REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus - C.T.A. CASE NO. 2790

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs, affirming that of the Collector of Customs and in holding the vessel SS "Wako Maru" liable for an administrative fine of ₱3,000.00 for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, for failure to submit a proper, complete and accurate manifest of its cargo.

It appears that on September 22, 1971, the vessel SS "Wako Maru" arrived at the Port of Manila carrying, among other cargoes, thirty (30) Steel Tandrums of Foss 2217 marine corrosion inhibitor, under Bill of Lading No. M-74, shown as weighing 400 kgs. in the inward manifest. After finding that the said cargo actually weighed 1,020 kgs., instead of 400 kgs. as shown in the ship's manifest, the Collector of Customs required petitioner to explain why the said cargo was not properly and accurately manifested in violation of Section 1005, in relation to Section 2521, of the

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Tariff and Customs Code of the Philippines, as amended.

In a letter dated October 1, 1971, petitioner's Operations Manager explained that the freight of the cargo was based on measurement basis and that the mistake with respect to the cargoes' weight as shown in the manifest was due to typographical error committed at the port of origin; that the amendment of the inward manifest was made to reflect the correct weight of the cargo; and that, lastly, the correct taxes and duties were paid by the consignee.

Finding these explanations unsatisfactory, respondent filed Administrative Case No. V-640/71 and notified petitioner to appear and that failure on the part of the latter shall be construed as a waiver of its right to be heard. (Exh. 2, p. 8, Customs rec.) Petitioner failed to appear on the scheduled date of hearing. The case was submitted for resolution, and on August 12, 1975, a decision was rendered by the Collector of Customs finding the vessel SS "Wako Maru" liable for an administrative fine of ₱3,000.00 (P. 9-10, Customs rec.) Not in accord with the decision of the Collector of Customs, petitioner appealed to the Commissioner of Customs who affirmed the decision of the former. Hence, this present petition for review.

The sole issue in this controversy is whether or not the imposition of the fine of ₱3,000.00 on the vessel SS "Wako Maru" is in accordance with the provisions of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

Petitioner contends that the cargo in question was properly manifested and, therefore, the vessel SS "Wako Maru" cannot be held liable for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. It argues that under the provisions of Section 1005, it does not require that the gross weight of the cargo be placed in the manifest; and that in order for the cargo to be considered properly manifested, there must be information showing the marks, numbers, quantity and description of the goods and the person to whom it is consigned. Finally, petitioner argues that the error committed in reflecting the gross weight of the cargo does not render the manifest inaccurate or incomplete, and in order to be liable for a fine under Section 1005, the vessel must have committed, which petitioner asserts the vessel never committed, any of the following acts, to wit: (1) That said vessel entered or departed from a port of entry or departure, respectively, without submitting the proper manifest thereof to the customs authorities; (2) that there was entry or departure by the vessel conveying thereon unmanifested cargo; or (3) that there was a failure on the part of the ship to deliver or mail to the Auditor General a true copy of the manifest of the incoming and outgoing cargo.

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Respondent, on the other hand, contends that it is mandatory for every vessel from a foreign port to have on board ship a complete and accurate, manifest of all her cargo, and in order to be considered accurate, the manifest must describe all the cargo which must necessarily include the correct weight thereof. Thus, for not having manifested the correct weight of the subject shipment, respondent considered the said cargo not to have been properly and accurately manifested and that to allow a vessel to state merely that its cargo consists of boxes or cartons etc., without indicating the correct weight thereof, will thus encourage smuggling.

The contentions and arguments of the parties notwithstanding, this Court, however, notes that there is error in litigating and deciding this case under Section 2521, in relation to Section 1005, of the Tariff and Customs Code. We think that the proper law involved in this case is Section 2523 of the same Code. This is so because there was in this case an inward manifest filed or submitted to the Bureau of Customs with respect to the cargo consisting of 30 Steel Tandrums of Foss inhibitors. The important fact is that the weight of the cargo was manifested at 400 kgs. or 880 lbs. weight instead of its actual weight of 1,020 kgs. or 2,244 lbs. Thru simple mathematical computation, it can be seen that the discrepancy in

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weight of the cargo in question, which is 620 kgs. or 1,364 lbs., is 61% of the actual weight, or exceeds by more than 20% of the weight as declared in the manifest, in violation of said Section 2523; and that due to the apparent carelessness or incompetency of its master or pilot in command, owner or employee, therefore, the vessel SS "Wako Maru" is subject to a fine of not more than 15% of the value of the cargo with respect to which the deficiency exists.

Section 2523 of the Tariff and Customs Code applicable in this case 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 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.

In a recently decided case of United States Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2796, July 31, 1978, applying aforecited Section 2523, stated thus:

> "The question of whether, under Section 1005 of the Tariff and Customs Code, the weight of an imported article should be stated in the cargo manifest of vessels coming from a foreign port was squarely resolved in the affirmative in the case of Smith, Bell Co., Inc. vs. Commissioner of Customs. (C.T.A. Case No. 2396, April 30, 1973.) As interpreted and applied

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by this Court in said case, the particulars or data required to be stated in the cargo manifest, under said Section 1005 of the Tariff and Customs Code, include the weight of the cargo. As a matter of fact, the Court, in making this interpretation, has made reference to the aforecited Section 2523 of the Code which imposes a fine for a discrepancy in weight of the cargo of over 20% of what was declared in the manifest or bill of lading.

As to proof or evidence of the discrepancy of more than 20% between the actual weight and declared weight of the merchandise in question, we find the appraisal report of the Customs appraiser dated October 29, 1968, forming part of the Customs record, sufficient. (See p. 2, Customs rec.) For petitioner to overthrow the findings of the Bureau of Customs as to the discrepancy in weight, it should have presented countervailing evidence during the hearing before this Court to rebut said findings of the Bureau of Customs. It cannot simply rely, to support its stand that there is no weight discrepancy, on bare allegations. Moreover, petitioner admits in its memorandum that an amendment to the vessel's manifest was submitted to, and was approved by, the Bureau of Customs. Indeed, if there was no weight discrepancy in this case, why was an amendment as to the weight filed by petitioner still necessary?

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. 2576, August 31, 1977; Macondray & Co., Inc. 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.

Finally, it is no defense that the weight of the cargo declared in the manifest or bill of lading was supplied and furnished by the shipper, and that the cargo in question was freighted on measurement basis and not on weight. As explicitly stated by this Court: ' x x x that the weight of the cargo is declared by the shipper and any discrepancy in weight is beyond the control of the shipping company is not a valid excuse. Accepting petitioner's explanation as a valid defense is virtually nullifying Section 2523 of the Tariff and Customs Code, brushing aside the provisions of Section 2523

> of the said Code as a dead letter. x x x.' (F. E. Zuellig, Inc. vs. Commissioner of Customs, supra; see also 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. 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978.) 'Anent petitioner's averment that the freightage on the subject shipment was made on a measurement basis, suffice it to state that freightage is merely the charge of compensation paid by the shipper or importer to the carrier, and is not a determinative factor in the assessment and imposition of duties and penalties on the imported goods. As aptly observed by the respondent, freightage is never a factor in determining the responsibility of the vessel under Section 2523 of the Tariff and Customs Code.' (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, Certiorari denied in G.R. No. L-46287, June 20, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 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. 2802, June 30, 1978.)"

We find no legal basis to depart from the holding of this Court in said case which is identical to the case at bar.

The records of the parties, however, do not show the value in Philippine Currency or in Dollars of the weight discrepancy of 620 kgs. or 1,364 lbs. However, this Court is convinced that the negligence or incompetence of the master, owner, officer or employee of the vessel SS "Wako Maru" does not amount to willful negligence or gross incompetence, and that the law allows a latitude in the imposition of the fine. A minimal fine, to our mind, of ₱1,500.00

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is just and reasonable to impose against petitioner under the circumstances.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby modified, and the vessel SS "Wako Maru" and/or petitioner Citadel Lines, Inc. are hereby ordered to pay the fine of ₱1,500 for violation of Section 2523 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, September 20, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge