STANDARD-VACUUM OIL COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 644

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 dated March 6, 1959 denying a claim for refund in the sum of ₱20,718.74 paid by petitioner Standard-Vacuum Oil Company as wharfage on 10,359,371 kilos of bulk fuel oil which arrived on board the tanker S/S "Kirishima Maru".

The facts of the case are, as stipulated by the parties, quoted below:

> "1. That petitioner is a foreign corporation organized and existing under the laws of the State of Delaware, U.S.A., and duly licensed to do business in the Philippines; that respondent is the duly qualified and acting Commissioner of Customs;
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> "2. That on or about July 28, 1955, a shipment of 10,359,371 kilos of bulk fuel oil consigned to petitioner arrived at the Port of Manila on board the tanker S/S 'Kirishima Maru' (Registry No. 877) and was declared under Entry No. 66021, series of 1955;
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> "3. That the said tanker on arrival at the Port of Manila anchored outside the breakwater at a place assigned by the Bureau of Customs; that the said vessel remained outside the breakwater during its stay at said port;
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> "4. That pursuant to Special Permit No. 1529 issued by the Bureau of Customs on July 27, 1955, after the filing of the necessary bond and deposit to secure payment of the customs duties, taxes and other

charges, the aforesaid 10,359,371 kilos of bulk fuel oil were pumped by means of exhaust pumps from the importing vessel into the barges of the Luzon Stevedoring Company of Manila, which were towed and moored alongside the importing vessel outside the breakwater, in the presence of and under the supervision of the customs officers;

"5. That after said barges were filled and sealed they were towed along the Pasig River by launches of the Luzon Stevedoring Company to petitioner's installation in Pandacan, Manila; that a customs guard accompanied each of said barges while enroute to Pandacan;

"6. That upon arrival of said barges in Pandacan, they were moored alongside three (3) wharves owned and constructed by petitioner and which adjoin its Pandacan installation. A sketch of the said wharves with their dimensions in meters is hereto attached as Annex 'A' hereof;

"7. That on the water surface right alongside said three wharves were floating movable pumps owned by petitioner and which (pumps) were connected to pipelines. These pipelines were in turn connected to the Pandacan storage tanks of petitioner;

"8. That a customs examiner was stationed in the petitioner's Pandacan installation who, upon receipt of the notice of the arrival of the importing vessel, measured petitioner's Pandacan storage tanks and determined the quantity of fuel oil contained therein; that after measuring their contents, the fuel oil in said barges was pumped into the Pandacan storage tanks and, thereafter, a customs examiner again measured the storage tanks and determined the quantity of fuel oil thus pumped into petitioner's Pandacan storage tanks; that after ascertaining the quantity of fuel oil thus pumped into the Pandacan storage tanks the customs examiner computed the exact amount of the taxes, duties and other charges due on the imported fuel oil;

"9. That the Collector of Customs of Manila assessed, levied and collected the sum of ₱20,718.74 as wharfage fees on the imported fuel oil, as evidenced by Official Receipts Nos. 34467 and 37314, dated July 28, and August 15, 1955, respectively, and liquidated under Voucher No. 12664, dated February 2, 1956, pursuant to Sections 1(b) and 3 of Republic Act No. 1371;

"10. That on February 25, 1956, petitioner filed with the Collector of Customs of Manila a protest (Manila Protest No. 148) against the assessment and collection of the amount of ₱20,718.74 as wharfage fees on the fuel oil imported by it;

"11. That the Collector of Customs of Manila in his decision dated June 24, 1958, denied petitioner's protest;

"12. That petitioner appealed to respondent Commissioner of Customs in accordance with law, and on March 13, 1959, petitioner received the decision of respondent dated March 6, 1959, affirming the decision of the Collector of Customs of Manila;"

(Partial Stipulation of Facts, CTA rec., pp. 30-32.)

On April 8, 1959, petitioner filed its petition for review in this case.

The only issue to be resolved in this case is whether or not the Collector of Customs of Manila legally assessed and collected, pursuant to the provisions of Section 3 of Republic Act No. 1371, from petitioner Standard-Vacuum Oil Company wharfage fees on its importation of bulk fuel oil discharged from the S/S "Kirishima Maru" outside the breakwater and pumped into barges which were towed along the Pasig River to petitioner's wharves in Pandacan, Manila, where the oil was piped to storage tanks.

Petitioner contends that inasmuch as its imported bulk fuel oil was unloaded from the tanker S/S "Kirishima Maru" unto privately owned barges from which the bulk fuel oil was finally unloaded on private wharves without using government wharves, no wharfage fee should be collected thereon. Petitioner predicates its contention on the last proviso of Section 3 of Republic Act No. 1371 which exempts from the payment of wharfage fees imported articles unloaded on private wharves.

On the other hand, respondent asserts that petitioner cannot invoke the exemption proviso of Section 3 of Republic Act No. 1371 inasmuch as the bulk fuel oil imported by petitioner was not unloaded directly on a private wharf, but was discharged and delivered shipside unto barges which in turn unloaded the bulk fuel oil on the wharves owned by petitioner. Respondent argues that in order to be exempted from wharfage fees, the imported articles should be unloaded directly from the importing vessel (in this case, the S/S "Kirishima Maru") to private wharves.

We find no merit in respondent's contention. Section 3 of Republic Act No. 1371 reads:

> "SEC. 3. 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 gross metric ton as a fee for wharfage; Provided, That in the case of logs, or flitches twelve inches square or equivalent cross-sectional area, or over, a charge of sixty centavos per cubic meter shall be collected: <u>Provided, further, That such wharfage fee shall not be levied on articles imported or brought into the Philippines which are unloaded on private wharves</u>." (Underscoring supplied.)

It may be observed that the exemption proviso used the phrase "unloaded on private wharves". The word "directly" is nowhere to be found. A close perusal of all the provisions of Republic Act No. 1371 does not yield an intention of Congress to require imported articles to be directly unloaded from the importing vessel to private wharves in order to be exempted from the payment of wharfage fees.

Moreover, it should be borne in mind that at the time Republic Act No. 1371 was enacted, the waters and channels off most private wharves throughout the archipelago were not deep enough to allow ocean-going vessels to dock alongside said wharves, so much so that when ocean-going vessels unloaded on private wharves, lighters, barges or cascos were availed of to convey the articles from the vessel, which ordinarily was anchored off-shore in deep waters, to the wharves. This situation was undoubtedly well known to the members of Congress who enacted the law. Having been aware of the prevailing condition when the exemption from payment of wharfage fees of imported articles unloaded on private wharves was provided, Congress could have specifically decreed that the exemption was limited only to imported articles directly unloaded on private wharves, if its intention was to so limit the exemption.

It is also urged upon us that the common definition of "wharfage", used in the United States, should not be applied in this jurisdiction for the reason that Republic Act No. 1371 itself defines the same as the "amount assessed against the cargo of a vessel engaged in the foreign trade". Accordingly, for the purpose of imposing the wharfage fees under Section 3 of Republic Act No. 1371, it is immaterial whether or not facilities of a government wharf are used in loading and unloading cargoes inasmuch as said wharfage fees are not charges for the use of such facilities, but are impositions on goods imported into and exported from the Philippines for the purpose of raising the so-called Port Works Fund.

This pretension has previously been passed upon by this Court in an appeal (Superior Gas and Equipment Co. vs. Commissioner of Customs, C.T.A. Case No. 396, June 30, 1958) involving a question similar to the case at bar. In resolving the question as to whether or not the universal and common definition of "wharfage" may be applied, insofar as Section 3 of Republic Act No. 1371 is concerned, we held:

> "According to the explanatory note to House Bill No. 4015, later enacted into Republic Act No. 1371, the purpose of the bill 'is to fix, define, classify, regulate and consolidate all the charges and fees to be collected in the Philippine ports in keeping with present conditions, not only locally but also of the entire shipping world as has been observed in the trips abroad by officials of the Executive Department of the Government and also of the different Congressmen' (p. 2844, Vol. II, No. 69, Congressional Records, House of Representatives). As afore-quoted it was the manifest intent of the legislative body in the enactment of Republic Act No. 1371 to fix, define, classify, regulate and consolidate all the charges and fees to be collected in the Philippine ports in

keeping with the universal practice accepted by the entire shipping world. In other words, by legislative intent, the terms 'wharfage charge' defined in Section 1, of Republic Act No. 1371, as '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' should be given a meaning no different from the universally accepted connotation of the term 'wharfage'". (Superior Gas and Equipment Co. vs. Commissioner of Customs, C.T.A. Case No. 396, June 30, 1958.)

"Wharfage" is commonly and universally defined as:

> The charge for the use of wharf by way of rent or compensation. (Vol. 45, Permanent Ed. Words & Phrases, p. 41, citing: Marine Lighterage Corp. v. Luckenbach S.S. Co., 248 N.Y. 71, 72.)
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> The money paid for landing goods upon, or loading them from a wharf. (Vol. 3, Bouvier's Law Dict. 3d Revision, p. 3450 citing: Sacramento v. The "New World", 4 Cal. 41.)
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> The fee or duty paid for the privilege of using a wharf. (Webster's Unabridged New International Dict. 2nd Ed. p. 2907.)

"Applying the above-quoted universally accepted meaning of the term 'wharfage', it would seem that by 'wharfage charges', as defined in Section 1 of Republic Act No. 1371, our legislators authorized only the levying and collection of fees, dues or charges for the use of the facilities of government wharves or piers. And to stress this legislative intent and avoid the possibility that the same be over-looked or misapplied, our lawmakers expressly exempted from the payment of wharfage dues 'articles imported or brought into the Philippines which are unloaded on private wharves' (Sec. 3, R.A. No. 1371)." (Superior Gas and Equipment Co. vs. Commissioner of Customs, supra.)

The evidence shows that in unloading the 10,359,371 kilos of bulk fuel oil from the S/S "Kirishima Maru" on its Pandacan installations, petitioner used no facilities of a government wharf. As elsewhere discussed, said bulk fuel oil was unloaded on private wharves belonging to petitioner. Said bulk fuel oil comes within the contemplation of the last proviso of Section 3 of Republic Act No. 1371 exempting from the payment of wharfage fees imported articles unloaded on private wharves. Consequently, the sum of ₱20,718.74 paid by petitioner as wharfage fees on 10,359,371 kilos of bulk fuel oil was illegally assessed and collected by the Collector of Customs of Manila.

IN VIEW OF THE FOREGOING, the decision dated March 6, 1959 of the Commissioner of Customs denying petitioner's claim for refund in the sum of ₱20,718.74 is hereby reversed. The Commissioner of Customs is ordered to refund to the Standard-Vacuum Oil Company the amount of ₱20,718.74 erroneously collected as wharfage fees on 10,359.371 kilos of bulk fuel oil imported by petitioner. Without pronouncement as to costs.

SO ORDERED.

Manila, June 13, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

R. M. Umali
ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO is on leave.