REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC., as
agent of the vessel SS
"FERNBANK",
Petitioner,

- versus - C.T.A. CASE NO. 2862

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - x

11/15/78

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of the Port of Manila in Administrative Case No. V-363, imposing an administrative fine of ₱42,901.00 against the vessel S/S "FERNBANK" and/or its local agent, petitioner Macondray & Co., Inc., for violation of Section 2523 of the Tariff and Customs Code.

On April 17, 1968, in a letter sent by the Acting Chief, Law Division of the Bureau of Customs, petitioner was informed that the S/S "FERNBANK", which arrived at the Port of Manila on September 26, 1967 conveying 73 bales of Cotton and Rayon Remnants with a gross weight of 87,515 pounds without proper manifest, violated Section 2523 in relation to Section 1005 of the Tariff and Customs Code. Petitioner, as ship agent, was therefore required 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 this violation. (p. 5, Customs record.)

In a reply dated May 4, 1968, petitioner explained that the cargo was duly manifested under New York/Manila B/L No. 77; that it has a total gross weight of 18,180 kilos as reflected in the manifest; that the cargo was freighted on a measurement basis; and that the weight appearing in the manifest and in the bill of lading as is customary in trade, was supplied and declared by the shippers abroad at their own risk and responsibility. (p. 10, Customs records.) The said explanation, however, was found unsatisfactory by the Bureau of Customs.

Subsequently, administrative proceedings was instituted against the vessel S/S "FERNBANK" for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code. During the administrative hearing of the case, the parties agreed to the following stipulation of facts:

> 1) That the respondent company is the local agent of the vessel S/S "Fernbank" which arrived at this Port on September 26, 1967;
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> 2) That the vessel conveyed 73 bales of cotton remnants; and
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> 3) That the weight declared at the Inward Foreign Manifest of the vessel was 40,079 lbs., however, the true and accurate

weight of the 73 bales was 87,515 lbs.;

4) That because of the inaccurate weight as declared in the Inward Manifest of the vessel, the respondent company filed an amendment, to show among others, the exact and correct weight of the shipment which was 87,515 lbs.; and

5) That the amendment was approved by the Collector of Customs with the notation "without prejudice to an administrative action against the vessel." (t.s.n. of Administrative Case No. V-363, pp. 27-28, Customs records.)

Counsel for respondent also submitted the following additional counter proposal, to wit:

1) That the cargoes being nearly bales of cotton and rayon remnants, the same were freighted on a measurement basis;

2) That the weight as appearing in the manifest as 40,079 lbs. which is also appearing in the Bill of Lading was supplied by the shipper abroad;

3) That the duties corresponding to the cargoes of 73 bales were duly paid; and

5) That the authorities did not weigh the cargoes at the Port of loading. (See t.s.n. of Administrative Case No. V-363, pp. 26-27, Customs records.)

This counter proposal was likewise agreed upon and stipulated by the parties.

On January 13, 1975, after proper hearing, the Collector of Customs rendered a decision imposing a fine of ₱42,901.00 on the S/S "FERNBANK" and/or petitioner herein for violation of Section 1005 in relation to Section 2523 of the Tariff and Customs Code. On January 31, 1977, on appeal by petitioner, said decision of the Collector of Customs was affirmed by respondent. Hence, the present recourse.

The issue to be resolved in this case is whether the imposition of the administrative fine of ₱42,901.00 against the vessel S/S "FERNBANK" and/or petitioner herein is, under the circumstances, valid, proper and in accordance with law.

In assailing respondent's decision, petitioner puts forward the following arguments: that the imposition of the fine under Section 2523 of the Tariff and Customs Code for a charge under Section 2521 is erroneous and contrary to law; that the imposition of the fine under Section 2523 requires the concurrence of two elements, namely, (1) the actual weight must exceed by more than 20% of the declared gross weight, and (2) the discrepancy must be due to carelessness or incompetency of the master or pilot in command, owner or employee of the vessel; that the decision ignores the customary practice in maritime trade that the shipment was freighted on measurement basis; and that the master, owner and employees of the vessel are under no legal obligation to ascertain the true and actual weight of the cargo.

Not much need be said on petitioner's reliance on the impropriety of the charge as a point of disputing the legality of the fine imposed against the S/S "FERNBANK". Settled is the rule that a mistake in or impropriety of the charge, in cases involving the imposition of administrative penalties under Customs Law, is of no consequence where the violation was properly described which is clearly punishable. (United States Lines Co. vs. Commissioner of Customs, CTA Case No. 2365, June 17, 1974.) Certainly, the appellate power of the Commissioner of Customs to review seizure and protest cases is not limited to a review of the issues raised on appeal. He may affirm, modify or reverse the decision of the Collector on other questions provided that his findings and conclusions are supported by evidence. (Vierneza vs. Commissioner of Customs, L-24348, July 30, 1968, 24 SCRA 394.)

The law upon which the decision of respondent is based provides:

> "SEC. 2523. Discrepancy Between Actual and Declared Weight of Manifested Cargo. - 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."

Parenthetically, it should be stated that the above Section of the Tariff and Customs Code refers to discrepancy in the weight of an article or package as declared in the manifest, while Section 1005 in relation to Section 2521, also of the same Code, refers to a failure to supply the requisite manifest. (See United States Lines Co. vs. Commissioner of Customs, *supra*.; Smith Bell & Co. vs. Commissioner of Customs, CTA Case No. 2469, December 27, 1974) Since the offense involved in this case relates to the discrepancy in the actual weight and the weight declared in the Inward Cargo Manifest and not to a failure to supply the manifest, as in fact there was an Inward Cargo Manifest, as stated in the parties' stipulation of facts, Section 2523 of the Tariff and Customs Code is the law applicable to this proceedings.

Comming now to the other arguments and defenses advanced by petitioner, we find that the same are not of first impression. In all fours with the case at bar on these points, by reason of the similarity of the facts involved and the questions litigated, as well as the close identity of parties, are the following cases wherein this Court ruled that:

> 1. DELGADO SHIPPING AGENCIES, INC. VS. COMMISSIONER OF CUSTOMS, CTA CASE NO. 2685, FEBRUARY 15, 1977.
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> 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.)

2. MACONDRAY & CO., INC. vs COMMISSIONER OF CUSTOMS, CTA CASE NO. 2656, January 21, 1977.

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. Zuellig, 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.

. . . . 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.
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> 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 States 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 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. 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 ommission of the concern that one with ordinary prudence should have of the Customs laws of the country with which it does business. (Underlining supplied.)

Anent petitioner's averment that the freightage of 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.

We find no cogent and valid reason to modify, much less depart from the conclusion reached in the above-cited cases, as expressed in the opinion of this Court there, and the same should resolve the identical problem again brought before us in this proceedings.

As determined by the Bureau of Customs, the fine imposed for the violation in this case is ₱42,901.00, and the computation and the amount thereof are not being questioned or assailed by petitioner as erroneous and excessive. In the final analysis, however, we find no compelling reason to affirm the maximum penalty imposed by the Bureau of Customs because, from the circumstances of this case, it does not appear that the negligence or incompetence of the master, officer or employee of the vessel amounts to willful negligence or gross incompetence. Petitioner filed an amendment to the manifest, which was duly approved by the Collector of Customs, to show among others, the exact and correct weight of the shipment, and the duties corresponding to the cargo were duly paid. Nonetheless, this is not the first case brought to this Court involving the same fine imposed on the same vessel and the same petitioner for violation of the same provision of law. (Macondray & Co., Inc., as agent of M/S "FERNBANK," vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977) Accordingly, it is deemed just and reasonable that a reduced fine of ₱23,000.00 be imposed on the vessel S/S "FERNBANK" and/or petitioner herein Macondray & Co., Inc., as agent of the vessel.

WHEREFORE, the decision of the Commissioner of Customs is hereby MODIFIED. The vessel S/S "FERNBANK" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the fine of ₱23,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, November 15, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Roaquin

CONSTANTE C. ROAQUIN
Associate Judge