REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCIES, INC.,
in its capacity as shipagents
of the vessels SS "Aminaka Maru",
SS "Nanko Maru" and SS "Eurygenes,"
Petitioner,

- versus - C.T.A. CASE NO. 2837

COMMISSIONER OF CUSTOMS,
Respondent. 11/12/77

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated September 7, 1976, affirming that of the Collector of Customs of Manila, imposing upon petitioner as shipagent, an administrative fine in the total amount of ₱67,316.00 for violation by the SS "Aminaka Maru," the SS "Nanko Maru," and the SS "Eurygenes" of Section 2523 of the Tariff and Customs Code of the Philippines, as amended, 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.

This case was submitted for decision based upon the pleadings and records which are not disputed. Based upon three (3) administrative cases, namely: (1) Case No. 540 initiated against the SS "Aminaka Maru," (2) Case No. 543 initiated against the SS "Nanko Maru," (3) Case No. 576 initiated against the SS "Eurygenes", for their alleged violations of the aforesaid Section 2523 of the said Code, the Collector of Customs found the following:

Administrative Case No. 540

That the vessel SS "Aminako Maru", Reg. No. 2466 arrived at this port on December 29, 1969 and discharged a shipment consisting of 27 bales of assorted textile remnants consigned to Baylin Commercial covered by a Bill of Lading No. KM-10; that said shipment was declared under Entry No. 005190, series of 1969 and the declared weight appearing in the Bill of Lading is 5,670 lbs. gross but upon examination it was found that the actual weight is 43,179 lbs. gross and therefore there was an excess of 31, 882.65 lbs. gross (should be 37,509 lbs. gross).

Administrative Case No. 543

That the vessel SS "Nanko Maru", Reg. No. 147 arrived at this port on January 24, 1970 and discharged a shipment consisting of 31 bales of assorted textile remnants consigned to Coman Incorporated covered by a Bill of Lading No. KM-21; that said shipment was declared under Entry No. 009052, series of 1970 and the declared weight appearing in the Bill of Lading is 9,610 lbs. gross but upon examination it was found out that the actual weight is 46,482 lbs. gross and therefore there was an excess weight of 36,872 lbs. gross.

Administrative Case No. 576

That the vessel SS "Eurygenes", Reg. No. 2351, arrived at this port on December 10, 1969 and discharged a shipment consisting of 55 bales of assorted textile remnants consigned to Jose Ligon covered by Bill of Lading No. 142; that said shipment was dec-

> lared under Entry No. 05463, series of 1969 and declared weight appearing in the Bill of Lading is 16,866 lbs. gross but upon examination it was found out that the actual weight is 45,369 lbs. gross and therefore there was an excess of weight of 28,503 lbs. gross.

in his decision dated January 27, 1975 and imposed upon these vessels, or their local agent, the total amount of P67,316.00 as administrative fine, itemized as follows:

> "Aminaka Maru" - Administrative Case No. 540 Twenty-One Thousand Five Hundred Twenty-Six Pesos (P21,526.00) Philippine currency;
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> "Nanko Maru" - Administrative Case No. 543 Twenty-Three Thousand One Hundred Seventy-Two Pesos (P23,172.00) Philippine Currency; and
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> "Eurygenes" - Administrative Case No. 576 Twenty-Two Thousand Six Hundred Eighteen Pesos (P22,618.00) Philippine Currency.

On appeal of the above decision to the Commissioner of Customs, the latter affirmed the same on September 7, 1976. Hence, petitioner appealed to this Court.

The only issue is whether or not said vessels, the SS "Aminaka Maru," the SS "Nanko Maru," and the SS "Eurygenes" violated Section 2523 of the Tariff and Customs Code, as amended, so as to subject said vessels or petitioner, as shipagent of the former, the payment of the total administrative fine of P67,316.00.

Petitioner asserts, firstly, that it should not be held liable for the fines imposed upon the vessels in question on the ground that there is no evidence which will show that the excess weights of the cargoes were due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessels; that the freightage of the cargoes were in fact made on the measurement basis, that the bills of lading were declared by the shippers and the said vessels have relied only on the good faith of said shippers in declaring the true weights of said shipments. Secondly, it contends that the fine imposed upon each vessel is excessive, unjust and confiscatory in that the fines were imposed upon the value of the whole shipment in question of each vessel and not just upon the value of the deficiency.

This issue in question is not new. In a decision of the Court in the case of Macondray & Co. Inc. etc. vs. Commissioner of Customs, CTA Case No. 2575, promulgated on April 6, 1977, this Court held thus:

> During the hearing in this Court, instead of presenting its evidence, petitioner joined respondent in submitting the case, as aforesaid, based upon the pleadings and customs records, but stated in its defense that in order to sustain the fine, "x x x there must be proof that the alleged weight discrepancy of more than 20% must be shown to be due to carelessness or incompetency of the master in command, owner, or employee of the vessel" and that "(t)here is no proof regarding such carelessness or incompetency." (Memorandum of Petitioner, at p. 30, CTA rec.) This Court states with emphasis that there was admittedly in this case a 37.7% increase in weight of the cargo, or 17.7% over the 20% tolerable limit of discrepancy allowed by law. Considering this percentage of increase over the good's declared weight, there was, to our minds, a complete disregard of the duty of the master, owner, or employee of the vessel in exercising that ordi-

nary care and prudence in detecting any misdeclaration in weight of the cargo in question, we assume that the master, owner or employee of the vessel responsible knows that the cargo in question was destined for discharge in the Philippines, and knowing as they should of the strict provision of Section 2523 of the Tariff and Customs Code requiring that the weight of the cargo should not be more than 20% of that weight reflected in the accompanying bill of lading and in the ship's manifest, they have not, therefore, taken all ordinary and necessary steps to prevent a violation of said law. The fact that the weight was supplied by the shipper, and that under maritime practice, ships, such as the M/S "TROUBADOUR", at the time of loading goods in the foreign ports, do not weigh their cargo is not a valid excuse in not at all considering the magistracy of our customs laws requiring that the cargo destined for Philippine ports should be weighed and the discrepancy should not exceed 20% of what is declared. And we see nothing in the record which showed some kind of abnormal condition obtaining in the port of loading, which is in New York, that could have brought about this rather high percentage of weight discrepancy. Consequently, this Court is constrained to find that there was an unexcusable negligence or incompetency on the part of either the master, owner, or employee of the vessel in charge of the cargo in preventing the occurrence of over 20% discrepancy in weight of the 43 bales of assorted textile remnants carried by the M/S "TROUBADOUR" penalized under Section 2523 of the Tariff and Customs Code. However, we are of the opinion that the fine to be imposed under Section 2523 of the Tariff and Customs Code, as amended, should not be more than 15% of the value of the article or goods in respect to which the deficiency exists. The weight discrepancy of the goods is 24,811 lbs., and based upon the appraised value of $0.85 per lb. of discrepancy, the total value of the excess weight discrepancy is, therefore, $21,089.35, or computed at the rate of ₱3.94 to a dollar, the value of the excess weight discrepancy is ₱83,092.04. Fifteen (15%) per cent of the total value of the weight discrepancy of ₱83,092.04, which is ₱12,463.80, is the administrative fine legally imposable under Section 2523 of said Code."

This decision followed closely the rationale in the cases of Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2741, February 3, 1977; Delgado Shipping Agencies, Inc. etc. vs. Comm. of Customs, CTA Case No. 2685, February 15, 1977 and Delgado Shipping Agency Inc. vs. Comm. of Customs, CTA Case No. 2744, February 25, 1977.

The aforesaid decision of Macondray & Co., Inc. etc. vs. Comm. of Customs, CTA Case No. 2575, was appealed by certiorari by petitioner to the Supreme Court and docketed as G.R. No. L-47010, but the said appeal was denied for lack of merit in a resolution of the latter dated October 7, 1977.

With respect to the case at bar, and applying the aforesaid decision of this Court in the aforesaid case of Macondray & Co., Inc., C.T.A. Case No. 2575, supra, we find that the percentage of discrepancy between the actual weight (43,179 lbs) as found in the examination by the Customs officials and the weight of the cargo as declared (5,670 lbs.) in the bill of lading, carried by the SS "Aminaka Maru," is 66.15% (37,509 lbs. ÷ 5,670 lbs.); and the percentage of discrepancy between the weight as found (46,482 lbs.) and upon investigation was declared (9,610 lbs.) in the bill of lading, and which was carried by the Ss "Nanko Maru" is 38.37% (36,872 lbs. ÷ 9,610 lbs.) These increases in weights of the cargoes of these two vessels are very much in excess of the 20% tolerable limit provided for in, and punishable by fine under, Section 2523 of the Tariff and Customs Code, as amended. However, the weight discrepancy between the actual weight (45,369 lbs.) of the cargo as found in the examination by the Customs officials and what was declared (16,866 lbs.) in the bill of lading, carried by the SS "Eurygenes," is only 16.87% (28,503 lbs. ÷ 16,866 lbs.), which is well within the 20% tolerable limit allowed under Section 2523 of the Code, and, hence, the SS "Eurygenes" cannot therefore, be held liable to an administrative fine under the said provision of the Code. Considering, the foregoing, we will now compute the allowable fine that may be imposed but upon the two (2) vessels, the SS "Aminaka Maru" and SS "Nanko Maru".

Anent the SS "Aminaka Maru," the weight discrepancy of the cargo carried by it is 37,509 lbs. Based upon the appraised value of $0.85 per lb. of weight discrepancy, the value of the excess weight discrepancy is, therefore, $31,882.65, or computed at the rate of P3.91 to a dollar, is P124,661.16. Fifteen (15%) per cent of the value of weight discrepancy of P124,661.16, which is P18,699.00, is the maximum fine that can be impossable upon it under Section 2523 of the said Code.

As regards the SS "Nanko Maru," the weight discrepancy of the cargo it carried is 36,872 lbs., and based upon the appraised value of $0.85 per lb. of weight discrepancy, the value of the excess weight discrepancy is therefore, $31,341.20, or computed at the rate of P3.91 to a dollar, the value of the excess weight discrepancy is P122,544.09. Fifteen (15%) per cent of the said value of weight discrepancy of P122,544.09, which is P18,382.00, is the maximum fine that can be imposable under said Section 2523. However, this Court finds no compelling reason to impose the maximum penalty under said Section 2523 because the negligence or incompetence of the master, owner, officer or employee of the vessel does not, to our mind, and upon the circumstances, amount to willful negligence or gross incompetence. Consequently, a fine of P9,350.00 and P9,190.00 is deemed just and reasonable for the discrepancies in weights of the cargoes of the SS "Aminaka Maru" and the SS "Nanko Maru," respectively. In sum, for the violation of Section 2523 of the Tariff and Customs Code, as amended, by the SS "Aminaka Maru" and the SS "Nanko Maru," petitioner as shipagent is, therefore, liable to pay the total sum of P18,540.00 as administrative fine.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is hereby modified. Petitioner, in its capacity as agent of the vessels SS "Aminaka Maru" and SS "Nanko Maru," is hereby ordered to pay respondent the total sum of P18,540.00 for violation of said Section 2523 of the Tariff and Customs Code of the Philippines, as amended.

With costs against petitioner.

SO ORDERED.

Quezon City, November 12, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge