REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
in its capacity as shipagents
of the MS "QUEENSVILLE",
Petitioner,

- versus - C.T.A. CASE NO. 2758

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Customs dated September 16, 1975, affirming that of the Collector of Customs, which imposed an administrative fine of ₱11,998.00 against the MS "Queensville" for violation of Section 2523 of the Tariff and Customs Code, which reads:

> Sec. 2523. Discrepancy Between Actual and Declared Weight of Manifested Article.- If the gross weight of any article or package described in the manifest exceeds by more than twenty *per centum* the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen *per centum* of the value of the package or article in respect to which the discrepancy exists, may be imposed upon the importing vessel or aircraft.

34

The antecedent facts of this case show that the MS "Queensville", under Customs Registry No. 1745, arrived at the Port of Manila on June 29, 1969 and discharged thereat, among other cargoes, 84 bales of cotton and rayon remnants imported from the United States. As declared in the bill of lading, the total weight of the said cargo was 51,086 lbs. but upon examination by the customs authorities, it was discovered that the shipment actually weighs 75,152 lbs., which is more than 20% of the declared weight. (see pp. 2 & 7, Customs rec.)

Consequently, on October 13, 1969, the Bureau of Customs, through the Chief, Law Division, notified petitioner Macondray & Co., Inc., as the ship agent of the MS "Queensville", that said vessel had discharged 84 bales of assorted textile remnants with an excess weight of more than 20% of what had been declared in the manifest; and requiring it "to explain in writing within five (5) days from receipt hereof and show cause, why no administrative fine in the amount of ₱12,028.00, should be imposed upon your vessel for (this) violation" of Section 2523 of the Tariff and Customs Code, or to inform the Bureau of Customs within the same period if it prefers to have the case

35

formally investigated; otherwise, its failure to do so would be construed as a waiver of the right to be heard and the case decided accordingly. (p. 13, Customs rec.)

In a letter dated November 18, 1969, petitioner explained to the Bureau of Customs that the vessel did not violate Section 2523 of the Code inasmuch as the weight of the cargo as stated in the bill of lading was supplied by the shipper; that the shipment was freighted on measurement basis and not on weight; and that the declaration of the weight of the cargo in the manifest is not required by law. Petitioner further requested that in the event such explanation was not sufficient for the dismissal of the case, the Bureau of Customs should conduct an investigation to afford the vessel an opportunity to present "evidence in support of her defense and to be apprised of the evidence against her." (pp. 17-18, Customs rec.)

The records show that this proceeding, captioned: "In the matter of administrative investigation of MS "Queensville", Voy. 34-A which arrived on June 29, 1969, conveyed and discharged 84 bales of assorted remnants with an excess weight of more than 20% as declared in the manifest - Administrative

Case No. V-518/70" - in the Bureau of Customs, was scheduled for hearing by the Collector of Customs on November 17, 1972 at 9:30 A.M. before the Law Division, Port of Manila, as per notice of hearing dated October 20, 1972, a copy of which was received by petitioner on October 24, 1972. (p. 19, Customs rec.; par. 2, Answer of Respondent.) Thereafter, on November 14, 1974, the Collector of Customs of Manila rendered a decision against the MS "Queensville", imposing a fine of ₱11,998.00 upon said vessel and/or its local agent, Macondray & Co., Inc., for violation of Section 2523 of the Tariff and Customs Code. (pp. 20-21, Customs rec.) Recourse to respondent Commissioner of Customs proved unavailing.

Hence the present appeal.

Has the vessel MS "Queensville" violated Section 2523 of the Tariff and Customs Code so that it and/or its local agent, petitioner herein, are subject to the fine imposed by respondent?

In maintaining its innocence under Section 2523 of the Tariff and Customs Code, and non-liability from the fine imposed therein, petitioner, in its memorandum, argues that:

> The records show that the weight appearing in the bill of lading was declared by the shipper Alto Textile Export Company of New York. The master, owner and employee of the vessel have nothing to do with it. They relied on the information supplied by the shipper. It served as the basis of the carrier in manifesting the cargo. The shipment was freighted on measurement basis and not on weight. The weight is immaterial insofar as freight is concerned and whatever weight was declared by the shipper is taken as true and correct weight of the cargo by the carrier. The declaration of the weight of the cargo in the manifest is not required by law.
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> From the foregoing, it is well-nigh clear that the alleged under declaration in the weight of said cargo can not be attributed to the carelessness or negligence of the master, pilot, owner or employee of the vessel. Moreover, there is nothing in the records, muchless any piece of evidence introduced to show carelessness and negligence of the master, pilot, owner or employee of the vessel with respect to the alleged under declaration of the weight of the cargo. This, being so, petitioner can not be held liable under Section 2523. (p. 3, Petitioner's Memorandum)

Petitioner's position calls to mind Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977; Certiorari denied in G.R. No. L-46287, June 20, 1977, involving identical parties and under substantially similar facts, and where this Court disposed of the same arguments and contentions in the following wise:

> As regards the contention of petitioner that the discrepancy is not due to the carelessness or incompetence of the

38

master, owner, or employee of the vessel because the weight declared in the bill of lading or manifest was supplied by the shipper, and that under Section 612 of the Code of Commerce, and even under the Tariff and Customs Code, the captain or master of the vessel is not required to ascertain the weight of the cargo, a similar issue was settled by this Court in the case of "F.E. Zuelig, Inc., in its capacity as agent of the M/V "Hongkong Grace", vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975, wherein it was ruled that the fact that the captain of a vessel is not careless on the basis of his duties under the Code of Commerce is no defense against this penalty. Because of its controlling effect on the present case, we will quote from the decision.

> . . . On the other hand, petitioner claimed that the said discrepancy is by no means attributable to the master or captain of the vessel because, under Article 612 of the Code of Commerce listing the duties of the said official, he is not required to ascertain the actual weight of the cargo of any particular shipper. Consequently, it is argued that neither carelessness nor incompetence can be imputed against the captain of the vessel "Hongkong Grace" to justify the imposition of the penalty imposed by the Tariff and Customs Code.
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> It is not Article 612 of the Code of Commerce which deals with the duties of the captain of a vessel but Section 2523 of the Tariff and Customs Code that governs this case. Under the latter law the fact that the captain of a vessel is not careless on the bases of his duties as enumerated in the Code of Commerce is no defense against the penalty. The law includes the carelessness of the owner or employee of the vessel. The explanation of the manager of the Shipping Division of petitioner to the effect that no shipping line in the United

> States has facilities for checking the weight or contents of the goods shipped therefrom; <u>that the weight of the cargo is declared by the shipper and any discrepancy in weight is beyond the control of the shipping company is not a valid excuse</u>. Accepting petitioner's explanation as a valid defense is virtually nullifying Section 2523 of the Tariff and Customs Code, brushing aside the provisions of Section 2523 of the said Code as a dead letter. Doing business in the Philippines, it behooves petitioner to abide by our Customs laws and to ignore them is nothing short of gross carelessness. It is an omission of the concern that one with ordinary prudence should have of the Customs laws of the country which it does business. (Underlining supplied.)

Anent petitioner's averment that the freightage of the subject shipment was made on a measurement basis, suffice it to state that freightage is merely the charge or compensation paid by the shipper or importer to the carrier, and is not a determinative factor in the assessment and imposition of duties and penalties on the imported goods. As aptly observed by the respondent, freightage is never a factor in determining the responsibility of the vessel under Section 2523 of the Tariff and Customs Code.

Accordingly, since it has been established that there is a discrepancy of 71,450 lbs. (24,066 lbs. in the present case) between the declared weight (59,938 lbs.) and the actual weight (131,388 lbs.) of the subject importation (51,016 lbs. and 75,152 lbs. in the instant appeal), which discrepancy is obviously more than 20% of the weight, and which is attributable to the carelessness or incompetence of the master, officer or employee of the vessel because of his reliance solely on the declared weight furnished by the shipper and failure to take steps to ascertain and verify the correct weight of the cargo before transporting the same, in utter disregard of his obligation imposed on him

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> by the law, the vessel MS "Fernbank" and/or its ship agent are liable for the fine of not more than 15% of the value of said shipment pursuant to Section 2523 of the Tariff and Customs Code. x x x.

We find no plausible and valid reason to modify, much less depart from the conclusion reached in Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, as stated in the above-quoted opinion of the Court, and the same should therefore resolve the same question now brought before us in the instant appeal. More so when it is considered that the petition for review on certiorari of the decision of this Court in the said case was denied by the Supreme Court for lack of merit in L-46287, July 21, 1977.

We have already ruled that the fine of not more than fifteen <u>per centum</u> imposed for violation of Section 2523 of the Tariff and Customs Code should be based on "the value of the package or article in respect to which the deficiency exists", in accordance with the express provision of the law. (See Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977; Delgado Shipping

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Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977.) There being no showing in the instant case that the amount of the fine imposed by the Bureau of Customs is not in accordance with the law, and since the records of the case are silent on this point, we take it that the amount of ₱11,998.00 imposed by respondent on MS "Queensville" and/or petitioner is not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists. Nonetheless, considering that the negligence or incompetence of the master, owner, officer or employee of the vessel does not amount to willful negligence or gross incompetence, and the law allows latitude in the imposition of the fine, we deem it just and reasonable to reduce the administrative fine imposed on the MS "Queensville" and/or petitioner Macondray & Co., Inc., as ship agent of the vessel to ₱3,500.00

WHEREFORE, the decision appealed from is MODIFIED and the vessel MS "Queensville" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the fine of ₱3,500.00 for violation

47

of Section 2523 of the Tariff and Customs Code.
With costs.

SO ORDERED.

Quezon City, April 28, 1978.

Amante Filer

AMANTE FILER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge