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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
(As agent of S/S "TROUBADOUR")
Petitioner,

- versus - C.T.A. CASE NO. 2679

COMMISSIONER OF CUSTOMS,
Respondent.

6/27/78

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DECISION

This is a petition to review the decision of respondent Commissioner of Customs dated March 12, 1975, affirming that of the Collector of Customs of Manila dated November 13, 1974, imposing an administrative fine of ₱12,797.00 upon the vessel S/S "Troubadour" for violation of Section 2523 of the Tariff and Customs Code which reads:

> "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 discrepancy exists, may be imposed upon the importing vessel or aircraft."

The antecedent facts of this case show that the S/S "Troubadour", with Customs Registry No. 453, arrived at the Port of Manila on March 20, 1968 and discharged thereat, among other cargoes, 32 bales of assorted textile remnants imported from United States. As declared in the vessel's manifest and bill of lading, the total weight of the said cargo was 11,110 lbs. or 5,039 kilos, but upon examination by customs authorities, it was discovered that the actual weight of said merchandise was more than 85% of the declared weight.

Consequently, on December 9, 1968, the Bureau of Customs, through the Acting Chief of the Law Division, notified petitioner Macondray and Company, ship agent of the vessel S/S "Troubadour", that said vessel had discharged 32 bales of assorted textile remnants with an excess weight of more than 20% of what was declared in the manifest, and required it (petitioner) to explain in writing within five (5) days from receipt thereof and show cause why no administrative fine should be imposed upon the vessel for violation of Section 2523 of the Tariff and Customs Code, or to inform the Bureau of Customs within the same period if it desires to have the case formally investigated; otherwise, its failure to do so would be construed as a waiver of the right to be heard. (p. 4, Customs rec.)

In a reply to the Bureau of Customs dated December 18, 1968, petitioner explained that it did not violate the law because the weight of the subject importation was supplied by the shippers, and that the vessel was not negligent nor motivated by bad faith.

Not satisfied with the explanation of petitioner, the Collector of Customs instituted administrative Case No. V-422 against the S/S "Troubadour," with petitioner as respondent, and after the hearing on November 13, 1974, rendered a decision imposing a fine of ₱12,797.00 upon said vessel and/or its ship agent, Macondray & Co., for violation of Section 2523 of the Tariff and Customs Code.

Upon appeal, the decision of the Collector of Customs was affirmed _in toto_ by the Commissioner of Customs in his decision dated March 12, 1975. Hence, the present appeal.

The issue is whether or not the vessel and/or petitioner herein are liable for the fine for violation of Section 2523 of the Tariff and Customs Code.

In maintaining that neither it nor the vessel is liable for the fine for violation of Section 2523 of the Tariff and Customs Code, petitioner argues in its memorandum that there is no proof of the negligence or carlessness of the master, owner or employee of the vessel; and that under the Code of Commerce, it is not his duty to check the weight of the cargo loaded on board the vessel.

The facts, the issue and arguments presented in this case are not new. In the case of Macondray & Co., Inc. in its capacity as ship agents of the MS "QUEENSVILLE" vs. Commissioner of Customs (CTA Case No. 2758, April 28, 1978) which is only one of the numerous similar cases between the same parties already decided by this Court, citing the case of Macondray & Co. Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, it was held:

> As regards the contention of petitioner that the discrepancy is not due to the carelessness or incompetence of the master, owner, or employee of the vessel because the weight declared in the bill of lading or manifest was supplied by the shipper, and that under Section 612 of the Code of Commerce, and even under the Tariff and Customs Code, the captain or master of the vessel is not required to ascertain the weight of the cargo, a similar issue was settled by this Court, in the case of "F.E. Zuelig, Inc., in its capacity as agent of the M/V "Hongkong Grace,"vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975, wherein it was ruled that the fact that the captain of a vessel is not careless on the basis of his duties under the Code of Commerce is no defense against this penalty. Because of its controlling effect on the present case, we will quote from the decision:
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> > . . . . On the other hand, petitioner claimed that the said discrepancy is by no means attributable to the master or captain of the vessel because, under Article 612 of the Code of Commerce listing

the duties of the said official, he is not required to ascertain the actual weight of the cargo of any particular shipper. Consequently, it is argued that neither carelessness nor incompetence can be imputed against the captain of the vessel "Hongkong Grace" to justify the imposition of the penalty imposed by the Tariff and Customs Code.

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 State has facilities for checking the weight or contents of the goods shipped therefrom: <u>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</u>. Accepting petitioner's explanation as a valid defense in 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. 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 which it does business. (Underlining supplied.)

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Accordingly, since it has been estalished that there is discrepany of 71,450 lbs. (24,066 lbs. in the present case) between the declared weight (59,938 lbs.) and the actual weight (131,388 lbs.) of the subject

> importation (51,016 lbs. and 72,152 lbs. in the instant appeal), which discrepancy is obviously more than 20% of the weight, and which is attributable to the carelessness or incompetence of the master, officer or employee of the vessel because of his reliance solely on the declared weight furnished by the shipper and failure to take steps to ascertain and verify the correct weight of the cargo before transporting the same, in utter disregard of his obligation imposed on him by the law, the vessel MS "Fernbank" and/or its ship agent are liable for the fine of nor more than 15% of the value of said shipment pursuant to Section 2523 of the Tariff and Customs Code.

As to the amount of the fine, the Court observes that petitioner does not dispute how it was arrived at or computed by the Bureau of Customs. Nonetheless, considering that the negligence or incompetence of the master, owner, officer or employee of the vessel does not amount to willful negligence or gross incompetence, and the law allows latitude in the imposition of fine, we deem it just and reasonable to reduce the imposable fine from ₱12,797.00 to ₱5,000.00.

WHEREFORE, the decision appealed from is hereby modified, and the vessel S/S "Troubadour" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs a fine of ₱5,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, June 27, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge