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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED STATES LINES, INC., in its capacity as agent of the SS "Pioneer Moon",
Petitioner,

- versus -

CTA CASE NO. 2796

COMMISSIONER OF CUSTOMS,
Respondent.

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7/31/78

D E C I S I O N

This is an appeal by petitioner United States Lines, Inc., in its capacity as agent of the vessel S/S "Pioneer Moon," from the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of Manila imposing an administrative fine of ₱30,202.00 against the said vessel and/or petitioner 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 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.

On or about January 20, 1968, the SS "Pioneer Moon," a vessel represented by petitioner, with Registry No. 126, arrived at the Port of Manila and and discharged, among others, a cargo of 54 bales assorted textile remnants (covered by Bill of Lading No. 118), and with a declared weight of 18,721 lbs. Upon examination of the merchandise, it was discovered by the Bureau of Customs that there was an excess weight of more than 20% over what was declared in the bill of lading and the manifest in violation of Section 2523 of the Tariff and Customs Code. (See Memo-Report of Appraiser dated October 29, 1968, p. 2, Customs record.)

In a letter dated November 6, 1968, the Collector of Customs informed petitioner of the discrepancy in weight of the subject merchandise and requested it to explain in writing or show cause why no administrative fine should be imposed upon the vessel SS "Pioneer Moon" for the above violation. Petitioner, by means of a letter of its Inward Foreign Manager dated December 4, 1968, replied that the weight stated in the bill of lading was supplied by the shipper at the port of origin which served as the basis for manifesting the cargo; and that the imported merchandise was freighted on the measurement basis which rendered actual weighing of the cargo unnecessary; and concluding that the vessel had not violated the customs laws.

The Collector of Customs found these explanations unsatisfactory and, subsequently, instituted administrative proceedings against the vessel, notices of hearings of which were sent to petitioner United States Lines, Inc. On December 27, 1974, a decision of the Collector of Customs was rendered finding the vessel SS "Pioneer Moon" guilty of violating Section 2523 of the Tariff and Customs Code and imposing an administrative fine of ₱30,202.00 against the said vessel and/or its local agent.

On March 11, 1975, petitioner filed a motion for reconsideration of the decision on the ground that there was no hearing conducted on the case and that petitioner was not given an opportunity to be heard and present its evidence. But said motion was denied by the Collector of Customs in his order dated May 26, 1975.

Upon perfecting its appeal to the Commissioner of Customs, the latter, in a letter dated August 18, 1975, gave petitioner an opportunity to submit a memorandum in support of the grounds raised in its appeal to the effect that the decision of the Collector was rendered without hearing and that all the evidence presented against petitioner were hearsay. However, after the submission of petitioner's memorandum on September 17, 1975, the Commissioner of Customs rendered a decision on March 2, 1976, affirming that of the Collector of Customs and holding, among others, as follows:

> This office reiterates the view that as an administrative body it is entitled "to use a varying degree of discretion in arriving at decisions and often to proceed without being bound by some of the so-called procedures of law courts. x x x. (McDernat, Review of Adm. Decisions, Lawyers Journal 560 cited in p. 10 of Martin's Adm. Law). Moreover, being an Administrative Tribunal the Commissioner of Customs is not bound by rules of procedure enforced in the regular courts of justice. For administrative expediency, it is sufficient that he complies with the elementary rules of fair play as handed down by the Supreme Court in the case of Ang Tibay vs. The Court of Industrial Relations" (O.G. No. 11, Suppl. p. 29). Such rules have been observed in this case.

From the decision of respondent Commissioner of Customs, petitioner appealed to this Court, and after issues were joined with the filing of respondent's answer, a hearing was conducted, and after the hearing, petitioner filed a memorandum presenting correctly the following issues:

> 1. Whether or not Section 2523 of the Tariff and Customs Code, as amended, was violated; and
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> 2. Assuming, without admitting, that the vessel violated Section 2523 of the Tariff and Customs Code, was the fine in the amount of ₱30,202.00 imposed by Collector of Customs reasonable and not confiscatory?

Relative to the first issue, petitioner argues that the vessel did not violate Section 2523 of the Tariff and Customs Code because of the following grounds: (1) That the weight of the cargo is not required to be stated in the manifest under Section 1005 of the Tariff and Customs Code; and that even if the weight of the cargo is erroneously declared in the manifest, there is no violation; (2) that there is no evidence or proof that the weight of the subject merchandise is more than 20% of the weight declared in the manifest and bill of lading; (3) that there is no evidence or proof, assuming there is a discrepancy in weight, that same was due to the carelessness or incompetency of the master, owner, officer or employee of the vessel; and (4) that assuming there is carelessness or incompetency on the part of the master, owner, officer or employee of the vessel, the same is excusable because the weight stated in the bill of lading and the manifest was supplied by the shipper and that the cargo was freighted on the measurement basis and not on the weight.

The question of whether, under Section 1005 of the Tariff and Customs Code, the weight of an imported article should be stated in the cargo manifest of vessels coming from a foreign port was squarely resolved in the affirmative in the case of Smith, Bell Co., Inc. vs. Commissioner of Customs. (C.T.A. Case No. 2396, April 30, 1978.) As interpreted and applied by this Court in said case, the particulars or data required to be stated in the cargo manifest, under said Section 1005 of the Tariff and Customs Code, include the weight of the cargo. As a matter of fact, the Court, in making this interpretation, has made reference to the aforecited Section 2523 of the Code which imposes a fine for a discrepancy in weight of the cargo of over 20% of what was declared in the manifest or bill of lading.

As to proof or evidence of the discrepancy of more than 20% between the actual weight and declared weight of the merchandise in question, we find the appraisal report of the Customs appraiser dated October 29, 1968, forming part of the Customs record, sufficient. (See p. 2, Customs rec.) For petitioner to overthrow the findings of the Bureau of Customs as to the discrepancy in weight, it should have presented countervailing evidence during the hearing before this Court to rebut said findings of the Bureau of Customs. It cannot simply rely, to support its stand that there is no weight discrepancy, on bare allegations. Moreover, petitioner admits in its memorandum that an amendment to the vessel's manifest was submitted to, and was approved by, the Bureau of Customs. Indeed, if there was no weight discrepancy in this case, why was an amendment as to the weight filed by petitioner still necessary?

Likewise, the insistence by petitioner that there is no proof or evidence as to the carelessness or incompetence of the master, owner, officer or employee of the vessel is untenable. This court has consistently ruled that under Section 2523 of the Tariff and Customs 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, owner, pilot, officer or employee of the vessel. Failing in this duty, the conclusion is inevitable that there is an unexcusable laxity on the part of the master, officer or owner of the vessel in exercising the ordinary care and prudence in avoiding the underdeclaration of the weight of the ship's cargo, penalized under said Section 2523. Doing business in the Philippines, it is the solemn obligation of the master, pilot in command, owner or employee of the vessel to abide by our customs laws and regulations. In other words, if the discrepancy of more than 20% between the declared weight and actual weight of the imported article arose because of, and which could have been avoided if it were not for, the failure or omission of the master, pilot in command, owner, officer or employee of the vessel to perform his duty of ascertaining or verifying the weight of the cargo, the inevitable conclusion is that he is negligent or careless within the contemplation of the law. (See Citadel Lines, Inc. etc. vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978; Compania General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2576, August 31, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2575, April 6, 1977, Certiorari denied in G.R. L-47010, October 7, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977; 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, certiorari denied in G.R. L-46287, June 20, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2548, September 30, 1976; F.E. Zuellig, Inc. vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975.) In this case, petitioner frankly admits that the weight declared in the bill of lading and the manifest was supplied by the shipper and same was simply relied upon by the carrier. This evidently indicates that no actual verification or ascertainment of the weight of the cargo at the port of loading was made on the part of the vessel.

Finally, it is no defense that the weight of the cargo declared in the manifest or bill of lading was supplied and furnished by the shipper, and that the cargo in question was freighted on measurement basis and not on weight. As explicitly stated by this Court: " x x x 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. Accepting petitioner's explanation as a valid defense is 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. x x x." (F.E. Zuellig, Inc. vs. Commissioner of Customs, supra; see also Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, Certiorari denied in G.R. L-46287, June 20, 1977; Delgado Shipping Agéncies, Inc. vs. Commissioner of Customs, CTA Case No. 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978.) "Anent petitioner's averment that the freightage on the subject shipment was made on a measurement basis, suffice it to state that freightage is merely the charge or compensation paid by the shipper or importer to the carrier, and is not a determinative factor in the assessment and imposition of duties and penalties on the imported goods. As aptly observed by the respondent, freightage is never a factor in determining the responsibility of the vessel under Section 2523 of the Tariff and Customs Code." (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, Certirari denied in G.R. No. L-46287, June 20, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2802, June 30, 1978.)

Coming to the next issue, it is argued by petitioner that the fine of P30,202.00 imposed by the Bureau of Customs is unreasonable and confiscatory on the following grounds: (1) That the duties and taxes on the subject shipment, which are based on value or ad valorem, have already been paid; (2) that an amendment to the vessel's manifest was promptly submitted and approved by the Collector of Customs; (3) that assuming that there is negligence or incompetence in this case and the same is not excusable, it does not amount to willful negligence or grave incompetence; and (4) that if ever a fine is imposable, the same should be based on the value of the article in respect to which the discrepancy or deficiency exists and not on the total value of the whole shipment.

It appears that the computation of the fine by the Bureau of Customs is not clear. But petitioner, in questioning the basis of the fine, has not itself come up with its own facts and figures (or computation), which would impugn the correctness of the fine imposed by the Bureau of Customs. Consequently, the only recourse, this Court has is to consider the circumstances obtaining in this case, as we did in previous cases of a similar nature, to reduce or mitigate the fine imposed. (See Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2802, June 30, 1978; Citadel Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2679, June 27, 1978; Delgado Shipping Agency, vs. Commissioner of Customs, CTA Case No. 2729, June 16, 1978; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2684, April 24, 1978.) These circumstances are: (1) That there is no intention on the part of the vessel to defraud the government of lawful revenues; (2) that the negligence or incompetence of the master, pilot in command, owner, officer or employee of the vessel does not amount to willful negligence or gross incompetence; and (3) that the law, Section 2523 of the Tariff and Customs Code, allows latitude in the imposition of the fine. With those in mind, set against the circumstances in this case, we believe that it is just and equitable to reduce the fine imposed to only ₱9,000.00.

WHEREFORE, the decision appealed from is MODIFIED, and the vessel S/S "Pioneer Moon" and/or its agent, petitioner United States Lines, Inc., are hereby ordered to pay to the Bureau of Customs the fine of ₱9,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, July 31, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge