REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
in its capacity as agent
of the S/S "FERNLAKE",
Petitioner,

versus

C.T.A. CASE NO. 2428

THE COMMISSIONER OF
CUSTOMS,
Respondent.

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Oct 31/73

D E C I S I O N

This is an appeal from a decision of respondent Commissioner of Customs imposing upon petitioner as agent of the vessel S/S "Fernlake" an administrative fine of ₱48,601.00 for violation of Section 2523 of the Tariff and Customs Code.

The vessel S/S "Fernlake" arrived on January 30, 1970 at the port of Manila and discharged, among its cargo, a shipment consisting of 195 bales of assorted textile remnants covered by Bill of Lading No. 91. Upon Customs examination it was found to weigh 155.987 lbs. gross. The importer, B.S. Martin Enterprises, through its customs broker, Malibay Customs Brokerage Corporation, declared in the import entry the weight of the shipment at 152,000 lbs. net, the weight found by the customs examiner. The customs duties were based on the value of the articles (ad valorem) as declared in the import entry, which was in turn based on the weight thereof. Based on the said import entry declaration, the importer paid the total amount of ₱259,061.00 as customs duties, sales tax and wharfage dues. Upon closer examination the customs appraiser found discrepancy in the apportionment of some of the articles and proceeded to make a reapportionment resulting in additional assessment of ₱26,656.00, as customs duties, sales tax and fine, which was also paid by the importer. The shipment appears to have been declared in the vessel's manifest and bill of lading as having a gross weight of 58,500 lbs. (26,536 kgs.).

Because of the discrepancy of more than 160% between the actual and declared weight in the manifest, which is way above the 20% excess weight allowed by Section 2523 of the Tariff and Customs Code, the chief of the Law Division, Bureau of Customs, acting for the Collector of Customs in a letter dated April 23, 1970, formally asked petitioner to explain in writing why no administrative fine should be imposed on the vessel.

In a letter dated May 15, 1970, petitioner made its explanation and at the same time asked for a formal investigation, if its explanation proves unsatisfactory. Acceding to its request, formal hearings were conducted with due notice to the parties.

On July 12, 1971, the Collector of Customs rendered a decision holding petitioner liable to an administrative fine of ₱48,601.00 for the acts of its vessel S/S "Fernlake" when it conveyed and discharged a cargo of 195 bales, assorted textile remnants, which was declared in the manifest and bill of lading more than 20% lower than its actual weight pursuant to Section 2523 of the Tariff and Customs Code. Not satisfied with the said decision, petitioner appealed to respondent who, in a decision rendered on July 14, 1972, affirmed in toto the Collector's decision. Hence, the present petition for review.

When the case was heard the parties chose to submit it on the pleadings and the record instead of entering into trial.

Respondent justifies the imposition of the fine under Section 2523 of the Tariff and Customs Code, which provides as follows:

> 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 the 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.

Respondent contends that petitioner is liable to the fine imposed by the aforesaid law because it failed to satisfactorily explain the discrepancy of more than 160% between the actual and declared weight of the manifested article, which is way above the 20% allowable excess weight.

Petitioner, for its part, disclaims any liability for said fine and in support thereof advances the following pretensions:

> 1. The vessel's representatives were not notified and were not present when the Bureau of Customs examined and weighed the shipment after its discharge at Manila; consequently, the finding of the Bureau of Customs that the shipment had a gross weight of 155,987 lbs. is not binding upon petitioner;
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> 2. Under Sec. 2523 of the Tariff and Customs Code, the discrepancy between the actual and declared weight of a manifested shipment must be due to the carelessness or incompetency of the master, owner or employee of

> the vessel; in the present case, no evidence of such carelessness or incompetency was adduced; and
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> 3. The facts and circumstances under which the subject shipment was loaded at the Port of New York negate carelessness or incompetency on the part of the master, owner or employees of the vessel.

<u>The first pretension</u>:

There is no law or regulation, and petitioner has pointed to none, which requires that the shipping company must be notified of the actual examination or weighing of imported articles. As a matter of fact petitioner's witness, Dominador Bergaño, admits that in cases of shipment subject to customs examination, it is not the practice of shipping firms to send their representatives. This is understandable because in case any violation of the customs law is found upon actual examination or inspection of the imported goods, the party liable is notified and given the opportunity, if he chooses, to explain in a formal hearing why he should not be held liable. On the other hand, it appears that the actual weighing of the shipment in question was done by a customs examiner in the presence of the representatives of the broker, after which the latter filed an import entry declaring the weight of the shipment not on the bases of what appeared in the manifest and bill of lading, but on the weight as found by the customs examiner, and paid the corresponding duties, taxes and fees due thereon. Under these circumstances there can hardly be any error in the finding of the customs examiner as to the correct weight of the shipment.

The second and third pretensions:

These two pretensions are interrelated and will be dealt with jointly.

The records of this case more or less bear out the finding that the carrier herein was either careless or incompetent with respect to the weight in the manifest.

The parties stipulated that:

> 1. "that the loading procedure at the Port of New York is that the shipper or forwarder prepares an export declaration, dock receipt and bill of lading and the vessel's representatives do not usually re-check or verify the declared weight, most especially, where, as in the present case, the cargo had been freighted on measurement basis";
>
> 2. "that the pier where this shipment was loaded does not have weighing scales to re-check the weight of the cargo immediately before it is loaded aboard the vessel";
>
> 3. "that the shipment in this case had a measurement of 4,341 cu. ft.";

4. "that the vessel <u>based the freight on the measurement</u> rather than on weight basis <u>considering that the vessel would earn more freight if the freight is based on the cargo's measurement</u>." (pp. 66-67, t.s.n. of the hearing of April 15, 1971 before the Bureau of Customs; Underscoring supplied).

A letter of the Barber Steamship Lines, Inc., petitioner's agent in New York, port of loading, to its agent in Oslo reads as follows:

> We quite agree with the remarks contained in the second paragraph of your letter to Messrs. Macondray & Company that we do consider it a very serious matter should the Customs Authorities at Manila decide to impose fines on the carriers if underdeclarations of manifested weights are found. We think that from past exchanges of correspondence we have made it abundantly clear as to the shipping procedure in the U.S. where the shipper or forwarder prepares an export declaration, dock receipt and bill of lading and as it is highly impractical to weigh these bales at the pier at time of delivery (most piers do not have scales), it is most unfair that the carrier should be held responsible in any way. We would suggest, in view of the impracticability of weighing cargo at time of delivery at vessel's loading berth, that perhaps the shipper or his forwarder could be required to file a certified weight certificate in connection with the Consular invoice or for example in the case of shipment to Bangkok where the duty is imposed on a valuation basis that the consignee in the Philippines be required to file a certified invoice before clearing the shipment from the pier. We know that these documents could and probably would be misdeclared in some form or

> other, but we feel that at least the responsibility would be on the shipper and/or consignee and would remove the responsibility from the carrier, where it certainly does not belong.

From the foregoing stipulation and letter, it is plain that the shipping company accepted without question the shipper's declaration as to the weight of the shipment although it was fully aware that there would be misdeclaration in one form or another. It did not bother itself to check in any way feasible under the circumstances the weight declared. It just brushed aside the provisions of Section 2523 of our Tariff and Customs Code partly because of a shortage of scales in the port of loading and partly because of the conviction that the responsibility imposed by our law should be laid on the shipper and not on the carrier. Accepting petitioner's terse explanation as a valid defense is virtually nullifying Section 2523 of the Tariff and Customs code. It will provide the shipping company with a handy defense because it is well-nigh impossible for our government to verify the veracity of the explanation. The least that can be said is that the explanation reveals a careless disregard of Section 2523 of the Tariff and Customs Code, an omission of the concern of its obligations under said Section by one with ordinary prudence. 17

The respondent imposed a fine of ₱48,601.00, the maximum amount imposable under the law. The shipping company herein relied solely on the shipper's declaration which was the loading practice observed in the port of New York, the port of loading, and disregarded the obligation imposed upon it by Section 2523 of the Tariff and Customs Code in the conviction that it was not required to do more. Considering that this is a case of first impression that involves a difficult question of law, we are inclined towards liberality and we believe that a fine of ₱4,000.00 would be more appropriate under the premises.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby modified, and petitioner is ordered to pay the sum of ₱4,000.00.

SO ORDERED.

Quezon City, October 31, 1973.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge