Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

Jan. 28, 1965

-versus- C.T.A. CASE No. 1454

ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

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

D E C I S I O N

This is an appeal from two decisions of the Acting Commissioner of Customs, dated August 15, 1963, in Customs Cases Nos. 570 and 576, affirming the decisions in Cagayan Protests Nos. 181 and 187, respectively, of the Collector of Customs for the Port of Cagayan de Oro City, dated July 19, 1961, (pp. 2-3; 9-10, Customs Record) denying the protests of the petitioner on the collection of the total amount of ₱379.25, as berthing fees, under Section 2903 of Republic Act No. 1937, better known as the Tariff and Customs Code.

The parties submitted their case for decision on the following "Stipulation of Facts," (pp. 16-17, CTA rec.) to wit:

> "1. Petitioner is a corporation organized and existing under the laws of the Philippines with principal office at 848 Marques de Comillas, Ermita, Manila; respondent is the incumbent Acting Commissioner of Customs.
>
> "2. Sometime in June, 1961, the vessels 'Rita Maersk' and 'Effie Maersk' of

which petitioner is the ship agent in the Philippines docked at the Bugo pier at the Port of Cagayan de Oro for the purpose of loading cargo to be transported by them abroad. The Bugo pier has no cargo sheds and is owned and operated exclusively by the Philippine Packing Corporation.

"3. The Collector of Customs of the Port of Cagayan de Oro levied and assessed on said vessels the sum of ₱379.25 as berthing fees under Section 2903 of the Tariff and Customs Code (Republic Act 1937), which fees were paid by petitioner as follows:

Vessel	Berthing Fee	Official Receipt No.	Date
Rita Maersk	₱189.31	C-2463944	6/30/61
Effie Maersk	₱189.94	C-2463947	7/30/61

"4. Petitioner filed with the Collector of Customs of Cagayan de Oro protests against the imposition and collection of berthing fee on the allegation that these vessels did not moor or berth at any public or government-owned pier, wharf, bulkhead-wharf, river or channel marginal wharf, or make fast to any vessel so berthed or moored, but berthed at the Buto (sic) pier owned by the Philippine Packing Corporation, which protests were docketed as Cagayan Protests Nos. 181 and 187, respectively.

"5. The Collector of Customs of Cagayan de Oro rendered separate decisions denying petitioner's protests which decisions were appealed by petitioner within the time prescribed by law and these appeals were docketed by respondent as Customs Cases Nos. 570 and 576, respectively.

"6. On August 15, 1963, respondent rendered his decision in Customs Cases Nos. 570 and 576, respectively, affirming the decisions of the Collector of Customs of Cagayan de Oro, copies of which were received by petitioner on September 6, 1963."

The only issue raised for our consideration is whether or not the collection of berthing fees by the respondent from the petitioner in the total sum of ₱379.25 is legal, considering that the two foreign vessels, "Rita Maersk" and "Effie Maersk" of which the petitioner is the ship agent in the Philippines, docked at the Bugo pier of the Port of Cagayan de Oro for the purpose of loading cargo, which pier is owned and operated exclusively by the Philippine Packing Corporation.

This question is no longer of first impression as far as this Court is concerned. In Luzon Stevedoring Corporation vs. The Commissioner of Customs, C.T.A. Case No. 1146, dated February 1, 1963, now on appeal in the Supreme Court, G.R. No. 21005, which is analogous to the present case, this Court has held that:

> "Petitioner's protest against the collection of the berthing fees in question is predicated mainly on the theory that the right to collect the same extends only to vessels mooring or berthing in government piers. Where, as in this case, the mooring or berthing takes place in privately owned piers, it is urged upon us that no liability for berthing fees attaches.
>
> "Section 2901 of the Tariff and Customs Code defines berthing charge thus:
>
> > 'Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any port in the Philippines; or for mooring and making fast to a vessel so berthed;

> or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any port of the Philippines. The owner, agent, operator or master of the vessel is liable for this charge.'

"From the afore-quoted codal definition, it is clear that, in this jurisdiction, liability for berthing charge attaches to 'a vessel for mooring or berthing at a pier, wharf x x x at any port in the Philippines x x x.' The liability, therefore, is not conditioned upon the nature of ownership over the pier or wharf. The fact that the mooring or berthing takes place in a privately owned pier or wharf does not exempt the vessel from such liability, for the law makes no distinction between government-owned and privately owned vessels in authorizing the collection of the berthing charge or fee. Ubi lex non distinguit, nec nos distinguere debemus."

The facts of the present case are no different from the facts in the above-quoted case to warrant a departure from our original decision.

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

SO ORDERED.

Quezon City, Philippines, January 28, 1965.

AUGUSTO M. LUCIANO
Acting Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge