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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE WOODCRAFT & VENEER CORPORATION,
Petitioner,

- versus -

Jan. 30, 1967

C.T.A. CASE NO. 1618

PABLO C. MARIANO, Acting 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 Acting Commissioner of Customs dated August 7, 1963, affirming that of the Collector of Customs for the port of Davao, denying petitioner's claim for refund of the sum of ₱249.75 paid as wharfage dues on a shipment of 375 crates of plywood, pursuant to Sections 2801 and 2802 of the Tariff and Customs Code.

Petitioner, a corporation duly organized and existing under and by virtue of the laws of the Philippines, is engaged in the manufacture of plywood. On October 5, 1955, it was granted exemption by the Secretary of Finance from the payment of taxes, the exemption to continue until December 31, 1958, as a new and necessary industry under the provisions of Republic Act No. 901 (pp. 1-3, Customs rec.). Sometime in October, 1958, petitioner exported 375 crates of plywood to Longview, Washington, U.S.A. The crates of plywood were loaded on a lighter from a private wharf of petitioner at Maco, Mabini, Davao Bay, Mindanao, and brought to Davao Port where they were loaded shipside the freighter S/S "OREGON" which was waiting at the middle of the bay. For said shipment, the Collector of Customs of Davao assessed and collected on October 28, 1958 the amount of ₱249.75 as wharfage dues pursuant to Sections 2801 and 2802 of the Tariff and Customs Code (p. 12, Customs rec.). Petitioner, on November 10, 1958, filed a protest with the Collector of Customs of Davao and sought the refund of the amount paid as wharfage dues (pp. 5-7, Customs rec.). On December 22, 1958, the Collector of Customs of Davao rendered his decision denying petitioner's claim for refund (pp. 15-16, Customs rec.). This decision, upon appeal interposed by petitioner, was affirmed by then Acting Commissioner of Customs Rodrigo D. Perez, Jr. on August 7, 1963. Petitioner filed a motion for reconsideration of the decision of the Acting Commissioner of Customs, which was, however, denied by respondent in an order, dated March 11, 1965. Petitioner now comes to us for review of respondent's decision.

The principal issue presented for our consideration is purely of law, i.e., whether or not wharfage dues are taxes.

Petitioner contends that as a new and necessary industry under Republic Act No. 901, it is exempt from the payment of all taxes which include wharfage dues. Respondent, on the other hand, justifies the collection of wharfage dues on the ground that they are not taxes, but fees within the contemplation of Sections 2801 and 2802 of the Tariff and Customs Code. Besides, respondent pointed out, the letter of the Secretary of Finance which accompanied petitioner's tax exemption certificate enumerated the kinds of taxes from the payment of which petitioner is exempted, and wharfage dues are not one of them. The provisions of law relied upon by both parties provide as follows:

> "SECTION 1. Any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry shall be entitled to exemption until December thirty-one, nineteen hundred and fifty-eight from payment of <u>all taxes</u>, directly payable by such person, x x x in respect to said industry and to a diminishing exemption during the following four years as follows: x x x" (Underscoring supplied; Rep. Act No. 901.)

> "SEC. 2801. <u>Definition</u>. - Wharfage due is the amount assessed against the cargo of a vessel engaged in the foreign trade, based on the quantity, weight or measure received and/or discharged by such vessel. The owner, consignee, or agent of either, of the article is the person liable for such charge.

> "SEC. 2802. <u>Schedule of Dues</u>. - There shall be levied, collected and paid on all articles imported or brought into the Philippines, and on products of the Philippines except coal, lumber, creosoted and other pressure treated materials as well as other minor forest products, cement, guano, natural rock asphalt, the minerals and ores of base metals (e.g., copper, lead, zinc, iron, chromite, manganese, magnesite and steel), and sugar molasses, exported from the Philippines, a charge of two pesos per gros metric ton <u>as a fee for wharfage</u>: x x x." (Underscoring supplied; Rep. Act No. 1937.)

The letter of the Secretary of Finance which enumerated the kinds of taxes from the payment of which petitioner is exempted, in effect, limits the tax exemption of petitioner to certain particular taxes only. This, we believe, he cannot legally do. The Secretary of Finance is not authorized either expressly or impliedly by Republic Act No. 901 to determine for himself what taxes the grantee of the privilege should pay and what taxes he should not pay. (See Marble Corp. of the Phil. v. Coll., et al., BTA Case 126, Dec. 17, 1954, aff'd in G.R. No. L-8677, Dec. 28, 1957.) In other words, a tax-exempt entity under Republic Act No. 901, like petitioner herein, is exempt from the payment of all taxes regardless of whether or not they are listed in the tax exemption certificate granted by the Secretary of Finance.

As regards the question of whether or not wharfage dues are taxes, we are in accord with respondent's view that they are not taxes. In a case, similarly situated and involving identical issue as the one at bar, we held:

> "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 are not being either a tax or a duty, petitioner is, therefore, not exempt from their payment." (Underscoring supplied; Procter & Gamble Phil. Mfg. Corp. v. Comm. of Customs, CTA Case 1384, Dec. 29, 1964.)

We find no cogent reason to deviate from the aforesaid ruling.

Lastly, petitioner contends that it is not liable to pay wharfage dues because no Government wharves or facilities were used. We find no merit in this contention. In numerous cases decided by us, we held that wharfage dues collected under Sections 2801 and 2802 of the Tariff and Customs Code are charges for the use of wharves and are imposed by law irrespective of whether the loading or unloading is made on Government or private wharves. (See Procter & Gamble Phil. Mfg. Corp. v. Comm. of Customs, CTA Case 1303, March 14, 1964; Phil. Iron Mines, Inc. v. Comm. of Customs, CTA Case 1270, June 29, 1964; Caltex (Phil.) Inc. v. Actg. Comm. of Customs, CTA Case 1325, Sept. 22, 1964; Procter & Gamble Phil. Mfg. Corp. v. Comm. of Customs, CTA Case 1384, Dec. 29, 1964.)

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, January 30, 1967.

(Sgd.) ROMAN M. UMALI
Presiding Judge

WE CONCUR:

(Sgd.) ESTANISLAO R. ALVAREZ
Associate Judge

(Sgd.) RAMON L. AVANCEÑA
Associate Judge

See also dec. in Barking Bay CTA 1606