REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2573

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - x

9/26/84

D E C I S I O N

Disputed by petitioner Caltex (Philippines) Inc. in this appeal from the decision of respondent Commissioner of Customs dated November 21, 1973 in Customs Case No. 73-138 is the right of the Bureau of Customs to the sum of ₱30,958.30 collected as checking charges on its twenty-one (21) shipments of lubricating oil between May 1970 to May 1973.

The antecedent facts that gave rise to the present controversy, which are not disputed, are alleged in the petition for review of petitioner and admitted in respondent's answer:

1. Petitioner is a corporation organized and existing under the laws of the Philippines with principal office and place of business at 540 Padre Faura St., Ermita, Manila; respondent is the duly qualified and acting Commissioner of Customs and may be served with summons at the Bureau of Customs, Port Area, Manila.

2. On twenty-one (21) different occasions during the period covering the months of May, 1970 to May, 1973, inclusive, petitioner imported from abroad base lubricating oils and additives which comprised the entire cargo of the importing vessels and were all consigned to petitioner; itemized as follows:

Vessel	Reg. No.	Date of Arrival	Cargo Product	Quantity	Date of Application for Shipside Permit
Visayan	839	5-13-70	Lubricating oil	2,756.52 m/t	5- 9-70
Shosei Maru	795	5- 7-70	-do-	1,393.903 m/t	4-25-70
-do-	1008	6- 8-70	-do-	1,339.305 m/t	6- 2-70
San Carlos	1054	6-17-70	-do-	4,003.389 m/t	6- 9-70
Ferngate	1275	7-20-70	Additives for lub. oil	410.125 m/t	7-14-70
Visayan	1399	8- 8-70	Lubricating oil	2,639.30 m/t	8- 5-70
-do-	1548	9- 4-70	-do-	1,341.485 m/t	8-27-70
Yoshu Maru	1937	11-11-70	-do-	135.71 m/t	11- 4-70
Shosei Maru	52	1- 8-71	-do-	294.29 m/t	12-17-70
Shizuura Maru	128	1-22-71	-do-	1,689.29 m/t	1-16-71
Visayan	1715	10- 2-70	-do-	1,267.64 m/t	9-29-70
Yuyo Maru	421	3-12-71	-do-	3,322.86 m/t	2-27-71
Lucky No. 1	762	5- 6-71	-do-	2,749.808 m/t	5- 3-71
Shosei Maru	883	5-25-71	-do-	852.336 m/t	5-19-71
Yuyo Maru	1134	7- 2-71	-do-	3,668.651 kilos	6-25-71
Stolt Sidra	1358	8- 6-71	ISO Propyl Alcohol	299,001 kilos	7-25-71
Bonneville	1492	8-24-71	Additives for lub. oil	120,194 kilos	8- 8-71

Chevron Genoa	1473	8-21-71	Aviation Gasoline	1,028 m/t	8-13-71
Zuiko Maru	1520	8-28-71	Lubricating oil	594,956 m/t	8-24-71
Shosei Maru	2120	12-12-70	-do-	2,355.71 m/t	11-23-70
Stolt Boel	946	5-30-73	Lubricating oil	5,135 m/t	5-22-73

3. The Collector of Customs of Manila levied and collected in advance on said shipments the following amounts aggregating ₱30,958.30 as checking charges pursuant to Customs Memorandum Order No. 55-69, dated October 3, 1969, which petitioner paid under protest under the following official receipts and were liquidated under the following voucher numbers and dates:

Vessel	Reg. No.	Amount of Checking Charges	Official Receipt Number	Official Receipt Date	Voucher Number	Voucher Date
Visayan	839	₱1,930.00	15766	5-13-70	15766	5-13-70
Shosei Maru	795	975.74	14381	5- 4-70	14381	5- 4-70
-do-	1006	937.51	19048	6- 4-70	19048	6- 4-70
San Carlos	1054	2,802.37	19874	6-10-70	19874	6-10-70
Ferngate	1275	287.09	25045	7-24-70	25045	7-24-70
		76.94	25046	-do-	25046	-do-
Visayan	1399	1,847.51	26374	8- 6-70	26374	8- 6-70
-do-	1548	939.04	29451	8-28-70	29451	8-28-70
Yoshu Maru	1937	122.14	37088	11- 6-70	37088	11- 6-70
Shosei Maru	52	264.86	41845	12-24-70	41845	12-24-70
Shizuura Maru	128	1,520.36	44312	1-21-71	44312	1-21-71
Visayan	1715	1,140.88	33120	10- 2-70	33120	10- 2-70
Yuyo Maru	421	2,990.57	51092	3-12-71	51092	3-12-71

Lucky No. 1	762	2,474.83	57012	5- 5-71	57012	5- 5-71
Shosei Maru	883	767.10	58955	5-24-71	58955	5-24-71
Yuyo Maru	1134	3,301.79	63081	6-30-71	63081	6-30-71
Stolt Sidra	1358	269.10	66822	8- 3-71	66822	8- 2-71
Bonneville	1492	108.17	68154	8-16-71	68154	8-16-71
Chevron Genoa	1473	925.20	68819	8-20-71	68819	8-20-71
Zuiko Maru	1520	535.46	69372	8-27-71	69372	8-27-71
Shosei Maru	2120	2,120.14	40197	12-10-70	40197	12-10-70
Stolt Boel	946	4,621.50	141415	6- 1-73	141415	6- 1-73
Total		₱30,958.30				

4. Petitioner filed with the Collector of Customs of Manila twenty-one (21) separate protests against the imposition and collection of said checking charges, which protests were docketed under the protest case numbers listed below and subsequently denied by the Collector of Customs of Manila in a decision rendered on August 27, 1973 and received by petitioner on October 8, 1973:

Vessel	Registry No.	Manila Protest No.
Visayan	839	6036
Shosei Maru	795	6037
-do-	1006	6085
San Carlos	1054	6094
Ferngate	1275	7025
Visayan	1399	7039
-do-	1548	7062

Yoshu Maru	1937	7082
Shosei Maru	52	8004
Shizuura Maru	128	8029
Visayan	1715	8082
Yuyo Maru	421	8106
Lucky No. 1	762	8160
Shosei Maru	883	8178
Yuyo Maru	1134	8208
Stolt Sidra	1358	8242
Bonneville	1492	8245
Chevron Genoa	1473	8246
Zuiko Maru	1520	8247
Shosei Maru	2120	8316
Stolt Boel	946	8861

5. On October 23, 1973, petitioner appealed to respondent the decision of the Collector of Customs of Manila in said protest cases, which appeal was docketed as Customs Case No. 73-138.

6. On November 21, 1973, respondent rendered his decision in Customs Case No. 73-138 affirming in toto the decision of the Collector of Customs of Manila in said protest cases, copy of which decision was received by petitioner on November 28, 1973 and is hereto attached as Annex "A" and made an integral part hereof.

Hence the present recourse.

Petitioner assails the right of the Bureau of

Customs to impose and collect the checking charges aforesaid. Argument advanced is that such charges are improper. Reasons: (1) No statutory authority for the collection of checking charges at the Port of Manila; and (2) No checking services were rendered to authorize the imposition and collection of checking charges.

1. Petitioner's position of no statutory authority for the collection of checking charges at the Port of Manila calls to mind Caltex (Philippines) Inc. vs. Acting Commissioner of Customs, CTA Case No. 2564, March 31, 1975, certiorari denied in L-41595, February 6, 1976, the factual setting of which is on all fours with the case at bar, including the parties involved and issues litigated, and where this Court disposed of the same contention in clear and unequivocal terms, in the following wise:

> The collection of checking charges on lubricating oil from petitioner was made pursuant to Customs Memorandum Order No. 55-69 dated October 3, 1969, which states:
>
> > "(6) At the Cash Division, the Billing Clerk together with the Liquidator assigned thereat from the Management Overseer Group and the representative of the arrastre contractors will compute the amount of checking charges and prepare the arrastre bills. The special permit shall be validated upon payment in advance of the corresponding checking charges as computed, in cash or in certified check by the owner,

> importer, consignee and/or broker of the cargo subject to refund if it is later verified that no actual checking services has been rendered. All payments in advance shall be received by the teller designated for such purpose by the Chief, Cash Division, and Official Receipts shall be issued for such payment to be credited to the Portworks Fund. A copy of the Official Receipt and a copy of the Arrastre Bill shall be forwarded by the Cash Division to the Internal Audit Service after payment. HENCEFORTH NO PAYMENT TO THE ARRASTRE CONTRACTORS OF CHECKING CHARGES FOR CHECKING SERVICES AT THE BAY SHALL BE ALLOWED OR AUTHORIZED." (Exh. "4" pp. 33-35, CTA rec.)

The collection of checking charges as embodied in the aforesaid Customs Memorandum Order No. 55-69 is authorized by Section 3302 of the Tariff and Customs Code, which provides as follows:

> "Sec. 3302. Other charges.- When any article is sold or any services rendered by the Bureau of Customs in any matter for which a charge may be collected legally, no fee therefor having been fixed by law, such charge shall be on such amount <u>as may from time to time be fixed by regulation or order of the Commissioner</u> and approved by the department head; and the payment of such charge may be made by affixing and cancelling the documentary customs stamp." (Underlining supplied.)

It is apparent from the above quoted provisions of the law that respondent can fix by regulation or order the amount of checking charges when the amount is not fixed by law. The contention of petitioner to the effect that there exists no statutory authority as a basis for the collection and imposition of checking charges on its lubricating oil is without merit.

We find no cogent and valid reason to modify, much less depart from the conclusion reached in Caltex (Philippines) Inc., as expressed in the above-quoted opinion of the Court there, and the same should resolve the identical problem now brought before us in this appeal.

2. Petitioner further contends that the amount of ₱30,958.30 paid as checking charges should be refunded to it in accordance with paragraph 6 of Customs Administrative Order No. 55-69, for the reason that there were no actual checking services rendered by the Bureau of Customs, or its arrastre contractor, on the lubricating oil shipments consigned to it. We find petitioner's contention well taken.

In order to have a more effective means of collecting lawful revenues, dues, fees, charges, fines and penalties accruing under the Tariff and Customs Code, the Bureau of Customs promulgated Customs Memorandum Order No. 55-69 dated October 3, 1969 providing for the collection of checking charges in advance; and the summary report of the arrastre checker is proof of actual checking services rendered. (Special and affirmative defenses of respondent in his answer to petitioner's petition for review.) To quote paragraph 8 of said memorandum order:

> "8) After the shipside discharge at the bay is completed, the Customs Inspector on board and the arrastre checker who shall be a qualified surveyor in cases of bulk cargoes shall sign on the face of Special Permit indicating time of completion of shipside discharge. The Arrastre Checker shall also submit to the Customs Inspector on board a summary report of actual service rendered to be attested by the inspector in five (5) copies, the original to be submitted to the Cash Division by the Contractor's Head Checker, one copy to be retained by the Customs Inspector, one copy for the broker/consignee and one copy for the Arrastre Contractor. The summary report duly accomplished shall be proof that checking services was rendered. x x x" (Underlining supplied.)

If the summary report of the arrastre checker is the evidence that checking services had been rendered, why is it that in denying the protests of petitioner against the imposition and collection of checking charges on its lubricating oil shipments, the Collector of Customs of Manila based its decision dated August 27, 1973 on the presumption of law that "official duty has been regularly performed" under Section 5, Rule 131 of the Rules of Court and not on the summary reports of his arrastre checker as provided for in Customs Memorandum Order No. 55-69? Then, when the protest cases were appealed to respondent Commissioner of Customs, the decision of the latter dated November 21, 1973, affirming *in toto* the decision of the Collector of Customs, merely noted that Customs Memorandum No. 55-69 "provides that the summary report of the Arrastre Checkers shall be proof of actual checking services rendered"; and "With the summary report of the Arrastre Checkers, the presumption of law is that checking services have been rendered in the instant cases, since the presumption of law is to the effect that official duty has been regularly performed". (pp. 6-7, CTA records.) Nothing - absolutely nothing - is said in the decisions of the Collector of Customs and Commissioner of Customs of the summary reports duly accomplished by their arrastre contractor that checking services were rendered, when these reports are supposed to be official records of the Bureau of Customs and under the customs memorandum, proof of actual checking services rendered.

It is to be fairly and justly presumed that the Commissioner of Customs, which possesses a power so comparatively broad and searching as to fix by regulation or order checking charges for services rendered has so shaped the customs memorandum order as, without ambiguity or doubt, to bring within it everything it was meant to be. Hence, where his memorandum order requires that the summary report of the arrastre checker is proof of actual checking services rendered, the right of the Bureau of Customs to collect checking charges should not be planted upon the presumption, standing alone, that official duty has been regularly performed. Accordingly, as contended by petitioner, the presumption that checking services have been rendered should arise upon the existence of "summary reports duly accomplished", and not based on another presumption that such summary reports exist because official duty has been performed. An assessment, which in this case is the liability of petitioner to checking charges, must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. (Collector of Internal Revenue vs. Benipayo, L-13656, January 31, 1962, 4 SCRA 182, 185.)

At any rate, in accordance with Section 2, Rule 7 of the Rules of the Court of Tax Appeals, which provides that the Commissioner of Customs shall certify and forward to this Court within ten (10) days after filing his answer, respondent, upon motion of petitioner, was directed to forward and certify, as part of the Customs records bearing on this case, the summary reports of the arrastre checkers. During the hearing of this case on July 11, 1983, however, respondent's counsel orally manifested before this Court that due to the lapse of almost ten (10) years, the summary reports of the arrastre checkers on the importations in question could no longer be located despite diligent efforts.

Nevertheless, if in the decisions of the Collector of Customs of Manila and respondent Commissioner of Customs in the subject protest cases, which were promulgated on August 27, 1973 and November 21, 1973, respectively, the summary reports of the arrastre checkers were never cited or mentioned as evidence that checking services were rendered pursuant to Memorandum Order No. 55-69; the Customs records submitted to this Court on February 11, 1974 do not include or contain the summary reports of checking services performed on the oil shipments of petitioner; and the personnel of the Bureau of Customs could not locate them, the only implication is that such summary reports do not exist. Undoubtedly, it seems clear that no checking services were actually rendered by the Bureau of Customs or its arrastre contractor on the lubricating oil shipments involved in this case. As observed by this Court in Caltex (Philippines) Inc. vs. Acting Commissioner of Customs, CTA Case No. 2564, March 31, 1975, certiorari denied in L-41595, February 6, 1976, which as stated earlier, is on all fours with the instant case by reason of the exact identity of the facts, parties and law involved, as well as the issue litigated:

> After the vessel had arrived, three cargo inspectors headed by Mr. Conrado Mendoza of the E.R. Sanderson and Company hired by the herein petitioner boarded

> the vessel for the purpose of checking the quantity of the cargo and to determine if the lubricating oil was contaminated with foreign elements while on board the vessel. Inspectors of R.S. Del Pan Industries hired by Far East Molasses also boarded the vessel for the same purpose but with a view to protect the vessel's owner should a claim be filed by a consignee. The said surveyors watched the opening of the tank hatches by the vessel's crew, after which the surveyors measured the lubricating oil before the same was pumped to the lighters and barges, and again it was measured when already at the lighters and barges. During all the time that petitioner's surveyors were performing the job measuring the said lubricating oil, none of the personnel of the Bureau of Customs present at the aforesaid vessel ever participated.

In the light of the above, and the uncontroverted testimony of petitioner's witness, Mr. Conrado Mendoza, who surveyed the cargo involved herein, that:

> Q. Mr. Mendoza, in performing the surveying functions in connection with the shipments involved in this case, would you know if there were any representative from the Bureau of Customs or Arrastre which conducted the same?
>
> A. In every vessel, they have customs inspector on board and customs guard. There are cases where checkers are boarding vessels also - which are arrastre checkers.
>
> Q. Now, on those cases where there were representatives from the arrastre operator, what did these representatives perform in connection with these shipments?
>
> A. I don't exactly know the scope of their work. What I know is, sometimes

they come to us and get quantities we computed, sometimes the measurement. After that they just leave for somewhere.

x x x x

Q. When you said they came to you and got figures you computed, what figures were you referring to?

A. Figures on the quantities of the product. We compute the quantities, later or after these figures have been already prepared they came to us and ask how much. But if you mean actual gauging performed by them together with us, I cannot remember whether they did the actual gauging. (TSN, July 1, 1982, pp. 6 & 7)

We are convinced that no actual checking services were rendered by the Bureau of Customs personnel or its arrastre contractor on the oil shipments of petitioner. In line with the decision of the Supreme Court in the case of Caltex Philippines, Inc., et al., vs. Delgado Bros., Inc., 96 Phil. 308, and the decision of this Court in Caltex (Philippines) Inc. vs. Acting Commissioner of Customs, supra, we find petitioner not liable for the checking charges in question as no checking services were performed by the Bureau of Customs or by the arrastre contractor. Accordingly, the checking charges paid by petitioner are refundable.

WHEREFORE, the decision appealed from is hereby reversed. Respondent Acting Commissioner of Customs is ordered to grant petitioner a tax refund or credit in the amount of ₱30,958.30.

SO ORDERED.

Quezon City, Metro Manila, September 26, 1984.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge