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. 2785

COMMISSIONER OF CUSTOMS,
Respondent.

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

LITONJUA SHIPPING COMPANY represented by Granexport Corporation as sub-agent,
Petitioner,

- versus - C.T.A. CASE NO. 2831

COMMISSIONER OF CUSTOMS,
Respondent.

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

LITONJUA SHIPPING COMPANY represented by Granexport Corporation as sub-agent,
Petitioner,

- versus - C.T.A. CASE NO. 2832

COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

Litonjua Shipping Company, represented by Granexport Corporation as sub-agent, petitioner in these three cases, poses the question before us: whether a vessel engaged in foreign trade, which berths at the privately

117

owned wharf or pier of the Iligan Bay Express Corporation located at the Port of Kiwalan, is liable to the payment of the berthing charge under Section 2901 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, which reads:

> "SEC. 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 national 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 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. The owner, agent, operator or master of the vessel is liable for this charge."

Petitioner, contending that the Government's right to collect berthing charges is delimited to national ports, and the port of Kiwalan is a municipal port separate, distinct and independent of the national port of Iligan, and is not a slip, channel, basin, river or canal under the jurisdiction of the national port of Iligan, protested against the imposition and collection of berthing fees from its vessels by the Collector of Customs of the City of Iligan. The Collector of Customs of the port of Iligan denied the protests of petitioner. Appeal to respondent Commissioner of Customs proved unavailing.

Hence the present recourse.

118

As narrated by the Collector of Customs of the port of Iligan, the following facts as borne out by the records appear undisputed:

C.T.A. CASE NO. 2785

That on or about January 7, 1973, the MS "Chozan Maru" Voy. No. V-106 berthed at the berthing facilities of the Iligan Bay Express Corporation in Kiwalan, Iligan City and was assessed in the amount of ₱2,551.00 in berthing fees paid under Official Receipt No. 1208384 dated April 17, 1973, and protested per notice of protest dated April 18, 1973. (Protest No. 004-73)

That on or about April 27, 1973, the MS "Samuel S" Voy. No. 34 berthed at the berthing facilities of the Iligan Bay Express Corporation in Kiwalan, Iligan City and was assessed in the amount of ₱8,000.00 in berthing fees paid under Official Receipt No. 4847317 dated May 9, 1973, and protested per notice of protest dated May 8, 1973. (Protest No. 005-73)

That on or about May 27, 1973, the MS "Ero" Voy. No. 73 berthed at the berthing facilities of the Iligan Bay Express Corporation in Kiwalan, Iligan City and was assessed in the amount of ₱5,000.00 in berthing fees paid under Official Receipt No. 4847683 dated June 4, 1973 and protested per notice of protest dated June 11, 1973. (Protest No. 007-73), and

That on or about June 2, 1973, the MS "Messinia" Voy. No. 4-73 berthed at the berthing facilities of the Iligan Bay Express Corporation in Kiwalan, Iligan City and was assessed in the amount of ₱5,000.00 in berthing fees paid under Official Receipt No. 4847769 dated June 11, 1973, and protested per notice of protest dated June 11, 1973. (Protest No. 008-73)

C.T.A. CASE NO. 2831

That the MS "PAVEL RYBIN" Voy. No. 1 berthed at Iligan Bay Express Corporation berthing facilities at Kiwalan, Iligan City, on March 22, 1975 to March 26, 1975 and paid berthing fee in the amount of ₱4,000.00 under Official Receipt No. 5623301, dated April 3, 1975 (Protest No. 05-75).

That the MS "CALEDONIA" Voy. No. 43-B berthed Iligan Bay Express Corporation berthing facilities at Kiwalan, Iligan City on April 26, 1975 to May 3, 1975 and paid berthing fee in the amount of ₱7,000.00 under Official Receipt No. 0339740 dated May 7, 1975 (Protest No. 06-75).

<u>C.T.A. CASE NO. 2832</u>

That the M/S "LEONIDAS D.", Voy. No. 42 berthed at the Iligan Bay Express Corporation berthing facilities at Kiwalan, Iligan City, on May 25 to June 3, 1975, and paid berthing fee in the amount of ₱9,000.00 under Off. Rec. No. 0340132 dated June 7, 1975.

Inasmuch as these three appeals involve the same parties and raise the same questions, they are consolidated with only one decision being rendered.

In contesting the legality of the imposition and collection of berthing fees, petitioner argues that Kiwalan, where the aforementioned vessels moored and docked, is a municipal port and, therefore, berthing charges should not be collected thereat in accordance with the provisions of Section 2901 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, <u>supra</u>. Respondent, on the other hand, failed to indicate clearly and unequivocally his position whether Kiwalan is a municipal port or a national port in the Philippines. However, in brushing aside the stand of petitioner that the port of Kiwalan is a municipal port, respondent avers that under Customs Administrative Order No. 1-72 dated September 21, 1971, Kiwalan is within the jurisdiction and territorial limits of the port of Iligan, the prin-

140

cipal port of entry. And the Collector of Customs of the port of Iligan has the power and authority to collect berthing fees from vessels berthed or moored within the jurisdiction and territorial limits of the port of Iligan. (Pars. 4 and 5, Special and Affirmative Defenses of respondent's Answer, CTA Case No. 2785.)

While respondent also alleges as affirmative and special defenses in his answers in CTA Cases Nos. 2831 and 2832 that:

9. Customs Administrative Order No. 1-72 dated September 21, 1971, clearly defines the collection district of Iligan as comprising the provinces of Lanao del Norte and Lanao del Sur, and all the islands wihin the jurisdiction of the said provinces and Kiwalan being a barrio of Iligan City, it is and within its jurisdiction. Moreover, it is clearly stated thereon that the port of Iligan is the principal port of entry;

10. Kiwalan, being a barrio of Iligan City, is within the collection district of the port of Iligan City, hence, the imposition of berthing fees on vessels berthing or mooring thereat, as in this case, is proper and legal;

11. Customs Administrative Order No. 1-72 dated September 21, 1971, provides that the Collector of Customs of Iligan City, the principal port of entry of the district has the power to collect berthing fees is co-extensive and co-terminous with the territorial and harbor limits of the port of Iligan;

171

12. The fact that Kiwalan is not listed as a national port does not militate against its being already an integral part of the national port of Iligan City. Iligan City is a national port of entry of the district and Kiwalan is part thereof, intact and unseparable. Thus, to list Kiwalan as a national port is not necessary;

Respondent, after petitioner has introduced its evidence and rested its case (or cases), merely moved during the hearing on February 10, 1978, without offering proof as to the truth of his allegations, that he is submitting the case (cases) for decision on the basis of the records. And the records, which consist mainly of the evidence presented by petitioner show that:

1. The berthing facilities of Iligan Bay Express Corporation at Kiwalan were constructd, improved, operated and maintained solely by and at the expense of the Iligan Bay Express Corporation, a private corporation duly organized under the laws of the Philippines and authorized to own, construct, maintain and operate warehouses, loading and uhloading facilities, piers, docks, buildings and works.

2. The berthing charges involved in these cases were collected by the Collector of Customs of the port of Iligan in Iligan City on vessels of petitioner berthed or moored at the berthing facilities of Iligan Bay Express Corporation at Kiwalan.

3. During the time material to these cases, the district of Iligan comprised the provinces of Lanao del Norte and Lanao del Sur, and all the islands within the jurisdiction of the said provinces, in which Iligan City is the principal port of entry as shown by a copy of Customs Administrative Order No. 1-72 dated September 21, 1971 of respondent Commissioner of Customs defining the jurisdictional limits of Customs collection districts.

4. By a letter of confirmation dated January 19, 1973 of Acting Deputy Commissioner of Customs Pedro C. Mendoza, Jr., to petitioner's counsel, liability for berthing fees under Sections 2901 to 2907 of the Tariff and Customs Code of the Philippines, as amended by Presidential Decree No. 34, applies only to vessels berthing or docking at a pier, wharf, bulk-head-wharf, river or channel marginal wharf at any national port in the Philippines or to any slip, channel, basin, river or canal under and <u>not</u> to those docking or berthing at municipal ports of the Philippines, <u>including private piers or wharves found in said municipal ports</u>.

5. In Customs Memorandum Circular No. 33-73 dated March 29, 1973 of respondent Commissioner of Customs appending the List of National Ports classified through Acts of Congress and Executive Orders as of April, 1972, the port of Kiwalan is not one of those classified and listed as national port.

6. In Customs Memorandum Circular No. 47-73 dated May 22, 1973 of Acting Commissioner of Customs Pedro C.

Mendoza, Jr. appending, for information and guidance of all concerned, a letter of respondent Commissioner of Customs dated May 4, 1973 to the Collector of Customs of Iloilo, respondent Commissioner of Customs ruled that by virtue of the amendment of Section 2901 et seq. of the Tariff and Customs Code by Presidential Decree No. 34, it is now very clear that berthing charges shall be collected only in national ports; consequently, it appearing that Banago wharf in Bacolod City is not one of those listed as a national port, the said port should be considered as municipal, pursuant to the provisions of Executive Order No. 72, series of 1936. Berthing charges therefore may not be collected from vessels docking thereat.

7. In a letter of the Bureau of Public Works dated December 29, 1972 to petitioner's counsel, confirming the information given by the Division of Ports and Harbors, Port Kiwalan in Iligan City is a municipal port. Attached thereto is the list of national ports as classified through Acts of Congress and Executive Orders as of April 1972, in which the port of Kiwalan is not one of those listed as national port, and the list of municipal ports with existing facilities as of October 1972, in which Kiwalan in Iligan City is listed as a municipal port.

Since respondent did not rebut or controvert the evidence of petitioner introduced to prove its allegations, but instead submitted these cases for judgment on the basis of the records which consist principally of petitioner's evidence, respondent must be understood to admit the truth of all the material and relevant allegations of petitioner, and to rest his motion for judgment on these allegations as proven by the evidence.

Nonetheless, whatever the dialectics employed, respondent's contention is, in substance, that Kiwalan is in effect and for Customs administrative purposes a "national port in the Philippines", since it is within the jurisdiction of the collection district and territorial limits of the national port of Iligan City, then the principal port of entry. While Kiwalan is not listed as a national port in the Philippines, that is not necessary being already an integral part of the territorial limits and collection district of the national port of Iligan City.

The parties do not therefore quarrel with the proposition that liability for berthing charges under Sections 2901 to 2907 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, applies only to vessels that berth or dock at a pier, wharf, bulk-head-wharf, river or channel marginal wharf at <u>any national port</u> or which come or moor within any slip, channel, basin, river or canal under the jurisdiction <u>of any national port</u>. Referring to the terms of Section 2901 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, <u>supra</u>, it is quite clear that the Government's right to collect berthing charges is grounded upon the condition that the vessel be moored or berthed at a pier or wharf, or made fast to a vessel so berthed, at a national port; or the slip, channel, basin, river or canal where the vessel "came" or moored within be under the jurisdiction of any national port of the Philippines.

Given the fact that Kiwalan is within the jurisdiction, collection district or territorial limits of the port of Iligan, which is classified as national port of entry through Republic Act 3615 (1963) and Executive Order No. 254, series of 1940 (Annex "F" Request for Admission) - does that make or convert it (Kiwalan) into a national port, as respondent contends, so that the imposition and collection of berthing fees on vessels berthing or mooring thereat, as in these cases, is proper and legal under the provisions of Sections 2901 - 2907 of the Tariff and Customs Code?

This brings us to the legal basis for the classification of ports into national ports or into municipal ports. The present law governing the assessment and collection of tariff or customs duties and fees, including berthing charges, Republic Act No. 1937, as amended, otherwise known as the Tariff and Customs Code of the Philippines, does not contain a provision on the legal basis for the classification of ports into national or municipal, notwithstanding that under Section 2901 thereof, as amended by Presidential Decree No. 34, the Government's right to collect berthing charges is planted upon the condition that the pier or wharf, or slip, channel, basin, river or canal be at or under the jurisdiction of <u>any national port of the Philippines</u>. Nevertheless, Executive Order No. 72, series of 1936, entitled "Establishing a Classification of Ports", contains the following classification:

> "1. National ports. - National ports shall comprise all ports primarily of importance to foreign, interisland, and interprovincial commerce. Other ports which, on account of their geographical locations, are necessary for enforcing customs regulations or for national defense, may also be classified as national ports. x x x" (Sec. 1, E.O. No. 72, series of 1936).

> "3. Municipal ports. - Municipal ports shall comprise all other ports not classified as national ports. x x x" (Sec. 3, supra).

And under Section 2 thereof, the executive order classifies and lists particular ports as national ports. It thus results that a port is a national port if it is classified and listed as such. All other ports not classified and listed as national ports are municipal ports in accordance with the explicit provision of Section 3 of Executive Order No. 72, series of 1936, <u>supra</u>. As correctly pointed out by petitioner, this interpretation is supported by respondent's own Customs Memorandum Circular No. 47-73 which states:

> "It appearing that Banago Wharf in Bacolod City is not one of those <u>listed</u> as a nat-

177

ional port, the said port should be considered as municipal, pursuant to the provisions of Executive Order No. 72, series of 1936. x x x" (Annex "D" of Request for Admission).

Of course, the explicit and specific designation and listing of particular ports as national ports originally enumerated in Section 2 of Executive Order No. 72, series of 1936, has been increased through the years by express classification and designation into national ports of those which were previously categorized as municipal ports, in accordance with the rule contained in the said Executive Order that "municipal ports shall comprise all other ports not classified as national ports." (Section 3, supra) And the classification and designation is done, it is to be stressed, through legislation, by the passage and approval of Republic Acts, or through amendatory Executive Orders. At all events, it was never done by inferences or implications.

For the information and guidance of all concerned, a complete list of all national ports classified through Acts of Congress and Executive Orders is published in Customs Memorandum Circular No. 33-73 dated March 29, 1973 of respondent Commissioner of Customs. (Annex "C", Request for Admission.) And it is to be emphasized that the port of Kiwalan is not one of those classified and listed thereon as a national port.

The net result, therefore, is that the port of Kiwalan has never been classified and designated as a national port by any law, executive order or decree. And if we adhere, as we should, to the rule clearly and expressly enunciated in Section 3 of Executive Order No. 72, series of 1936, which has been reenacted in subsequent Acts of Congress and Executive Orders, that "municipal ports shall comprise all other ports not classified as national ports", it must logically and necessarily follow that Kiwalan is a municipal port. The terms of Executive Order No. 72, series of 1936, as subsequently executed and implemented by legislative enactments and other executive orders, provide the safest guide as to the legal basis for the classification of ports into national and municipal, to which obedience should be due. The view may be expressed that the implementation, or reenactment, of Congress of the basis for the classification of ports laid down in Executive Order No. 72 without any changes is tantamount to legislative approval or confirmation of such basis for classification.

Anent this, the Bureau of Public Works, in the letter dated December 29, 1972 of the Assistant Director to petitioner's counsel, classifies and lists the port of Kiwalan as a municipal port. (Annex "E", Request for Admission.) The classification commands much respect and weight since it proceeds from an office of the Government called upon to execute and implement laws governing the development and expansion of the port and harbor facilities of the country.

In the light of the above, we see no significance therefore in the stand of 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.

The Tariff and Customs Code, under Section 701 thereof, provides in this connection that:

> SEC. 701. Collection Districts and Ports of Entry thereof.- For administrative purposes, the Philippines shall be divided into as many collection districts as there are at present existing, the respective limits of which may be changed from time to time by the Commissioner of the Bureau of Customs, upon the approval

> of the department head. The principal ports of entry for the respective collection districts shall be Manila, Sual, Tabaco, Cebu, Pulupandan, Sia-in, Iloilo, Davao, Legaspi, Zamboanga, Jolo, Aparri, Jose Panganiban, Cagayan, Tacloban, San Fernando, Hinigaran, Dumaguete City, Batangas, San Jose, Maasin, Masao, Iligan City, Surigao, Ozamis City, Cabugao, Virac, Batalay, Supang, Gaang, Dagupan City, Bislig, Catbalogan, Dadiangas, Mariveles, and Masbate. (As amended by Rep. Act Nos. 2378, 3615, 3643, 3757, 4432, 4559, 4577, 4579, 4746, 4768, 4804, 4811, 5425, 5490 and 5703.)

Thus, for administrative purposes, as correctly stated by petitioner, the entire Philippines has been divided into collection districts, with their respective principal ports of entry, for the purpose of delineating the territorial jurisdiction of each Collector of Customs in order to prevent overlapping of functions and authority in the collection of customs duties and administration of customs laws. 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 Philippines is not covered by a collection 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.

The District of Iligan is defined in Customs Administrative Order No. 1-72 dated September 21, 1971 of respondent as comprising the provinces of Lanao del Norte and Lanao del Sur, and all the islands within the jurisdiction of the said provinces. However, under Customs Administrative Order No. 1076 dated February 23, 1976 of respondent (Annex "1" of Petitioner's Memorandum), superseding Customs Administrative Order No. 1-72, the jurisdictional limits of the Customs Collection Districtss have been re-defined, reducing the collection districts of the entire Philippines to only twelve (12). Iligan was removed as an independent collection district and made to fall within the territorial jurisdiction and collection district of Cagayan de Oro. Again, it is to be stressed that no point or locality in the Philippines is not covered by a collection district, or does not fall within the territorial jurisdiction of a collection district, with a corresponding principal port of entry which is always a national port properly classified and listed as such by legislation or through executive order.

Since all ports in the Philippines, for administrative purposes and enforcement of tariff and customs laws, must necessarily be placed or come within the territorial limits and jurisdiction of a collection district, with its respective principal port of entry which is always a national port properly and legally classified and listed as such by executive order or by legislation, to say therefore that Kiwalan is a national port simply be-

137

cause it is within the territorial limits or jurisdiction of the collection district of the national port of Iligan, now Cagayan de Oro, is to incur in self-contradiction. For if we follow the theory of respondent to its logical conclusion, all ports in the Philippines would ipso facto become national ports, without any municipal ports, contrary to the rule expressed in Executive Order No. 72, series of 1936, and succeeding legislation.

As has already been discussed and ruled above, a port is a national port of the Philippines if it is explicitly and properly classified and listed as such by Section 2 of Executive Order No. 72, series of 1936, or by subsequent Acts of Congress or executive orders; otherwise, it is a municipal port in accordance with the clear provisions of Section 3 of said Executive Order No. 72.

The port of Kiwalan, not having been classified and designated as a national port of the Philippines by law, executive order or decree, it is therefore a municipal port.

Since liability for berthing charges under Sections 2901 to 2907 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, applies only to vessels berthed or docked at a pier, wharf, bulk-head-wharf, river or channel marginal wharf at any national port in the Philippines; or moored within any slip, channel, basin, river or canal within the jurisdiction of any national port of the Philippines; and not to those berthing or mooring at municipal ports; and the port of Kiwalan, where petitioner's vessels berthed, is a municipal port and not a national port of the Philippines; the Bureau of Customs has no right and authority to collect berthing charges from the vessels of petitioner docked in the private pier of the Iligan Bay Express Corporation located at the port of Kiwalan. In the end, we therefore find the protests of petitioner against the assessment and collection of berthing charges from the following vessels, with the corresponding amount collected, meritorious:

Name of Vessel	Berthing Fees Paid
MS Chozan Maru	₱ 2,551.00
MS Samuel S	8,000.00
MS Ero	5,000.00
MS Messinia	5,000.00
MS Pavel Rybin	4,000.00
MS Caledonia	7,000.00
MS Leonidas	9,000.00
TOTAL	₱40,551.00

Accordingly, petitioner Litonjua Shipping Company, represented by Granexport Corporation as sub-agent, is entitled to the refund of the sum of ₱40,551.00 representing erroneously collected berthing charges.

WHEREFORE, the decisions appealed from are hereby reversed and respondent Commissioner of Customs is ordered to refund to petitioner the amount of ₱40,551.00. No costs.

SO ORDERED.

Quezon City, July 28, 1968.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

134