Lib

(6)

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING COMPANY,
in its capacity as agent
of the SS "JUNSHO MARU,"
Petitioner,

- versus -

C.T.A. CASE NO. 2722

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

8/31/78

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated June 26, 1975, affirming that of the Collector of Customs dated October 3, 1974, imposing a fine of P15,280 on the vessel, the SS "JUNSHO MARU," for violation of 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 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 records are undisputed and show that the SS "Junsho Maru" arrived at the Port of Manila on May 29, 1969 and discharged thereat 28 bales of textile remnants consigned to Melben Marketing of Manila, declared under Entry No. 52184(69), and covered by a bill of lading. The gross weight of said merchandise, as declared in the bill of lading, was 28,126 lbs., but it was reported after appraisal was conducted by an examiner that the actual gross weight was 58,776 lbs., or 30,650 lbs. more than the declared or manifested weight (p. 6 Customs rec.), which is a discrepancy of 109% over what was declared. The records do not, however, show the value of the discrepancy in weight of 30,650 lbs. of the shipment.

In a letter dated July 23, 1969, the Chief of the Law Division of the Bureau of Customs, Eduardo R. Gatchalian, informed petitioner Delgado Shipping Co., that there was a discrepancy in weight of the textile remnants by more than 20% between its declared weight and the actual weight thereof, and required petitioner to explain in writing and show cause why no administrative fine of P15,280 should be imposed upon the vessel. However, there is no evidence or record in the Administrative hearing (Case No. 482-69) conducted showing how the amount of fine was arrived at, or computed by said Division.

After hearing, Collector of Customs rendered a decision on October 3, 1974 finding the vessel SS "Junsho Maru" and/or its agent, petitioner Delgado

Shipping Company, liable for a fine of ₱15,280 under Section 2523 of the Tariff and Customs Code.

On appeal to the Commissioner of Customs, the latter in a decision dated June 26, 1975, affirmed that of the Collector of Customs. From this decision, petitioner appealed to this Court.

The only issue submitted in this case is whether or not the SS "Junsho Maru" violated Section 2523 of the Tariff and Customs Code and/or is liable for the fine of ₱15,280.

Initially, the petitioner puts up the defense for non-liability of the fine that the gross weight of the shipment was declared by the shipper and the vessel had merely relied on the declared weight of the shipper; that not one of the employees participated in the preparation of the shippers' declaration; that the shipment, by its nature, is capable of absorbing moisture and/or water and the absorption of water increases its weight; and that there was no proof of negligence on the part of the master, officers and crew of the vessel with respect to the discrepancy in weight. Consequently, petitioner concludes that the vessel is not liable for a fine under Section 2523 of the Tariff and Customs Code. However, respondent contends otherwise.

We find petitioner's contention without merit. The issue raised in this case as well as the arguments herein are not of first impression. In a decision in the case International Harvester, Macleod, Inc. etc., vs. Commissioner of Customs, C.T.A. Case No. 2698, dated November 25, 1977, this Court held as follows:

> At this juncture, it is hardly necessary to add that under Section 2523 of the Tariff and Customs Code, the declaration, ascertainment or verification of the correct weight of the cargo at the port of loading is the duty or obligation of the master, pilot, owner, officer or employee of the vessel. If he omits or disregards this duty and a punishable discrepancy between the declared weight and actual weight of the cargo exists, the inevitable conclusion is that he is negligent or careless. (See Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, Feb. 15, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, Feb. 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977 and cases cited therein.) Similarly, if in the exercise or performance of this duty, he is negligent or careless resulting in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law, carelessness or incompetency is, nonetheless, imputable to him.
>
> Thus, in the case of Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977, certiorari denied, G.R. L-46262, July 6, 1977, this Court ruled:
>
> > And as to petitioner's insistence of proof on the part of respondent of the negligence or carelessness of the master, owner or employee of the vessel, suffice it to say, additionally, that this Court has already unequivocally ruled that under Section 2523 of the Code, the ascertainment or verification of the weight of the

> ship's cargo at the port of loading is the duty or obligation of the master, pilot, 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 the 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.

In the light of the above decision, we hold the master, owner, officer or employee of the SS "Junsho Maru" and/or its agent, petitioner herein, negligent and incompetent in not declaring the correct weight of the cargo.

The records of the parties in this case, however, do not show the value of the weight discrepancy of 30,650 lbs. We take it that the imposed fine of ₱15,280 against the SS "Junsho Maru" and/or petitioner is equal to, or is not more than 15% allowed as fine under Section 2523 of the Tariff and Customs Code. However, from the facts and circumstances, this Court finds no compelling reason to impose the maximum 15% fine, as it does not appear that the negligence or incompetence of the master, owner, officer or employee of the vessel amounts to willful negligence or gross incompetence, and the law allows a latitude in the imposition of the fine. To our minds, the reasonable fine to be imposed against said vessel and/or petitioner is ₱4,500.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby modified, and the vessel SS "Junsho Maru" and/or petitioner Delgado Shipping Company, are hereby ordered to pay the fine of ₱4,500 for violation of Section 2523 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, August 31, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Acting Presiding Judge