

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN STEAMSHIP AGENCIES, INC.,
in its capacity as agent of the MS
"KYOSHIN MARU",

Petitioner,

- versus -

C.T.A. CASE NO. 2798

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner, the American Steamship Agencies, Inc., as agent of the MS "KYOSHIN MARU" appealed from the decision of the Commissioner of Customs dated March 9, 1976, affirming that of the Collector of Customs of Manila dated November 15, 1974, decreeing the imposition of a fine of ₱42,364.00 for violation of Section 2523 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 the 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.

This case was submitted by the parties for decision based upon the pleadings and the records of

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the Bureau of Customs. As shown from the records and the pleadings, the MS "KYOSHIN MARU" discharged and unloaded at the Port of Manila on April 16, 1969, 48 bales of assorted textile remnants from the U.S.A. under Bill of Lading No. KM-24 and Manifest which reflected a gross receipt of 15,380 lbs. Upon examination, however, the gross weight of the 48 bales of remnants was found by Customs Appraiser Magno Clemente in a report dated April 29, 1969 to be 64,888 lbs. The difference between the weight of the cargo declared in the bill of lading and the actual weight as found by the appraiser is 49,508 lbs. The discrepancy between the gross weight declared in the bill of lading and the actual gross weight as found is more than 20%. This discrepancy was attributed to the carelessness or incompetence of the master or pilot in command or employee concerned. However, with respect to the discrepancy, difference in value, between what was declared (P256,494.33) and the value of the remnants as found by the examiner in the course of his reappraisal (P282,429.24), is P25,934.91. These findings were then made the basis for which the deficiency or additional duties, special import taxes and sales taxes were assessed against petitioner. (p. 2, Customs rec.)

Against these findings by the customs officials, petitioner defended itself in the administrative case

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by asserting that the MS "Kyoshin Maru", with respect to the weights of its cargoes, had depended solely upon the declaration of the exporter or shipper. Despite this defense, and based upon the aforecited facts, the Collector of Customs, in a decision dated November 15, 1974, held the MS "Kyoshin Maru" or its agent, petitioner herein, liable to pay a fine of ₱42,364.00 pursuant to the provision of Section 2523 of the Tariff and Customs Code, as amended.

On appeal, the Commissioner of Customs affirmed the decision of the Collector of Customs in toto. Hence, petitioner appealed to this Court.

The only issue in this case is whether or not the vessel MS "Kyoshin Maru" violated Section 2523 of the Tariff and Customs Code, as amended, for which said vessel or its agent, petitioner American Steamship Agencies, Inc. is liable for a fine of ₱42,364.00.

Petitioner, in its defense of non-liability of the fine submits the arguments that the mere existence of a discrepancy in the weight of the cargo beyond the 20% limit provided in Section 2523 of the Tariff and Customs Code, as amended, does not amount to a violation thereof, that it will not be liable to a fine in the absence of any evidence presented; that the under declaration of the weight was due to the carelessness or negligence of the master, owner or employee of the vessel, or the MS "Kyoshin Maru", which must be established by independent positive proof. (pp. 2-3, Memorandum for

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Petitioner); that the MS "Kyoshin Maru", based upon established customs and usages of the trade, had relied only on data, weight, content, measurement, quality or nature of the cargo which were supplied by the shipper, and that the vessel in question was not under the law required to check the weight of its cargoes.

The issue raised is not of first impression. In the case of Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2575, promulgated on April 6, 1977 by this Court, it was held:

During the hearing in this court, instead of presenting its evidence, petitioner joined respondent in submitting the case, as aforesaid, based upon the pleadings and customs records, but stated in its defense that in order to sustain the fine, " x x x there must be proof that the alleged weight discrepancy of more than 20% must be shown to be due to carelessness or incompetency of the master ~~in~~ command, owner, or employee of the vessel" and that "(t)here is no proof regarding such carelessness or incompetency." (Memorandum of Petitioner, at p. 30, CTA rec.) This Court stated with emphasis that there was admittedly in this case a 37.5% increase in weight of the cargo, or 17.7% over the 20% tolerable limit of discrepancy allowed by law. Considering this percentage of increase over the goods declared weight, there was, to our minds, a complete disregard of the duty of the master, owner, or employee of the vessel x x x in detecting any misdeclaration in weight of the cargo in question, we assume that the master, owner or employee of the vessel responsible knows that the cargo in question was destined for discharge in the Philippines, and knowing as they should of the strict provision of Section 2523 of the Tariff and Customs Code requiring that the weight of the cargo should not be more than 20% of that weight reflected in the accompanying

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bill of lading and in the ship's manifest, they have not, therefore, taken all ordinary and necessary steps to prevent a violation of said law. The fact that the weight was supplied by the shipper, and that under maritime practice, ships, such as the M/S "TROUBADOUR", at the time of loading goods in the foreign ports, do not weigh their cargo is not a valid excuse in not at all considering the magistracy of our customs laws requiring that the cargo destined for Philippine ports should be weighed and the discrepancy should not exceed 20% of what is declared. And we see nothing in the record which showed some kind of abnormal condition obtaining in the port of loading, which is New York, that could have brought about this rather high percentage of weight discrepancy. Consequently, this Court is constrained to find that there was an unexcusable negligence or incompetency on the part of either the master, owner, or employee of the vessel in charge of the cargo in preventing the occurrence of over 20% discrepancy in weight of the 43 bales of assorted textile remnants carried by the M/S "TROUBADOUR" penalized under Section 2523 of the Tariff and Customs Code.

However, considering that the discrepancy in weight of the cargo of textile remnants upon which the deficiency existed is only ₱25,934.91 aforesaid 15% thereof or ₱3,890.23 is reasonably and legally imposable as fine against the MS "Kyoshin Maru", or its agent, then herein petitioner, under Section 2523 of the Tariff and Customs Code, as amended.

WHEREFORE, the decision of the respondent Commissioner of Customs is hereby modified. Petitioner, in its capacity as agent of the vessel MS "Kyoshin Maru", is hereby ordered to pay respondent

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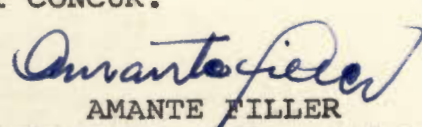
the sum of ₱3,890.23 for violation of Section 2523
of the Tariff and Customs Code of the Philippines, as
amended. With costs against petitioner.

SO ORDERED.

Quezon City, October 26, 1977.


CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:


AMANTE FILLER
Acting Presiding Judge

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