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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

may 31, 1967

ATLAS CONSOLIDATED MINING &
DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 1782

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 May 16, 1966, affirming in toto the decisions of the Collector of Customs of Cebu in Cebu Protests Nos. 32, 33, 34, 55, 50, 114 and 115, holding petitioner liable for wharfage dues and denying its claim for refund of wharfage dues in the sum of ₱10,553.00.

It appears that petitioner Atlas Consolidated Mining & Development Corporation imported the following merchandise which were unloaded on its private wharf in Sangi, Toledo City:

"A. On December 18, 1965, imported were 6,668 bags Ammonium Nitrates per the S.S. 'EASTERN JUPITER', declared under Import Entry No. 6246-C on which ₱410.00 was collected on wharfage fee evidenced by O.R. No. 632556-J and covered by Protest No. 32;

"B. On July 29, 1965, imported were 185 Pkgs. Mild Steel 1-Beams; Angles; Channels and Flat Bars per the S.S. 'ROSS/COTABATO' declared under Import Entry 3879-C on which ₱243.00 was collected as wharfage fee evidenced by O.R. No.7948520 and covered by Protest No. 33;

"C. On August 6, 1965, imported were 199 Pkgs. Mining Machinery and Equipment Spare Parts per the S.S. 'BENCLEUCH' declared under Import Entry No. 3884-C on which ₱280.00 was collected as wharfage fee evidenced by O.R. No. 7948519 and covered by Protest No. 34;

"D. On January 8, 1966, imported were 4,190.95 long tons Rock Phosphate per the S.S. 'PHIL. RIZAL' declared under Import Entry No. 257-C on which ₱8,516.00 was collected as wharfage fee evidenced by O.R. No. F-7950885 covered by Protest No. 55;

"E. On January 18, 1966, imported were 9,070 Bags Prilled Ammonium Nitrates per the S.S. 'LEONARD' declared under Import Entry No. 497 on which ₱558.00 was collected as wharfage fee evidenced by O.R. No. 7949626 and covered by Protest No. 50;

"F. On February 5, 1966, imported were 6,988 cases Dynamites and Accessories per the S.S. 'SARANGANI BAY' declared under Import Entry No. 658-C on which ₱393.00 was collected as wharfage fee evidenced by O.R. No. 641535-J and covered by Protest No. 114;

"G. On November 14, 1965, imported were 490 Pkgs. unprotected Steel Rails, Fishbelts and Nuts per the S.S. 'ASPHALION' declared under Import Entry No. 568-C on which ₱153.00 was collected as wharfage fee evidenced by O.R. No. 641590-J covered by Protest No. 115." (Decision of the Commissioner of Customs dated May 16, 1966, attached as Annex "A" of the Petition.)

Petitioner protested the assessment and collection of wharfage dues on the seven (7) importations and requested the Collector of Customs for the Port of Cebu to credit and/or refund in its favor the total amount collected. The Collector denied the protests. Upon appeal to the Commissioner of Customs, the latter, in a decision dated May 16, 1966, affirmed the decisions of the Collector. From the decision of respondent Commissioner of Customs, petitioner appealed to this Court.

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

Petitioner contends that it is not liable for wharfage dues on its importations which were unloaded on its private wharf. It is the petitioner's view that wharfage dues are imposed only where importations are unloaded on a Government wharf.

In several cases decided by this Court, it has been consistently held that Sections 2801 and 2802 of the Tariff & Customs Code do not limit liability for the payment of wharfage dues to cargoes loaded or unloaded on Government wharves and that wharfage dues are also imposable on cargoes loaded or discharged on a private wharf. (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; Bislig Bay Lumber Co., Inc. vs. Comm. of Customs, CTA Case No. 1646, Nov. 3, 1965; Phil. Woodcraft & Veneer Corp. v. Pablo C. Mariano, CTA Case No. 1618, Jan. 30, 1967.) In the case of Philippine Iron Mines v. The Commissioner of Customs, supra, this Court held:

> "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 and 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.)
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> "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.)"

The case of Aboitiz Shipping Corporation, et al., vs. City of Cebu, et al (G.R. L-14526, March 31, 1965) relied upon by petitioner in support of its stand is not authoritative on the case at bar. The principal question involved therein is whether or not under its charter, the City of Cebu may provide by ordinance for the collection of wharfage dues from shipping concerns whose vessels dock at the public wharves located in said city but owned by the National Government. In the case at bar, the issue involved is the legality of the collection of wharfage dues on importations unloaded on a private wharf.

Finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, May 31, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge