REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPANIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2405

COMMISSIONER OF CUSTOMS,
Respondent.
X - - - - - - - - - - - - - - - - - X

10/24/74

DECISION

This is an appeal by herein petitioner Compania General de Tabacos de Filipinas from the decision of the respondent Commissioner of Customs affirming the decision of the Collector of Customs of Davao and sustaining the legality of the imposition of arrastre charges on petitioner's exportations of copra.

It appears that various exportations of copra were made by the herein petitioner, which exportations were loaded on various vessels at Sasa Wharf, Davao within the exclusive jurisdiction of the Collector of Customs of the Port of Davao. Accordingly, arrastre charges were assessed and collected on said shipments by the Bureau of Customs through Gustavo A. Suarez & Co., the arrastre service operator which has exclusive right, among others, of handling at the said Port all articles for export and of collecting arrastre charges under the management contract entered into by the Bureau of Customs with said company.

On or about September 2, 1965, the Bureau of Customs promulgated Customs Administrative Order No.

1-66. This order fixed arrastre charges on articles for export at the Port of Davao. On different dates from December 11, 1964 to July, 1968, petitioner made various exportations of copra at the Port of Davao. It paid to the Bureau of Customs, under protest, the arrastre charges thereon as fixed in the management contract aforestated, and later on in Customs Administrative Order No. 1-66, in the total sum of ₱143,835.03.

Petitioner filed with the Bureau of Customs the corresponding formal protests and claims for refund of said arrastre charges based on the following grounds, to wit:

1. The collection of the aforementioned arrastre charges through the Davao Arrastre Service is unauthorized and illegal, there being no provision in the Tariff and Customs Code which authorizes the collection of arrastre charges on export cargo at the Port of Davao;

2. The Management Contract entered into by the Bureau of Customs with Gustavo A. Suarez, as arrastre contractor, for the operation of the government arrastre service at the Port of Davao insofar as it authorizes the latter to collect arrastre charges on export cargo therein is null and void for being contrary to law;

3. The fact that the Bureau of Customs did not impose arrastre charges on export cargo at the Port of Davao from the date of the effectivity of the Tariff and Customs Code in June, 1957 up to the execution of the aforestated contract shows that the Bureau of Customs has been aware since the beginning of its lack of statutory authority to collect

arrastre charges on export cargo at the Port of Davao; and

4. That the amount of arrastre charges collected are excessive and not commensurate with the actual work done by the arrastre operator.

On April 14, 1969, the Collector of Customs of Davao rendered a decision in the aforementioned protests sustaining the validity and legality of the imposition of arrastre charges on articles for export at the Port of Davao. Petitioner appealed said decision to respondent on May 15, 1969. On April 7, 1972, respondent rendered a decision affirming the decision of the Collector of Customs of Davao; hence, this appeal.

The issues posed for our consideration are: (1) Whether or not the collection of arrastre charges on the copra exports of petitioner at the Port of Davao through the arrastre contractor is legal; and (2) Whether or not the arrastre charges in question are reasonable.

Petitioner contends that the collection of the aforementioned arrastre charges through the Davao Government Arrastre Service is unauthorized and illegal, there being no provision in the Tariff and Customs Code which authorizes the collection of arrastre charges on export cargo at the Port of Davao. It is argued that if Congress intended to impose arrastre charges on export cargo at the Port of Davao, it could have done so, as in the Ports of Manila, Zamboanga and Iloilo;

and the absence of a provision in the Tariff and Customs Code authorizing the imposition of arrastre charges at the Port of Davao is an indication that Congress did not intend to authorize the imposition of such arrastre charges in Davao.

Respondent contends that it is erroneous to state that the Bureau of Customs is not authorized to collect arrastre charges on export cargo at the Port of Davao because, under Section 3108 of the Tariff and Customs Code, the Commissioner of Customs, with the approval of the Secretary of Finance, has the power to fix such rates in all other ports in the Philippines, for handling, receiving and custody of imported and exported articles. Moreover, respondent argues that the intention of Congress in including the above provision is to avoid inequality in the collection of arrastre charges on imported and exported articles. It is not to be assumed that it was the intention of Congress to subject export articles in some ports to arrastre charges and at the same time exempting the same articles when exported from other ports.

The decision of respondent finds support in Section 3107 (now Section 3105) of the Tariff and Customs Code, which reads as follows:

> "Section 3107.-<u>In All Other Ports.-</u> The office or agency of the government charged

> with the supervision, administration and management of all ports in the Philippines upon the approval of the department head, shall fix the rates for the handling, receiving and custody of imported or exported articles or the baggage of passengers in all other ports of entry, taking into account the facilities, machinery and equipment available in such port of entry." (Underscoring supplied.)

While the Tariff and Customs Code does not provide for the rates of the charges on export cargo at the Port of Davao, unlike other ports, such as Manila, Iloilo and Zamboanga, yet there is no prohibition against imposition of such charges, and in fact the Commissioner of Customs, with approval of the Secretary of Finance, has the power to fix the rates of arrastre charges for imported and exported articles in all other ports of the Philippines.

Inasmuch as the Tariff and Customs Code does not provide for the rates of charges on export cargo at the Port of Davao, we are of the opinion that the Commissioner of Customs, with the approval of the Secretary of Finance, has the authority to impose and to fix the rates of arrastre charges on articles exported from said port, pursuant to Section 3107 of the Tariff and Customs Code. (Southwest Agricultural Manufacturing Co. v. Commissioner of Customs, C.T.A. No. 2147, Dec. 27, 1973.)

With respect to the second issue, petitioner contends that the amount of the charges in question (₱2.00 for every 1,000 kilos) is not commensurate with the actual work done by the arrastre service operator and are, therefore unreasonable. On this point, we wish to quote from our decision in a previous case involving the same issue, to wit:

> Accordingly, as far as the arrastre rates at the Port of Davao are concerned, it will be noticed that in fixing the rate of ₱2.00 for handling of articles for exports, classified under general cargo per ton of 40 cubic feet or 1,000 kilos, from consignor's transportation upon the pier or wharf to the slings of the exporting vessels, respondent Commissioner of Customs merely took the rate fixed by Section 3105 for import general cargo and applied it to export general cargo. In other words, what the Commissioner did was only to use the rate fixed by the law for like services, paid by similarly situated persons availing themselves of like benefits and facilities under like circumstances. Hence, the ₱2.00 determined by respondent Commissioner cannot be considered excessive, unreasonable and oppressive because it is merely the rate specifically fixed by the law for the same services and benefits in the same Port of Davao. The Commissioner of Customs simply imposed and levied that which the law has provided.

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Finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, October 24, 1974.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge