COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2576

THE 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 December 19, 1973 in Customs Case No. 73-97 (Administrative Case No. V-494/69), affirming that of the Collector of Customs, Port of Manila, imposing an administrative fine of ₱5,000.00 against the vessel SS "LICA MAERSK" and/or petitioner Compañia General de Tabacos de Filipinas for violation of Section 2523 of the Tariff and Customs Code, as amended, which reads as follows:

> "Sec. 2523. <u>Discrepancy Between Actual and Declared Weight of Manifested Article</u>.- If the gross weight of any article or package described in the manifest exceeds by more than twenty <u>per centum</u> 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 <u>per centum</u> of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft."

The facts are not in dispute. It appears that petitioner is the general agent in the Philippines for the MAERSK LINE, a company engaged in the business of inter-ocean shipping which operates, among others, the vessel "LICA MAERSK". On or about April 19, 1969 the SS "LICA MAERSK" arrived at the Port of Manila conveying and discharging thereat seventy six (76) bales of assorted textile remnants under Bill of Lading No. 150. (p. 1, Customs rec.) The gross weight of said merchandise as declared in the bill of lading was 40,121 lbs. but upon actual examination by the Customs authorities, it was found that the actual gross weight thereof was 67,575 lbs., or an excess of 27,454.lbs. over the declared weight. (Pp. 2 & 6, Customs rec.)

After due hearing, the Collector of Customs rendered a decision dated August 13, 1973, imposing an administrative fine of five thousand pesos (₱5,000.00) on the SS "LICA MAERSK" and/or petitioner herein for violation of Section 2523 of the Tariff and Customs Code. (pp. 28-30, Customs rec.) Not satisfied with the said decision, petitioner appealed to the Commissioner of Customs, who, in a decision rendered on December 19, 1973, affirmed the decision of the Collector. (pp. 34-36, Customs rec.) Hence, the present appeal.

This case was submitted for decision based on the pleadings and customs records, and the only issue raised for resolution is whether or not the vessel SS "LICA MAERSK" and/or petitioner herein are liable for the administrative fine of ₱5,000.00 for violation of Section 2523 of the Tariff and Customs Code.

Petitioner contends that neither it nor the vessel is liable for violation of Section 2523 of the Tariff and Customs Code because, although there is proof that there is a weight discrepancy, the carelessness or incompetency of the master, owner, or employee of the vessel has not been established. Besides, the particulars concerning the weight of the cargo were supplied and furnished by the shipper and the vessel has nothing to do with them. However, respondent claims that the discrepancy could only be attributed to the carelessness or incompetency of the master in command or employee of the vessel because he should have verified the correct and actual weight of the cargo and not merely relied or depended on the declaration of the shipper.

The issue presented is not new. In the cases of Delgado Shipping Agencies, Inc. v. Commissioner of Customs, CTA Case No. 2548, September 30, 1976; Macondray & Co., Inc. v. Commissioner of Customs, CTA Case No. 2656, January 21, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA

Case No. 2685, February 15, 1977; and Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977; wherein the facts and issues involved therein are similar to those in the case at bar, this Court has consistently held that, under Section 2523 of the Tariff and Customs Code, the ascertainment or verification of the weight of the vessel's cargo at the port of loading is the duty or obligation of the master, pilot, owner or employee of the vessel. Consequently, if the discrepancy of more than 20% between the declared weight and the actual weight of the imported article arose because of, or which could have been avoided if it were not for, his failure or omission to perform this duty, the inevitable conclusion is that he is negligent or careless within the contemplation of the law.

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:

> "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."

And in the case of Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977, this Court also ruled:

> "The issue is not one of first impression. In several cases, where the factual setting is similar to that in the instant case, this Court unequivocally held that under Section 2523 of the Tariff and Customs Code, the ascertainment or verification of the weight of the vessel's cargo at the port of loading is the duty or obligation of the master, pilot, owner or employee of the vessel. Thus, if the discrepancy of more than 20% between the declared weight and the actual weight of the imported article arose because of, or which could have been avoided if it were not for, his failure or omission to perform this duty, the inevitable conclusion is that he is negligent or careless within the contemplation of the law."

We find no plausible reason to depart from this rule.

As stated above, the discrepancy in weight of the imported article is 27,454 pounds. From the memorandum for the chief appraiser dated April 28, 1969 of the appraiser and examiner of the imported article, which is page 2 of the records of the Bureau of Customs, the average cost per pound of the article is $1.06. If the discrepancy in weight is 27,454 pounds, the value in respect to which the deficiency exists would therefore be US$29,101.24. Reduced to pesos, which as appearing again from the memorandum of the appraiser and examiner for the chief appraiser, the value of the article in respect to which the deficiency exists is ₱113,185.84. Fifteen <u>per cent</u> (15%) of ₱113,785.84 is ₱17,067.87. Since under Section 2523 of the Tariff and Customs Code, the "fine of not more than fifteen <u>per cent</u> is based on the value of the article in respect to which the deficiency exists," the maximum fine which can be imposed upon the vessel SS "Lica Maersk" and/or petitioner is ₱17,067.87 (Macondray & Co., Inc., vs. Commissioner of Customs, CTA Case No. 2741, Feb. 3, 1977.)

In this case, however, the Court finds no justification to impose the maximum penalty considering that the carelessness or incompetence due on the part of the master, officer or employee of the vessel does not amount to willful negligence or gross incompetence. Nevertheless, considering that this case is already one of several cases brought to this Court involving the same penalty imposed on the same ship agent, a fine of ₱8,000.00 is deemed just and reasonable.

WHEREFORE, the decision appealed from is MODIFIED and the vessel SS "LICA MAERSK" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs a fine of ₱8,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, August 31, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge