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CITADEL LINES, INC., In its
capacity as Agents of the
S/S "SOKO MARU",
Petitioner,

- versus - CTA CASE NO. 2718

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

6/20/78

D E C I S I O N

Appeal by petitioner Citadel Lines, Inc., in its capacity as ship agent of the S/S "Soko Maru", from the decision of respondent Commissioner of Customs dated June 18, 1975, affirming the decision of the Collector of Customs of Manila (in Administrative Case No. V-534/70) imposing a fine of P19,880.00 upon the said vessel and/or petitioner for violation of Section 2523 of the Tariff and Customs Code, the provisions of which read:

> 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 deficiency exists, may be imposed upon the importing vessel or aircraft.

The facts that spawned the controversy are not in dispute.

The S/S "Soko Maru", with Registry No. 1545, arrived at the port of Manila on August 12, 1969 and discharged thereat a cargo consisting of 18 bales of assorted textile remnants. The total weight of said cargo as stated in the bill of lading was 14,828 pounds but, upon examination by a customs examiner, it was ascertained that the actual weight was more by 25,410 pounds, or an excess of more than 20 per cent of the declared weight. Consequently, the Collector of Customs instituted administrative proceedings (Administrative Case No. V-534/70) against the vessel S/S "Soko Maru" for violation of Section 2523 of the Tariff and Customs Code.

On January 3, 1975, the Collector of Customs rendered a decision holding the vessel and petitioner herein liable for an administrative fine of ₱19,8[illegible]0.00 for violation of Section 2523 of the Tariff and Customs Code. On June 18, 1975, on appeal by petitioner, said decision of the Collector was affirmed <u>in toto</u> by the Commissioner of Customs. Hence, the present recourse.

The issue is whether or not the vessel S/S "Soko Maru" and/or its ship agent, petitioner herein, are liable for the fine for violation of Section 2523 of the Tariff and Customs Code.

In its memorandum, petitioner maintains that the vessel S/S "Soko Maru" did not violate Section 2523 of the Tariff and Customs Code because: (1) there is no evidence or proof that the discrepancy between the declared weight and actual weight of the subject shipment was due to the carelessness or negligence of the master, owner or employee of the vessel; and (2) the weight declared in the bill of lading was supplied and furnished by the shipper and was simply relied upon by the vessel.

In support of the latter contention, petitioner invokes a decision of the Court of Appeals in the case of "The New Zealand Co., Ltd. vs. The Honorable Court of Appeals and Royal Inter-Ocean Lines", (The New Zealand Insurance Co., Ltd., vs. Royal Inter-Ocean Lines, CA-G.R. No. 52383-R, December 19, 1977), wherein the said Court ruled:

> "It is customary in maritime commerce for shippers which, in this case M.V. Nidera HADELS-COMPAGNIE, to give to the shipping agent what is called a "pro-forma bill of lading" containing the description and weight of the goods to be shipped out to consignee. In turn, the shipping agent copies the entries in the "pro-forma bill of lading" unto the original bill of lading. Thus, if We may, We must trace the alleged shortage of the shipment, if any, to the shipper and not to the vessel, x x x x."

Petitioner further assails the amount of the fine imposed by the Bureau of Customs as erroneous, unjust and excessive because it is based upon the value of the whole shipment and not just upon by the value of the deficiency.

Indeed, the issue posed by this case is not one of first impression. In a long line of cases, where the factual setting is similar, if not exactly the same, to that in the case at bar, this Court has ruled consistently that under Section 2523 of the Tariff and Customs Code, the ascertainment and verification of the weight of the cargo at the port of loading is the duty or obligation of the master, owner or employee of the vessel. Failing thus, the conclusion seems to be inevitable that there is an unexcusable laxity on the part of the master or owner in exercising the ordinary care and prudence in the commission of excessive discrepancy in the weight of a ship's cargo penalized under the law. Doing business in the Philippines, it behooves the master or owner of a vessel to abide by our Customs laws and regulations and to ignore them is nothing short of gross carelessness or incompetence. Consequently, if the discrepancy of more than 20% between the declared weight and the actual weight of the imported article arose because of, or which could have been avoided if it were not for, his failure or omission to perform this duty, the inevitable conclusion is that he is negligent or careless within the contemplation of the law. (Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2576, August 31, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2575, April 4, 1977, Certiorari denied in L-47010, October 7, 197 ; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2744, February 25, 1977, Certiorari denied in L-47404, May 5, 1978; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, Certiorari denied in L-46287, June 20, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2548, September 30, 1976; F.E. Zuellig, Inc. vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2928, October 31, 1973.)

We find no plausible reason to depart from this rule, the decision of the Court of Appeals in the case of New Zealand Insurance Co., Ltd. vs. Royal Inter-Ocean Lines, cited above, notwithstanding. In the first place, the facts and issue in the said case, which is an action for alleged shortage and contamination sustained by the shipment subject matter of the case, are not similar to those involved in the present proceeding, which is an administrative case against a vessel for violation of Section 2523 of the Tariff and Customs Code. And in the second place, four-square with the instant appeal on this point (interpretation and application of Section 2523 of the Tariff and Customs Code), by reason of the close identity of the parties, the issue litigated and the factual setting of the case, are the cases cited above wherein the pronouncements and rulings of this Court in at least four (4) cases, which were brought to the Supreme Court upon petition for review on certiorari, were dismissed by the High Court, thus in effect sustaining and upholding this Court's decisions on this question. (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2575, April 4, 1977, Certiorari denied in L-47010, October 7, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2744, February 25, 1977, Certiorari denied in L-47404, May 5, 1978; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977, Certiorari denied in L-46262, July 6, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, Certiorari denied in L-46287, June 20, 1977.)

Concerning the amount of the administrative fine of ₱19,880.00, however, we feel that, although the same may have been computed correctly by the Bureau of Customs on the basis of Section 2523 of the Tariff and Customs Code, the reduction thereof is justified considering that the negligence or incompetence of the master, owner, officer or employee of the vessel in this case does not amount to willful negligence or gross incompetence, and that the law allows latitude in the imposition of the fine. (See Delgado Shipping Agency, Inc. vs. Commissioner of Customs, C.T.A. Case No. 2729, June 16, 1978.) Accordingly, a fine of ₱5,000.00 is deemed just and reasonable under the premises.

WHEREFORE, the decision appealed from is MODIFIED, and the vessel S/S "Soko Maru" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the administrative fine of ₱5,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, June 30, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge