Five Percent Discount Cases

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Court : US Supreme Court

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Appeal No. : 243 U.S. 97

Appellant : Five Percent Discount Cases

Judgement :

Five Percent Discount Cases - 243 U.S. 97 (1917)
U.S. Supreme Court Five Percent Discount Cases, 243 U.S. 97 (1917)

The Five Percent Discount Cases *

Nos. 149 to 162

Argued February 25, 28, 1916

Restored to docket for reargument March 6, 1916

Reargued February 2, 1917

Decided March 6, 1917

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CERTIORARI TO THE UNITED STATES

COURT OF CUSTOMS APPEALS

SYLLABUS

Section IV, paragraph J, subsection 7, of the Tariff Act of October 3, 1913, c. 16, 38 Stat. 114, 196, after declaring that a discount of five percentum on all duties imposed by the act hall be allowed on such goods as shall be imported in vessels admitted to registration under

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the law of the United States, adds, by way of proviso,

"that nothing in this subsection shall be so construed as to abrogate or in any manner impair or affect the provisions of any treaty concluded between the United States and any foreign nation."

Held, that the grant of the discount is confined to goods in American bottoms, and the effect of the proviso is to respect the treaty privileges with which such a grant would be in conflict not by extending the grant to goods borne in foreign vessels, but by suspending the grant entirely while such privileges exist.

6 Cust.App. 291 reversed.

The case is stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

In these cases, the Court of Customs Appeals has held that, by IV, paragraph J, subsection 7, of the Act of October 3, 1913, c. 16, 38 Stat. 114, 196, merchandise imported in the registered vessels of the United States, or in the registered vessels of other nations entitled by treaty to pay no higher duties than those levied upon vessels of the United States, is granted a discount of 5 percent upon the duties imposed by the act. Following an enactment that, except as otherwise specially

provided in the statute, duties should be levied upon all articles imported from any foreign country at the rates prescribed in the schedules, the above-mentioned subsec. 7 is as follows:

"That a discount of five percentum on all duties imposed by this Act shall be allowed on such goods, wares, and merchandise as shall be imported in vessels admitted to registration under the laws of the United States: *Provided,* That nothing in this subsection shall be so construed as to abrogate or in any manner impair or affect the provisions of any treaty concluded between the United States and any foreign nation."

More or less complete reciprocity is established by treaty with nearly all the commercial countries of the world, and the discount of 5 percentum was extended by the Court of Customs Appeals to goods imported in vessels of Belgium, the

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Netherlands, Great Britain, Austria-Hungary, Germany, Italy, Spain, and Japan.

The government contends that, while the subsection may indicate a reversal of the policy of reciprocity that has prevailed more or less for the better part of a century, Rev.Stats. 4228, it relies upon future negotiations to make the change effective, and suspends action while the present treaties remain in force, since it could not give the discount to merchandise in American bottoms alone without breaking the numerous treaties to which we have referred. The argument on the other side is that the words of the subsection are satisfied by extending the discount to goods from all the treaty countries, whereas, by the construction contended for by the government, they are emptied of meaning, or at least of present effect. We are of opinion that the government is right, and, as the meaning of the words seems to us to be intelligible upon a simple reading, and to be fortified by the facts preceding their adoption, we shall spend no time upon generalities concerning the principles of interpretation.

We have a clear opinion as to what the subsection means if the words are taken in their natural, straightforward, and literal sense. It grants a discount only to goods

imported in vessels registered under the laws of the United States, and conditions even that grant upon its not affecting treaties. There is a strong presumption that the literal meaning is the true one, especially as against a construction that is not interpretation, but perversion; that takes from the proviso its ostensible purpose to impose a condition precedent, in order to universalize a grant that purports to be made to a single class, and to do so notwithstanding the express requirement of the statute that specified rates should be paid. Nobody would express such an intent in such words unless in a contest of opposing interests, where the two sides both hoped to profit by an ambiguous phrase. But the section is

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not ambiguous on its face, and there is no sufficient ground for creating an ambiguity from without when it is considered that the purpose to favor American shipping was the manifest inducement for putting the subsection in.

The tariff bill as it first passed the House granted an exemption in favor of American shipping without the proviso. The clause was struck out by the Senate, and after it had been pointed out that such an enactment would violate many treaties, there was a conference which led to the passage of the subsection in its present form. It seems to us obviously more reasonable to suppose that Congress was content to indicate a policy to be pursued when possible than that, by circuitous and inapt language, it enacted that there should be a general discount from the rates specifically directed to be charged. That the subsection means what it says and no more seems to us still plainer when it is considered that, without going into nice calculation, the benefit to American shipping of such a general discount would be at least problematical, and certainly would be relatively small. A grant in present terms, subject to a condition precedent, is familiar to the law, and is not unknown in grants of the present kind. *Dunlap v. United States,* 173 U. S. 65 .

There was some discussion at the bar and in the court below upon the question whether the treaties operated as laws or were simply executory contracts, but it seems to us superfluous. If the statute bore the meaning attributed to it below, it

granted the discount to the nations having treaties of reciprocity, even if those treaties were only contracts. As, in our opinion, the subsection means what it says, it grants the discount to none.

Judgments allowing the discount of five percentum reversed.

MR. JUSTICE DAY is of opinion that the statute was interpreted correctly by the Court of Customs Appeals, and therefore dissents.

* The docket title of these case are: No. 149, *United States v. M. H. Pulaski Co., et al.;* No. 150, *United States v. R. B. Henry Co., et al.;* No. 151, *United States v. James Elliott Co., et al.;* No. 152, *United States v. J. Wile Sons & Co.;* No. 153, *United States v. Robert Muller & Co.;* No. 154, *United States v. Wood & Selick, et al.;* No. 155, *United States v. E. La Montane's Sons;* No. 156, *United States v. Albert Lorsch & Co., et al.;* No. 157, *United States v. Cullman Brothers, et al.;* No. 158, *United States v. G. W. Faber, Inc.;* No. 159, *United States v. Louis Meyers & Son;* No. 160, *United States v. William Openheim & Sons, et al.;* No. 161, *United States v. Park & Tilford;* No. 162, *United States v. Selgas & Co.*