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DELGADO SHIPPING AGENCIES, INC.,
in its capacity as agent of
the MS "JUNSHO MARU,"
Petitioner,

- versus - C.T.A. CASE NO. 2548

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

9/30/74

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated July 12, 1973, affirming the decision of the Collector of Customs of Manila, imposing upon petitioner a fine of ₱23,725.00 on the M/S "Junsho Maru" for violation of Section 2523 of the Tariff and Customs Code of the Philippines, as amended, which reads 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.

The facts are not in dispute. On February 17, 1969, the M/S "Junsho Maru" arrived in the Port of

Manila from Kobe, Japan. Among its cargo were 35 bales of assorted textile remnants with a declared weight of 14,875 lbs., covered by Bill of Lading No. KM-32, and with a value of ₱159,499.26. During the processing and appraisal of the covering entry papers no. 34240-69 and weighing of said cargo by Examiner Alfonso Seli, it was finally ascertained by Customs Appraiser Magno Clemente, Jr. of the Bureau of Customs that the actual weight of the aforesaid 35 bales of textile remnants was 45,252 lbs. and not 14,875 lbs. as shown by said bill of lading. There was a discrepancy in the declared weight of the remnants by 30,377 lbs., which was reportedly around 40% over what has been declared. Consequently, a report on the matter was made on April 25, 1969 showing this discrepancy not only in value but also in weight of the textile remnants and recommending the imposition of additional duty and tax and administrative fine.

On July 9, 1969, Eduardo R. Gatchalian, Chief of the Law Division of the Bureau of Customs notified petitioner, as agent of the vessel M/S "Junsho Maru," that said vessel discharged said textile remnants in an excess weight of 20% more than what was declared in said bill of lading in violation of Section 2523 of the Tariff and Customs Code and was required to explain why no administrative fine should be imposed upon the vessel.

On August 17, 1969, Atty. I. R. Seranilla, counsel for petitioner, explained among other things that the weight of the cargo was declared by the shipper and that the vessel merely relied upon the information given by the said shipper; and that the shipment is capable of absorbing moisture or water which probably could have caused the increase in weight.

After giving the M/S "Junsho Maru" full opportunity to be heard concerning the misdeclaration, and although represented already by petitioner Delgado Shipping Agencies, Inc. during the initial day of the administrative hearing, it did not however appear during the second and last hearing on March 9, 1973 to defend the vessel's case despite previous notice thereof. Hence, the counsel for the Government was allowed, as in fact he presented his evidence consisting of the oral testimony of Mr. Magno Clemente, Jr., customs appraiser, and documentary evidence, namely: (1) the report of said Mr. Magno Clemente, Jr. dated April 28, 1969 aforesaid; (2) the xerox copy of the bill of lading; (3) the xerox copy of the discrepancy report; and (4) the complaint filed by E. R. Gatchalian, Chief of the Law Division of the Bureau of Customs against the M/S "Junsho Maru".

Based upon those evidences presented, the Collector of Customs for the Port of Manila found the said M/S "Junsho Maru" to have violated Section 2523 of the Tariff and Customs Code, as amended, in his decision dated April 2, 1973, and imposed upon its agent, petitioner herein, Delgado Shipping Agencies, Inc. a fine of ₱23,725.00.

On appeal from the decision of the Collector of Customs, the Acting Commissioner of Customs, in a decision dated July 12, 1973, affirmed the imposition of a fine of ₱23,725.00 against petitioner, stating in admonition in his decision that the Bureau of Customs had time and again stressed to vessels the importance, which he said is not exaggerated, for the master to know the exact weights of the ship's cargoes; that it is a part of modern day shipping for a vessel not only to be seaworthy but must carry only such authorized weight in order to safeguard the passengers and cargo; that while the freight of cargo is based upon the space that it occupies, it will not negate the duty of the master to know their weights less important; and that, therefore, it is the duty of the master, pilot or employee of the vessel concerned to verify the weight of a cargo and not merely rely upon the declaration by the shipper in the bill of lading.

From the decision of the Commissioner of Customs, petitioner appealed to this Court.

During the hearing before this Court, petitioner did not take steps to show by any evidence whatsoever facts that may excuse it, or otherwise absolve it, or reduce the imposed fine. As a matter of fact, this case was conformably submitted with respondent to this Court for decision based only upon the pleadings and the records.

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In short, counsel for petitioner has not shown by evidence in its defense that the increase was not due to carelessness or negligence of the master, captain, or employee of the M/S "Junsho Maru," or, as alleged in a letter of Atty. Seranilla dated August 17, 1969 aforesaid, caused by moisture or absorption of water by the remnants. On the contrary, based upon the records, we note that there was an actual discrepancy in weight of 30,377 lbs. and is, percentagewise, and as actually computed, 48.96% over what has been declared in the bill of lading. In terms of tonnage, official estimate by the Bureau of Customs shows that the discrepancy is roughly 14.7 tons (equivalent to a little bit more than the weight of 3 army jeeps considering a single jeep weighs four (4) tons). We see clearly that there was in this case a complete disregard of the duty to find out whether there is a misdeclaration in weight of the remnants, which a master, an employee, or an experienced hand of the vessel responsible for this job, can easily detect by the simple exercise of ordinary care and prudence. An analysis of Section 2523 of the Tariff and Customs Code shows that it already grants to master of ships a tolerable allowance in weight discrepancy in the ship's cargo by not more than 20% of what is declared in the manifest or bill of lading. In this case however, the allowed percentage of tolerable discrepancy in weight of 20% was far exceeded by 28.96% [48.9% (actual weight) less 20% (tolerated weight)], or by more than 100% over the allowed percentage of discrepancy in the law. And there was no evidence on record which would show an abnormal situation which might have brought about the discrepancy in the port of loading, or in this case in Kobe, Japan, which might perhaps caused the big discrepancy in weight of the goods, or that there were no weighing facilities thereat to merit the imposition of a much lower penalty.[1] Failing thus, we are constrained to hold that there was an unexcusable laxity on the part of the master in exercising the ordinary care and prudence in the commission of excessive discrepancy in the weight of a ship's cargo (textile remnants) penalized under Section 2523 of the

[1] F. E. Zuellig, Inc. in its capacity as agent of the M/V "HONGKONG GRACE" vs. Comm. of Customs, CTA CASE No. 2360, April 10, 1975.

Tariff and Customs Code. Consequently, a fine in the amount of ₱5,000.00 to be imposed upon the M/S "Junsho Maru" is, to our minds and in the exercise of our intelligent discretion, just and reasonable under the above circumstances.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is hereby modified. Petitioner, in its capacity as agent of the vessel M/S "Junsho Maru," is hereby ordered to pay respondent the sum of ₱5,000.00 for the violation of Section 2523 of the Tariff and Customs Code of the Philippines.

With costs against petitioner.

SO ORDERED.

Quezon City, September 30, 1976

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Presiding Judge

AMANTE FILLER
Associate Judge