DELGADO SHIPPING AGENCIES, INC.
in its capacity as agent of the
SS "Eurygenes,"
Petitioner,

- versus - C.T.A. CASE NO. 2791

COMMISSIONER OF CUSTOMS,
Respondent.
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D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Customs dated March 9, 1976, affirming that of the Collector of Customs of Manila in Customs Case No. 75-48, imposing a fine of ₱59,492.00 on the vessel SS "Eurygenes" and/or its ship agent, petitioner Delgado Shipping Agencies, Inc., for alleged violation of Section 2523 of the Tariff and Customs Code.

It appears that on or about December 9, 1969, the vessel SS "Eurygenes" arrived and docked at the Port of Manila, and thereafter discharged, among other cargoes, 153 bales of assorted textile remnants from New York, U.S.A. The vessel's bill of lading No. 141 shows that the gross weight of said cargo was 50,178 lbs., but based upon an examination conducted by a customs examiner and a customs appraiser, it was found that the gross weight was actually 122,397 lbs., or a difference of 68,219 lbs. (should be 72,219 lbs.) resulting in a discrepancy of more than 20% between the actual gross weight and that weight as declared in the bill of lading.

In the said Customs Case No. 75-48 (Administrative Case No. V-549/70), the Collector of Customs, Port of Manila, charged the vessel SS "Eurygenes" with the violation of Section 2523 of the Tariff and Customs Code, to wit:

> 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.

On January 2, 1975, after hearing, the Collector of Customs rendered a decision imposing upon the vessel and/or petitioner herein a fine of ₱59,492.00 for violation of Section 2523 of the Tariff and Customs Code.

On March 9, 1976, said decision of the Collector was affirmed by the Commissioner of Customs. Hence, the present petition.

The only issue involved herein is whether or not said vessel SS "Eurygenes" violated Section 2523 of the Tariff and Customs Code, as amended, so as to subject said vessel and/or petitioner, as ship agent of the former, to the payment of the administrative fine of ₱59,492.00.

Petitioner's contentions are:

Firstly, that it should not be held liable for violation of Section 2523 of the Tariff and Customs Code for lack of evidence to show that the discrepancy between the declared and actual weight of the cargo was due to the carelessness or incompetence of the master, owner, officers and crew of the vessel; that the said officers of the vessel have relied solely on the sworn declaration of the shipper; and that the shipment was freighted on a measurement basis.

Secondly, the fine imposed was excessive, unjust and confiscatory for having been based on the value of the total shipment and not just on the deficiency.

The issue raised by petitioner is not a novel one. In a successive line of decisions, the most recent one being the case involving the same petitioner and vessel, Delgado Shipping Agencies vs. Customs, CTA Case No. 2837, decided on November 12, 1977, this Court repudiated petitioner's first allegation when it held:

> The only issue is whether or not said vessels, the SS "Aminaka Maru," the SS "Nanko Maru," and the SS "Eurygenes" violated Section 2523 of the Tariff and Customs Code, as amended, so as to subject said vessels or petitioner, or shipagent of the former, the payment of the total administrative fine of ₱67,316.00.
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> Petitioner asserts, <u>firstly</u>, that it should not be held liable for the fines imposed upon the vessels in question on the ground that there is no evidence which will show that the excess weights of the cargoes were due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessels; that the freightage of the cargoes were in fact made on the measurement basis, that the bills of lading were declared by the shippers and the said vessels have relied only on the good faith of said shippers in declaring the true weights of said shipments. <u>Secondly</u>, it contends that the fine imposed upon each vessel is excessive, unjust and confiscatory in that the fines were imposed upon the value of the whole shipment in question of each vessel and not just upon the value of the deficiency.
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> This issue in question is not new. In a decision of the Court in the case of Macondray & Co. Inc. etc. vs. Commissioner of Customs, CTA Case No. 2575, promulgated on April 6, 1977, this Court held thus:
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> > During the hearing in this Court, instead of presenting its evidence, petitioner joined respondent in submitting the case, as aforesaid, based upon the pleadings and customs records, but stated in its defense that in order to sustain the fine, " x x x there must be proof that the alleged weight discrepancy of more than 20% must be shown to be due to carelessness or incompetency of the master in command, owner, or employee of the vessel" and that "(t)here is no proof regarding such carelessness or incompetency." (Memorandum of Petitioner, at p. 30, CTA rec.) This Court

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states with emphasis that there was admittedly in this case a 37.7% increase in weight of the cargo, or 17.7% over the 20% tolerable limit of discrepancy allowed by law. Considering this percentage of increase over the good's declared weight, there was, to our minds, a complete disregard of the duty of the master, owner, or employee of the vessel in exercising that ordinary care and prudence in detecting any misdeclaration in weight of the cargo in question. We assume that the master, owner or employee of the vessel responsible knows that the cargo in question was destined for discharge to the Philippines, and knowing as they should of the strict provision of Section 2523 of the Tariff and Customs Code requiring that the weight of the cargo should not be more than 20% of that weight reflected in the accompanying bill of lading and in the ship's manifest, they have not, therefore, taken all ordinary and necessary steps to prevent a violation of said law. The fact that the weight was supplied by the shipper, and that under maritime practice, ships, such as the M/S TROUBADOUR", at the time of loading goods in the foreign ports, do not weigh their cargo is not a valid excuse in not at all considering the magistracy of our customs laws requiring that the cargo destined for Philippine ports should not be weighed and the discrepancy should not exceed 20% of what is declared. And we see nothing in the record which showed some kind of abnormal condition obtaining in the port of loading, which is in New York, that could have brought about this rather high percentage of weight discrepancy. Consequently, this Court is constrained to find that there was an unexcusable negligence or incompetency on the part of either the master, owner, or employee of the vessel in charge of the cargo in preventing the occurrence of over 20% discrepancy in weight of the 43 bales of assorted textile remnants carried by the M/S "TROUBADOUR" penalized under Section 2523 of the Tariff and Customs Code.

As regards the cases of U.S. Lines Co. vs. Customs, CTA 2365, June 17, 1974 and Smith, Bell & Co. Inc. vs. Customs, CTA 2469, Dec. 27, 1974, suffice it to state that they are not applicable to the case at bar for having different factual background.

Anent, however, the second allegation of petitioner that the fine imposed was excessive, unjust and confiscatory for having been based on the value of the total shipment and not just on the deficiency, such point was squarely ruled upon by this Court in the same case of Delgado Shipping Agencies, Inc. vs. Customs, which we quote hereunder:

> However, we are of the opinion that the fine to be imposed under Section 2523 of the Tariff and Customs Code, as amended, should not be more than 15% of the value of the article or goods in respect to which the deficiency of the goods is 24,811 lbs., and based upon the appraised value of $0.85 per lb. of discrepancy, the total value of the excess weight discrepancy is, therefore, $21,089.35, or computed at the rate of ₱3.94 to a dollar, the value of the excess weight discrepancy is ₱83,092.04. Fifteen (15%) per cent of the total value of the weight discrepancy of ₱83,092.04, which is ₱12,463.80, is the administrative fine legally imposable under Section 2523 of said Code.

Applying the aforecited decision to the case at bar, we are therefore constrained to hold petitioner liable for violation of Section 2523 of the Tariff and Customs Code, with a modification as to the amount of fine to be imposed. The gross weight as manifested in the bill of lading was 50,178 while the actual gross weight upon actual examination by the customs appraiser was 122,397, or a difference of 72,219 lbs. representing a discrepancy of more than 20%, or more specifically 59.48%. Based upon the appraised value of $0.85 per lb. of weight discrepancy, the value of the excess weight discrepancy is, therefore, $61,386.15, or computed at the rate of ₱3.91 to a dollar is ₱240,019.84. Fifteen (15%) per cent of the value of the weight discrepancy which is ₱36,002.98 is the maximum fine that can be imposed upon petitioner under Section 2523 of the Tariff and Customs Code. However, adverting to the ruling laid down in the above stated case of Delgado Shipping Agencies, Inc. vs. Customs, where this Court "finds no compelling reason to impose the maximum penalty under said Section 2523 because the negligence or incompetence of the master, owner, officers or employees of the vessel does not, to our mind, and upon the circumstances, amount to willful negligence or gross incompetence," we are inclined to reduce the fine to a just and reasonable amount of ₱12,000.00.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is hereby modified. Petitioner, in its capacity as agent

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of the vessel SS "Eurygenes" is hereby ordered to pay respondent the sum of ₱12,000.00 for violation of Section 2523 of the Tariff and Customs Code of the Philippines, as amended.

With costs against petitioner.

SO ORDERED.

Quezon City, January 30, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge

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