REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Nov. 27, 1967

REPUBLIC FLOUR MILLS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1844

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

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated February 13, 1967 affirming *in toto* the decision of the Collector of Customs of Manila in Protests Nos. 1281 to 1292, inclusive, holding petitioner liable for the sum of P7,948.00 as wharfage dues.

The undisputed facts of the case are as follows: Petitioner, Republic Flour Mills, Inc., is a domestic corporation, primarily engaged in the manufacture of wheat flour, and produces pollard (darak) and bran (ipa) in the process of milling. During the period from December, 1963 to July, 1964, inclusive, petitioner exported pollard and/or bran which was loaded from lighters alongside vessels engaged in foreign trade while anchored near the breakwater. The respondent assessed the petitioner by way of wharfage dues on the said exportations in the sum of P7,948.00, which assessment was paid by petitioner under protest.

This case was submitted by the parties for decision solely on the basis of the pleadings and customs records. (P. 27, C.T.A. Rec.)

The issue raised is whether or not the collection of wharfage dues in question is in accordance with law.

Petitioner contends that inasmuch as no government or private wharves or government facilities where utilized in exporting the pollard and/or bran, the collection of wharfage dues is contrary to law. (P. 2, Petition for Review, C.T.A. Rec.)

Respondent, on the other hand, contends that the liability for wharfage dues accrues upon receipt or discharge of the exported goods by a vessel engaged in foreign trade regardless of the non-use of government-owned or private wharves. (P. 20, par. 4, Answer, C.T.A. Rec.)

We find respondent's contention well taken. In Section 2801 of the Tariff and Customs Code, wharfage due is defined as follows:

> "Sec. 2801. Definition. - 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." (Underscoring supplied.)

From the above-cited provision of the law, it is evident that the liability for wharfage dues attaches not by reason of the use of wharves, whether private or government-owned, but because of the receipt or discharge of the cargo by a vessel engaged in foreign trade. In Procter & Gamble Phil. Manufacturing Corporation vs. Commissioner of Customs, G.R. No. L-22819, April 27, 1967, it was held:

> "x x x. But when a vessel anchors at the bay and discharges or unloads its cargo, wharfage dues are forthwith collected. For, as stated, said dues are assessed against the cargo discharged. This is clear from the provision of the law under which the assessment is based on the quantity, weight or measure of the cargo received by the importer and/or discharged by such vessel. And wharfage dues on the cargo are distinct from harbor fees or berthing charges on the vessel, so much so that different sections of law cover them.
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> "Since in the present case, the vessels involved called on port to unload, as they in fact did, some cargo, said cargo, having been unloaded amidst the safety afforded by the port, is chargeable with wharfage dues. Finally, wharfage dues partake of the nature of a tax which is collected by the Government to support its operation in relation to customs affairs." (Underscoring supplied.)

Petitioner, in its memorandum dated September 8, 1967, raised a new issue to the effect that pollard and/or bran is but a waste material which comes from the wheat milled, and therefore, can not be considered as a product of the Philippines, as contemplated by Section 2802 of the Tariff and Customs Code, and this being so, it cannot be subjected to wharfage dues. Having failed to raise this issue in its petition for review, it cannot be permitted to raise it for the first time in its memorandum.

WHEREFORE, the petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, November 27, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge