

PHILIPPINE PORTS AUTHORITY, PORT MANAGER AND PORT DISTRICT OFFICE OF DAVAO CITY, PETITIONERS, VS. HON. RENATO A. FUENTES AND TERMINAL FACILITIES AND SERVICES CORPORATION, RESPON...

G.R. No. 91259. April 16, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition for review with prayer for a writ of preliminary injunction and/or restraining order filed by petitioners, Philippine Ports Authority ("PPA" for brevity), Port Manager Bienvenido Basco and the Port District Manager, Ernesto Fernando of Davao City, challenges the jurisdiction of the Regional Trial Court of Davao City, Branch 17, in a case involving the legality of port charges imposed by the PPA on the respondent Terminal Facilities and Services Corporation ("TEFASCO" for brevity). The port charges in question include: (1) 100% wharfage dues and berthing fees and (2) the 10% government share in arrastre/stevedoring revenues and/or privilege fee, pursuant to Section 1213 of the Tariff and Customs Code.

The antecedent facts are:

On July 11, 1974, P.D. No. 505 was promulgated, creating the Philippine Ports Authority (PPA). The Decree was later amended by P.D. No. 857 dated December 23, 1975 (otherwise known as the Revised PPA Charter). Under the Decree, the PPA is entrusted with the function of carrying out an integrated program for the planning, development, financing and operation of ports and port districts throughout the country. The powers, duties, and jurisdiction of the Bureau of Customs concerning arrastre operations were transferred to and vested in the petitioner PPA (*Philippine Ports Authority vs. Mendoza*, 138 SCRA 496, 503). Pursuant to said decree, PPA was authorized to "regulate the rates or charges for port services or port related services so that, taking one year with another, such rates or charges furnish adequate working capital and produce an adequate return on the assets of the Authority" (PPA) (Section 20[b]) and "to levy dues, rates, or charges for the use of the premises, works, appliances, facilities, or for services provided by or belonging to the Authority or any other organization concerned with port operations" (Section 6[b] [IX]). Furthermore, the PPA was authorized to impose a ten percent (10%) charge on the monthly gross earnings of the operators of arrastre and stevedoring services (also known as Government Share). (*Pernito Arrastre Services, Inc. vs. Mendoza*, 146 SCRA 430.)

In its Board Resolution No. 7 dated April 21, 1976 embodying the "Memorandum Agreement," PPA laid down the terms and conditions under which TEFASCO was allowed to construct specialized port and terminal facilities for incoming and outgoing foreign and domestic vessels and authorized to render port services, particularly, arrastre and stevedoring services on incoming and outgoing cargoes loaded on or unloaded from foreign and domestic vessels. (p. 112, Rollo.)

On August 30, 1988, TEFASCO filed in the trial court a complaint for "declaration of nullity, prohibition, mandamus and damages with writ of preliminary injunction" against PPA, asking the court to restrain PPA: (a) from imposing and/or collecting any form of income-sharing whether under the guise of a government share or privilege fee or by such other name or designation whether based on gross receipts from TEFASCO's

arrastre/stevedoring or other port-related services or operations; (b) from collecting from TEFASCO, PPA's share of ten percent (10%) or any other percentage from the cargo handling revenue based on gross income; x x x (h) from collecting 100% wharfage, harbor, and berthing dues on cargoes and vessels availing of TEFASCO's port terminal facilities. (Annex E, pp. 6-7, Rollo.)

On October 27, 1988, PPA filed an Answer to the Complaint (Annex F). Subsequently, on November 25, 1988, TEFASCO filed its Reply with Answer to Counterclaim (Annex G). PPA then filed its Opposition to TEFASCO's prayer for a writ of preliminary injunction (Annex H). The parties exchanged numerous other pleadings and memoranda.

In an order dated December 14, 1988 (Annex C), the trial court granted TEFASCO's application for a writ of preliminary injunction. The dispositive portion of the order reads:

"WHEREFORE, in view of the foregoing finding the evidence of the plaintiff, submitted for the purpose of the issuance of a writ of preliminary injunction, as well as pleadings submitted by both parties, in accordance with Rule 58, Sections 3 and 4 of the New Rules of Court, pending determination and adjudication of the final legality of the questioned issuances and impositions of defendant PPA as well as pertinent issues connected thereat, during the pendency of this case, defendant PPA is hereby ordered the following:

"1. To restrain, desist and stop imposition of its so-called government share or privilege fee against plaintiff TEFASCO in its arrastre/stevedoring services, on cargoes loaded and unloaded, in the exercise of its private port commercial operation, pursuant to the questioned memorandum agreement, entered into by the parties on (sic) October, 1982;

"2. To desist, restrain, and stop collecting against plaintiff TEFASCO on wharfage dues in excess of 50% gross cargo levy on plaintiff's customer and/or shipping line operators;

"3. To likewise stop, desist and restrain, from collecting berthing fees in excess of 70% charges against ocean-going and interisland vessels docking at plaintiff's port.

"4. To avoid, restrain (sic) and stop the practice of harassment and intimidation of any cargo and vessel, intending to dock at plaintiff's port by way of imposing unreasonable wharfage due and berthing fees, if the vessel does not accede to the demand of the PPA;

"5. Stop, desist and restrain (sic) from committing undue machination in restraint of trade by way of unfair competition with plaintiff as a pretense of enforcing the terms and conditions contained in special permit No. CO/co-00-1-067802 as well as terms and conditions of the memorandum agreement, between parties pending determination by this court of the legality and validity of said special permit No. CO/co-1-067802 and memorandum agreement, during the trial of this case on the merits;

"6. To formally allow plaintiff corporation, to continue its present business as a private commercial port, without undue interference from defendant, other than regulating plaintiff's operation and payment of proper charges and fees imposed in accordance to (sic) law within the limit heretofore determined within the limit above ordered; (sic)

"Formal issuance of the writ prayed, in accordance with Rule 54, Section 4, of the New Rules of Court will be issued only upon plaintiff's posting of a bond in the amount of P1,000,000.00 to answer for whatever damages defendant will suffer, by reason of the issuance of the writ of preliminary injunction, prayer for..." (Underscoring ours; pp. 11--12, Rollo.)

Upon the posting of a P1 million bond by TEFASCO, respondent trial court issued a writ of preliminary injunction against PPA on January 10, 1989. (Annex D, p. 12, Rollo.)

PPA filed a Motion for Reconsideration and for Dissolution of the Writ of Preliminary Injunction with Offer of

Counterbond (Annex O). It was opposed by TEFASCO (Annex P, p. 13, Rollo).

In an order dated June 21, 1989 (Annex B), Judge Fuentes denied the motion. (p. 13, Rollo.)

On September 11, 1989, PPA filed an "Urgent Motion to Dismiss" the case on the ground among others that the trial court has no jurisdiction over the subject matter of the action which is essentially an action for injunction to restrain the collection of dues, fees, and other assessments in the nature of taxes or charges under the Customs law (Annex Q, p. 14, Rollo). TEFASCO opposed the Motion to Dismiss, alleging mainly that it is the trial court, not the Court of Tax Appeals, which has jurisdiction over its causes of action (Annex R, p. 15, Rollo).

In an order dated October 5, 1989, Judge Fuentes denied the Motion to Dismiss for lack of merit. (Annex S, p. 16, Rollo.)

On December 15, 1989, PPA filed this petition for certiorari and prohibition with prayer for the issuance of a writ or preliminary injunction and/or restraining order. (pp. 2-52, Rollo.)

On December 21, 1989, the First Division of this Court, without giving due course to the petition, required TEFASCO to comment (not to file a motion to dismiss) and issued a temporary restraining order, effective immediately and until further orders from this Court, enjoining the trial court from enforcing and/or implementing the Orders dated December 14, 1988, June 21, 1989, and October 5, 1989, and the writ of preliminary injunction dated January 10, 1989. (p. 445, Rollo.)

The petition is without merit.

PPA anchors its petition on Sections 39 and 29 of PD 857, in conjunction with Sections 7, 11 and 18 of Title VII, Book II of Republic Act 1125 to support its theory that wharfage dues, berthing fees, and the so-called "government share" are customs charges that fall under the exclusive appellate jurisdiction of the Court of Tax Appeals.

Sections 39 and 29 of P.D. 857 (PD 505 created PPA) creating the PPA provide as follows:

"Section 39. Bureau of Customs. — The Tariff and Customs Code is hereby modified or amended to the extent that all the powers, duties and jurisdiction of the Bureau of Customs concerning the following matters shall be transferred to and be vested in the Authority:

"a) All dues, fees and rates collectible on vessels and cargoes under Title VII but excluding Part VII of the Code, AS AMENDED BY P.D. 34, REGARDLESS OF THE PORT OR PLACE OF CALL OF THE VESSEL, WHETHER ON GOVERNMENT OR PRIVATE PORT (As amended by Executive Order No. 513);

"b) The general supervision, control and regulation of all matters and affairs that pertain to the operation of and the issuance of permits or license to construct ports, port facilities, warehouses, and other facilities within port districts;

"c) All such other powers, duties and jurisdictions vested in the Bureau of Customs, pertaining to every matter concerning port facilities, port operations or port works."

"Section 29. Existing Regulations. - Anything to the contrary notwithstanding and until new rules or regulations are promulgated by the Authority under Sections 26 and 27 of this Decree, the rules, regulations or orders made under the Customs Code or any other law of the Philippines relating to the matters covered by Sections 26, 27 and 28 shall continue to apply as if they were made under said sections and any reference to a customs official or any other officials under any law of the Philippines shall be deemed a reference to an equivalent official of the Authority." (Underscoring supplied.)

Sections 7, 11 and 18 of Republic Act 1125 creating the Court of Tax Appeals provide:

"Section 7. Jurisdiction. - 'The Court of Tax Appeals shall exercise appellate jurisdiction to review by appeal, as herein provided:

(1) x x x

(2) Decisions of the Commissioner of Customs in cases involving the liability for customs duties, fees or other money charges, seizure, detention or release of property affected; fines, forfeiture or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) x x x;

"Section 11. Who may appeal; effect of Appeal — Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue (now Commissioner), the Collector of Customs (now Commissioner) or any provincial or City Board of Assessment Appeals may file an Appeal in the Court of Tax Appeals within thirty (30) days after the receipt of such decision or ruling.

"No appeal taken to the Court of Tax Appeals from the decision of the Collector of Customs (now Commissioner) cf. *Rufino & Sons vs. Court of Tax Appeals* (100 Phil. 850), shall suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, that when in the opinion of the Court the collection by the Bureau of Internal Revenue may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

"Section 18. Appeal to the Supreme Court — No judicial proceeding against the Government involving matters arising under the National Internal Revenue Code, the Customs Law, or the Assessments Law shall be maintained except as herein provided, until and unless an appeal has been previously filed with the Court of Tax Appeals and disposed of in accordance with the provisions of this Act.

"Any party adversely affected by any ruling, order or decision of the Court of Tax Appeals may appeal therefrom to the Supreme Court. . ." (Emphasis supplied.)

Since jurisdiction is conferred by law (*Commissioner of Internal Revenue vs. Villa*, 22 SCRA 4); and under P.D. 857, the collection of port charges ceased to be an administrative function of the Bureau of Customs and was transferred to the PPA; that neither P.D. 857 nor R.A. 1125 contains a provision for an appeal to the Court of Tax appeals from decisions of the PPA; and further considering that the Court of Tax Appeals is a specialized court of limited jurisdiction, no appellate jurisdiction over PPA decisions may be vested in the Court of Tax Appeals by mere implication. This issue was set at rest by the decision of this Court in *Victorias Milling Co., Inc. vs. Court of Tax Appeals* (CTA Case No. 3466, *Victorias Milling Co., Inc. vs. PPA*), G.R. No. 66381, February 29, 1984, where we ruled:

"There is no law or statute which expressly vests jurisdiction upon the Court of Tax Appeals to review appeals from decisions or rulings of the Philippine Ports Authority x x x. The jurisdiction of a court to take cognizance of a case, we believe, should be clearly conferred and should not be deemed to exist on mere implication, specially with respect to the Court of Tax Appeals which is a specialized court of limited jurisdiction." (Underscoring supplied.)

In view of the foregoing, we deem it unnecessary to discuss the other issues raised in the petition.

WHEREFORE, the petition for certiorari and prohibition is DENIED for lack of merit, with costs against the petitioners. The temporary restraining order dated December 21, 1989 is lifted and set aside.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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