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CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 1325

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

This refers to an appeal from the decision of the respondent denying the claim of the petitioner for refund of the amount of ₱150,513.00 paid by it as wharfage dues on importations of crude oil.

The parties to this case entered into a stipulation of facts as follows:

"1. Petitioner is a corporation organized and existing under the laws of the Philippines, with principal office therein at 540 Padre Faura St., Manila; respondent is the incumbent and Acting Commissioner of Customs.

"2. Petitioner was granted on June 20, 1953 a petroleum refining concession under Republic Act 387, otherwise known as the Petroleum Act of 1949, and pursuant thereto has constructed a petroleum refinery in Bauan, Batangas, wherein it manufactures from the crude oil which it imports from abroad gasoline, kerosene, diesel oil, airplane jet fuel, and liquid petroleum gas.

"3. On four (4) separate occasions, shipments of crude oil consigned to petitioner arrived at the Port of Batangas from Sumatra on board the following vessels and were entered as follows:

Vessel	Date of Arrival	Quantity	Reg. No.	Entry No.
"Caltex Manila"	3/14/58	120,612.46 bbls.	35	16-58
"Caltex Durban"	3/15/58	121,234.69 "	36	17-58
"Caltex Manila"	4/ 3/58	120,493.01 "	42	18-58

"4. The above-mentioned importing vessels docked at petitioner's private wharf adjoining its Bauan refinery and the crude oil was unloaded into petitioner's shore tanks by pumping it through connecting pipelines owned and installed by petitioner.

"5. The Collector of Customs of Batangas levied and collected on these four shipments the following amounts as wharfage fees under Sections 2801 and 2802 of the Tariff and Customs Code (Republic Act 1937):

Vessel	Entry No.	Amount	Official Receipt No.	Date
"Caltex Manila"	16-58	₱32,367.00	A-5195928 A-5196045	3/20/58 4/ 1/58
"Caltex Durban"	17-58	32,694.00	A-5195971 A-5196046	2/24/58 4/ 1/58
"Caltex Manila	18-58	32,369.00	A-5196047 A-5196164	4/1 /58 4/16/58
"Regina Maersk"	19-58	53,083.00	A-5196105 A-5196257	4/13/58 4/24/58
	Total	₱150,513.00		

"6. Within the time allowed by law, petitioner filed with the Collector of Customs of Batangas four separate protests against the assessment and collection of the sum of ₱150,513.00 as wharfage fees on these four shipments, which protests were docketed as Batangas Protests Nos. 33, 34, 35 and 36.

"7. On September 15, 1958, petitioner received the decision of the Collector of Customs of Batangas denying its protests, dated September 10, 1958, which decision was appealed by petitioner to the Commissioner of Customs in accordance with law.

"8. On January 8, 1963, petitioner received the decision of respondent (Customs Case No. 23), dated December 26, 1962, affirming the decision of the Collector of Customs of Batangas. (Stipulation of Facts pp. 25-27, C.T.A. rec."

The issues to be resolved in this appeal are:

1. Whether or not the collection of wharf-

age dues on importations of crude oil unloaded on petitioner's private wharf is legal; and

2. Whether or not the petitioner is exempt from wharfage due under the Petroleum Act.

With regard to the first issue, petitioner contends that inasmuch as the importing vessel docked at its private wharf and the crude oil was unloaded into its shore tanks by pumping it through connecting lines owned by it, the oil in question is not liable for wharfage dues which partake of the nature of a rent or compensation for the use of a wharf owned by the Government.

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This issue is not new. In Procter & Gamble Philippine Manufacturing Corporation v. Commissioner of Customs, C.T.A. No. 1303, March 14, 1964, we held:

> "The above-quoted Section 3 of Republic Act No. 1371 was incorporated in the Tariff and Customs Code as Section 2801, 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 proviso 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. 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., 134)"

> "Section 2801 of the Tariff and 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. No. 1303, March 14, 1964.)"

As regards the second issue, petitioner argues that if it be held that wharfage dues imposed in Sections 2801 and 2802 of the Tariff and Customs Code are no longer a rent or compensation for the use of wharves as held in the Superior Gas Equipment case, but a duty on tonnage as held in Philippine Sugar Centrals Agency v. Insular Collector of Customs, 51 Phil. 131, it is exempt under Art. 103 of the Petroleum Act of 1949. In this connection, we wish to point out that petitioner's conclusion of immunity is based upon a wrong premise. Nowhere in the Sugeco case did the Supreme Court hold that wharfage dues are no longer rent or compensation for the use of wharves. Similarly, it was not held in the Philippine Sugar Agency case that wharfage dues are duties on tonnage.

That petitioner cannot seek shelter behind the cloak of immunity provided for by Art. 103 of the Petroleum Act of 1949 is beyond cavil. The exemption therein provided refers only to the payment of customs duty which embraces duty on tonnage. A wharfage due is different from duty on tonnage. The former is a charge on the use of a wharf, while the latter is a charge for the privilege of entering or trading or lying in a port or harbor. (See Parkersburg & Ohio-River Transp. Co. v. Parkersburg (107 U.S. 691, 27 L. Ed. 584).

Finding the decision appealed from in order, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, September 22, 1954.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge