REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASSOCIATED SUGAR, INC., BACOLOD-MURCIA MILLING CO., INC., TALISAY-SILAY MILLING CO., INC., MA-AO SUGAR CENTRAL CO., INC., and FINANCING CORPORATION OF THE PHILIPPINES,
Petitioners,

-versus-

C.T.A. CASE No. 1830

Aug. 28/68

COMMISSIONER OF CUSTOMS,
Respondent.
x- - - - - - - - - - - - -x

RESOLUTION

This is in connection with a "Motion to Dismiss" the instant petition for review on the ground of lack of a cause of action.

Petitioners have appealed from the decision of the Commissioner of Customs denying the protests and claims for refund of the total sum pf ₱904,236.38 paid as wharfage dues on various shipments of raw sugar (Annex A, Petition for Review) to the United States which were loaded on ocean going vessels from the private wharves of the Sto. Niño Dock at Bacolod City and the Philippine Bulk Terminal Wharf at Pulupandan, Negros Occidental. The raw sugar was shipped and loaded on board the ocean going vessels without using a single government port facility or wharf.

The petition for review alleges that respondent has no basis in denying the protests filed by petitioners against the collection of wharfage dues for the reason that liability for the payment of said dues under Sections 2801 and 2802 of the Tariff and Customs Code is predicated upon the ownership of the wharf by the Government, and that the wharves used in the shipment and loading of the raw sugar being privately owned, and not by the Government, the collection of the wharfage dues by the Collector of Customs of Iloilo constitutes a deprivation of property without due process of law.

Respondent, in his answer to the petition for review, admitted all the essential allegations of facts therein to the effect that the raw sugar of petitioners was shipped or loaded from a private and not a Government wharf, but interposed the defense that Sections 2801 and 2802 of the Tariff and Customs Code impose wharfage dues upon cargoes of vessels engaged in foreign trade regardless of the ownership of the wharf where the cargoes are loaded or unloaded.

Subsequently, respondent filed on November 25, 1968 a "Motion to Dismiss" the petition for review on the ground that it states no cause of action and argued that the authority of the Collector of Customs to collect wharfage dues on cargoes loaded or unloaded at private wharves was definitely resolved in favor of the Government in the cases finally decided by the Supreme Court (Luzon Stevedoring Corporation vs. Court of Tax Appeals, et al., G. R. No. L-21005, Oct. 22, 1966; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, G.R. No. L-22819, April 27, 1967) and, therefore, the wharfage dues on the raw sugar shipped and loaded from private wharves were lawfully collected.

The veracity of the decisions of the Supreme Court invoked by respondent in support of his motion to dismiss was neither disproved nor denied by petitioners in their opposition. Considering the well-settled ruling of the Supreme Court in the cases cited, and also the latest decision by this Court in the case of Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 1651, promulgated on July 20, 1967, we see no genuine issue tendered in this case; hence, there is a need for a prompt disposition of this case, which can be properly secured upon a motion for summary judgment pursuant to Section 2 of Rule 34 of the Rules of Court, and not upon a motion to dismiss. (Moran, Comments on the Rules of Court, Vol. I, 1963 Ed., pp. 418, 419, 420.) However, since the motion to dismiss filed by respondent is of the nature of a motion for summary judgment, because there is no controversy as to the facts, we will treat it as such. Consequently, on the strength of the decisions of the Supreme Court

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in the cases aforecited, and, in addition thereto, the decision in the case of Victorias Milling Co., Inc. vs. Auditor General (G.R. L-17414, Nov. 30, 1962), we hold that the wharfage dues in question were legally collected pursuant to Sections 2801 and 2802 of the Tariff and Customs Code.

WHEREFORE, finding the herein appeal without merit, the same is hereby dismissed, without pronouncement as to costs.

SO ORDERED.

Quezon City, December 28, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge