus proceedings in the Court of First Instance of Sulu against the collector of customs of Jolo, obviously for the purpose of compelling said official to make immediate delivery of the merchandise in question under a tentative liquidation. The case, however, was dismissed in view of an agreement entered into between the parties to the effect that the petitioners herein would make a deposit of 30 per cent in excess of the estimated duties on the merchandise in question. The petitioners thus made the deposit agreed upon and the merchandise was delivered to them under a tentative liquidation. Sometime later, a final liquidation of the aforesaid duties was made which showed that the petitioners' deposits exceeded the amount of the duty they owed, whereupon the collector of customs of Jolo issued the warrants for the excess, which were duly countersigned by the provincial auditor for delivery to the herein petitioners. Before delivery thereof was effected, the collector of customs of Jolo sought authorization from the Insular Collector of Customs to withhold and apply the amount of said warrants to the payment of the petitioners' debt. Inasmuch as he was granted such authority, said respondent cancelled the warrants in question and applied the amount thereof to the petitioners' account with the Government, Counsel for the said petitioners then addressed a communication to the Insular Auditor requesting him to order the delivery of the warrants in question to his clients. The Insular Auditor, however, sustained the action taken by the respondents and ruled that the Government was justified under the law to effect said compensation.

The petitioners contend that inasmuch as the collector of customs of Jolo had already issued the warrants in question, in refund of their excess deposits, there was nothing left for said official to do other than perform the ministerial duty of delivering said warrants to them. In support of their contention, they invoke the ruling laid down in the case of *Compañia General de Tabacos vs. French and Unson* (39 Phil., 34), wherein this court, among other things, said:

"We conclude, therefore, that no power to adjudicate and offset disputed unliquidated claims for damages is conferred upon the Insular Auditor by the cited provisions of the Jones Law or by the general grant of jurisdiction to examine and audit claims owing to the Government contained in section 584 of the Administrative Code. * * *."

The first proposition is based on section 1287 of the Administrative Code which provides that the liquidation made in connection with the computation of import duties becomes final and conclusive upon the parties after the expiration of one year, unless said liquidation was merely tentative. This contention makes it necessary for us to determine whether the first liquidation made by the collector of customs of Jolo relative to the imported sugar was tentative or final. The collector of customs of Jolo and the cashier, Arturo Fernandez, categorically stated that it was tentative and that it could not have been final on the ground that the test to determine the degree of polarization of the sugar had not yet been made by the Bureau of Science and, under such circumstances, it was impossible to determine the correct import duties chargeable to the petitioners herein. Their statements have been conclusively corroborated by the official documents presented, and under the circumstances, we are fully convinced that a strong preponderance of evidence supports the respondents' theory that the aforesaid liquidation was merely tentative and not final. It being established that the liquidation in question was merely tentative and not final, it becomes obvious that the petitioners' contention is untenable, inasmuch as the exception contained in section 1287 invoked by them, should be applied in this case.

With regard to the second proposition, it is clear that the principle enunciated in the case of *Compañia General de Tabacos vs. French and Unson*, supra, is not applicable to the case under consideration. In the case cited above, it was held that the Insular Auditor had no power to offset alleged unliquidated Government claims for damages against a settled and definite debt owing by the latter. In the case at bar, it is not attempted to set-off an

unliquidated claim for damages but another claim in the form of import duties resulting from a final and conclusive second liquidation.

This case presents another aspect in that according to the provisions of sections 1370, 1371, 1379, 1380, 1383, 1384 and 1385 of the Administrative Code, the petitioners herein, as importers, who did not agree to the final liquidation made by the collector of customs of Jolo, were in duty bound to make payment under protest and, at all events, appeal from the ruling of the said customs officer to the Insular Collector of Customs and to the Court of First Instance of Manila, in the manner and within the period prescribed by the aforementioned sections. The law clearly prescribes this exclusive remedy and inasmuch as the herein petitioners failed to take advantage of it, mandamus does not lie in this case, in the absence of any other legal provision making it a ministerial duty on the part of any of the respondents herein to deliver the warrants in question.

There still remains another point worthy of further consideration. According to the allegations of the amended petition, which are supported by the evidence and are neither denied nor refuted in the memorandum filed by the respondents, the excess deposits amount to P10,939.24, while the Government's claim which is intended to be offset thereby only amounts to P8,656.20. If the above figures are correct, it is clear that there exists a difference of P2,283.04 which should be distributed among such of the petitioners as are entitled thereto. But inasmuch as there seems to be no question regarding this balance and that the respondents are disposed to make the necessary refund thereof, we are of the opinion that there is no necessity for making a pronouncement in regard to said balance.

Wherefore, the petition herein is hereby denied, with costs against the petitioners. So ordered.

Street, Malcolm, Villa-Real, Abad Santos, Hull, and Vickers, JJ., concur.

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