CITADEL LINES, INC.,
In its capacity as agent
of the S/S "SHUNHO MARU",
Petitioner,

- versus -

C.T.A. CASE NO. 2711

COMMISSIONER OF CUSTOMS,
Respondent.
X - - - - - - - - - - - - X

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated May 14, 1975 affirming that of the Collector of Customs imposing a fine of ₱12,696.00 against the S/S"SHUNHO MARU" and/or its local agent, the Citadel Lines, Inc., herein petitioner, for violation of Section 2523 of the Tariff and Customs Code, 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 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.(Underlining ours.)

The court records show that the S/S "SHUNHO MARU" arrived at the Port of Manila on June 20, 1969; that part of its discharged cargo consisted of 22 bales of assorted textile remnants, covered by Bill of Lading No. KM-15 and declared under Entry No. 59234-69 series of 1969; that this cargo or articles were declared at a gross weight of 9,460 lbs. That upon examination by the Bureau of Customs, it found that the articles have actual gross weight of 34,927 lbs., or a discrepancy of 25,467 lbs., or more than 20% of the gross weight (9,460 lbs.), as declared in the bill of lading; that the percentage of discrepancy was in fact 72.93%, which is clearly 20% more than the declared weight of the articles or merchandise (9,460 lbs.) in the said bill of lading.

Based on the above, the Collector of Customs was constrained, on September 23, 1969, to send a letter to petitioner informing the latter of the violation committed by the said vessel of Section 2523 of the Tariff and Customs Code, as amended. Petitioner sent a reply, on November 19, 1969, to the Collector of Customs, explaining its side on the alleged violation and stating in its defense, that the weight appearing in the bill of lading was declared by the shipper at the port of origin, which served as basis for manifesting the cargo's weight by the vessel; that the cargo was freighted on a measurement basis and not upon its weight; and that there was no intention on the part of the vessel to defraud the government.

On January 31, 1975, the Collector of Customs rendered a decision holding the petitioner and/or the vessel S/S "SHUNHO MARU" liable as charged and imposing on the petitioner an administrative fine of ₱12,696.00 pursuant to the provisions of Section 2523 of the Tariff and Customs Code, as amended.

On appeal of the decision of the Collector of

Customs to the Commissioner of Customs, the latter in his decision of May 14, 1975, affirmed in toto the decision of the former.

On appeal to this Court, petitioner did not present any evidence to contradict the facts as found in the decisions of either the Collector or the Commissioner of Customs. In fact, petitioner had opted to submit this case based only upon the pleadings and the records of the Court of Tax Appeals.

The principal issue in this case is whether or not petitioner is liable for an administrative fine of ₱12,696.00 for violation of Section 2523 of the Tariff and Customs Code, as amended.

As shown in the petition for review, petitioner and the vessel defended their non-liability generally asserting (1) that the weights appearing in the bill of lading were declared by the shipper at the port of origin and the vessel in question just took the said entry and entered it in the ship's manifest at its face value; (2) that the cargo was freighted on a measurement basis and not upon its weight; (3) that the Collector of Customs neither received any evidence from the petitioner nor from the government to support his decision; (4) that there was no intention of petitioner to defraud the government; and (5) that the fine of ₱12,696.00 imposed is unjust and excessive.

This case with the issue just presented and the concomitant defenses asserted is not one of first impression to this Court. We have held in several cases, and sustained by the Supreme Court of the Philippines, that under Section 2523 of the Tariff and Customs Code, it is the duty and obligation of the master, owner, pilot, officer or employee of the vessel to ascertain and verify the weight of the ship's cargo at the port of loading. Where there was a failure to do this duty, the conclusion is inescapable that said master, official or owner of the vessel was unexcusably lax in exercising such care and prudence so as to avoid underdeclaration of the weight of the ship's cargo and hence, there was violation of Section 2523. Where, therefore, there is an admission that weight stated in the bill of lading was supplied by the shipper, and was principally relied upon by the vessel for the purpose of declaring the cargo's weight in the manifest, this simply indicates that it has not verified or ascertained the weight of the cargo at the port of loading. And where there was no actual ascertainment or verification of the weight of the cargo, the conclusion is that the master, pilot in command, owner, official or employee of the vessel was negligent or careless within the contemplation of law. (Delgado Shipping Agency, Inc. vs. Commissioner of Customs, CTA Case No. 2692, July 30, 1979, in turn citing Citadel Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978; Compania General de Tobacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2576, April 6, 1977, certiorari denied in G.R. L-47010, October 7, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2744, February 25, 1977, certiorari denied 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 the specific case of Commissioner of Customs vs. Court of Tax Appeals and Delgado Shipping Agencies, Inc., etc., G.R. L-49462, June 29, 1979, the Supreme Court in its decision therein stated that, under the provisions of Section 2523 of the said Code which authorizes the imposition of administrative fine, in order that the fine be imposable, two (2) requirements must be present, namely: (1) that the actual gross weight exceeded by more than twenty *per centum* (20%) the declared gross weight; and (2) that the discrepancy was due to carelessness or incompetency of the master, owner, or employee of the vessel. Where the discrepancy in the declared gross weight of the cargo and its actual weight is so grave, this discrepancy is *per se* evidence of willful negligence or gross incompetence on the part of the said official or employee of the ship. Inferentially, said law allows or tolerates only a weight discrepancy of not more than twenty (20%) percent of the declared gross weight.

In other words, the Supreme Court had said in the same case of Commissioner of Customs vs. Court of Tax Appeals and Delgado Shipping Agencies, Inc., ibid, that where the discrepancy in weight exceeds 20% of the declared weight, there is a violation of Section 2523 of the Tariff and Customs Code, as amended. Parenthetically, it said in that case that "xxx The discrepancy in the declared gross weight of the cargo (13,272 lbs.) and its actual weight (66,579 lbs.) is so grave that it constitutes per se evidence of willful negligence or gross incompetence. The actual gross weight of the shipment exceeded by more than four hundred (400%) percent its declared weight, whereas the statute allows a discrepancy of not more than twenty (20%) percent. In other words, the discrepancy of 53,307 lbs. (underdeclared weight exceeded by more than twenty (20) times the 20% discrepancy (2,654.4 lbs. or 20% of the declared weight of 13,272 lbs.) allowed by the law." The High Court went on and declared in the aforecited case that the codal provisions (Section 2523 of the Tariff and Customs Code, as amended) requiring vessels to declare the correct weight of the cargo is intended to cut smuggling activities through weight underdeclaration. And that the vessel's master, owner or employee are duty bound under penalty of fine to check and verify the correct weight, which to the High Court is not a burdensome task in this period of containerized cargo.

In this case at bar, the <u>actual gross weight</u> of the cargo (22 bales of assorted textile remnants) is 34,927 lbs. and the <u>declared weight</u> is 9,460 lbs. The discrepancy is, therefore, 25,467 lbs. The <u>actual gross weight</u> (34,927 lbs.) of the cargo exceeded by 269% its <u>declared gross weight</u> (9,460 lbs.). In other words, the discrepancy of 25,467 lbs. (underdeclared weight) exceeded by more than thirteen (13) times the 20% discrepancy (1,892 lbs. or 20% of the declared weight of 9,460 lbs.) authorized by law.

Accordingly, since this case was submitted for decision upon the pleadings and the Court of Tax Appeals records, the correctness of the imposed fine by the Collector of Customs, and as affirmed by the Commissioner of Customs, cannot be impugned and that it is within the legal presumption of law that the said official had decided correctly and that the decision is in accordance with and has the full force of law.

WHEREFORE, the decision of the Commissioner of Customs is affirmed and the vessel S/S "SHUNHO MARU" and/or its local ship agent, petitioner Citadel Lines, Inc., are hereby ordered to pay to the Bureau of Customs within thirty (30) days from the date this decision becomes final and

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executory the fine of ₱12,696.00. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1979.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge

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