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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITADEL LINES, INC., in its capacity as agent of the SS "EIKO MARU",
Petitioner,

- versus -

C.T.A. CASE NO. 2527

COMMISSIONER OF CUSTOMS,
Respondent.

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

9/29/78

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs, dated April 17, 1973, affirming that of the Collector of Customs, Port of Manila, (in Administrative Case No. V-442), imposing an administrative fine of P24,937.00 on the vessel SS "EIKO MARU" and/or petitioner herein Citadel Lines, Inc., in its capacity as agent of the SS "EIKO MARU", for violation of Section 2523 of the Tariff and Customs Code, which provides as follows:

> "SEC. 2523. <u>Discrepancy Between Actual and Declared Weight of Manifested Article.</u>- If the gross weight of any article or package described in the manifest exceeds by more than twenty <u>per centum</u> 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 <u>per centum</u> 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 facts are not in dispute. It appears that the SS "EIKO MARU" arrived at the Port of Manila on February 24, 1969 and discharged thereat 26 bales of assorted textile remnants from Japan. The gross weight of the said merchandise as declared in the vessel's cargo manifest was 8,684 lbs. but upon actual examination, it was found that the actual gross weight thereof was 60,711 lbs. or an excess of 52,027 lbs. over the weight declared in the manifest. Consequently, the Collector of Customs instituted administrative proceedings (Administrative Case No. V-442) against the vessel SS "EIKO MARU" for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

On October 16, 1972, the Collector of Customs of Manila rendered a decision holding the vessel and petitioner herein liable for an administrative fine of P24,937.00. On April 17, 1973, on appeal by petitioner, said decision of the Collector was affirmed by the Commissioner of Customs upon the ground that there was a violation of Section 2523 of the Tariff and Customs Code.

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

In its memorandum, petitioner maintains that the vessel SS "Eiko Maru" did not violate Section 2523 of the Tariff and Customs Code because there is no evidence or proof that the discrepancy between the declared weight and actual weight of the subject shipment was due to the carelessness or negligence of the master, owner or employee of the vessel. In support of its contention, petitioner invokes the case of Smith, Bell & Co. Inc. vs. Commissioner of Customs, CTA Case No. 2469, dated December 27, 1974.

Petitioner further asserts that the amount of the fine imposed by the Bureau of Customs has no legal basis since it is allegedly based on the total value of the cargo and not on the value in respect to which the difference exists as stated in Section 2523 of the Tariff and Customs Code.

This case is not one of first impression. In the case of United States Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2796, July 31, 1978, this Court ruled:

> Likewise, the insistence by petitioner that there is no proof or evidence as to the carelessness or incompetence of the master, owner,, officer or employee of the vessel is untenable. This court has consistently ruled that under Section 2523 of the Tariff and Customs 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, owner, pilot, officer or employee

of the vessel. Failing in this duty, the conclusion is inevitable that there is an unexcusable laxity on the part of the master,.officer or owner of the vessel in exercising the ordinary care and prudence in avoiding the underdeclaration of the weight of the ship's cargo, penalized under said Section 2523. Doing business in the Philippines, it is the solemn obligation of the master, pilot in command, owner or employee of the vessel to abide by our customs laws and regulations. In other words, if the discrepancy of more than 20% between the declared weight and actual weight of the imported article arose because of, and which could have been avoided if it were not for, the failure or omission of the master, pilot in command, owner, officer or employee of the vessel to perform his duty of ascertaining or verifying the weight of the cargo, the inevitable conclusion is that he is negligent or careless within the contemplation of the law. (See Citadel Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978; Compania General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2575, April 6, 1977, Certiorari denied in G.R. L-47010, October 7, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977; Macondray & Co., 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 G.R. 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.) In this case, petitioner frankly admits that the weight declared in the bill of lading and the manifest was supplied by the shipper and same was simply relied upon by the carrier. This evidently indicates that no actual verification or ascertainment of the weight of the cargo at the port of loading was made on the part of the vessel.

We find no plausible and valid reason to depart from this rule. The decision of this Court in Smith, Bell & Co. Inc. vs. Commissioner of Customs, CTA Case No. 2469, dated December 27, 1974, is not applicable to the case at bar since the circumstances in that case show that the discrepancy in weight appeared to have resulted from a clerical or typographical error and that the correct weight was reflected in the Bill of Lading.

With respect to the amount of the administrative fine of ₱24,937.00, however, we feel that, 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. (United States Lines, Inc. vs. Commissioner of Customs, _supra_; Citadel Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978.) Accordingly, a fine of ₱10,000 is deemed just and reasonable under the premises.

WHEREFORE, the decision appealed from is modified and the vessel SS "Eiko Maru" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs a fine of ₱10,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, September 29, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge