Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCIES, INC.,
in its capacity as agent of the
SS "EURYBATES,"
Petitioner,

- versus - C.T.A. CASE No. 2793

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

8/25/78

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated February 19, 1976, affirming that of the Collector of Customs dated October 17, 1974, imposing a fine of ₱26,575.00 on petitioner and/or the vessel SS "Eurybates" for violation of Section 2523, in relation to Section 1005 of the Tariff and Customs Code, 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 opinion that such discrepancy was due to the carelessness or incompetency of the master 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 judgment based on the records and the pleadings. It appears from the records that the vessel SS "Eurybates" arrived at the Port of Manila on July 16, 1969 and discharged thereat 72 bales of textile remnants consigned to Balin Commercial of Manila and covered by a bill of lading. The gross weight of said merchandise, as declared in the bill of lading, was 13,272 lbs., but it was reported after examination and appraisal that the actual weight was 66,579 lbs., resulting in a discrepancy of 53,307 lbs., which is 80% of what was declared. The record can not disclose the value of this weight discrepancy in dollar or in Philippine currency.

In a letter dated September 17, 1969, the Chief of the Law Division of the Bureau of Customs, Eduardo G. Getchalian, therefore, informed petitioner Delgado Shipping Agencies, Inc. that there was a discrepancy in weight of the textile remnants of more than 20% between its declared weight and the actual weight thereof as found by the examiner of said merchandise and required petitioner to show why no administrative fine of ₱26,575.00 on the vessel should be imposed, which amount is the maximum fine that can be imposed against the vessel determined by the Liquidation Division of the Bureau of Customs, and as stated by Appraiser Magno Clemente, Jr., in his letter to the Collector of Customs dated August 8, 1969. (p. 14, Customs Rec.) However, there was no evidence, as can be gleaned from the Administrative hearing (Case No. V-490/69) conducted, as to how the fine was arrived at, or computed, by said division. (pp. 64, 66, Customs Rec.)

After the hearing, the Collector of Customs rendered a decision on October 17, 1974 finding the vessel SS "Eurybates" liable under Section 2523 of the Tariff and Customs Code and ordering petitioner Delgado Shipping Agencies, Inc. to remit said fine within ten (10) days from the finality of the decision.

On appeal, the Commissioner of Customs, in his decision dated February 19, 1976, affirmed that of the Collector of Customs.

The only issue presented in this case is whether or not the SS "Eurybates" violated Section 2523 of the Tariff and Customs Code and is liable for the fine of ₱26,575.00.

Petitioner puts up the defense for its non-liability that the SS "Eurybates" master, owner or employee was not careless or incompetent with respect to the weight discrepancy of the textile remnants as found by the examiner of the Bureau of Customs because the master, owner or employee of the vessel has relied upon the declaration of the weight made by the shipper; that they were not required to check the weight of cargo; that there was no duty on the part of the master, owner or employee of the vessel to check the weight of the cargo; and that the discrepancy in weight thereof cannot be attributed to their negligence. A fortiori petitioner concludes that the vessel is not liable for a fine under Section 2523 of the Tariff and Customs Code. Respondent, on the other hand, contends the contrary.

We find petitioner's contention without merit. The issue in this case and the arguments raised are not of first impression. In the case of International Harvester, Macleod, Inc. etc. vs. Commissioner of Customs, C.T.A. Case No. 2698, November 25, 1977, this Court held as follows:

> At this juncture, 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. (See Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, Feb. 15, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, Feb. 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA 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 incompetency is, nonetheless, imputable to him.
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> Thus, in the case of Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977, certiorari denied, G.R. L-46262, July 6, 1977, this Court ruled:
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>> 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 unequivocally 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 to be 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 a vessel to abide by our Customs laws and regulations and to ignore them is nothing short of gross carelessness or incompetence.

The records of the parties in this case do not show the value of the excess weight discrepancy of 53,307 lbs. And we take it that the imposed fine of ₱26,575.00 against the vessel SS "Eurybates" is equal to, or is not as more than 15% allowed as fine under Section 2523 of the Tariff and Customs

Code. However, from the circumstances of this case, this Court finds no compelling reason to impose the maximum 15% fine, as it does not appear that the negligence or incompetence of the master, owner, officer or employee of the vessel amounts to willful negligence or gross incompetence, and considering further that the law allows a latitude in the imposition of the fine. To our mind, the reasonable fine to be imposed against said vessel is ₱6,000.00.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby modified, and the vessel SS "Eurybates" and/or petitioner Delgado Shipping Agencies, Inc., are hereby ordered to pay the fine of ₱6,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, August 25, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Acting Presiding Judge