lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCIES, INC.,
in its capacity as agent of the
M.S. "YUUKO MARU",
Petitioner,

- versus -

C.T.A. CASE NO. 2760

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

6/30/82

D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Customs dated October 20, 1975 finding no cogent reason to disturb the decision of the Collector of Customs of Manila imposing an administrative fine of ₱11,327.00 on the S/S "Yuuko Maru" and/or its agent Delgado Shipping Agencies, 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.

There is no dispute as to the facts, the case having been submitted for decision by petitioner on the basis of the pleadings and the records of the Bureau of Customs. As stated in the decision under review:

"That S/S 'Yuuku Maru' arrived at this Port on February 16, 1969 from Kobe, Japan, under Reg. No. 319; that among her cargoes were 54 bales assorted textile remnants consigned to Jugon Textile covered by Bill of Lading No. KM-67 with a declared gross weight of 18,090 lbs. and declared under Entry No. 19575-69; that upon examination, it was found that the said shipment had a gross weight of 93,632, or 75,542 lbs. more than the weight appearing in the Bill of Lading; that subsequently, the corresponding Discrepancy Report, dated March 11, 1969, and a supplementary Discrepancy Report, dated March 18, 1969, were prepared and submitted, containing, among others, the discrepancy in weight and additional duty and tax due thereon as a result thereof. Relative thereto, Mr. Magno Clemente, Jr., the Appraiser concerned, on March 19, 1969, in his Memorandum, thru Channel, to the Chief, Law Division, reported the said discrepancy in weight of the said shipment, for appropriate action. Accordingly, on August 1, 1969, the Chief, Law Division, informed the herein respondent of the imputed violation against the S/S "Yuuku Maru" and to submit a written explanation why no administrative fine in the amount of ₱11,327.00 be imposed and the herein respondent, thru counsel, on September 12, 1969, submitted a written explanation but was found unsatisfactory, hence, the instant investigation.

> "The assigned government prosecutor presented the Report dated March 19, 1969 of Appraiser Magno Clemente, Jr. (Exh. "A") and the discrepancy in weight being 75,542 lbs., 18,090 lbs. as appearing in the Bill of Lading as against the reported gross weight of 93,632 lbs. (Exh. "A-1"); the bill of lading (Exh. "B") and the weight of 18,090 lbs. appearing in the bill of lading (Exh. "B-1").

The lone question tendered for resolution is whether or not the vessel S/S "Yuuko Maru" and/or its ship agent petitioner herein Delgado Shipping Agencies, Inc., are liable for the administrative fine for violation of Section 2523 of the Tariff and Customs Code, as amended.

In support of its defense that neither it nor the vessel is liable for the fine, petitioner presented the following arguments:

a) The vessel relied, on the sworn declaration of the shipper of said 54 bales, which stated the gross weight thereof to be 18,090 lbs.;

b) The gross weight of the shipment as declared in the Bill of Lading No. KM-67 was furnished by the shipper with the MS"YUUKO MARU" having no material participation in the computation or declaration of such weight therein;

c) The shipment was freighted in a measurement basis;

d) No shipping line in Japan has facilities for checking the weight or contents of packages shipped out of Japan as ships are not required to do such checking;

e) The alleged discrepancy between the declared and actual weight of the shipment was not due to the carelessness or incompetence of the master, owner, officers and crew of the vessel.

Indeed, the issue involved in this case is not one of first impression. In United States Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2796, July 31, 1978, where the factual setting is on all fours with the case at bar, this Court disposed of the same charge and contentions in clear and unequivocal terms in the following wise:

> 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, 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.

Then in the more recent case of Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 3089, December 28, 1981, after the Supreme Court has already passed upon the same question involved in this appeal in Commissioner of Customs vs. Court of Tax Appeals and Delgado Shipping Agencies, Inc., in its capacity as agent of SS "EURYBATES", L-49462, June 29, 1979, 91 SCRA 258, this Court made observations, among others, as follows:

> A discrepancy of more than 132% (500% in this case) of the declared weight could not be a mere random quirk but one of positive breach unduly straining the allowable latitude of 20%. And this particular issue has been already decided by the Supreme Court in Commissioner of Customs v. Court of Tax Appeals and Delgado Shipping Agencies, Inc., in its capacity as agent of SS "EURYBATES" (G.R. No. L-49462, June 29, 1979) which in all material respects precisely like the case under consideration, holding, inter alia, that a gross underdeclaration "constitutes per se evidence of willful negligence or gross incompetence on the part of the vessel's master." And, as further stressed, "The vessel's master, owner or employees are duty bound under the cited codal section under pain of the penalty of fine therein provided to check and verify the correct weight of the cargo or shipment so as to prevent a misdeclaration or underdeclaration of weight. The vessel master's discharge of such obligation imposed by law to properly determine and verify the weight of cargos carried by it is certainly pertinent to and important for the proper assessment of the collectible

customs duties and taxes, and is not a burdensome task in the present era of containerized cargos."

The aforesaid view had been expressed with explicit distinctness in previous findings on repeated similar egregious blunders and had been carried into adjudications in a number of cases by this Court, thus, "It is hardly necessary to add that under Section 2523 of the Tariff and Customs Code, the declaration, ascertainment or verification of the correct weight of the cargo at the port of loading is the duty or obligation of the master, pilot, owner, officer or employee of the vessel. If he omits or disregards this duty and a punishable discrepancy between the declared weight and actual weight of the cargo exists, the inevitable conclusion is that he is negligent or careless. (Delgado Shipping Agencies, Inc. v. Commissioner of Customs, C.T.A. Case No. 2685, February 15, 1977; Macondray & Company, Inc. v. Commissioner of Customs, C.T.A. Case No. 2741, February 3, 1977; Macondray & Co., Inc. v. Commissioner of Customs, C.T.A. Case No. 2656, January 21, 1977 and cases cited therein.) Similarly, if in the exercise or performance of this duty, he is negligent or careless resulting in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law, carelessness or incompetence is, nonetheless, imputable to him." (International Harvester Macleod, Inc. v. Commissioner of Customs, C.T.A. Case No. 2698, November 25, 1977.) We can do no less but hold the herein petitioner accountable for such deviation from the peremptory demands of the law, the proffered good faith as an encapsulating panacea in bashing the delinquency notwithstanding. This specie of irregularity was not propitious then, it cannot, now.

And, "as to petitioner's insistence of proof on the part of respondent of the negligence or carelessness of the master, owner or employee of the vessel, suffice it to say, additionally, that this Court has already unequivocably ruled that under Section 2523 of the 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, pilot, owner or employee of the vessel. Failing thus, the conclusion seems inevitable that there is an unexcusable laxity on the part of the master or owner in exercising the ordinary care and prudence in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law. Doing business in the Philippines, it behooves the master or owner of the vessel to abide by our customs laws and regulations and to ignore them is nothing short of gross carelessness or incompetence." (Delgado Shipping Agencies, Inc. v. Commissioner of Customs, C.T.A. Case No. 2685, February 15, 1977; certiorari denied, G.R. No. L-46262, July 6, 1977; cited in Commissioner of Customs v. Court of Tax Appeals, et al., supra.) If anything can go wrong, it will, so it seems.

The attempt to push such a gross discrepancy of 132% (500% in the instant case) beyond the tolerable statutory limit of 20% sans any penalty becomes illogic and negates "The clear purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to such underdeclarations. Hence, imposing the maximum fine on vessels which fail to comply with the obligation to declare the true weight of their cargo promotes the spirit and purpose of the law." (Commissioner of Customs v. Court of Tax Appeals and Delgado Shipping Agencies, Inc., as Agent of SS "EURYBATES", 91 SCRA 262.) Que sera, sera as it must, relief has to be denied petitioner.

In the light of Commissioner of Customs vs. Court of Tax Appeals and Delgado Shipping Agencies, Inc., L-49462, June 29, 1979, 91 SCRA 258, we find no cogent and valid reason to deviate, much less depart from the conclusion reached in the afore-cited cases, as expressed in the above-quoted opinions of the Court, and the same should resolve the identical problem now brought before us in this proceeding. Accordingly, the decision of the Collector of Customs of Manila imposing an administrative fine of ₱11,327.00 on the S/S "Yuuku Maru" and/or its agent Delgado Shipping Agencies, Inc., petitioner herein, as affirmed by respondent Commissioner of Customs, must have to be sustained.

WHEREFORE, the decision under review is hereby affirmed, with the costs of this instance against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge