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December 29, 1964

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 1384

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs affirming the decision of the Collector of Customs for the Port of Manila denying petitioner's claim for refund of wharfage dues in the total amount of ₱1,434.00 paid on three shipments of palm oil and coconut fatty alcohol, which arrived at the Port of Manila on February 3, 1958 and March 15, 1958, respectively.

In the months of February and March, 1958, three bulk shipments of palm oil and coconut fatty alcohol consigned to petitioner arrived at the port of Manila. These importations were unloaded from vessels anchored near the breakwater in Manila Bay area into private lighters belonging to Atlantic Gulf & Pacific Co., which were moored alongside said vessels. After unloading, the lighters were towed by tugboats, also owned by the Atlantic Gulf & Pacific Co., to petitioner's private wharf at Vitas, Tondo, Manila, where the importations were finally unloaded. No Government wharves or facilities were used or availed of in unloading the imported articles from the vessels to petitioner's warehouses at its factory.

On these three shipments, the Collector of Customs of Manila levied, assessed and collected from petitioner the sums of ₱566.00, ₱646.00 and ₱222.00, or a total amount of ₱1,434.00, as wharfage dues, under Sections 2801 and 2802 of the Tariff & Customs Code (Republic Act No. 1937).

Petitioner, on March 5 and May 2, 1958, filed written protests against the assessment and collection of the wharfage dues and sought their refund, contending that it is not liable as it did not make use of the Government wharves or piers in the unloading of its importations, and that wharfage dues partake of the nature of customs duties; hence, it is exempt from the payment of such dues under Republic Act No. 901, as amended.

Petitioner's protests having been denied by the Collector of Customs of Manila in its decision of May 26, 1960, it filed its timely appeal to the Commissioner of Customs, who, on March 18, 1963, affirmed the decision of his Collector for the Port of Manila. Hence, the present appeal.

The issues presented to us for determination are as follows:

> 1. Whether or not the collection of wharfage dues on its importations of palm oil and coconut fatty alcohol unloaded on petitioner's private wharf is legal under Sections 2801 and 2802 of the Tariff & Customs Code (Rep. Act No. 1937);
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> 2. Whether or not petitioner is exempt from wharfage dues under Section 1 of Republic Act No. 901.

With regard to the first issue, petitioner, invoking the decision in the case of Commissioner of Customs vs. Superior Gas & Equipment Co. (G. R. No. L-14115, May 25, 1960), contends that it is not liable to pay wharfage dues which is a rent or compensation for the use of a Government wharf as its importations were unloaded on its own wharf and not on Government wharves or facilities.

We have decided several cases in the past involving analogous facts and issues wherein we sustained the legality of the imposition of wharfage dues on imported articles unloaded on private wharves. The decision in the case of Commissioner of Customs vs. Superior Gas & Equipment Co, (Ibid.), invokedby petitioner, is inapplicable to the instant case as the law involved therein is Section 3 of Republic Act No. 1371, a law different from the ones involved herein which are Sections 2801 and 2802 of the Tariff & Customs Code.

In Caltex (Philippines) Inc. vs. Acting Commissioner of Customs, C.T.A. Case No. 1322, dated September 22, 1964, where the petitioner-importer was similarly situated, we held:

> "This issue is not new. In Procter & Gamble Philippine Manufacturing Corporation v. Commissioner of Customs, C.T.A. Case No. 1303, March 14, 1964, we held:
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> > 'The above-quoted Section 3 of Republic Act No. 1371 was incorporated in the Tariff & Customs Code as Section 2802, but the proviso contained in the former law 'that such wharfage fee shall not be levied on articles

imported or brought into the Philippines which are unloaded on private wharves' was eliminated. Obviously, the purpose of Congress in eliminating the said provisio is to impose wharfage dues irrespective of where the unloading of imported goods is made, whether on Government or private wharves. The validity of the imposition of wharfage dues on exported or imported goods loaded or unloaded on private wharf has been recognized.'

"Again, in Philippine Iron Mines Inc. v. The Commissioner of Customs, C.T.A. Case No. 1270, June 29, 1964, a case of similar nature, we sustained the legality of the imposition of wharfage dues on imported goods loaded or unloaded on private wharves as follows:

'It is true that wharfage due ordinarily means a charge by way of rent or compensation for the use of a Government wharf. (The Commissioner of Customs v. Superior Gas & Equipment Co., G.R. No. L-14115, May 25, 1960.) But there is nothing to prevent Congress from imposing wharfage dues for loading or unloading of merchandise on privately owned wharves. (Philippine Sugar Centrals Agency v. Insular Collector of Customs, 51 Phil. 135)

'Section 2801 of the Tariff & Customs Code defines wharfage due as the amount assessed against the cargo of a vessel engaged in foreign trade, based on the quantity, weight or measure received and/or discharged by such vessel, and Section 2802 prescribes the rates of wharfage dues. The law does not limit liability for the payment of wharfage dues to cases where cargo is loaded or unloaded on a Government wharf. Therefore, liability for such dues arises even if cargo is discharged on a private wharf, as in the instant case. (Procter & Gamble Philippine Manufacturing Co. v. Com. of Customs, C.T.A. Case No. 1303, March 15, 1964.) [Caltex (Philippines) Inc. vs. Acting Commissioner of Customs, C.T.A. Case No. 1322, Sept. 22, 1964].'"

However, it is urged upon us by petitioner that Congress, in eliminating the proviso "That such wharfage fee shall not be levied on articles imported or brought into the Philippines which were unloaded on private wharves" (found in Section 3 of Republic Act No. 1371) from Section 2802 of the Tariff & Customs Code, did not in effect repeal or amend the former law as the congressional purpose in enacting Republic Act No. 1937 (Tariff & Customs Code) was merely to codify all our existing tariff and customs laws. A cursory reading of the explanatory note of the Committee on Ways and Means and the Special Committee to Revise and Codify Tariff-Customs and All Tax Laws, in House Bill No. 5513 (now Republic Act No. 1937), shows that it was not only the intention of Congress to codify all our existing tariff and customs laws, because, among the broad policies and objectives of the enactment, is the aim "to raise government revenue" (Congressional Record, House of Representatives, Vol. III, No. 13, 3rd Congress, Third Special Session, July 16, 1956, 3264-3266.) It is clear that Congress intended a change or modification in the prior law. This change by Congress was made with the view of increasing the revenue by requiring the payment of wharfage dues on importations unloaded either in Government or private wharves or piers.

Moreover, the intention of Congress to repeal or amend Section 1 of Republic Act No. 1371 is evident in the general repealing clause, Section 3701, of the Tariff & Customs Code, which provides as follows:

> "SEC. 3701. Repealing Clause.--All Acts, Executive Orders, rules and regulations or parts thereof, in conflict with the provisions of this Code, are repealed."

Where a law contains a provision that any Act or Executive Order, rule, or regulation, whose provisions are contrary or are in contravention thereto, is repealed, the intention of Congress to establish a uniform system of law on the subject dealt with and to nullify all prior inconsistent laws is clear. (See Republic of the Philippines Digest, Vol. 6, p. 493, citing Chinese Flour Importers' Assoc. v. Price Stabilization Board, July 12, 1951, G.R. No. L-4465.) Also, "where the subsequent act covers the whole subject, omitted substantive portions characterizing the earlier act, have been regarded as inconsistent with the latter act so as to be within the general repealing provision". (50 Am. Jur. Par. 520, p. 529, citing 10 ALR 910, affd. in 240 U.S. 457, 60 L ed 739, 36 S Ct 400).

With respect to the second issue, petitioner contends, assuming that wharfage due is imposable under Sections 2801 and 2802 of the Tariff & Customs Code, then it is no longer a rent or compensation for the use of wharves, as held in Superior Gas Equipment Case (supra), but a duty on tonnage, as held in Philippine Sugar Central Agency vs. Insular Collector of Customs (51 Phil. 131). Accordingly, it is exempt from the payment of wharfage dues under Section 1 of Republic Act No. 901.

This contention of petitioner is without merit. Wharfage dues under Sections 2801 and 2802 of the Tariff & Customs Code are not duties on tonnage, but are rents and compensation for the use of wharves and are imposable irrespective of whether the unloading of the imported goods is made on Government or private wharves or piers. (Procter & Gamble Philippine Manufacturing Co. vs. Commissioner of Customs, C.T.A. Case No. 1303, *supra*; Philippine Iron Mines Inc. vs. Commissioner of Customs, C.T.A. Case No. 1270, June 29, 1964; Caltex (Philippines) Inc. vs. Acting Commissioner of Customs, C.T.A. Case No. 1325, Sept. 22, 1964.) It has never been held in the Philippine Sugar Central Agency case, *supra*, that wharfage dues are duties on tonnage. A wharfage due is a charge on the privilege of using a wharf and is in no sense understood as a tax or duty (Keokuk Northern Line Packet Co. vs. City of Keokuk, 95 U.S. 80, 24 L ed. 377, 380). A duty is a charge for the privilege of entering a port or harbor (See Parkersburg & Ohio River Transp. Co. v. Parkersburg, 107 U.S. 691, 27 L. ed. 584). Under Section 1 of Republic Act No. 901, the exemption of petitioner is limited to payment of taxes and customs duties. Wharfage dues not being either a tax or a duty, petitioner is, therefore, not exempt from their payment.]

WHEREFORE, finding the decision appealed from to be in order, the same is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, December 29, 1964.

AUGUSTO M. LUCIANO
Acting Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge