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SAMAR MINING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2141

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner Samar Mining Co., Inc. has appealed from the decision of respondent Commissioner of Customs dated April 28, 1970, affirming the decision of the Collector of Customs of Davao, denying its claim for refund of arrastre charges on its exportation of copper concentrates.

The material facts are as follows:

> Samar Mining Company, Inc., a domestic corporation from 1965 to 1968, exported various quantities of copper concentrates by way of the Sasa Wharf. The Collector of Customs of the Port of Davao imposed an arrastre charge of ₱2.00 per metric ton for cargoes passing thru the Sasa Wharf, as a consequence of which the Davao Arrastre Service collected for and in behalf of the Collector of Customs, Port of Davao, the sum of ₱57,747.19 as arrastre charges which Samar Mining Company, Inc. paid under protest as per the tabulation of all protests showing the protest number, date of filing, name of vessel, amount of arrastre charges paid, receipt number and date of payments attached as Annex "A" in the Stipulation of Facts dated January 20, 1975. (See Stipulation of Facts, par. 1 and 2). The protest of Samar Mining Company, Inc. filed with the Collector of Customs, Port of Davao, for refund of said arrastre charges

> paid was denied by the Collector of Customs of Davao in his decision dated July 12, 1968, which was appealed by Samar Mining Co., Inc. to the Commissioner of Customs. The Commissioner of Customs affirmed the decision of the Collector of Customs of Davao as per its decision dated April 28, 1970. (See Stipulation of Facts, dated January 20, 1975, par. 3).

The instant case was filed on June 10, 1970 questioning the aforementioned decision of the Commissioner of Customs.

The issues to be resolved are as follows:

> (1) Whether or not the collection of the arrastre charges on the export cargoes of petitioner is legal; and
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> (2) Whether or not the rate of ₱2.00 per metric ton fixed by the Bureau of Customs as arrastre charges on said export cargoes is reasonable.

Petitioner contends that the collection of arrastre charges is illegal and unauthorized because: (1) Section 3105 of the Tariff and Customs Code prescribes arrastre charges only on import cargoes and not on export cargoes; (2) Sections 3102, 3104 and 3106 of the same Code authorize arrastre charges on export cargoes only for the Port of Manila, Zamboanga and Iloilo, and thus should be construed to mean that Congress did not intend to impose such charges for the Port of Davao; and (3) Section 3108, which is relied upon the Commissioner of Customs, merely empowers him to increase or decrease existing arrastre rates but not to impose rates not previously fixed or existing.

As regards the second issue, petitioner maintains that the rate of ₱2.00 per metric ton of export concentrates is oppressive and unreasonable because the arrastre services of the arrastre contractor are not commensurate with the amount charged, and that said rate is much higher than the rate of arrastre charges fixed for the Port of Zamboanga under Section 3104 of the Code.

The two issues raised in this case have already been resolved in previous similar cases. Thus, it was held:

> The decision of respondent finds support in Section 3107 (Now Section 3105) of the Tariff and Customs Code, which reads as follows:
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> > "Section 3107.- In All Other Ports.- 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.)
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> 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 article 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.

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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. (Southwest Agricultural Manufacturing Co. v. Commissioner of Customs, C.T.A. No. 2147, Dec. 27, 1973; see also Compania General de Tabacos de Filipinas v. Commissioner of Customs, C.T.A. No. 2405, Oct. 24, 1974.)

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

SO ORDERED.

Quezon City, January 19, 1976

ROMAN M. UMALI
Presiding Judge

I CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge
(Did not take part)