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F. E. ZUELLIG, INC., in its
capacity as agent of the
M/V "HONGKONG GRACE",
Petitioner,

- versus - C.T.A. CASE NO. 2360

COMMISSIONER OF CUSTOMS,
Respondent.
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4/10/75

D E C I S I O N

Petitioner has appealed from the decision of respondent Commissioner of Customs, dated November 16, 1971, affirming that of the Collector of Customs, Manila, imposing upon petitioner a fine of P28,294.00, equivalent to 15% of the value of the imported article 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 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 aricraft.

The vessel M/V "Hongkong Grace" arrived in Manila from New York, U. S. A. on February 24, 1970. Among its cargoes are 149 bales of cotton and rayon remnants weighing 87,691 lbs. as declared under Bill of Lading

No. NV-MA-20. The master of the vessel caused the recording of the said weight in the Inward Cargo Manifest.

While processing the entry papers of the said imported goods, it was found that the weight of the cotton and rayon remnants was 127,270 lbs. and not 87,691 lbs. as declared therein. Consequently, a discrepancy in weight of 39,579 lbs. was ascertained by the customs examiners. The allowance in gross weight prescribed by law is only 20% of 87,691 lbs. or 17,583.2 lbs. In brief, even if the statutory allowance of 20% is granted, there still remains an excess gross weight of 22,040.8 lbs. of the imported cotton and rayon remnants.

On June 10, 1970, Mr. Castor B. Pambid, Acting Chief, Law Division of the Collector's Office, notified petitioner that the vessel "Hongkong Grace" discharged 149 bales of the remnants in question with an excess weight of more than 20% as declared in the Bill of Lading and Inward Cargo Manifest, in violation of Section 2523 of the Tariff and Customs Code. Petitioner was, therefore, required to explain why no administrative fine should be imposed on the vessel.

On July 10, 1970, Mr. J. E. Allen, Manager of the Shipping Division of petitioner, explained in writing that no shipping line in the United States has facilities for checking the weight or contents of the goods shipped therefrom; that the weight of the cargo was declared by the shipper; and that any discrepancy in weight is beyond its control.

After due hearing, the Collector of Customs of the Port of Manila decided on June 9, 1971 that petitioner is subject to the maximum fine of 15% of the value of the imported remnants. On November 16, 1971, the Commissioner of Customs affirmed the decision of the Collector of Customs. Hence, this appeal.

The main issue to be resolved is whether or not petitioner's failure to declare in the Inward Cargo Manifest the true, correct, and excess weight of the imported cotton and rayon remnants is subject to the penalty imposed by Section 2523 of the Tariff and Customs Code, *supra*.

Respondent maintains that the fine of ₱28,294.00 was validly imposed because the staggering discrepancy of 39,579 lbs. in the declared and actual weight of the remnants was due to the carelessness and negligence of the master of the vessel. 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 [illegible]tain of the vessel "Hongkong Grace" to justify the imposition of the penalty imposed by the Tariff and Customs Code.

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; 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 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 omission of the concern that one with ordinary prudence should have of the Customs laws of the country with which it does business.

In Macondray & Co., Inc. v. Commissioner of Customs, C.T.A. Case No. 2428, October 31, 1973, this Court said:

> A letter of the Barber Steamship Lines, Inc., petitioner's agent in New York, port of loading, to its agent in Oslo reads as follows:
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> > We quite agree with the remarks contained in the second paragraph of your letter to Messrs. Macondray & Company that we do consider it a very serious matter should the Customs Authorities at Manila decide to impose fines on the carriers if underdeclarations of manifested weights are found. We think that from past exchanges of correspondence we have made it abundantly clear as to the shipping procedure in the U.S. where the shipper or forwarder prepares an export declaration, dock receipt and bill of lading and as it is highly impractical to weigh these bales at the pier at time of delivery (most piers do not have scales), it is most unfair that the carrier should be held responsible in any way. We would suggest, in view of the impracticability of weighing cargo at time of delivery at vessel's loading berth, that perhaps the shipper or his forwarder could be required to file a certified weight certificate in connection with the Consular invoice or for example in the case of shipment to Bangkok where the duty is imposed on a valuation basis that the consignee in the Philippines be required to file a certified invoice before clearing the shipment from the pier. We know that these documents could and probably would be misdeclared in some form or other, but we feel that at least the responsibility would be on the shipper and/or consignee and would remove the responsibility from the carrier, where it certainly does not belong.
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> From the foregoing stipulation and letter, it is plain that the shipping company accepted without question the shipper's declaration as to the weight of the shipment although it was fully aware that there would be misdeclaration

> in one form or another. It did not bother itself to check in any way feasible under the circumstances the weight declared. It just brushed aside the provisions of Section 2523 of our Tariff and Customs Code partly because of a shortage of scales in the port of loading and partly because of the conviction that the responsibility imposed by our law should be laid on the shipper and not on the carrier. Accepting petitioner's terse explanation as a valid defense is virtually nullifying Section 2523 of the Tariff and Customs code. It will provide the shipping company with a handy defense because it is well-nigh impossible for our government to verify the veracity of the explanation. The least that can be said is that the explanation reveals a careless disregard of Section 2523 of the Tariff and Customs Code, an omission of the concern of its obligations under said Section by one with ordinary prudence.

This Court, however, does not find sufficient evidence to justify the imposition of the maximum penalty of 15% of the value of the imported remnants prescribed by law. In the circumstances, the imposition of ₱2,000.00 fine on the importing vessel is deemed just and reasonable.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is modified. Petitioner as agent of the vessel M/V "Hongkong Grace", is hereby ordered to pay respondent the sum of ₱2,000.00 for violating Section 2523 of the Tariff and Customs Code.

SO ORDERED.

Quezon City, April 10, 1974.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

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