Republic of the Philippines
COURT OF TAX APPEALS
Manila

June 29, 1964

PHILIPPINE IRON MINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1270

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the respondent Commissioner of Customs denying the claim for refund of the petitioner in the sum of ₱11.00 paid by it as wharfage dues on merchandise unloaded on its private wharf. The facts of the case are stated in the petition for review, viz.:

> "2. That under date of September 14, 1960, the Acting Collector of Customs for Camarines Norte assessed, demanded and collected from the petitioner the amount of ₱6.00 allegedly due as wharfage dues on the latter's importations, covered by Import Entries Nos. 19, 20 and 21, unloaded and discharged at its private wharf or pier at Larap, Panganiban, Camarines Norte. A photostat copy of the Official Receipt issued for the said ₱6.00 is herewith attached as Annex 'A' and made an integral part hereof.
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> "3. That under date of September 22, 1960, the Acting Collector of Customs for Camarines Norte again assessed, demanded and collected from the petitioner the amount of ₱5.00 allegedly due as wharfage dues on the latter's importations, covered by Import Entry No. 24, unloaded and discharged at its private wharf or pier, at Larap, Panganiban, Camarines Norte. A copy of the Official Receipt issued for the said ₱5.00 is herewith attached as Annex 'B' and made an integral part hereof.

"4. That on October 6, 1960, the petitioner filed with the Office of the said Acting Collector of Customs at Jose Panganiban, Camarines Norte, its Protest, dated October 5, 1960, against the assessment and collection of the amount of ₱6.00 mentioned in paragraph two (2) of this Petition. This Protest, a copy of which is herewith attached as Annex 'C' and made an integral part hereof, prays among others, for the cancellation and revocation of the assessment and collection of the said ₱6.00 as wharfage dues and for the refund to it of this amount, the same not being legally and justificably due and, therefore, erroneously and illegally collected mainly on the ground that -

> The accepted concept of 'wharfage charge' is a charge for the use of wharf by way of rent or compensation or the money paid for landing goods upon, or unloading them from, a wharf or the fee or duty paid for the privilege of using a wharf, which wharf is owned by the Government,

a situation which does not apply to the object of the instant Protest as the importations on which the wharfage dues were slapped were unloaded on the <u>private wharf or pier</u> of the petitioner.

"5. That on the same date, October 6, 1960, the petitioner filed with the Office of the said Acting Collector of Customs a separate Protest, dated October 6, 1960, against the assessment and collection of the amount of ₱5.00 mentioned in paragraph three (3) of this Petition. This Protest, a copy of which is herewith attached as Annex 'D' and made an integral part hereof also prays, among others, for the cancellation and revocation of the assessment and collection of the said ₱5.00 as wharfage dues and for the refund to it of this amount, the same not being legally and justifiably due and, therefore, erroneously and illegally collected mainly on the same ground mentioned in the immediately preceding paragraph.

"6. That in an Order, datdd December 1, 1960, received by the undersigned counsel on December 8, 1960, the said Acting Collector of Customs denied the said two protests 'for lack of merit.' A copy of the said Order is herewith attached as Annex 'E' and made an integral part hereof.

"7. That in due time, on December 15, 1960, the petitioner filed its Notice of Appeal with the Office of the Commissioner of Customs. A copy of the Notice of Appeal is herewith attached as Annex 'F' and made an integral part hereof.

"8. That in a decision, dated July 16, 1962, received by the undersigned counsel on August 16, 1962, the respondent Commissioner of Customs denied petitioner's appeal of the Order, Annex 'E', sustaining therefore the assessment and collection of the amounts of ₱6.00 and ₱5.00, or a total of ₱11.00, as wharfage dues. A copy of the Decision is herewith attached as Annex 'G' and made an integral part hereof. (See Petition for Review, pp. 1-3, C.T.A. records.)

The sole issue is whether or not the collection of wharfage dues on goods unloaded on a private wharf is authorized under Sections 2801-2802 of the Tariff and Customs Code.

It is contended that wharfage due is essentially a charge for the use of a wharf by way of rent or compensation, or the money paid for landing goods upon, or unloading them from, a wharf; or the duty paid for the privilege of using a wharf, which wharf is owned by the Government. And since in this case the use of a Government wharf was not availed of, wharfage dues may not be validly collected.

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.)

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. (Proctor & Gamble Philippine Manufacturing Co. v. Com. of Customs, C.T.A. No. 1303, March 14, 1964.)

The decision appealed from being in order, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, June 29, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge