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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES) INC.,
Petitioner ,

- versus - C.T.A. CASE No. 2564

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

3/31/75

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D E C I S I O N

This is an appeal from the decision of respondent dated September 24, 1973, affirming the order of the Collector of Customs of Manila dated August 20, 1973, denying petitioner's claim for refund in the amount of ₱4,379.61 paid by it on December 17, 1971, as checking charges, pursuant to Customs Memorandum Order No. 55-69.

It appears that on December 21, 1971, the vessel S/S "San Carlos" with Registry No. 2261 arrived at the Port of Manila with a cargo of 4,866.237 metric tons of lubricating oil consigned to herein petitioner and declared in application for Shipside Permit dated December 20, 1971. Before the arrival of the S.S. "San Carlos", the Collector of Customs of Manila levied and collected in advance the amount of ₱4,379.61 as checking charges on said cargo pursuant to Customs Memorandum Order No. 55-69, dated October 3, 1969, which was paid under Official Receipt No. 81384 on December 17, 1971, and liquidated under Voucher No. 81384 on the same date.

Petitioner, believing that it is not liable for checking charges, filed with the Collector of Customs of Manila a protest (Manila Protest No. 8351) against the imposition and collection of said checking charges, but the same was denied by the Collector of Customs in his order of August 20, 1973 and received by petitioner on August 24, 1973. This order of the Collector of Customs was appealed by petitioner to respondent Commissioner of Customs. On October 1, 1973, petitioner received respondent's decision dated September 24, 1973, affirming the order of the Collector of Customs. Hence, this appeal.

The only issue to be resolved is whether or not the imposition and/or collection of checking charges by respondent on the lubricating oil consigned to the petitioner in the amount of ₱4,379.61 is legal.

The collection of checking charges on lubricating oil from petitioner was made pursuant to Customs Memorandum Order No. 65-69 dated October 3, 1969, which states:

> "(6) At the Cash Division, the Billing Clerk together with the Liquidator assigned thereat from the Management Overseer Group and the representatives of the arrastre contractors will compute the amount of checking charges and prepare the arrastre bills. The special permit shall be validated upon payment in advance of the corresponding checking charges as computed, in cash or in certified check by the owner, importer, consignee and/or broker of the cargo subject to refund if it is later verified that no actual checking services has been rendered. All payments in advance shall be received by the teller designated for such purpose by the Chief, Cash Division, and Official Receipts shall be issued for such payment to be credited to the Portworks Fund. A copy of the Official Receipt and a copy of the Arrastre Bill shall be forwarded by the Cash Division to the Internal Audit

Service after payment. HENCEFORTH NO PAYMENT TO THE ARRASTRE CONTRACTORS OF CHECKING CHARGES FOR CHECKING SERVICES AT THE BAY SHALL BE ALLOWED OR AUTHORIZED." (Exh. "4" pp. 33-35, CTA rec.)

The collection of checking charges as embodied in the aforesaid Customs Memorandum Order No. 55-69 is authorized by Section 3302 of the Tariff and Customs Code, which provides as follows:

"Sec. 3302. Other charges. - When any article is sold or any services rendered by the Bureau of Customs in any matter for which a charge may be collected legally, no fee therefor 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; and the payment of such charge may be made by affixing and cancelling the documentary customs stamp." (Underlining supplied.)

It is apparent from the above quoted provisions of the law that respondent can fix by regulation or order the amount of checking charges when the amount is not fixed by law. The contention of petitioner to the effect that there exists no statutory authority as a basis for the collection and imposition of checking charges on its lubricating oil is without merit.

Petitioner further contends that the amount paid as checking charges should be refunded to it in accordance with paragraph 6 of Customs Administrative Order No. 55-69, for the reason that there was no actual checking service rendered by the Bureau of Customs, or its arrastre contractor, on the cargo of lubricating oil consigned to it. We find petitioner's contention well taken.

It was established during the hearing that before the vessel S.S. "San Carlos" arrived at the Port of Manila, the Bureau of Customs was notified by the ship agent of such arrival. Petitioner then prepared an application for shipside permit supported by a Pro-Forma Invoice and the same was given to the Luzon Brokerage for necessary processing. Apparently, the preparation of the ship-side permit is necessary before the arrival of the said vessel because of the condition provided in paragraph 6 of the Customs Memorandum Order No. 55-69 wherein the payment in advance of the checking charges is required before a shipside permit is issued.

After the vessel had arrived, three cargo inspectors headed by Mr. Conrado Mendoza of the E.R. Sanderson and Company hired by the herein petitioner boarded the vessel for the purpose of checking the quantity of the cargo and to determine if the lubricating oil was contaminated with foreign elements while on board the vessel. Inspectors of R.S. Del Pan Industries hired by Far East Molasses also boarded the vessel for the same purpose but with a view to protect the vessels owner should a claim be filed by a consignee. The said surveyors watched the opening of the tank hatches by the vessel's crew, after which the surveyors measured the lubricating oil before the same was pumped to the lighters and barges, and again it was measured when already at the lighters and barges. During all the time that petitioner's surveyors were performing the job measuring the said lubricating oil, none of the personnel of the Bureau of Customs present at the aforesaid vessel ever participated.

The lubricating oil was then transported to the Pandacan Terminal owned by petitioner, and the same was pumped from the said lighters and barges to the storage tanks. At the Pandacan Terminal, none of the personnel of the Bureau of Customs was present during the time that the said oil was pumped as well as when the same was measured at the said storage tanks.

We are convinced that no actual checking services were rendered by the Bureau of Customs personnel from the time the lubricating oil loaded on the vessel S.S. "San Carlos" arrived at the Port of Manila up to the time the said lubricating oil was pumped and measured at the storage tanks of petitioner located at Pandacan.

It is worth noting, that the only thing that the personnel of the Bureau of Customs present at the vessel S.S. "San Carlos" did was to issue a "Boat Note" requiring the surveyors to take note of the quantity loaded on the barge and lighters before the lubricating oil was allowed to be transported to petitioner's terminal at Pandacan. In other words, respondent adopted the findings of petitioner's surveyors. In the case of Caltex Philippines Inc., et al. vs. Delgado Bros., Inc.

et al., 96 Phil. 368, it was held:

> Merely reiterating the reasons given by the trial court in deciding adversely against the defendants, we need only point out that, although under paragraph 23 of the "Arrastre Contract" in favor of Delgado Brothers, Inc., there shall be collected on all import cargo falling under Customs Administrative Order No. 137 (old series), as amended by Customs Administrative Order No. 113, and other subsequent Customs Administrative Orders relative to ship-side delivery, charges in the amount of P0.68, under paragraph 17 the contractor is entitled to make charges to the public "for receiving, handling, and custody and delivery of merchandise and the services rendered in conjuction therewith," said paragraph specifying the schedule of arrastre charges on imported cargo, lighter deliveries, export cargo, transit cargo, heavy cargo and shipside charges. In view of the finding of the court a quo that Delgado Brothers, Inc. "did not receive, or handle, or take into their custody, and later deliver to the plaintiffs the cargos of bulk petroleum products in question, and no service was rendered by the defendants in connection therewith," no checking charges are due to said contractor under paragraph 17 of the "Arrastre Contract". Paragraphs 23 and 17 must of course be taken in conjuction with each other.

In line with the decision of the Supreme Court in the case cited above, we find petitioner not liable for the checking charges in question as no checking services were performed by the Bureau of Customs or by the arrastre contractor. Accordingly, the checking charges paid by petitioner are refundable.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby reversed. Respondent is hereby ordered to refund to the herein petitioner the amount of ₱4,379.61 paid by it on December 17, 1971, as checking charges. Without pronouncement as to costs.

SO ORDERED.

Quezon City, March 31, 1975.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge