REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHWEST AGRICULTURAL
MARKETING CORPORATION,
Petitioner,

-versus-

C. T. A. CASE NO. 2147

COMMISSIONER OF CUSTOMS,
COLLECTOR OF CUSTOMS OF
THE PORT OF DAVAO AND
GUSTAVO A. SUAREZ,
Respondents.

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Dec 27/73

D E C I S I O N

This appeal is interposed by petitioner against the decision of respondent Commissioner of Customs dated April 28, 1970, affirming the decision of the Collector of Customs of the Port of Davao denying petitioner's claim for refund of the amounts of ₱508.00 and ₱2,032.00, or a total of ₱2,540.00, as arrastre charges paid on the exportation of copra.

Petitioner is a domestic corporation with main office at Davao City and is engaged in the business of buying and exporting copra to foreign countries. On its aforesaid exportations, petitioner paid the corresponding arrastre charges.

Respondent, Gustavo A. Suarez, is an arrastre contractor at the Port of Davao under and by virtue of a contract entered into between him and the Bureau of Customs, the latter being represented by respondent Commissioner of Customs. This contract was entered into after an invitation to bid was issued by respondent Commissioner of Customs at the Port of Davao. An "Instruction to Bidders" was also issued by respondent to all bidders, wherein the rate of arrastre charges on imports as well as exports were embodied in said instruction to bidders at the Port of Davao, in accordance with the instruction of the Secretary of Finance. After the aforementioned bidding, the Arrastre Management Contract was finally awarded to the herein private respondent Gustavo A. Suarez on April 22, 1964, the date the said contract was approved by the Secretary of Finance.

For all arrastre services rendered, respondent Gustavo A. Suarez had been collecting the rates provided in the management contract. However, on September 2, 1965, an Administrative Order No. 1-66 was issued revising the rates of arrastre charges at the Ports of San Fernando La Union, Cebu, Davao, Iloilo and Zamboanga (62 O.G. 1759).

On November 21, 1968, petitioner exported 250 tons of copra abroad and paid the corresponding arrastre charges in the sum of ₱508.00 to the Colletor of Customs at the Port of Davao under O.R. No. H-3600870, and on December 6, 1968, it exported 1,016 tons of copra and also paid the corresponding arrastre charges in the amount of ₱2,032.00 to respondent

Gustavo A. Suarez under O.R. No. 6401.

These two payments were formally protested by petitioner on December 13, 1968, and on July 29, 1969, respondent Collector of Customs denied petitioner's protest. This denial was affirmed by respondent Commissioner of Customs in his decision of April 28, 1970.

The only issue to be resolved is whether or not the aforesaid arrastre charges collected at the Port of Davao are legal.

At the outset, it should be stated that in addition to the regular and special customs duties levied by the Tariff and Customs Code, the same Code also imposes other fees, dues and charges, namely: (a) harbor fees, Sections 2701 to 2703; (b) wharfage dues, Sections 2801 to 2802; (c) berthing charges, Sections 2901 to 2908; (d) storage charges, Sections 3001 to 3005; (e) arrastre charges, Sections 3101 to 3107; (f) tonnage dues, Sections 3201 to 3204; and (g) miscellaneous fees and charges for services rendered and documents issued by the Bureau of Customs, Sections 3301 to 3303.

Thus, if a vessel is engaged in foreign trade, charges or fees are levied on its different activities. For coming to the Philippines from a foreign port or for going to a foreign port from the Philippines it pays tonnage dues. For entrance into or departure from a port of entry, harbor fees are collected. Wharfage dues are assessed against the cargo discharged by a vessel engaged in foreign trade. Berthing charges are levied on a vessel coming or mooring within specified places or waters of a port. (Procter & Gamble Philippine Manufacturing Corporation v. Commissioner of Customs, G.R. No. L-22819, April 27, 1967.) As a matter of fact, wharfage dues and berthing fees are collectible regardless of the fact that loading or unloading is made on a private wharf. (Compania General de Tabacos de Filipinas v. Acting Commissioner of Customs, G.R. No. L-24247, May 13, 1968.) For handling, receiving and custody of cargo, whether imported or exported, the owner thereof must have to pay arrastre charge. (Section 3101, Tariff and Customs Code.) And if the cargo is stored in customs premises, cargo shed and warehouses of the government, storage charge is collected. (Section 3001, id.)

A vessel ordinarily enters a harbor and lays anchor or moors in a port to load, unload or both. In doing so, the vessel derives benefit from port facilities provided and maintained by the Government. For this reason, they are made to contribute to the Government through the payment of berthing charges and harbor fees. (Luzon Stevedoring Corporation v. Court of Tax Appeals, G.R. No. L-21006, Oct. 22, 1966.) Similarly, cargoes discharged on a Philippine port from a vessel engaged in foreign trade derive benefit from port facilities provided and maintained by the Government; said cargoes are also made to share the cost of providing and keeping a safe port, in the form of wharfage dues. (Proctor & Gamble Philippine Manufacturing Corporation v. Commissioner of Customs, supra.)

In the same manner, for the convenience and comfort of passengers, and the systematic, safe and methodical receiving, handling and custody of the baggage and cargo, including the use of such plants and facilities connected with, or incidental to, such service, the passengers or cargo owners are also required to pay the Government arrastre charges. Accordingly, the Bureau of Customs has exclusive supervision and control over the receiving, handling, custody and delivery of articles on the wharves and piers at all ports of entry. In the exercise of these functions it is authorized to acquire, take over, operate and superintend such plants and facilities as may be necessary for the receiving, handling, custody and delivery of articles, and the convenience and comfort of passengers and the handling of baggage, as well as to acquire fire protection equipment for use in the piers. The Commissioner of Customs may, however, after public bidding and subject to the approval of the department head, contract with any private party for the service of receiving, handling, custody and delivery of articles and cargoes, whenever in his judgment such services can be carried on by private parties with greater efficiency. (Section 1213, Tariff and Customs Code.)

From this, we cannot but draw the conclusion that arrastre charges are not just for services rendered in the handling, receiving and custody of imported or exported articles or the baggage of passengers. Applying the law stated above as thus worded, it is quite clear that the government's right to collect arrastre charge is also based upon its authority to acquire, take over, operate and superintend such plants and facilities as may be necessary for the receiving, handling and custody of articles; its obligation to provide for the convenience and comfort of passengers and the handling of their baggage; and its duty to acquire fire protection equipment for use in the piers. Why? Because port facilities afford benefits to vessels and passengers and cargo owners; and the maintenance and development of the port, and the purchase, conditioning and replacement of the equipment thereof - all to enable such vessels and their passengers and cargo owners to make use of piers or wharves - are the concern of the government. Petitioner's cargoes enjoy the benefits of such governmental undertaking. Petitioner should thus contribute thereto. (See Luzon Stevedoring Corporation v. Court of Tax Appeals, supra.)

Petitioner, however, avers that there is no legal basis for the collection of arrastre charges on copra exports in the Port of Davao. While it admits that Section 3105 of the Tariff and Customs Code enumerates the arrastre charges to be collected in the said Port, petitioner contends that the same section does not provide for arrastre charges on exports of copra.

At first blush, it would seem that petitioner's theory is plausible. Nonetheless, it must yield to the specific language of the law which is controlling. The statutory definition of arrastre charge as stated in Section 3101 reads thus: "Arrastre charge is the amount which the owner, consignee, or agent of either of article or baggage has to pay for the handling, receiving and custody of the imported or exported article or the baggage of the passengers." While, as stated above, the government's right to collect arrastre charge is also for services rendered in the handling, receiving and custody of cargoes, aside from the benefits afforded to vessels, passengers and cargo owners, the accent of the law is on the words - "imported or exported articles or the baggage of the passengers." Accordingly, whether the cargo is for import or export, the owner thereof should be required to pay arrastre charge. 7

Furthermore, Section 3107 expressly provides that: "The office or agency of the government charged with the supervision, administration and management of all ports in the Philippines, upon approval of the department head, shall fix the rates for the handling, receiving and custody of imported or exported articles or the baggage of passengers in all other ports of entry, taking into account the facilities, machinery and equipment available in such port of entry." And: "The provisions of sections 3102 to 3107, inclusive, to the contrary notwithstanding (schedules of certain charges at the Ports of Manila, Cebu, Zamboanga, Davao and Iloilo, which are not confined to arrastre charges but also for other services rendered and benefits afforded by these ports), the office or agency of the government charged with supervision, administration and management of all ports in the Philippines, upon prior approval of the department head, may increase or decrease the rates fixed therein in any port of the Philippines, by not more than fifty per cent when such increase or decrease is necessary to protect the interest of the government: x x x ". (Section 3108, Tariff and Customs Code.)

Construed together, the above provisions lead to no other conclusion but that the Commissioner of Customs, upon approval of the department head, may determine or establish the arrastre charge on imports, as well as exports, in all ports of the Philippines in cases where no schedule of charges has been provided by law. For if we are to follow the theory of petitioner to its logical conclusion, an absurdity would result and mischievous consequences would follow to the prejudice of the Government. If petitioner and others similarly situated could not be made to contribute to the maintenance and development of the port, and the purchase, conditioning and replacement of the equipment therein - all to enable vessels, passengers and cargo owners to make use of the port facilities - the Government would not be able to render the services and afford the benefits required of it under the law. To deprive, therefore, the Government of its authority to fix the schedule of the arrastre charge for the handling, receiving and custody of imported or exported articles is to render nugatory the legislative will. Indeed, it is frequently stated that the intention of the legislature constitutes the law. (50 Am. Jur. 223.) Section 3101 provide the legal basis for the collection of the arrastre charge for the handling, receiving and custody of imported or exported articles, and in the absence of a schedule of charges provided by the law, Section 3107 confers upon the Commissioner of Customs, upon the approval of the department head, the authority to fix the rates taking into account the facilities, machinery and equipment available in such port of entry.

The conclusion reached is reinforced by the principle stated above that arrastre charges are also for services rendered. Under Section 3302 of the Tariff and Customs Code, it is provided that when "any service rendered by the Bureau of Customs in <u>any matter for which a charge may be collected legally</u>, no fee therefore having been fixed by law, such charge shall be on such amount as may from time to time be fixed by regulation or order of the Commissioner and approved by the department head." (Underscoring supplied.) While it is to be admitted that this section falls under Part 7 of Title VII (Fees and Charges Collectible by the Bureau of Customs) and not under Part 5 (Arrastre Charge), the imperative requirement of the law levying dues and charges for all services rendered by the Bureau of Customs is present. It is hardly necessary to add that the different parts of a statute reflect light upon each other, and statutory provisions are regarded as in _pari materia_ where they are parts of the same act. Hence, a statute should be construed in its entirety, and as a whole. (50 Am. Jur. 352.)

We do not subscribe to petitioner's stand that the determination by respondent Commissioner of Customs of the arrastre rates embodied in the arrastre contract constitutes an exercise of legislative power. Such determination is a mere administrative ascertainment of the rates of the arrastre charges on exported articles, taking into account the facilities, machinery and equipment available in the port of Davao. The general rule consistently followed by courts is to distinguish between the delegation of power to make the law and conferring authority or discretion as to its execution. It has been said: "That true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (Smith, Bell & Co., [Phil] Inc. v. Commissioner of Internal Revenue, CTA Case No. 1733, Oct. 5, 1967, citing Cincinnati, W. & Z. R. Co. v. Clinton County Comrs. 1 Ohio St. 88.)

Assuming that respondent Commissioner has the power to fix the rates of arrastre charges, petitioner, however, contends that the arrastre charges on exported articles at the Port of Davao are excessive, unreasonable and oppressive. It cites the Port of Zamboanga, which is the nearest port to that of Davao. According to petitioner, the arrastre charge for allegedly the same arrastre service as that rendered in Davao was ₱0.15 originally, and now ₱0.28, per metric ton; the arrastre rate for the same service in the Port of Davao is ₱2.00 per metric ton. If the arrastre service rendered in the Port of Davao is to be compensated, petitioner avers that the reasonable compensation should be that which is paid in the Port of Zamboanga for the same kind of work and which is expressly fixed by law in the amount of ₱0.28 per metric ton, and not the rate of ₱2.00 per metric ton fixed by respondent Commissioner himself.

It should be stated that the rate collected by the arrastre contractor is that fixed for "General Cargo", which is the rate for any cargo not specified in Customs Administrative Order No. 1-66, dated September 2, 1965. Since the rate for copra exported is not expressly specified, it falls under "General Cargo" for which the charge is ₱2.00 per metric ton.

Under Section 3105 of the Tariff and Customs Code, at the Port of Davao:

> (a) Import Cargo (including transit import cargo) - x x x
>
> > (1) For receiving imported articles, including transit import cargo, from ship's tackle or ex-lighters, to the pier or wharf and rehandling same from said pier or wharf onto consignee's or agent's transportation during the regular office hours, per ton of 1,000 kilograms or 40 cubic feet - ₱2.00

and for rehandling of the same imported articles ". . . from the pier or wharf to the customs warehouse onto consignee or agent's transportation, during regular office hours, per ton of 1,000 kilograms or 40 cubic feet - ₱1.00." The rates are higher when the service is rendered after office hours or during Sundays or legal holidays.

Accordingly, as far as the arrastre rates at the Port of Davao are concerned, it will be noticed that in fixing the rate of ₱2.00 for handling of articles for exports, classified under general cargo per ton of 40 cubic feet or 1,000 kilos, from consignor's transportation upon the pier or wharf to the slings of the exporting vessels, respondent

Commissioner of Customs merely took the rate fixed by Section 3105 for import general cargo and applied it to export general cargo. In other words, what the Commissioner did was only to use the rate fixed by the law for like services, paid by similarly situated persons availing themselves of like benefits and facilities under like circumstances. Hence, the ₱2.00 determined by respondent Comissioner cannot be considered excessive, unreasonable and oppressive because it is merely the rate specifically fixed by the law for the same services and benefits in the same Port of Davao. The Commissioner of Customs simply imposed and levied that which the law has provided.

Accordingly, the decision of respondent Commissioner of Customs dated April 28, 1970, sustaining the decision of the Collector of Customs of the Port of Davao, denying petitioner's claim for the refund of the amount of ₱2,540.00 as arrastre charges paid on the exportation of copra, is affirmed, at petitioner's cost.

SO ORDERED.

Quezon City, December 27, 1973.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge