lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus - C.T.A. CASE NO. 2539

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

8/30/78

D E C I S I O N

This is an appeal filed by petitioner Macondray & Co., Inc., in its capacity as agent of the M/S "TOREADOR", from the decision rendered by respondent Commissioner of Customs, affirming that of the Collector of Customs of the Port of Manila in Administrative Case No. V-455/69, imposing an administrative fine of ₱14,792.59 against the vessel for violation of Section 2523 of the Tariff and Customs Code.

There is no dispute as to the facts of the case. As alleged by petitioner in its petition for review and admitted by respondent in his answer:

I. Petitioner is a corporation organized and existing under the laws of the Philippines and is the shipagent in the Philippines of the M/S "TOREADOR"; respondent Commissioner of Customs is the government authority in charge of the enforcement of the Tariff and Customs Code of the Philippines, and may be served with summons and other processes at the Bureau of Customs, Port Area, Manila.

II. On or about April 22, 1969, the M/S "TOREADOR" arrived and docked at the Port of Manila under Customs Registry No. 763, and thereafter discharged, among other cargo, 231 bales of cotton and rayon remnants declared under Bill of Lading No. 193, dated March 10, 1969, consigned to JUCICOR COMMERCIAL, Manila.

III. In Administrative Case No. V-455/69, the Collector of Customs, Port of Manila, charged the M/S "TOREADOR" with violation of Section 2523 of the Tariff and Customs Code for allegedly conveying and discharging the 231 bales aforementioned with an excess weight of more than twenty (20%) percent of the gross weight thereof as declared in the vessel's manifest.

IV. Petitioner, in answer to the charge, advised the Collector of Customs that it was not liable for the fine sought to be imposed by the latter and manifested its desire for a formal investigation on the matter; hence, an investigation was conducted by the Law Division, Bureau of Customs.

VI. In a decision dated October 12, 1972, the Collector of Customs of Manila found that the M/S "TOREADOR" violated Section 2523 of the Tariff and Customs Code and sentenced said vessel to pay a fine of ₱14,792.59.

VII. Within the reglementary period, petitioner appealed said decision to respondent Commissioner of Customs. On June 15, 1973, said respondent, in Customs Case No. 72-38 (Adm. Case No. V-455/69), rendered a decision affirming the decision of the Collector of Customs referred to in paragraph VI hereof. Copy of respondent's decision aforesaid was received by the undersigned attorneys on June 28, 1973 and is hereto attached as Annex "A".

Respondent denies in his answer, however, the averments under paragraph V of the petition for review that:

(a) The vessel relied on the sworn declaration of the shipper of said 231 bales, which stated the gross weight thereof to be 75121 lbs. as reflected in the vessel's bill of lading and manifest.

(b) The gross weight of the shipment as declared in Bill of Lading No. 193 was furnished by the shipper, with the M/S "TOREADOR" having no material participation in the computation or declaration of such weight therein.

(c) The shipment was freighted on measurement basis.

(d) There is no law, Philippine or American, which requires shipping companies to check the weight of packages or bales to be loaded on board said companies' vessels, and that no shipping line in the United States has facilities for checking the weight or contents of said packages or bales.

(e) The alleged discrepancy between the declared and actual weight of the shipment was not due to the carelessness or incompetence of the master, owner, officers and crew of the M/S "TOREADOR".

Respondent also denies the allegations under paragraph VIII of the petition for review with regards to the errors committed by him in his decision appealed from, or the decision being contrary to law and the evidence; the truth, according to respondent, being those stated as affirmative and special defenses in his answer:

3. That the 231 bales of assorted textile remnants consigned to Judicor Commercial were manifested in the accompanying Bill of Lading No. 193 dated March 10, 1969, as having a gross weight of 75,121 pounds, but upon actual examination, the gross weight thereof was found and verified to be 100,078 pounds or 24,957 pounds more than the weight appearing in the bill of lading.

4. That Section 2523 of the Tariff and Customs Code provides:

> "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." (Underscoring supplied).

5. That Section 1005, same Code, imposes an absolute obligation upon every vessel from a foreign port to have on board a complete, true, and accurate manifest of all her cargo (U.S. vs. SS "Islas Filipinas", 28 Phil. 201; U.S. vs. Steamship "Rubi", 32 Phil. 228); and

6. That in a similar case, this Court, quoting the case of Sherman, S & S Ry. Co. v. Conly (37 S.W. 253-254), said:

> "A demand for 'weight or amount, or something more definite' does not necessarily include and embrace quantity. Quantity may include <u>weights or amounts</u>, but neither of these letter terms, are accurately synonymous with quantity. A shipment of lumber may be designated by giving the quantity in some other manners than by weight or amount ..." (Smith, Bell Co., Inc., in its capacity as agent of the SS "CHANGSA", Petitioner, vs. Commissioner of Customs, Respondent, C.T.A. Case No. 2396; underscoring supplied).

After the issues were joined, the case was set for trial on the merits but the hearings were invariably postponed mainly because of the manifestation of petitioner that the parties intend to submit a stipulation of facts for the approval of the Court. However, during the hearing on November 16, 1977, petitioner submitted, without objection of respondent, this case for decision on the basis of the pleadings and the customs records without offering proof as to the truth of its own allegations. While the parties were given time within which to submit their memoranda, respondent did not file his memorandum.

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

One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De La Rosa, et al., 76 Phil. 115.) There seems to be no question, therefore, that the 231 bales of assorted textile remnants in question have been manifested in the accompanying bill of lading as having a gross weight of 75,121 pounds, but upon actual examination, the gross weight thereof was found and verified to be 100,078 pounds or 24,957 pounds more than the weight appearing in the bill of lading; and on the basis of the customs records (pp. 60 and 71), as found by the Collector of Customs, the discrepancy of more than twenty-five (25%) per cent between the actual gross weight and the gross weight declared in the bill of lading was due to the carelessness or incompetence of the master or pilot in command or employee concerned of the vessel.

At any rate, as manifested in the accompanying Bill of Lading No. 193 dated March 10, 1969, the gross weight of the 231 bales of assorted textile remnants was 75,121 pounds, but, as found in the examination, the gross weight thereof was 100,078 pounds, or 24,957 pounds more than the weight appearing in the bill of lading. (See Memorandum dated April 29, 1969 of Customs Appraiser Magno Clemente, Jr. to the Law Division and Formal Entry Division of the Manila Customshouse.) And as to the argument of petitioner that there was no violation of Section 2523 of the Tariff and Customs Code because the negligence or incompetency of the master, owner or employee of the vessel has not been established by independent positive proof, this Court has already ruled consistently, in a long line of cases, where the factual setting is similar, if not exactly the same, to that in the case at bar, that under Section 2523, 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. (Compaña General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case 2576, August 31, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2575, April 6, 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; Macondray & Company, 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. 2498, October 31, 1973; Citadel Lines, Inc. vs. Commissioner of Customs, CTA

Case No. 2718, June 30, 1978.)

We find no valid and cogent reason to modify, much less depart from the conclusion reached in the afore-cited cases, as expressed in the opinion of this Court therein, and the same should resolve the identical problem again brought before us in this proceeding. Specially so when it is considered that in at least four (4) of the cases cited above, which were brought to the Supreme Court upon petition for review on certiorari, the same were denied by the High Court, thusin effect sustaining and upholding this Court's conclusion on this matter. (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2575, April 6, 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.)

As to the amount of the administrative fine of P14,792.59 imposed by respondent, although the computation thereof is not being contested by petitioner, and the same may have been computed correctly by the Bureau of Customs on the basis of Section 2523 of the 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, CTA Case No. 2729, June 16, 1978; Citadel Lines, Inc., vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978.) Accordingly, an administrative fine of P5,000.00 is deemed just and reasonable under the premises.

WHEREFORE, the decision appealed from is MODIFIED, and the vessel M/S "Toreador" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the administrative fine of P5,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, August 30, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge