REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC., in
its capacity as agent of
the M/S "TROUBADOUR",
Petitioner,

- versus C.T.A. CASE NO. 2575

COMMISSIONER OF CUSTOMS,
Respondent.
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DECISION

This is an appeal from the decision of respondent Commissioner of Customs dated December 13, 1973, affirming that of the Collector of Customs of Manila, imposing upon petitioner a fine of ₱21,815.00 for violation by the M/S "TROUBADOUR" of Section 2523 of the Tariff and Customs Code of the Philippines, as amended, 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.

This case was submitted for decision based upon the pleadings and the records of the Bureau of Customs and the evidence presented therein.

As shown by the records and pleadings, it is undisputed that the M/S "TROUBADOUR" discharged and unloaded at the Port of Manila on March 20, 1968 43 bales of assorted textile remnants consigned to Soledad San Agustin. In the covering Bill of Lading No. 143 and the ship's manifest, the goods had a declared weight of only 15,050 lbs. During the appraisal of the goods under Covering Entry No. 33783 S. 1968, and the weighing of the same, it was ascertained by Customs Appraiser Magno Clemente, Jr., as shown in his report dated April 18, 1969, that the actual weight of the godds was 39,861 lbs., and, hence, there was a discrepancy in weight of 24,811 lbs. Percentagewise, the increase or discrepancy in weight was 37.7% over the declared weight.

On July 5, 1969, Eduardo R. Gatchalian, Chief of the Law Division of the Bureau of Customs, wrote a letter to petitioner, Macondray & Co. Inc., as agent of said vessel M/S "TROUBADOUR", requiring it to explain why no administrative fine should be imposed upon the vessel for the over 20% increase in weight of the discharged cargo from that which is declared in the bill of lading and ship's manifest penalized under Section 2523 of the Tariff and Customs Code.

On August 18, 1969, in a letter to the Collector of Customs, petitioner Macondray & Co., Inc. defended itself by saying that in the bill of lading and in the ship's manifest, the statement of the gross weight of the articles tallies and that the weight was supplied by the shippers; and that assuming the weight is erroneous, the vessel, the M/V "TROUBADOUR", was neither negligent nor motivated by bad faith.

During the administrative investigation that followed, the discrepancy in weight was admitted by petitioner. It was equally established in the investigation that vessels, as a matter of maritime practice, do not weigh their cargoes at the time of loading in the foreign ports and, therefore, the M/S "TROUBADOUR" had not weighed the cargo at the port of loading, or in New York; that the cargo was freighted on a measurement basis; that the vessel does not have a weighing machine or scale for that purpose. Based on these facts, petitioner vigorously argued that the weight discrepancy was not due to carelessness or incompetency of the master of the vessel, or of any of its employees. After taking into account these facts and defenses, the Collector of Customs in his decision dated September 14, 1973 held petitioner liable for a fine of ₱21,816 for violation of Section 2523 of the Tariff and Customs Code.

On appeal, the Commissioner of Customs affirmed that of the Collector of Customs in toto in his decision dated December 13, 1973. Hence, petitioner appealed to this Court.

During the hearing in this Court, instead of presenting its evidence, petitioner joined respondent in submitting the case, as aforesaid, based upon the pleadings and customs records, but stated in its defense that in order to sustain the fine, " x x x there must be proof that the alleged weight discrepancy of more than 20% must be shown to be due to carelessness or incompetency of the master in command, owner, or employee of the vessel" and that "(t)here is no proof regarding such carelessness or incompetency." (Memorandum of Petitioner, at p. 30, CTA rec.) This Court states with emphasis that there was admittedly in this case a 37.7% increase in weight of the cargo, or 17.7% over the 20% tolerable limit of discrepancy allowed by law. Considering this percentage of increase over the good's declared weight, there was, to our minds, a complete disregard of the duty of the master, owner, or employee of the vessel in exercising that ordinary care and prudence in detecting any misdeclaration in weight of the cargo in question, we assume that the master, owners or employees of the vessel responsible knows that the cargo in question was destined for discharge in the Philippines, and knowing as they should of the strict provision of Section 2523 of the Tariff and Custom Code requiring that the weight of the cargo should not be more than 20% of that weight reflected in the accompaying bill of lading and in the ship's manifest, they have not, therefore, taken all ordinary and necessary steps to prevent a violation of said law. The fact that the weight was supplied by the shipper, and that under maritime practice, ships, such as the M/S "TROUBADOUR", at the time of loading goods in the foreign ports, do not weigh their cargo is not a valid excuse in not at all considering the magistracy of our customs laws requiring that the cargo destined for Philippine ports should be weighed and the discrepancy should not exceed 20% of what is declared. And we see nothing in the record which showed some kind of abnormal condition obtaining in the port of loading, which is in New York, that could have brought about this rather high percentage of weight discrepancy. Consequently, this Court is constrained to find that there was an unexcusable negligence or incompetency on the part of either the master, owner, or employee of the vessel in charge of the cargo in preventing the occurrence of over 20% discrepancy in weight of the 43 bales of assorted textile remnants carried by the M/X "TROUBADOUR" penalized under Section 2523 of the Tariff and Customs Code. However, we are of the opinion that the fine to be imposed under Section 2523 of the Tariff and Customs Code, as amended, should not be more than 15% of the value of the article or goods in respect to which the deficiency exists. The weight discrepancy of the goods is 24,811 lbs., and based upon the appraised value of $0.85 per lb. of discrepancy, the total value of the excess weight discrepancy is, therefore, $21,089.35, or computed at the rate of ₱3.94 to a dollar, the value of the excess weight discrepancy is ₱83,092.04. Fifteen (15%) per cent of the total value of the weight discrepancy of ₱83,092.04, which is ₱12,463.80, is the administrative fine legally imposable under Section 2523 of said Code.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is hereby modified. Petitioner in its capacity as agent of the vessel M/S "TROUBADOUR" is hereby ordered to pay respondent the sum of ₱12,463.80 for violation of Section 2523 of the Tariff and Customs Code of the Philippines.

With costs against petitioner.

SO ORDERED.

Quezon City, April 6, 1977

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge