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ARNALDO BORRES, LUCAS BORRES,
VIOLETA M. BORRES, ANTONIO V.
MONTELIBANO AND MARIA V. VDA.
DE MONTELIBANO,
Petitioners,

August 5, 1957

- versus -

C.T.A.
CASE NO. 236

THE COMMISSIONER OF CUSTOMS
OF THE PHILIPPINE REPUBLIC,
Respondent.

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D E C I S I O N

This is an appeal interposed by the petitioners Arnaldo, Lucas and Violeta, all surnamed Borres, Antonio V. Montelibano and Maria V. Vda. de Montelibano, questioning on legal grounds the correctness of a decision of the respondent Commissioner of Customs in refusing to refund the sum of ₱3,828.59 representing drawbacks on fuel oil used in the operation of petitioners' fishing boats with the alternative prayer that should this Court decide that petitioners are not engaged in Philippine coastwise trade and therefore not entitled to the refund of the aforesaid amount under Section 21 of the Philippine Tariff Act of 1909, that the respondent be ordered instead to refund to petitioners the annual coastwise license fees in the total amount of ₱1,942.84 paid by them to the Bureau of Customs since 1949 up to the present on all their fishing boats pursuant to the provision of Section 1207 of the Revised Administrative Code and to desist from collecting the said coastwise license fees in the future.

Here are the uncontroverted facts of the case.

The petitioners herein are all residents of Iloilo City and are the owners and operators of eight (8) motor boats of more than five gross tons each, propelled by diesel and bunker fuel oil and used exclusively for deep-sea fishing within Philippine waters more particularly around the Visayan Sea. The vessels in question are duly registered with the Bureau of Customs in the respective names of the petitioners as evidenced by the certificates of Philippine register and ownership, Exhibits J, K, L, M, N, O, P and Q. The petitioners have been paying regularly to the Bureau of Fisheries the annual Commercial Fishing Licenses on their vessels as evidenced by the official receipts, Exhibits E, F, G, H and I as well as the tonnage dues, clearance and entrance fees. The petitioners have likewise been up-to-date since 1949 up to the present in the payment of the annual coastwise license fees to the Bureau of Customs on their respective fishing vessels as required of them under Section 1207 of the Revised Administrative Code, as evidenced by Coastwise Licenses, Exhibits B, C and D, and the certification of payment, Exhibits R, R-1 and R-2, by the Collector of Customs for the Port of Iloilo. As reflected in Exhibits R, R-1 and R-2, the total amount of Coastwise License Fees paid by the petitioners to the Bureau of Customs on their respective fishing boats from 1949 to the present amounts to ₱1,800.20 and not ₱1,942.84 as petitioners' counsel claims because the amounts that have been paid by Cesar Montelibano and Azucena Absolucion are not covered by this appeal.

In a letter, Exhibit S, dated April 13, 1956, the petitioner Antonio V. Montelibano, in his behalf and in behalf of the other petitioners, requested the Collector of Customs for the Port of Iloilo for exemption from payment of coastwise license fees on their respective fishing vessels which request was denied by said official in a letter, Exhibit S-2, dated July 7, 1956, citing as authority, Opinion No. 188, Series of 1956, of the Secretary of Justice wherein it was opined that vessels engaged in fishing and weighing more than five (5) gross tons may be required to secure a license for coastwise trade under Section 1207 of the Revised Administrative Code.

In a letter dated June 23, 1955, (Annex A of the Petition for Review) the petitioners likewise requested the Commissioner of Customs, pursuant to the provision of Section 21 of the Philippine Tariff Act of 1909, for the refund of the sum of ₱3,828.59 representing drawbacks on the diesel and bunker fuel oil consumed in the propulsion of their respective fishing vessels which request was also denied by the Commissioner of Customs in a letter, (Annex B of the Petition for Review) dated December 8, 1955, citing as authority an opinion of the Secretary of Justice dated December 11, 1937 wherein it was opined that fishing does not constitute coastwise trade.

Thus, in this appeal the petitioners seek the refund of the sum of ₱3,828.59 representing drawbacks on the diesel and bunker fuel oil consumed in the propulsion of their respective motor boats should we find that under Section 21 of the Philippine Tariff Act of 1909, said vessels are engaged in the Philippine coastwise trade or in the alternative, should we hold otherwise, that the respondent Commissioner of Customs be ordered to refund to the petitioners the amount of ₱1,800.20 (not ₱1,942.84) representing the total amount of annual coastwise license fees paid by them to the Bureau of Customs on their fishing vessels from 1949 to 1957, inclusive.

This case narrows down to the following issues:

1. Whether or not the fishing boats of petitioners which are admittedly all over five (5) tons gross could be considered as being engaged in the Philippine coastwise trade for the purpose of imposing the required coastwise trade license fee under Section 1207 of the Revised Administrative Code, which provides as follows:

> "SEC. 1207. License for coastwise trade. --All vessels engaging in the coastwise trade except boats of five tons gross or less must be duly licensed annually."

2. Whether or not the boats in question could be considered as being engaged in the Philippine coastwise trade for the purpose of refund of drawbacks on the fuel oil consumed for their propulsion under Sec-

tion 21 of the Philippine Tariff Act of 1909 which reads as follows:

> "Sec. 21. That on all fuel imported into the Philippine Islands which is afterwards used for the propulsion of vessels <u>engaged in trade with foreign countries, or between ports of the United States and the Philippine Islands, or in the Philippine coastwise trade, a refund shall be allowed equal to the duty imposed by law upon such fuel, less one per centum thereof</u>, which shall be paid under such rules and regulations as may be prescribed by the Insular Collector of Customs." (Underscoring supplied.)

The petitioners contend that the respondent Commissioner of Customs has adopted an inconsistent stand in the interpretation and application of the two provisions of law above-quoted. They maintain that the respondent has been rather illogical not to say arbitrary in holding that the fishing boats in question were engaged in the Philippine coastwise trade for the purpose of exacting from the owners thereof the required license fee for coastwise trade under Section 1207 of the Revised Administrative Code, and yet, for the purpose of refund of drawbacks on the fuel oil used for their propulsion under Section 21 of the Philippine Tariff Act of 1909, the respondent has refused to consider and classify them as such. In other words, the theory of petitioners is to the effect that in the interpretation of the phrase "engaged in Philippine coastwise trade" as employed in Section 1207 of the Revised Administrative Code, the respondent Commissioner has adopted a very liberal interpretation to the extent of including fishing vessels of more than five tons gross within its purview, while on the other hand, for the purpose of refund of drawbacks on the fuel oil consumed for their propulsion under Section 21 of the Philippine Tariff Act of 1909, the respondent Commissioner has adopted a very narrow and stringent interpretation of the term "Philippine coastwise trade" as appearing in said law by excluding the very same vessels from the benefit of refund of drawbacks.

On the question of the refund of the coastwise trade license fees in the total amount of ₱1,800.20 which the petitioners paid to the Bureau of Customs on their fishing vessels from 1949 to the present, we can do no better than to quote in full Opinion No. 188, June 22, 1956 of the Secretary of Justice (Exhibit A), to which we fully agree:

> "The Commissioner of Customs
> M a n i l a
>
> Sir:
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> This is with reference to your request for reconsideration of the opinion of this Department, dated December 11, 1937, which holds that 'fishing is not a part of the coastwise trade' and, consequently, that vessels engaged in fishing are not obliged to pay the license fee imposed under Section 1207 of the Revised Administrative Code, which provides:
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> > 'Sec. 1207. License for coastwise trade.- All vessels engaged in the coastwise trade except boats of five tons or less must be duly licensed.'
>
> The above-mentioned opinion states: 'No (Philippine) decisions have been found supporting the statement......that fishing is a part of the general coastwise trade. On the contrary, in the United States there are authorities to the effect that fishing is

not a part of the coastwise trade' (citing the cases of The Active v. U.S., 3 L. ed. 282 and The Eliza, 8 F. Cas. No. 4, 346).

The first statement has lost its validity, while the second is inaccurate.

In 1946, the Supreme Court declared that 'the term 'coastwise and interisland trade' does not have such a narrow meaning as to confine it to the carriage for hire of passengers and/or merchandise on vessels between the ports and places in the Philippines, because <u>while fishing is an industry, if the catch is brought to a port for sale, it is at the same time a trade</u>'. (Abueg et al v. San Diego, 44 O.G. No. 1, p. 80.)

We are not aware of any decision by courts in the United States to support the view that fishing is not a part of the coastwise trade. The cases of <u>The Active</u> and <u>The Eliza</u> are not in point. The question, which was resolved in the negative by these two cases, was whether or not the privilege to fish conferred by the fishing license included the privilege to carry freight or passengers for hire.

From the foregoing, I am of the opinion that vessels engaged in fishing, weighing more than five tons, may be required to secure a license for coastwise trade under Section 1207 of the Administrative Code. This supersedes the opinion mentioned at the outset of this letter.

Respectfully,

(Sgd.) PEDRO TUAZON
Secretary of Justice"

As regards the refund of drawbacks on the fuel oil consumed in the propulsion of petitioners' fishing vessels amounting to ₱3,828.59, one will note that Section 21 of the Philippine Tariff Act of 1909 uses the term "Philippine coastwise trade" in a general sense without any restriction or qualification. Under the aforesaid section of the Philippine Tariff Act of 1909 and Customs Administrative Order No. 157 which took effect on December 12, 1952, implementing the former, in order that a claim for refund of drawbacks on fuel oil could be legitimately granted, the claimant must prove the following: (a) that his vessel is engaged in trade with foreign countries, or (b) between ports of the United States and the Philippine Islands, or (c) is engaged in the Philippine coastwise trade, and (d) that the claimant has filed with the Bureau of Customs the corresponding entry (B.C. Form No. 213) for the quantity of fuel oil to be loaded as well as a separate drawback entry as required under Customs Administrative Order No. 157. The petitioners make no pretense in support of their present claim for refund, that they are engaged in trade with foreign countries or between ports of the United States and the Philippines. The respondent admits, on the other hand, through the testimony of Collector of Customs Pacifico Pacis for the Port of Iloilo, that the petitioners have complied with all the requirements imposed under Customs Administrative Regulation No. 157 as a condition precedent to the allowance of petitioners' claim for refund. (pp. 5, 9 t.s.n.)

The only question at issue, therefore, is whether or not the fishing vessels of petitioners fall under category (c) of Section 21 of the Philippine Tariff Act of 1909, viz. "those engaged in the Philippine coastwise trade" so as to entitle the petitioners to the benefit of refund of drawbacks or duties paid on the fuel oil used for the propulsion of their vessels as the law permits.

As heretofore stated, Section 21 of the Philippine Tariff Act of 1909, uses the term "Philippine coastwise trade" in its generally accepted sense without any restriction or qualification. In Abueg et al. vs. San Diego, December 17, 1946, 44 O.G. No. 1, p. 80, the Supreme Court defined the scope of Philippine coastwise trade thus:

> "The term 'coastwise and interisland trade' does not have such a narrow meaning as to confine it to the carriage for hire of passengers and/or merchandise on vessels between ports and places in the Philippines, because while fishing is an industry, if the catch is brought to a port for sale, it is at the same time a trade." (Underscoring supplied.)

We believe that the petitioners have met all the requirements and are duly entitled to the benefit of refund of drawbacks or duties on the fuel oil used in the propulsion of their respective vessels in the total amount of ₱3,828.59 under Section 21 of the Philippine Tariff Act of 1909. According to the uncontradicted testimony of petitioner Antonio V. Montelibano, "the fish caught by the fishing vessels under our management is brought to the port of Iloilo for sale". (p. 46, t.s.n.)

(Obviously, the underlying purpose of the law in providing for refund of drawbacks or customs duties on imported fuel oil used in the propulsion of vessels of Philippine registry engaged in foreign as well as

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Philippine coastwise trade is to give their owners as well as future operators some sort of an additional incentive or encouragement to engage or to continue engaging in this particular line of trade. From the standpoint of our national economy, let alone the legal questions involved herein which we have heretofore resolved in favor of petitioners, we have not overlooked the fact that by extending the benefit of refund of drawbacks or customs duties to owners and operators of motor-propelled deep-sea fishing boats of more than five (5) tons gross under Section 21 of the Philippine Tariff Act of 1909, we would also be giving additional incentive and encouragement to those already engaged or those who intend to engage in deep-sea fishing which is one of our principal industries in this country. Presently, these operators are already burdened with numerous imposts such as the annual coastwise license fee required under Section 1207 of the Revised Administrative Code; the annual commercial fishing license fee which is required to be paid to the Bureau of Fisheries; a tonnage fee based on the tonnage of fish caught per month; entrance, clearance and inspection fees and income tax (pp. 28, 29 t.s.n.). Congress must have realized that with all these burdens, the deep-sea fishing industry would find it hard to survive to the detriment of our national economy. In the last session of Congress, Section 188 of our Tax Code was amended by Republic Act No. 1856 (approved June 22, 1957) expressly exempting fishermen and fishing operators from percentage tax.)

WHEREFORE, and on the strength of the foregoing consideration, the decision of the respondent Commissioner of Customs of December 8, 1955, denying petitioners' claim for refund of drawbacks or customs 392 duties amounting to ₱3,828.59 on the imported fuel oil used in the propulsion of their fishing vessels is hereby reversed and the respondent Commissioner of Customs is hereby ordered to refund said amount of ₱3,828.59 to the petitioners with legal interest thereon from the date of the institution of this suit. (Section 21 Philippine Tariff Act of 1909; Abueg et al. vs. San Diego, 44 O.G. No. 1, p. 80.)

Petitioners' claim for refund of the amount of ₱1,800.20 representing the total amount of annual coastwise license fees paid by them to the Bureau of Customs on their respective fishing vessels from 1949 to 1957, inclusive, is hereby denied, the imposition and collection of the same having been made in accordance with Section 1207 of the Revised Administrative Code. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, August 5, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge