MACONDRAY & CO., INC., in its capacity as agent of the MS "TAI PING",
Petitioner,

- versus - C.T.A. CASE NO. 2741

COMMISSIONER OF CUSTOMS,
Respondent.

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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 2, 1975 affirming the decision of the Collector of Customs of Manila, imposing a fine of ₱3,512.00 on the MS "TAI PING" and/or its ship agent, petitioner MACONDRAY & CO., INC., 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 the opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or em-

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> ployee 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."

It appears that on February 1, 1972 the vessel MS "TAI PING" arrived at the Port of Manila from Montreal, Canada, carrying and discharging thereat, among others, 34 drums of steelskin metal working compound under bill of lading No. M-1. As declared in the inward foreign manifest of said vessel, the gross weight of said merchandise was only 1,004 kilos but upon actual examination by the Bureau of Customs, the actual weight thereof was found to be 6,242 kilos, or 5,238 kilos more than the declared weight. This is admitted by petitioner in its letter dated February 21, 1972. (p. 2, Customs records)

Subsequently, an administrative case was instituted by the Collector of Customs against the vessel MS "TAI PING" and its ship agent petitioner Macondray & Co., Inc. for the discrepancy in weight, but the charge was for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

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On January 6, 1975, however, after proper hearing, the Collector of Customs of Manila rendered a decision finding the MS "TAI PING" liable for violation of Section 2523 of the Tariff and Customs Code and ordered petitioner to pay an administrative fine of ₱3,512.00, representing 15% of the total value of the imported article. On appeal, respondent Commissioner of Customs affirmed the decision of the Collector, holding petitioner liable for violation of Section 2523 of the Tariff and Customs Code. Hence, the present recourse.

As correctly stated by the petitioner in its memorandum, and concurred with by the respondent, the only issue in this case is whether or not Section 2523 of the Tariff and Customs is violated.

Petitioner contends that there is no violation of Section 2523 of the Tariff and Customs Code because there is no proof that the discrepancy of more than 20% between the declared weight and adtual weight of the subject merchandise was due to the cafelessness or in-

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competency of the master in command, owner or employee of the vessel.[1] However, respondent claims that the discrepancy could only be attributed to the carelessness or incompetency of the master in command or employee of the vessel because he should have verified the correct and actual weight of the cargo and not merely relied or depended on the declaration of the shipper.

The issue is not one of first impression. In several cases (see below), where the factual setting is similar to that in the instant case, this Court unequivocally held that under Section 2523 of the Tariff and Customs Code, the ascertainment or verification of the weight of the vessel's cargo at the port of loading is the duty or obligation of the master, pilot, owner or employee of the vessel. Thus, if the discrepancy of more than 20% between the declared weight and the actual weight of the imported article arose because of, or which could have

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[1] See Petitioner's memorandum.

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been avoided if it were not for, his failure or omission to perform this duty, the inevitable conclusion is that he is negligent or careless within the contemplation of the law.

In the following cases, this Court ruled:

> F.E. ZUELLIG, INC. v. COMMISSIONER OF CUSTOMS CTA CASE NO. 2360, APRIL 10, 1975; MACONDRAY & CO., INC. v. COMMISSIONER OF CUSTOMS, CTA CASE NO. 2656, 21 JANUARY, 1977.
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> It is not Article 612 of the Code of Commerce which deals with the duties of the captain of a vessel but Section 2523 of the Tariff and Customs Code that governs this case. Under the latter law the fact that the captain of a vessel is not careless on the bases of his duties as enumerated in the Code of Commerce is no defense against the penalty. The law includes the carelessness of the owner or employee of the vessel. The explanation of the manager of the Shipping Division of petitioner to the effect that no shipping line in the United States has facilities for checking the weight or contents of the goods shipped therefrom; 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 said Code as a dead letter. Doing business in the Philippines, it behooves petitioner to abide by our Customs laws and to ignore them is nothing short of gross carelessness. It is an omission of the concern that one with ordinary prudence should have of the Customs Laws of the country with which it does business.

DELGADO SHIPPING AGENCIES, INC. v. COMMISSIONER OF CUSTOMS, CTA CASE NO. 2548 SEPT. 30, 1976.

. . . 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 cafe 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 thé 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% . . . . . 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. . . 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 Tariff and Customs Code.

MACONDRAY & CO., INC. v. COMMISSIONER OF CUSTOMS, CTA NO. 2428, OCT. 31, 1973.

From the foregoing stipulation and letter, it is plain that the shipping company accepted without question the shipper's declaration as to the weight of the shipment . . . . It did not bother itself to check in any way feasible under the circumstances the weight declared. It just brushed aside the

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> provisions of Section 2523 of our Tariff and Customs Code partly because of a shortage of scales in the port of loading . . . . Accepting petitioner's terse explanation as a valid defense is virtually nullifying Section 2523 of the Tariff and Customs Code. It will provide the shipping company with a handy defense because it is well-nigh impossible for our government to verify the veracity of the explanation. The least that can be said is that the explanation reveals a careless disregard of Section 2523 of the Tariff and Customs Code, an omission of its obligations under said Section by one with ordinary prudence. (Underlining supplied.)

Petitioner next assails the legal basis of the fine of ₱3,512.00, which represents 15% of the total value of the imported article in question, arguing, that the fine should have been based on the value in respect to which the deficiency exists. As stated above, the discrepancy in weight of the imported article is 5,238 kilos or 11,523 pounds. As appearing in the working sheet of the Bureau of Customs, which formed part of the Customs records, and on which basis the fine of ₱3,512.00 imposed by respondent was computed, the cost per pound of the article is US $0.27. If the discrepancy in weight is 11,523 pounds, the value in respect

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to which the deficiency exists would therefore be US $3,111.21. Reduced to pesos, which as appearing again in the working sheet of the Bureau of Customs at that time was ₱6.30 to a dollar, and which is also the basis of the computation of the fine in question, the value of the article in respect to which the deficiency exists is ₱19,600.00. Fifteen per cent (15%) of ₱19,600.00 is only ₱2,940.00 and not ₱3,512.00. Since under Section 2523 of the Code, the "fine of not more than fifteen per cent is based on the value of the article in respect to which the deficiency exists" and not on the total value of the imported merchandise, the maximum fine which can be imposed upon petitioner is only ₱2,940.00.

In this case, however, the Court finds no justification to impose the maximum penalty considering that the carelessness or incompetence here on the part of the master, officer or employee of the vessel does not amount to willful negligence or gross incompetence. Nonetheless, considering that this case is already one of several cases brought to this Court involving the same penalty imposed on the same ship agent, a fine of ₱1,500.00 is deemed just and reasonable.

WHEREFORE, the decision appealed from is MODIFIED and the vessel MS "TAI PING" and/or petitioner herein are hereby ordered to pay to the Collector of Customs of Manila a fine of ₱1,500.00 for violation of Section 2523 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, February 3, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge