REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus - C.T.A. CASE NO. 2685

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 March 18, 1975 imposing upon the vessel S/S "EURYBATES" and/or its ship agent, petitioner Delgado Shipping Agencies, Inc., a total administrative fine of ₱78,210.00 for violation of Section 2523 of the Tariff and Customs Code.

It appears that on July 16, 1969, the vessel S/S "EURYBATES", of which petitioner is the ship agent, arrived at the port of Manila and discharged thereat several bales of assorted textile remnants with their corresponding weights declared in the bills of lading, as follows:

1. 55 bales of assorted textile remnants consigned to Adela Medina, covered by Bill of Lading No. 82 and Import Entry No. 70697-69. Declared weight: 14,414 lbs.

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2. 77 bales of assorted textile remnants consigned to Baylin Commercial, covered by Bill of Lading No. 120 and Import Entry No. 68412-69. Declared weight: 14,385 lbs.

3. 59 bales of assorted remnants consigned to Bahaghari Marketing, covered by Bill of Lading No. 59, Import Entry No. 068294-69. Declared weight: 18,938 lbs. (Pp. 1, 9, 16, Customs rec.)

Upon actual examination by customs appraisers and examiners, said shipments (1, 2 & 3) were found to weigh 30,424 lbs., 71,595 lbs. and 54,853 lbs. or a difference of 16,010 lbs., 57,210 lbs. and 35,925 lbs., respectively, which are more than 20% of the weights declared in the shipping manifest for each shipment. (Pp. 16-20, 8-12 and 1-14, Customs rec.)

On October 13, 1969 the Chief of the Law Division of the Bureau of Customs in behalf of the Collector, sent a letter to petitioner informing it that the S/S EURYBATES had discharged cargoes with an excess in weights of more than 20% of what had been declared in the bills of lading, and requiring it to explain in writing within five (5) days from receipt thereof and show cause why no administrative fines in the amounts of ₱7,961.00, ₱28,521.00 and ₱17,910.00, respectively, 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 prefers to have the case formally investigated; otherwise, its failure to do so would be construed as a waiver of the right to be heard and the case decided accordingly. (p. 27, Customs rec.) In spite of the lapse of the period stated in the said letter, however, petitioner never favored the Collector of Customs with a reply explaining its side of the case. Hence, the administrative case of petitioner was deemed submitted for decision to the Collector of Customs on the basis of the records.

Consequently, on November 14, 1974, the Collector of Customs rendered a decision holding the vessel S/S "EURYBATES" liable for an administrative fine of ₱15,167.00 with respect to the excess in weight of the 55 bales of assorted textile remnants declared under Entry No. 70697-69;

another administrative fine of ₱35,692.00 relative to the excess weight of the 77 bales covered by Entry No. 68412-69; and likewise an administrative fine of ₱27,351.00 with respect to the excess weight of the 59 bales under Entry No. 068294-69, or a total fine of ₱78,210.00, for violation of Section 2523 of the Tariff and Customs Code. On appeal, said decision of the Collecter was affirmed by the Commissioner of Customs on March 18, 1975. Hence, the present petition.

During the hearing of this case before this Court on December 10, 1975 petitioner moved, and to which respondent agreed, that the case be decided on the basis of the pleadings, as well as of the records of the Bureau of Customs. No trial on the merits was therefore conducted by the Court although the parties were allowed to file their respective memorandum in support of their positions.

The only issue to be resolved is whether or not the S/S "EURYBATES" or its ship agent, petitioner herein, is liable for the administrative fines 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."

Petitioner contends that neither it nor the vessel is liable for violation of the law because there is no proof of the said weight discrepancies of more than 20%, or if any, of the carelessness or incompetency of the master, owner or employee of the vessel. Besides, petitioner claims that even if there is such a violation, the fines imposed by the respondent are erroneous and excessive because the basis thereof is the total value of the imported articles and not the value in respect to which the deficiency exists.

To begin with, as stated above, petitioner submitted this case for decision on the basis of the pleadings and of the records of the Bureau of Customs. No trial on the merits was conducted by this Court. One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115) Petitioner must be understood to have admitted therefore the truth of the following material and relevant allegations of respondent found in his answer that:

1. Petitioner cannot now be heard to complain of the non-observance of due process in this case.

2. The decision of respondent appealed from is amply supported by the undisputed fact that there was actually a discrepancy of weight between the actual and declared weight of the cargoes exceeding the allowable 20%. Furthermore, under Section 2523 of the Tariff and Customs Code, responsibility is lodged

not only on the master or pilot of the vessel for the discrepancy between the actual and declared weight of the manifested articles, but also on the owner or employee of the vessel. It is, therefore, incumbent upon these persons to see to it that no discrepancy beyond the allowable limit of 20% exists.

3. Petitioner should know the exact weight of the cargoes brought into the country by its vessel.

4. Petitioner is presumed to know the Customs laws of the country to which the goods or cargoes its vessel carries are destined for unloading.

At any rate, as already shown above, and stated in the decision appealed from, which is Annex "A" of the petition for review, the Collector of Customs of Manila, thru the Chief of the Law Division of the Bureau of Customs, sent petitioner on October 13, 1969 a letter informing it of the violation committed by its vessel, S/S "EURYBATES". The said letter, which states in detail the discrepancies between the actual and declared weights of the shipments under consideration as found by the customs examiner, required petitioner to explain in writing within five (5) days from receipt thereof and show cause why no administrative fine should be imposed on the vessel. Petitioner "was likewise granted an alternative option to elect a formal investigation thereon, which option must be exercised within the same period of time stated in the aforesaid letter, otherwise, the same shall be construed as a waiver of petitioner's right to be heard and the case will be decided accordingly." In spite of the lapse of the period stated in the said letter, petitioner failed and continued to fail to comply therewith. Since the proceedings before the Court of Tax Appeals is a trial de novo, and if petitioner desired to present evidence in addition to those already filed in the Customs records forwarded to this Court, it could have done so (C.F. Sharp & Co. Inc. vs. Commissioner of Customs, No. L-23803, February 26, 1968, 22 SCRA 760), petitioner cannot now complain that:

1. It was not afforded due process of law.

2. It cannot be held liable because respondent has not presented competent proof that the

discrepancy between the actual and declared weight of subject cargoes was more than 20%.

3. There is no proof on record presented by respondent to show that the alleged weight discrepancy of more than 20% was due to the carelessness or incompetency of the master or pilot in command.

4. The subject bill of lading covering the subject cargoes reflects the correct weight so that any erroneous weight declaration was merely the result of a clerical or typographical error.

5. The imposition of the fines is unjust, unreasonable and confiscatory.

Aside from the fact that all of these allegations under paragraph VI of its petition for review were all denied by respondent in paragraph 5 of his answer, petitioner submitted this case without offering proof as to the truth of its own allegations, and the record of the Bureau of Customs, which is also the basis on which petitioner submitted this case for decision, show that:

1. The 55 bales were manifested as weighing 14,414 lbs. gross but were however reported to weigh

30,424 lbs. gross by the Customs Examiner concerned.

2. The other shipment of 77 bales was entered in the shipping manifest as weighing 14,385 lbs. gross but was found by the Customs Examiner to have a weight of 71,595 lbs. gross.

3. The last 59 bales were found to weigh 54,863 lbs. gross, contrary to the reported 18, 938 lbs. gross in the shipping manifest thereof.

By opting to submit this case on the pleadings and the Customs records, petitioner is deemed to have admitted these findings of facts of the Bureau of Customs. (Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2555, December 18, 1975; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977.)

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 a 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. (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; F.E. Zuelig, Inc. vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2548, September 30, 1976.)

Smith, Bell & Co. vs. Commissioner of Customs, CTA Case No. 2469, December 27, 1974, cited by petitioner, is not applicable to the present action because its factual setting is different from that in the case at bar. The discrepancy in weight in that case appears to have resulted merely from a clerical or typographical error and the shipping documents reflected the correct weight of the vessel's cargo.

As to the amounts of the fines imposed by the Bureau of Customs, we notice from the Customs records that same were based on the total value of the imported articles. This Court has already ruled that the fine should be based on "the value of the package or article in respect to which the deficiency exists" in accordance with Section 2523 of the Code. (See Macondray & Co., Inc. vs. Comm. of Customs, CTA 2741, supra).

In this case, the discrepancy of more than 20% between the declared weight and actual weight of the subject importations (namely: 55 bales, 77 bales, 59 bales, of assorted textile remnants) is 16,010 lbs., 57,210 lbs., and 35,925 lbs., respectively. As found and determined by the Bureau of Customs, the cost per pound of the merchandise is US $0.85, or converted into pesos at the rate of exchange at the time of importation, which was ₱3.91 to a dollar, the peso value per pound would be ₱3.32. The discrepancies of 16,010 lbs., 57,210 lbs., 35,925 lbs., when multiplied by ₱3.32 (value per pound), will yield the total value of the discrepancy for each shipment, respectively as follows: ₱53,153.20, ₱189,937.20, ₱119,271.00. Fifteen percent (15%) of each of these, which is the maximum fine allowed under Section 2523 of the Tariff and Customs Code, would only be ₱7,972.98 ₱28,490.58, ₱17,890.65, respectively, or a total of ₱54,354.21.

However, considering the circumstances of this case, the Court finds no compelling reason to impose the maximum penalty because the negligence or incompetence of the master, owner, officer or employee of the vessel does not seem to amount to willful negligence or gross incompetence. Consequently, a fine of ₱27,250.00 is deemed just and reasonable for the discrepancies in the weights of the 3 shipments: ₱4,000.00 with respect to the 55 bales; ₱14,250.00 to the 77 bales; and ₱9,000.00 to the 59 bales.

WHEREFORE, the decision appealed from is hereby MODIFIED and the vessel S/S "EURYBATES" and/or petitioner herein are ordered to pay to the Bureau of Customs a total fine of ₱27,250.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, February 15, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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