UNITED STATES LINES, INC.,
In its capacity as agents
of the S/S "PIONEER MINX",
Petitioner,

- versus - C.T.A. CASE NO. 2678

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

10/17/77

# D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated March 7, 1975, affirming that of the Collector of Customs of Manila, imposing upon petitioner a fine of ₱17,066.00 for violation by the vessel S/S "Pioneer Minx" 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 the records of the Bureau of Customs. As shown from the records and pleadings, the S/S "Pioneer Minx" discharged and/or unloaded at the port of Manila on January 31, 1968 twenty five (25) bales of assorted cottons and rayon remnants consigned to one Rolando V. Masil. Upon examination of the said assorted 25 bales of assorted cottons and rayon remnants, the customs examiner found that there existed a discrepancy between their actual weight and that weight declared in the manifest or bill of lading for said goods. The Chief Appraiser, M. B. Zandueta, of the Bureau of Customs found that there was an increase in weight of said cargo by 232% (p. 1, Customs rec.) but this discrepancy was due to the reappraisal of the goods covered in item I(a) which had only a total reappraisal value of ₱11,962.02. In the reappraisal report, Chief Appraiser Zandueta stated thus:

> Discrepancy is due to reappraisal of Item I(a) exceeding 20% and increase in weight by 232%. Surcharge at your discretion. Item I(a) exceeds 5 mts. Error in tariff classification. This is a supplementary report. (p. 1, Customs rec.)

On November 7, 1968, Alejandro F. Dizon, Acting Chief of the Law Division, wrote petitioner, United States Lines Inc., requiring it to explain why no administrative fine should be imposed upon the vessel for conveying the bales of cotton and rayon remnants in question which has an excess weight of over 20% in violation of Section 2523 of the Tariff and Customs Code as amended. In a letter to the Collector of Customs, dated December 4, 1968, petitioner United States Lines, Inc. defended itself asserting that the weights of the cargoes appearing in the bill of lading were declared by the shipper at the port of origin, and whatever weight was therefore declared by the shipper was taken as the true and correct weight of said cargo.

During the hearing of the administrative case, petitioner vigorously defended itself asserting that the discrepancy in weight was not due to the carelessness or incompetence of the master in command, or owner or employee of the vessel, and, hence, the vessel should not be held liable for administrative fine under Section 2523 of the Tariff and Customs Code. After taking into account the defense of petitioner, the Collector of Customs, in his decision dated November 11, 1974, held petitioner liable for a fine of ₱17,066.00 for violation of Section 2523 of the Tariff and Customs Code. On appeal, the Commissioner of Customs affirmed that of the Collector of Customs in his decision dated March 7, 1975. Hence, petitioner appealed to this court.

The issues in this case are: (a) whether or not the vessel S/S "Pioneer Minx" violated Section 2523 of the Tariff and Customs Code, as amended;

and (b) whether or not the administrative fine of ₱17,066.00 imposed by respondent is reasonable.

The issues raised are not of first impression. In the case of Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2575, April 6, 1977, it was held:

> 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 37.5% 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 vesselx x x 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 is 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 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.

As regards petitioner's contention that the fine imposed by respondent is unreasonable, we find the same to be meritorious. The records show that there existed an increase of weight of about 232%, but only with reference ostensibly to Item I(a) or to the goods or articles that had a reappraisal value of only ₱11,962.02. (p. 1, Customs Rec, __op. cit.__) On the basis of the foregoing, the value of the goods subject to discrepancy being only ₱11,962.02, the fine imposed could not possibly be in the amount of ₱17,066.00 as held by respondent, for the fine would then be greater even than the value of the goods upon which the alleged discrepancy in weight of 232% occurred. As per Appraiser Zandueta's certification, the discrepancy in weight does not include, by implication, the goods covered by Items II(a), (b), (c), and (d). (Supplementary Report, p. 1, Customs Rec.) While the existence of the excess weight was due definitely to the carelessness or incompetence on the part of the master, officer or employee of the vessel, it is our opinion that on the bases of the circumstances that (1) the value of the goods where the discrepancy arose is only ₱11,962.02 and (2) that the excess weight does not amount to willful negligence or grave incompetence, a fine of ₱2,000.00 is deemed just and reasonable to impose, as we hereby so impose, under the premises.

WHEREFORE, the decision of the respondent Commissioner of Customs is hereby modified. Petitioner, in its capacity as agent of the vessel S/S "Pioneer Minx," is hereby ordered to pay respondent the sum of ₱2,000.00 for violation of Section 2523 of the Tariff and Customs Code of the Philippines. With costs against petitioner.

SO ORDERED.

Quezon City, October 17, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge