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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LUZON STEVEDORING
CORPORATION,
Petitioner,

- versus -

February 1, 1963

C.T.A. CASE NO. 1146

COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

Petitioner seeks to recover the total sum of ₱9,506.92 paid as fees for mooring or berthing its tugboats and barges at the Caltex pier in Bauan, Batangas, during the period from August 20, 1957 to July 20, 1959.

It appears that during the period from August 20, 1957 to July 20, 1959, petitioner, a domestic corporation engaged in the lighterage business, hauled fuel oil, gasoline and other products of the Caltex Refinery, using its (former's) tugboats and barges which berthed at the Caltex pier, a privately owned pier in Bauan, Batangas. The tugboats are self-propelled, they being propelled by internal combustion engines, and the barges are not self-propelled. During the same period, petitioner paid berthing charges or fees in the total amount of ₱9,506.92.

It also appears that petitioner, in a letter dated July 24, 1959, and received by the Collector of Customs for the Port of Batangas on August 4, 1959, protested the collection of the berthing fees in question and, at the same time, requested for the refund thereof. The Collector of Customs for the Port of Batangas dismissed the protest, which dismissal was affirmed by respondent. Hence, this appeal.

This appeal raises the following issues:

1. Whether or not petitioner's tugboats and barges are subject to the payment of berthing fees for mooring or berthing at Caltex pier in Bauan, Batangas; and, if in the negative,

2. Whether or not the total amount of ₱9,506.92 paid by petitioner as berthing fees may be refunded; and if in the affirmative,

3. Whether or not interest on the refundable amount is collectible from the government.

Petitioner's protest against the collection of the berthing fees in question is predicated mainly on the theory that the right to collect the same extends only to vessels mooring or berthing in government piers. Where, as in this case, the mooring or berthing takes place in privately owned piers, it is urged upon us that no liability for berthing fees attaches.

Section 2901 of the Tariff and Customs Code defines berthing charge thus:

> "Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf

> at any port in the Philippines; or for mooring and making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any port of the Philippines. The owner, agent, operator or master of the vessel is liable for this charge."

From the afore-quoted codal definition, it is clear that, in this jurisdiction, liability for berthing charge attaches to "a vessel for mooring or berthing at a pier, wharf x x x at any port in the Philippines x x x." The liability, therefore, is not conditioned upon the nature of ownership over the pier or wharf. The fact that the mooring or berthing takes place in a privately owned pier or wharf does not exempt the vessel from such liability, for the law makes no distinction between government-owned and privately owned vessels in authorizing the collection of the berthing charge or fee. Ubi lex non distinguit, nec nos distinguere debemus.

> "x x x A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity." (50 Am Jur. 207.)

Petitioner also contends that assuming that liability for berthing charge or fee attaches even for mooring or berthing in privately owned piers, its tugboats and barges are not vessels within the contemplation of Section 2906 of the Tariff and

Customs Code before its amendment by Republic Act No. 2369, and, therefore, are not liable therefor.

Before its amendment on June 20, 1959, Section 2906 of the Tariff and Customs Code read:

> "Sec. 2906. Vessels in the Philippine Coastwise Trade-Ports With Cargo Sheds.- Every vessel propelled by steam or internal combustion engine and engaged in the Philippine coastwise trade, excepting boats of five tons gross or less or pleasure or non-commercial craft, which berths at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any national port in the Philippines provided with cargo sheds or which makes fast to any vessel at such wharf, or pier, for the purpose of loading or discharging cargo or for any other purpose except when in distress, shall pay a berthing fee x x x."

After its amendment by Republic Act No. 2369, it reads thus:

> "Sec. 2906. Vessels in Philippine Coastwise Trade-Ports with cargo sheds.- Every vessel propelled by steam or internal combustion engine and engaged in the Philippine coastwise trade, including barges and lighters towed by such vessels, excepting boats of five tons gross or less or pleasure or noncommercial craft, which berths at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any national port in the Philippines provided with cargo sheds or which makes fast to any vessel at such wharf, or pier, for the purpose of loading or discharging cargo or for any other purpose except when in distress, shall pay a berthing fee x x x." (Underscoring supplied).

In the light of the original provision of

Section 2906 of the Tariff and Customs Code, we find that petitioner's tugboats, being self-propelled by internal combustion engines, were vessels subject to the payment of berthing fees. Petitioner's barges, not being self-propelled by steam or internal combustion engines, were not such vessels as to be subject thereto. However, with the amendment of the original provision of Section 2906 of the Tariff and Customs Code on June 20, 1959 by Republic Act No. 2369, petitioner's barges in question fell within the category of vessels liable for berthing fees. This liability therefore commenced only on June 20, 1959.

Having ruled that petitioner's tugboats are vessels within the contemplation of both the original and amended Section 2906 of the Tariff and Customs Code, and, therefore, are liable for berthing fees; and that petitioner's barges are vessels subject to berthing fees only from June 20, 1959, we shall now determine whether or not the fees paid for the mooring of the barges during the period from August 20, 1957 to June 19, 1959 are refundable to petitioner.

In this connection, it is to be noted that petitioner filed a written protest against the collection of the berthing fees in question only on August 4, 1959. Under Sec. 2308 of the Tariff and Customs Code, "When a ruling or decision of the Collector is made whereby liability for x x x fees, or other money charge is determined, x x x, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor x x x". Hence, in the case at bar, whatever was illegally collected within 30 days prior to August 4, 1959 is refundable to petitioner. And since petitioner's barges became subject to the payment of berthing fees from June 20, 1959, the date of the effectivity of Republic Act No. 2369 which amended Section 2906 of the Tariff and Customs Code, it follows that petitioner is not entitled to any refund.

The contention of petitioner that respondent is estopped from exacting compliance with the legal requirements on formal protest because the Collector of Customs for the Port of Batangas allegedly entertained the verbal protest of the former is not well taken. Even assuming that a verbal protest was made, such protest is not sufficient. The law, as afore-cited, requires a written protest. The government is not bound by the mistakes of its agents (Koppel /Phil./ Inc. vs. Collector, G.R. No. L-10550, September 19, 1961; Central Azucarera de Tarlac vs. Collector, G.R. No. L-11092, September 30, 1958).

In view of our adverse ruling on the question of refund, we find it unnecessary to consider the issue regarding interest.

WHEREFORE, the petition for review filed by the petitioner Luzon Stevedoring Corporation is hereby dismissed with costs against the petitioner.

SO ORDERED.

Manila, Philippines, February 1, 1963.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge