REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LITONJUA SHIPPING COMPANY, represented by **GRANEXPORT CORPORATION** as sub-agent,
Petitioner,

- versus - **C.T.A. Case No. 3047**

COMMISSIONER OF CUSTOMS,
Respondent.

12/13/93

D E C I S I O N

This is a claim for refund in the amount of P14,000.00 allegedly erroneously collected berthing fees.

Petitioner, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, is represented herein by Granexport Corporation, its sub-agent, also a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

On or about September 28, 1974; November 19, 1974 and December 21, 1974, the foreign vessels MS "AEGEAN NYMPH", MS "ANDROS MARINER" and MS "SUERTE", respectively docked at the private pier of the Iligan Bay Express Corporation (IBEC) located at

Kiwalan, Lanao del Norte. The berthing facilities of IBEC consists of a private pier or wharf constructed, improved, operated and maintained solely by and at the expense of IBEC, a private corporation duly organized under the laws of the Philippines. It is authorized to own, construct, maintain and operate warehouses, loading and unloading facilities and other structures, buildings and works.

On February 14, 1975, the Collector of Customs of the City of Iligan rendered a decision ordering the said foreign vessels which docked at the private pier of the Iligan Bay Express Corporation found in the municipal port of Kiwalan, to pay berthing fees as follows:

MS "AEGEAN NYMPH"	P6,000.00
MS "ANDROS MARINER"	P6,000.00
MS "SUERTE"	P2,000.00

under the Tariff and Customs Code of the Philippines as amended by Presidential Decree No. 34. (Annex A)

The Petitioner, having paid all the assessment under protest through its sub-agent filed its notice of appeal from the decision of the Collector of Customs on March 5, 1975.

On October 28, 1975, Respondent rendered a decision affirming the decision of the Collector of Customs which was received by the Petitioner on October 31, 1979. (Annex B)

Hence, this Petition for Review.

This Petition for Review, according to the Petitioner, is grounded upon the fact that "Sections 2901-2907 of the Tariff and Customs Code as amended by Presidential Decree No. 34 authorized the collection of berthing fees only from national ports and those under the jurisdiction of any national port of the Philippines as distinguished from municipal ports." (Petition for Review, par. 14, p. 4) And since "the Bureau of Public Works confirms that the Port of Kiwalan in Iligan City is a municipal port in a letter of the Assistant Director Carlos Castillo dated December 29, 1972" (Annex F, as admitted by the Respondent, CTA Records, p. 70) and corroborated by the fact that "the Bureau of Public Works does not include the Port of Kiwalan in the list of national ports" (Annex G, as admitted by the Respondent, ibid.) then Petitioner should not be liable for berthing fees and the amount paid should then be refunded.

On June 23, 1989, "On motion of petitioner and without objection on the part of the respondent, this Court resolved to ARCHIVE without prejudice the above-entitled cases to await the decision of the Supreme Court in the case of **Commissioner of Customs vs. Court of Tax Appeals, et al.**, G.R. Nos. L-48886, 48887 and 48888 (CTA Cases Nos. 2785, 2831 & 2832) which are now pending before it and involving the same issues and similar facts as the instant cases." (Resolution, CTA Records p. 96)

On July 21, 1993, a decision was rendered by the Supreme Court in the consolidated cases of **Commissioner of Customs vs. Court of Tax Appeals, et al.**, G.R. Nos. 48886-88 involving the same issues and similar facts in the case at bar, which decision, is favorable to herein Respondent. Hence, this case may now be resolved in accordance with the above-mentioned Supreme Court decision, which ruled, thusly:

> "The governing law classifying ports into national ports and municipal pots is Executive Order No. 72, Series of 1936 (O.G. Vol. 35, No. 6, pp. 65-66). A perusal of said executive order discloses the absence of the port of Kiwalan in the list of national ports mentioned therein.
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> Furthermore, Paragraph 1 of Executive Order No. 72 expressly provides that "the improvement and maintenance of national

ports shall be financed by the Commonwealth Government, and their administration and operation shall be under the direct supervision and control of the Insular Collector of Customs." It is undisputed that the port of Kiwalan was constructed and improved and is operated and maintained solely by and at the expense of the Iligan Express Corporation, and not by the National Government of the Republic or any of its agencies or instrumentalities.

Petitioner insists that Kiwalan is a national port since it is within the jurisdiction of the collection district and territorial limits of the national port of Iligan City. The claim is put forward that "Kiwalan simply cannot claim to be an independent port within a national port without infringing on the territorial jurisdiction of the Port of Iligan", citing in support thereof Customs Administrative Order No. 1-76 dated February 23, 1976. However, a reading of said administrative order shows that it was issued merely for administrative purposes redefining the jurisdictional limits of each Customs Collection District "based on the approved staffing pattern." It has nothing to do with the collection of berthing fees. On this point we quote with approval the following conclusions of respondent Court of Tax Appeals:

> '...we see no significance therefore in the stand of the respondent, as averred as affirmative and special defenses of his answers, that it is not necessary to list Kiwalan as a national port being already an integral part of the national port of the city of Iligan, within its territorial limits, jurisdiction or collection district. Such an assertion, besides being violative of the legal basis for the classification of ports into national or municipal under Executive Order No. 72, series of

1936, as implemented by subsequent Republic Acts and Executive Orders, would make all ports in the Philippines national ports. A port is not classified as a national port just because it is located within the territorial limits or boundaries of a city or municipality where a national port is situated, much less within the jurisdiction or collection district of a national port; otherwise, all ports in the Philippines would be classified as national ports without any municipal ports.

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x x x
x x x

'...Customs Administrative Order No. 1-72 dated September 21, 1971, which is entitled as defining the jurisdictional limits of customs collection districts, divided the entire Philippines into thirty four (34) collection districts. It bears emphasis that no point or locality in the district, or does not fall within the territorial jurisdiction or limits of a collection district, with a principal port of entry which is always a national port properly classified and listed as such by law or executive order. (pp. 47-48, Rollo)

The Bureau of Customs itself in its Customs Memorandum Circular No. 33-73 dated March 29, 1973, does not accord the status of national port to the port of Kiwalan, nor does the list of national ports appended thereto include the port of Kiwalan . Moreover, said memorandum circular indicates the specific law (Public Act, Commonwealth Act, Republic

Act or Executive Order) creating particular national port. Petitioner has not cited or brought to our attention , and we have found none, any law creating Kiwalan Port as a national port or converting it to one.

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation of construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning to confine its terms to those expressly mentioned (Agpalo, Statutory Construction, 2nd Ed., 1990, pp. 160-161, and the cases therein cited). The port of Kiwalan not being included in the list of national ports appended to Customs Memorandum Circular No. 33-73 nor in Executive Order No. 72, it follows inevitably as a matter of law and legal principle that this Court may not properly consider said port as a national port. To do otherwise would be to legislate on our part and to arrogate unto ourselves powers not conferred on us by the Constitution.

Even the Bureau of Customs in its Customs Memorandum Circular No. 47-73 held -

> 'It appearing that Banago Wharf in Bacolod City is not one of those listed as a national port, the said port should be considered a municipal, pursuant to the provisions of Executive Order No. 72 series of 1936. Berthing charges therefore may not be collected from vessels docking thereat. (p. 3, Customs Memorandum Circular No. 47-73)

Plainly, therefore, the port of Kiwalan is not a national port. However, petitioner maintains that regardless of whether or not the port of Kiwalan is a national port, berthing charges may still be collected by the Bureau of Customs from vessels berthing at said port, citing the case of Luzon Stevedoring Corporation vs. Court of Tax Appeals and Commissioner of Customs (18 SCRA 436 [1966]), where it was held:

> 'Adverting to the terms of the law, it is quite apparent that the government's right to collect berthing charges is not planted upon the condition that the pier be publicly owned. The statute employs the word pier - without more.. Nothing there said speaks of private or public pier. Where the law does not exact the nature of ownership as a condition, that condition should not be read into the law. We are not indulge in statutory construction. because the law is clear. Our plain duty is to apply the law as it is written. So applying, we rule that berthing or mooring charges here were properly collected. (at pp. 438-439.)

The above ruling, however, is no longer effective and can not apply in the case at bar for the same was decided before the Tariff and Customs Code was amended by Presidential Decree No. 34 which took effect thirty days from October 27, 1972, the date of promulgation.

Section 2901 of the Tariff and Customs Code prior to its amendment and said section as amended by Presidential Decree No. 34 are hereunder reproduced with the amendments duly highlighted:

> 'Section 2901. Definition - 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 or 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. (old TCC)
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> Section 2901. Definition - Berthing charge is the amount assessed a vessel for mooring or berthing at a pier, wharf, bulkhead wharf, river or channel marginal wharf AT ANY NATIONAL PORT IN THE PHILIPPINES; for mooring or 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 NATIONAL port of the Philippines; Provided, HOWEVER, THAT IN THE LAST INSTANCE, THE CHARGE SHALL BE FIFTY (50%) PER CENT OF RATES PROVIDED FOR IN CASES OF PIERS WITHOUT CARGO SHED IN THE SUCCEEDING SECTIONS.

It will thus be seen that the word "national" before the word "port" is inserted in the amendment. The change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had (Agpalo, supra, p. 76). The insertion of the word "national" before the word "port" is a clear indication of the legislative intent to change the meaning of Section 2901 from what it originally meant, and not a mere surplusage as contended by petitioner, in the sense that the change "merely affirms what customs authorities had been observing long before the law was amended" (p. 18, Petition) It is the duty of this Court to give meaning to the amendment. It is, therefore, our considered opinion that under Section 2901 of the Tariff and

Customs Code, as amended by Presidential Decree No. 34, only vessels berthing at national ports are liable for berthing fees. It is to be stressed that there are differences between national ports and municipal ports, namely: (1) the maintenance of municipal ports is borne by the municipality, whereas that of the national ports is shouldered by the national government; (2) municipal ports are created by executive order, while national ports are usually created by legislation; (3) berthing fees are not collected by the government from vessels berthing at municipal ports, while such berthing fees are collected by the government from vessels moored at national ports. The berthing fees imposed upon vessels berthing at national ports are applied by the national government for the maintenance and repair of said ports. The national government does not maintain municipal ports which are solely maintained by the municipalities or private entities which constructed them, as in the case at bar. Thus, no berthing charges may be collected from vessels moored at municipal ports nor may berthing charges be imposed by a municipal council (Tejam's Commentaries on the Revised Tariff and Customs Code, p. 2486, citing Circular Letter No. 2981 dated September 30, 1958 quoting Op. No. 122, s. of 1958 and Op. No. 373, s. of 1940, Sec. of Justice).

The subject vessels, not having berthed at a national port but at the port of Kiwalan, which was constructed, operated, and continues to be maintained by private respondent Iligan Express Corporation, are not subject to berthing charges, and petitioner should refund the berthing fees paid by private respondent."

WHEREFORE, the claim for refund sought is hereby GRANTED and the Respondent is ORDERED to

REFUND the amount of P14,000.00 erroneously collected as berthing fees.

SO ORDERED.

Quezon City, Metro Manila, December 13, 1993

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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