Lib.

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

MANILA CIVIL
CASE NO. 17242

December 22, 1958

PAN-PHILIPPINE SHIPPING, INC.,
Defendant.

x - - - - - - - - - - - - - - - x

DECISION

This is an action instituted by the plaintiff to recover from the defendant the sum of ₱84,487.30 representing customs duty, and internal revenue advance sales plus legal interest on said amount from February 13, 1952, and costs of the suit. This action was originally filed with the Court of First Instance of Manila and was remanded to this Court for final disposition pursuant to Section 22 of Republic Act No. 1125.

The facts of this case are summarized hereunder:

On December 11, 1951, the defendant, Pan-Philippine Shipping, Inc., a corporation organized under Philippine Law (as SELLER) entered into a contract with the Cebu Portland Cement Company (as BUYER) for the sale of 5,000 metric tons of Portland Cement under the following terms and conditions:

> "1. That the SELLER hereby undertakes to sell and deliver to the BUYER 5,000 metric tons of Portland cement, Type 1, at a price of ₱3.79 per bag, delivered in good order on board the BUYER'S trucks alongside Muelle de la Industria, Manila, all expenses, import license fee, customs duty, sales tax and all other government taxes for SELLER'S account;

534

"2. That the cement will be furnished in multi-wall paper bags containing 94 lbs. net each. Bags will be 4-ply of 40 lbs., and 1-ply of 50 lbs., or equivalent;

"3. That the SELLER hereby undertakes to ship the entire quantity of 5,000 metric tons herein contracted for, as follows:

3,000 - metric tons to arrive in Manila not later than January 15, 1952;

2,000 - metric tons to arrive in Manila not later than January 31, 1952;

or at SELLER'S option to ship the entire quantity of 5,000 metric tons at one time to arrive in Manila not later than January 31, 1952;

"4. That the SELLER will obligate itself to deliver only good order bags on board the BUYER'S trucks alongside Muelle de la Industria, Manila;

"5. That the SELLER will not be held responsible for any delays in the shipment as stipulated above in the event that such delays are caused by force majeure or Acts of God;

"6. That the BUYER agrees to pay the SELLER in the amount of ₱3.79 per bag, actually delivered on board BUYER'S trucks - alongside Muelle de la Industria, Manila, upon representation of delivery receipts covering the actual quantity of bags delivered;

"7. That the SELLER shall furnish a bond satisfactory to the BUYER in the amount of 20% of the full value of the order to guaranty the faithful performance of this contract." (Exhibit "A", pp. 64-66, C.T.A. rec.)

In fulfillment of said contract, and by virtue of Purchase Order No. 12024 dated December 5, 1951 (Exhibit "M", p. 73, C.T.A. rec.) issued by the Cebu Portland Cement Company, the defendant imported from Japan for delivery to the former 86,000 bags of Portland cement with a total gross weight of 4,429,000 kilos (par. 3, Amended Complaint, pp. 87-93, C.T.A. rec.;

par. 1(a) Amended Answer, pp. 94-98, C.T.A. rec.). This importation was covered by License No. 8573, issued by the Import Control Commission (now defunct) and financed under Letter of Credit No. 48137 dated December 14, 1951 of the Philippine National Bank. The goods were shipped on the S/S "Banzai Maru" under Bill of Lading No. 1 (Exhibit "B") issued by the Mitsui Steamship Co., Ltd. indicating "order of Philippine National Bank" as consignee with "Pan-Philippine Shipping Inc." as ultimate consignee. The said bill of lading was indorsed by the Philippine National Bank to the defendant who appears as the last indorsee thereof (par. 9, Amended Complaint; par. (a) Amended Answer). The latter had assumed the obligation to pay and in fact paid to the vessel's agent the freight charges from Japan to the Philippines corresponding to the shipment (p. 5, Amended Complaint; p. 1, par. (a), Amended Answer, Exhibits "C", "D", & "N-3", pp. 70, 71 and 171, C.T.A. rec.).

The shipment arrived on February 12, 1952 at the port of Manila but instead of unloading thereat, the vessel proceeded to Mariveles, Bataan, where the goods were unloaded and delivered to the defendant on February 13, 1952, without prepayment of the corresponding customs duty and internal revenue taxes (par. 4, Amended Complaint; par. 1 (b) Amended Answer). For failure of the defendant to file an import entry covering the shipment in question, both the Bureau of

Customs and Bureau of Internal Revenue, proceeded to determine and compute the corresponding customs duties and advance sales tax, respectively due on the imported cement and the accompanying extra paper bags. On investigation thereof, it was ascertained that the value of the importation was $98,000.00 or ₱196,000.00. The records of the Bureau of Customs show that the gross weight of the imported cement was 4,429,000 kilos, (Exhibit "N-1", pp. 118-119, C.T.A. rec.) and that the shipment consists of 86,000 Portland cement bags and 2,580 empty spare bags. (Exhibit "N-2", p. 120, C.T.A. rec.) Consequently, on the basis of the report submitted by the agents of both said Bureaus (Exhibit "N", p. 117, C.T.A. rec.) the following is the computation of the customs duties and advance sales tax found to be due on the shipment in question.

IMPORT DUTY

On Cement:

Gross weight of the cement	4,429,000 kilos	
Rate of duty per 100 kilos	$ .65	
Amount of duty	$28,788.50 or	
	₱57,577.00 --	₱57,577.00

On Paper Bags:

Value of 2,580 pieces at $10.00	$ 258.00	
Rate of duty	40%	
Amount of duty	$ 103.20 or	
	₱ 206.40 --	₱ 206.40
TOTAL DUTY		₱57,783.40

ADVANCE SALES TAX

Value of importation (cement and paper bags) ...	$ 98,000.00 or ₱196,000.00	
Duty on cement and paper bags (as above)	57,783.40	
Freight	34,744.00	
Exchange Tax (17% of (₱196,000.00)	16,660.00	
Landed Cost	₱305,187.40	
Mark-up (25% of landed cost)	76,296.85	
Taxable value	₱381,484.25	
Advance sales tax (7%)	26,703.90	₱26,703.90
TOTAL AMOUNT OF DUTIES AND ADVANCE SALES TAX		₱84,487.30

(Exhibit "N", p. 117, C.T.A. rec.)

In connection with the above, Capt. Hilarion T. Benedicto, General Manager of the defendant, conferred with the Acting Chief Appraiser of the Bureau of Customs on June 5, 1952 and promised to take immediate steps to pay whatever amount of duties and taxes that may be due on the importation. However, in view of the fact that no action was taken by the defendant on the matter in question, on June 12, 1952, the then Collector of Customs, Melecio Fabros, sent a letter to said Capt. Benedicto, as general manager of the defendant demanding payment of the customs duties and taxes due on the importation in the respective amounts of ₱57,783.40 and ₱23,661.80 (should be ₱26,703.90) or a total amount of ₱81,445.21 (should be ₱84,487.30) (Exhibit "E", p. 72, C.T.A. rec.).

It appears however that, notwithstanding the demands made by the plaintiff, the defendant failed to pay the customs duties and taxes herein involved. Hence, this action.

This case was submitted for decision solely on plaintiff's evidence, after the defendant had unjustifiably failed to defend its case despite the repeated postponements granted by this Court at the latter's instance to enable it to have its day in court (see motions for postponements, dated January 29, 1955, p. 56; February 10, 1956, p. 100, Minutes of the Court, dated February 4, 1957, p. 107; Minutes dated March 11, 1957, p. 110, Minutes dated March 15, 1957, p. 113; Motion, dated April 26, 1957, p. 131; Minutes dated April 26, 1957, p. 133; Minutes dated June 3, 1957; p. 140, Motion dated December 14, 1957, pp. 146-147; Order, dated December 18,1958, p. 151; Motion dated May 2, 1958, pp. 152-153; see also Resolutions of this Court dated May 7, June 24, and July 30, 1958).

The only defense set up by the defendant in his answer is that it merely acted as agent of the Cebu Portland Cement Co., which in turn was allegedly acting as agent of the National Shipyards and Steel Corporation (NASSCO), a public corporation engaged in a new and necessary industry (see pars. 1-13, Amended Answer, dated July 6, 1955, pp. 94-98, C.I.A. rec.). Obliquely, the defendant would seem to set up the additional defense that the NASSCO is entitled to the tax exemption granted by Republic Act No. 901 to persons or corporations engaged in new and necessary industry.

There is no question that the defendant is the importer of the cement in question from Japan. It should be also noted that in the letter of the defendant dated January 28, 1952, (Exhibit "C") to the Manila Steamship, it stated as follows:

> "This is to confirm our verbal talk whereby we are willing to pay immediately the freight of our cement which is loaded in one of your ships the S.S. 'Banzai Maru' x x x"

That the defendant actually paid the freight charges amounting to ₱34,744.00 is established (see notation of PNB Checks Nos. 2236437, February 25, 1952; 83481, February 29, 1952; and 2236462, March 3, 1952; Exhibits "N-2", "N-3", and "Q", pp. 120, 121 and 126, C.T.A. rec.). Moreover, according to the agreement between the Cebu Portland Cement Co. as BUYER, and the defendant Pan-Philippine Shipping, Inc. as SELLER (Exhibit "A"), the latter is liable for all the customs duties and taxes due on the cement to be furnished the former. Being the importer thereof, there is no doubt therefore, that the defendant is liable for the imposts in question.

Defendant's pretension, that it was merely the agent of Cebu Portland Cement Company, and the latter in turn was the agent of the National Shipyards and Steel Corporation (NASSCO), a corporation allegedly engaged in new and necessary industry, is without merit. The contract, Exhibit "A", denominating the defendant as SELLER and the Cebu Portland Cement Co. as BUYER of the cement, clearly describes the relationship of the parties thereto as one between vendor and vendee, and the subsequent acts of the parties in pursuance of the stipulations in their agreement are incompatible with the aforesaid pretension of agency. It would be incompatible for the defendant to be both seller and agent of the buyer (see Gonzalo Puyat & Sons, vs. Arco Amusement Co., 72 Phil. 402).

The statement, in the "Application to Import" (Exhibit "5", p. 129, C.T.A. rec.), that the "Cebu Portland Cement Co., represented by the defendant, do hereby apply for authority to import commodities, x x x" cannot be taken as altering the relationship of seller and buyer described in the contract, Exhibit "A", which was executed subsequent to the application and which vendor-vendee relationship is corroborated by their subsequent acts.

As to the claim for tax exemption under Republic Act No. 901, suffice it to state that the privilege is granted only to the party directly obligated to pay the tax. And assuming, but without deciding, that the NASSCO is entitled to the tax exemption under Republic Act No. 901, then NASSCO is entitled thereto but certainly not the herein defendant. We should take note that Republic Act No. 35, Section 1, imposes two conditions for the exercise of the privilege, namely: (a) that the person, partnership, company, or corporation "shall engage in a new and necessary industry" and (b) that the exemption shall refer to "the payment of all internal revenue taxes directly payable by such person, partnership, company, or corporation in respect to said industry. Similar provisions are also found in Republic Act No. 901, which is amendatory to said Republic Act No. 35. The unmistakable intention of Congress is apparent in both laws that only the person or entity directly liable for the customs duties and taxes is entitled to the tax exemption privilege. Moreover, exemption from payment of taxes is strictly construed against the party claiming, and cannot be predicated upon mere conjectures or vague implications. (Collector v. Manila Jockey Club, G.R. No. L-8755; March 23, 1956; Asiatic Pet. Co. v. Llanes, 49 Phil., 466; House v. Posadas, 53 Phil. 338; Phil. Tel.& Tel. Co. v. Collector, 58 Phil. 639.)

In fine, we are of the opinion and so hold that the defendant corporation is liable for the customs duties and taxes in question.

IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered ordering the defendant Pan-Philippine Shipping,Inc. to pay to the plaintiff the sum total of ₱84,487.30 representing customs duty and internal revenue tax due on the former's importation, with costs against the defendant.

SO ORDERED.

Manila, December 22, 1958.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Not appealed.

I abstain:

ROMAN M. UMALI
Associate Judge