

United States Vs. Goldenberg

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Court : US Supreme Court

Decided On : Oct-26-1897

Appeal No. : 168 U.S. 95

Appellant : United States

Respondent : Goldenberg

Judgement :

United States v. Goldenberg - 168 U.S. 95 (1897)

U.S. Supreme Court United States v. Goldenberg, 168 U.S. 95 (1897)

United States v. Goldenberg

No. 85

Argued and submitted October 14, 1897

Decided October 26, 1897

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CERTIFICATE FROM THE CIRCUIT COURT

OF APPEALS FOR THE SECOND CIRCUIT

SYLLABUS

Where imported foreign goods are entered at a custom house for consumption, the payment by the importer of the full amount of duties ascertained to be due upon the liquidation of the entry of the merchandise, as well as the giving notice of dissatisfaction or protest, within ten days after the liquidation of such duties, is not necessary in order to enable a protesting importer to have the exaction and classification reviewed by a board of general appraisers and by the courts, under the provision in section 14 of the Act of June 10, 1890, c. 407, 26 Stat. 131, 137,

"That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall within ten days after, 'but not before,' such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment,

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the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon."

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used, and the cases are few and exceptional in which the letter of the statute is not deemed controlling, and only arise when there are cogent reasons for believing that the letter does not fully justify and accurately disclose the intent.

The fourteenth section of the Act of Congress approved June 10, 1890, c. 407, 26 Stat. 131 137, is as follows:

"That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage) shall be final and conclusive against all persons interested therein unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees charges, and exactions other than duties shall, within ten days after 'but not before' such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges, and exactions, if dissatisfied with such decision give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment, the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of three general appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers who may be designated by the Secretary of the Treasury for such duty at that port, or at any other port, which board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such who shall liquidate the entry accordingly,

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except in cases where an application shall be filed in the circuit court within the time and in the manner provided for in section fifteen of this act."

Upon this section, after stating the facts of this case showing its pertinency, the Circuit Court of Appeals of the Second Circuit has certified to us the following question:

"Was the payment of the full amount of the duties ascertained to be due upon the liquidation of the entry of the merchandise required to be made by the importers, as well as the giving notice of dissatisfaction or protest, within ten days after the liquidation of such duties, where the goods, as in the present case, were entered for consumption, in order to enable the protesting importers to have the exaction and classification reviewed by the board of general appraisers and by the courts? "

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MR. JUSTICE BREWER, after stating the facts in the foregoing language, delivered the opinion of the Court.

The question must be answered in the negative. Such answer is demanded by the obvious and natural import of the language, giving to it the ordinary grammatical construction. This is practically conceded by counsel for the government, for he says in his brief: "A literal interpretation of the statute favors the importers," and, again, referring to the opinion of district judge Townsend, he adds: "Strictly speaking, Judge Townsend is correct in saying that this statute contains no ambiguity." There are two separate clauses, each prescribing a condition. One is, "shall within ten days after *but not before*' . . . *give notice,*" etc., and the other, "*shall pay the full amount of the duties,*" etc. In the latter, no time is mentioned, and, the clauses being independent, there is no grammatical warrant for taking the specification of time from the one and incorporating it in the other.

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language

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that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for

contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute. In the case at bar, the omission to make specific provision for the time of payment does not offend the moral sense. *Holy Trinity Church v. United States*, [143 U. S. 457](#) . It involves no injustice, oppression, or absurdity. [United States v. Kirby](#), 7 Wall. 482; *McKee v. United States*, [164 U. S. 287](#) . There is no overwhelming necessity for applying in the one clause the same limitation of time which is provided in the other. *Non constat* but that Congress believed it had sufficiently provided for payment by other legislation in reference to retaining possession until payment, or security therefor, or that it failed to appreciate the advantages which counsel insists with inure to the importer in case payment does not equally with protest follow within ten days from the action of the collector, or that, appreciating fully those advantages, it was not unwilling that he should enjoy them. Certainly there is nothing which imperatively requires the court to supply an omission in the statute or to hold that Congress must have intended to do that which it has failed to do. Under these circumstances, all that can be determined is that Congress has not specifically provided that payment shall be made within ten days, as one of the conditions of challenging the action of the collector, and hence there is no warrant for enforcing any such condition.

An answer in the negative must therefore be certified to the circuit court of appeals.

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