

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERNATIONAL HARVESTER, MACLEOD,
INC., in its capacity as agent
of the vessel M/S "TAIMYR",
Petitioner,

- versus -

CTA CASE NO. 2745

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - x

D E C I S I O N

Petitioner International Harvester Macleod, Inc., in its capacity as agent of the vessel M/S "TAIMYR", has appealed from the decision of respondent Commissioner of Customs, dated August 25, 1975, affirming the decision of the Collector of Customs of Manila (in Administrative Case No. V-781/73) imposing a fine of ₱5,000.00 upon the said vessel for the violation of Section 2529 (h)-5 of the Tariff and Customs Code, as amended, and Customs Administrative Order No. 2-71 dated June 3, 1971.

The parties have submitted the case for decision based on the pleadings and customs records, wherein the following facts appear:

On May 7, 1973, petitioner International Harvester Macleod, Inc., ship agent in the Philippines of the Norwegian vessel M/S "TAIMYR", sent a letter to the Bureau of Customs, advising the latter that

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said vessel was arriving at the Port of Manila loaded, among other cargoes, with chemicals and explosives consigned to the Philippine Explosives Corporation. On May 10, 1973, while still outside the breakwater, the vessel's Hatch No. 4 caught fire and it was discovered by Customs Inspector Alfonso Catambay, who boarded and inspected the vessel, that the fire was caused by the burning of chemicals. The fire was extinguished only on May 14, 1973. The following day, or on May 15, 1973, petitioner, through its manager, requested the Customs Berthing Officer in writing that the M/S "TAIMYR" be assigned a pier berth in order that it can discharge its cargoes, and stating therein that the hatch that caught fire had already been cleared. This request was granted by customs authorities and the vessel was allowed to dock at Pier 5, Berth 4, after a chemist, who was hired by petitioner, conducted an ocular inspection to determine the presence or absence of smoke or fumes resulting from the fire and who had submitted a report, the pertinent portion of which reads:

FINDINGS AND OBSERVATIONS:

1. After boarding the ship, the first and some portion of the cover of the second deck of Hatch #4 were noted opened. Several persons were also noted cleaning and collecting burned trash from the cover of the second deck.

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2. Hatch No. 4 has three decks. Only the first and second decks were inspected in as much as there is no access door through which deck No. 3 could be inspected. No smoke or fumes were noted coming from the first and second deck.

3. All materials seen still inside the two decks were noted charred.

REMARKS AND RECOMMENDATION:

Based on the above findings and observations, it is recommended that the unloading shall only be made of the cargo in first and second decks of Hatch No. 4. Unloading the 3rd deck will only be undertaken after it has been determined that it contains no fumes hazardous to human health.

Based upon the above recommendation and the granting of the request to discharge its cargoes, it began to unload its cargoes. Unfortunately, on May 16, 1973, during the unloading of the cargoes, some stevedores working in the area of Hatch 4 of the vessel were stricken seriously ill by showing signs of dizziness and during their confinement and treatment in the hospital, four (4) of these stevedores died of gas poisoning. As a result of this incident, work on board the vessel was immediately stopped; and all hatches of the vessel were closed upon order of the Deputy Collector of Customs.

Subsequently, Administrative Case No. V-781/73 was instituted by the Collector of Customs of Manila against the vessel M/S "TAIMYR" (with petitioner representing it as party-respondent) for causing the emission and spread of harmful gas, fumes and chemicals

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in violation of Section 2529 (h)-5 of the Tariff and Customs Code, and for the alleged failure to state in its "notice of arrival" of the existence of explosives and inflammables on board thereof in violation of Customs Administrative Order No. 2-71, dated June 3, 1971.

On December 12, 1974, after proper hearing, the Collector of Customs rendered a decision holding the M/S "TAIMYR" liable as charged, and punished by a fine of ₱5,000.00, thus:

In this connection, evidence show that the vessel before entering this Port caught fire produced from chemicals it carried and destined for this Port. When Hatch 4 was opened while already in Port and after the fire has been allegedly put out, a thick smoke billowed out of the hatch. This Office takes notice that smoke from the vessel has been seen as far as Sta. Cruz and Sampaloc with attendant abnoxious odor. It may be stated that four (4) stevedores had died while several others were stricken ill allegedly as a consequence of this particular incident.

In view of the foregoing, this Office finds and so holds that the M/S "Taimyr" is liable for the imputed violations.

WHEREFORE, by virtue of Section 2312 of the Tariff and Customs Code, it is hereby ordered and decreed that the vessel M/S "Taimyr" for violation of Section 2529 (h)-5 of the Revised Tariff and Customs Code, and also Customs Administrative Order No. 2-71, covered by Administrative Case No. 781/73, be meted a fine of FIVE THOUSAND (₱5,000.00) PESOS. Failure of respondent vessel to pay said fine within fifteen (15) days from receipt hereof subjects the vessel to seizure pursuant to Section 2533 of the Tariff and

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Customs Code. (Underlining supplied)

Upon appeal, the Commissioner of Customs, on August 25, 1975, affirmed the decision of the Collector, holding as follows:

After a careful scrutiny of the facts of this case, this Office finds no possible excuse for the guilt of the vessel. All avenues point to the inexcusable negligence and nonchalant attitude of the respondent in its concern for the safety and well-being of the area where the vessel is to dock. Knowing fully well that the vessel was loaded with chemicals and explosives that was on fire for days, precautions should have been intensified enough to secure that no ill-effects would follow when the burnt hatches will be opened. As it was, the respondent merely relied on a half hazzard report of a chemist who did not probe enough to really determine the extent of the damage. Everything was assumed that the fire was already contained but as to the effects of the fire on the chemicals and the explosives, nothing has been over-emphasized. Thus, the tragic death of the four stevedores working on the burnt hatches where the harmful gas came from.

WHEREFORE, finding no reason to reverse or modify the decision appealed from, the same is hereby affirmed.

Hence, this present appeal.

The issue is whether or not the M/S "TAIMYR" has committed the offense and is punishable by a fine of ₹5,000.00 for violation of Section 2529 (h)-5 of the Tariff and Customs Code, as amended, which states:

SEC. 2529. Miscellaneous Offenses.-
The following administrative fines shall be imposed upon any vessel that sails or operates under any of the circumstances hereunder specified:

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h. A vessel shall be fined in an amount hereafter fixed for:

xxx

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xxx

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(5) Causing the emission and spread of harmful gas, fumes and chemicals, five thousand pesos for each offense.

and Customs Administrative Order No. 2-71.

In maintaining that the vessel M/S "TAIMYR" is not liable for violation of said Section 2529 (h)-5 of the Tariff and Customs Code and Customs Administrative Order No. 2-71, petitioner argues (1) that the chemicals on board the vessel were not harmful as the vessel was allowed by the Bureau of Customs to berth at the pier; (2) that the gas fumes which emitted from the vessel were not harmful but merely smelled bad; (3) the ship agent had informed the Bureau of Customs, through the Chief, Water Patrol Division, that the vessel was arriving at the Port of Manila with a cargo of explosives consigned to the Philippine Explosives Corporation; and (4) the vessel was given a clearance and permission by the Bureau of Customs to berth at Pier 5 to unload its cargoes. (Paragraph V, Petition, p. 2, CTA rec.) Furthermore, petitioner cites, in support of its plea of non-liability, the findings and recommendations of the chemist who had determined the extent of the

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damage of the cargoes, chemicals, and explosives (Par. VIII, Petition, p. 3, CTA rec.) and who certified that unloading can be partly undertaken in the first and second decks of hatch 4 and that unloading in the 3rd deck will be undertaken only after it has been determined that it contains no fumes hazardness to human health.

From our perusal of the facts, there appears to be no violation ^{by} the M/S "TAIMYR" of Customs Administrative Order No. 2-71. The letter of petitioner dated May 7, 1973, which was presented as evidence during the administrative proceedings in the Bureau of Customs (Exh. 1, p. 73, Customs rec.) and, in fact, admitted by the Commissioner of Customs in his decision (p. 158, Customs rec.), had properly advised the Bureau of Customs, through the Water Patrol Division, that the vessel was arriving at the Port of Manila with a cargo of chemicals and explosives consigned to the Philippine Explosives Corporation. The said letter, in our opinion, constitutes a sufficient notice or information as to the existence of explosives and inflammables carried by the vessel and substantially satisfies the requirement of Customs Administrative Order No. 2-71. However, the facts and circumstances of the case strongly justify the conclusion that the vessel and/or petitioner herein are liable for violation of Section 2529

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(h)-5 of the Tariff and Customs Code. From the records of the Bureau of Customs, we find no iota of evidence to support petitioner's allegation that the chemicals on board the vessel and the gas fumes which emitted therefrom were not harmful. In fact, from the very tenor of the report of the chemist (Exh. 6, p. 68, Customs rec.), which has been cited by petitioner, the recommendation based on his findings and observations, was that the unloading of the cargoes shall only be made on the first and second decks of Hatch No. 4 where the fire took place but that "the unloading of the third deck will only be undertaken after it has been determined that it contains no fumes hazardous to human health." "Said report of the chemist, which was made after the fire had been extinguished, was with caution, which implies, that the unloading of cargoes was not yet wholly safe as the hatches may still contain gas fumes which are dangerous to human health. There is nothing in the said report of the chemist which states that the chemicals or gas fumes are not harmful as averred by petitioner.

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In the absence of competent and positive evidence that the chemicals and gas fumes emitted from the vessel were not harmful and that the illness of some, and death of four, stevedores working on board the vessel during the unloading of the cargoes, were not caused by, or connected with, the said gas fumes and chemicals, the inevitable and inescapable conclusion is that the gas fumes and chemicals were not only harmful or injurious but patently lethal.

To our mind, for the violation of Section 2529 (h)-5 of the Tariff and Customs Code, as amended, it is of no moment, much less an exculpatory defense, that the petitioner informed the Bureau of Customs that the vessel M/S "TAIMYR" was carrying chemicals and explosives and that said vessel was permitted by Customs authorities to dock at the pier after the fire was extinguished. The act or offense punishable by law is "for causing the emission and spread of harmful gas, fumes and chemicals," and this circumstance had occurred exactly in this case. Besides, we believe that the clearance or permission granted by the Bureau of Customs for the said vessel to berth at the pier cannot be an evidence to establish the fact that the chemicals which the vessel carried and the gas fumes it emitted were not harmful or injurious to human health. In fact, that permission

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to berth the vessel and unload its cargo can not even be a guarantee that the vessel was free from and not responsible for injurious substances, such as gas fumes and chemicals, the emission and harmful effects of which were particularly within its full control at all times that the chemicals and explosives were on board thereof.

For this violation of the vessel, we find no circumstance that will mitigate the fine imposed by the Bureau of Customs. For, indeed, extreme precautions should have been taken by the officers and crew members of the vessel to prevent the commission of the offense, knowing as they did that a fire had already occurred in that portion of the vessel where the cargo of chemicals and explosives were loaded.

WHEREFORE, the decision appealed from is hereby affirmed. The vessel M/S "TAIMYR" and/or its agent, the International Harvester, Macleod, Inc., is ordered to pay to the Bureau of Customs a fine of ₱5,000.00 for violation of Section 2529 (h)-5 of the Tariff and Customs Code, as amended. Failure of said vessel and/or its ship agent to

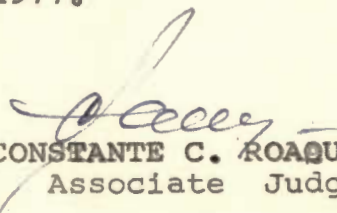
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pay the fine will subject the former to seizure under
Section 2533 of the Tariff and Customs Code, as amended.
With costs.

SO ORDERED.

Quezon City, December 23, 1977.


CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:


AMANTE FILLER
Acting Presiding Judge