

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SUPERIOR GAS & EQUIPMENT CO.,
Petitioner,

- versus -

C.T.A.
CASE NO. 396

COMMISSIONER OF CUSTOMS,
Respondent.

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June 20/58

D E C I S I O N

This is an appeal from the decision on appeal of the Commissioner of Customs affirming the decision of the Collector of Customs of Manila and denying petitioner's claim for refund of the sum of ₱2,400.00 collected as wharfage fees on its importation of 1,200 metric tons of industrial salt.

The material facts of the case are not disputed. It appears that on August 18, 1956, there arrived in Manila on board the S/S "Chi Chung" from Kaoshuing, Formosa, 1,200 metric tons of industrial salt consigned to petitioner, Superior Gas & Equipment Co. (hereinafter referred to as "SUGECO" for short) and covered by Customs Entry No. 0171125 (Exh. "F", p. 1, Customs rec.). By Virtue of Special Permit No. 2190 (Exh. "B", p. 18, Customs rec.), the cargo in question was discharged and delivered shipside, outside the breakwater but within the harbor sea-wall, into four lighters belonging to and operated by the Luzon Stevedoring Co., which took charge of its delivery for final unloading at a private wharf at Punta Sta. Ana which is owned by the Atlantic Gulf & Pacific Co. of

Manila (henceforth referred to as "ATLANTIC GULF", for brevity). At said wharf the cargo was unloaded from the lighters into trucks owned by SUGECO by means of derrick owned and operated by ATLANTIC GULF. As per Invoice No. 70386 (Exh. "D-1", p. 52, Customs rec.), ATLANTIC GULF charged SUGECO the amount of ₱782.50 for services of the derrick used in said unloading operations. Before the cargo in question could be unloaded from the ship, petitioner, thru its customs broker, the Allied Brokerage Corporation was required to as in fact it did pay on August 23, 1956, wharfage fee thereon, which was assessed against it by the Collector of Customs of Manila at the rate of ₱2.00 per metric ton, or the total amount of ₱2,400.00 as per Official Receipt No. 29050 (p. 11, Customs rec.). This payment was fully liquidated by the Bureau of Customs under voucher No. 104646, dated October 17, 1956.

On October 23, 1956, petitioner, claiming that pursuant to Republic Act No. 1371 it was exempt from the payment of wharfage dues on the shipment in question, filed a protest with the Bureau of Customs. After due hearing thereof, the Acting Collector of Customs of Manila rendered a decision denying the protest. Thereupon petitioner appealed this decision to the Commissioner of Customs, who affirmed the same on June 21, 1957. Consequently, on July 18, 1957 petitioner filed the instant appeal.

The only issue in the case at bar involves a question of law and may be postulated thus:- Is petitioner, pursuant to the provisions of Republic Act No. 1371 exempt from the payment of wharfage fees on its importation of industrial salt discharged and delivered shipside unto lighters and later unloaded on a private wharf without making use of the facilities of government wharves or piers?

This issue here revolves around the term "wharfage", as employed in Republic Act No. 1371, the law in force at the time of the subject importation.

It is the contention of petitioner that the merchandise in question which was unloaded without making use of the facilities of government wharves is not subject to the payment of wharfage dues. On the other hand, respondent contends, that notwithstanding the fact that government wharves have not been used in the unloading of the subject importation, the collection of wharfage charges thereon by the government was legal and proper. In support of the latter contention respondent argues:- first, that in this jurisdiction the Supreme Court, in the case of Philippine Sugar Centrals Agency vs. Collector of Customs, 51 Phil. 131, has enlarged the ordinary concept of the term "wharfage"; and second, that a strict construction of the exempting proviso found in Section 3, of Republic Act No. 1371, excludes the instant importation from the pale of the exemption

granted therein.

We find respondent's view not well taken. It is true that the Supreme Court, in the *aforecited* case of *Philippine Sugar Centrals Agency vs. Collector of Customs* case held that wharfage fees may legally be collected on products exported from the Philippines, whether or not the facilities of government wharves have been used in the exportation thereof. However, we find this ruling not applicable to the case at bar. The *aforementioned* decision is based on the provisions of Section 14, of the Philippine Tariff Act of 1909, before the same was amended by Section 3, of Republic Act No. 1371. We must emphasize here that this case must be resolved in accordance with the provisions of Republic Act No. 1371 the law enforced at the time of importation herein was made.

According to the explanatory note to House Bill No. 4015, later enacted into Republic Act No. 1371, the purpose of the bill "is to fix, define, classify, regulate and consolidate all the charges and fees to be collected in the Philippine ports in keeping with present conditions, not only locally but also of the entire shipping world as has been observed in the trips abroad by officials of the Executive Department of the Government and also of the different Congressmen." (p. 2844, Vol. II, No. 69, Congressional Records, House of Representatives.) As *afore-quoted*,

it was the manifest intent of the legislative body in the enactment of Republic Act No. 1371 to fix, define, classify, regulate and consolidate all the charges and fees to be collected in the Philippine ports in keeping with the universal practice accepted by the entire shipping world. In other words, by legislative intent, the terms "wharfage charge" defined in Section 1, of Republic Act No. 1371, as "the amount assessed against the cargo of a vessel engaged in the foreign trade, based on the quantity, weight or measure received and/or discharged by such vessel" should be given a meaning no different from the universally accepted connotation of the term "wharfage".

(Authorities on hermeneutics, legal and lay, give the following definitions of wharfage, as follows:

"'Wharfage' is the charge for use of wharf by way of rent or compensation." (Vol. 45, Permanent Ed. Words & Phrases, p. 41, citing: Marine Lighterage Corp. v. Luckenbach S.S. Co., 248 N.Y. 71, 72.)

"'Wharfage' is the money paid for landing goods upon, or loading them from a wharf." (Vol. 3, Bouvier's Law Dict. 3d Revision, p. 3450 citing: Sacramento v. The "New World", 4 Cal. 41.)

"'Wharfage is the fee or duty paid for the privilege of using a wharf." (Webster's Unabridged New International Dict. 2nd Ed. p. 2907.))

(Applying the above-quoted universally accepted meaning of the term "wharfage", it would seem that by "wharfage charges" as defined in Section 1 of Republic

Act No. 1371, our legislators authorized only the levying and collection of fees, dues or charges for the use of the facilities of government wharves or piers. And to stress this legislative intent and avoid the possibility that the same be overlooked or misapplied, our lawmakers expressly exempted from the payment of wharfage dues "articles imported or brought into the Philippines which are unloaded on private wharves" (Sec. 3, R.A. No. 1371).

A perusal of the deliberations in the halls of Congress relative to the enactment of the aforementioned exempting proviso bears out the fact that Congress really intended to exempt from the payment of wharfage fees importation of goods or merchandise which do not make use of the facilities of government wharves or piers. Quoted hereunder are the pertinent portions of the congressional proceedings in relation to this enactment:

Mr. Tible: Under the amendment what will be the wharfage fee on ships that land at the coast and do not make use of port facilities?

Mr. Ramos: Mr. Speaker, I cede the floor now to the gentleman from Romblon, who is the principal author of the measure.

Speaker: Gentlemen from Romblon may have the floor.

Mr. Tible: The bill as amended imposes wharfage fees. Now, what will the ship pay for wharfage fees if it loads off the coast and does not avail itself of port facilities?

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Mr. Moreno: There is no wharfage fee on vessels, there is only a wharfage fee on merchandise, if the vessel is loading merchandise. Where there are no piers or wharves, naturally it will not have to pay anything, but it would be violating customs rules.

Mr. Tibble: But there are ships that load and unload merchandise off the coast.

Mr. Moreno: That would be smuggling.

Mr. Tibble: In that case what would be the fee that the ship would pay?

Mr. Moreno: There is no such provision because to unload off the coast is illegal.

Mr. Tibble: That is actually being done.

Mr. Moreno: Assuming that it is being done, it is being done illegally.

Mr. Tibble: But this is done with the consent of port authorities.

Mr. Moreno: In that case there are other fees chargeable, but certainly it will not be charged wharfage fees because there is no wharf or pier facility required.

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Mr. Tibble: What fee should the ship pay when it is loading on private wharves.

Mr. Moreno: Only harbor fees.

(Congressional Records, House of Representatives, Vol. II No. 69, p. 2862; underscoring supplied.)

The afore-quoted excerpts from the congressional records sustain petitioner's contention that importations of merchandise which do not make use of the facilities of government wharves or piers are

not subject to the payment of wharfage charges.

Coming to the case at bar, it is not disputed that the instant importation did not involve the use of the facilities of government wharves or piers. In fact, it is admitted that the merchandise in question was delivered ship-side beyond the breakwater but within the harbor sea-wall into lighters which towed the same directly to a private wharf at Punta, Sta. Ana, Manila.

✓ It appearing that petitioner in effecting the subject importation did not make use of the facilities of government wharves or piers, the same should not be subject to the payment of wharfage charges in keeping with the intent of the exemption provided for by Republic Act No. 1371.

That there has been a change in the phraseology of law on wharfage under Section 2801 of the Tariff and Customs Code (Republic Act No. 1937) is beside the point, for this law took effect only on July 1, 1957, long after the subject importation was made.

WHEREFORE, the decision appealed from should be, as it is hereby, reversed, and the respondent Commissioner of Customs is ordered to refund to petitioner Superior Gas & Equipment Co., the sum of ₱2,400.00 erroneously collected as wharfage fees on the latter's importation of 1,200 metric tons of industrial salt under Customs Entry No. 0171125.

DECISION -
C.T.A. CASE NO. 396

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series of 1956. Without pronouncement as to costs.

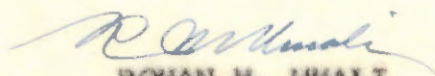
SO ORDERED.

Manila, Philippines, June 30, 1958.


MARIANO NABLE
Presiding Judge

WE CONCUR:


AUGUSTO M. LUCIANO
Associate Judge


ROMAN M. UMALI
Associate Judge

Off'd in G R No. L-14115, May 25, 1960.