REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERNATIONAL HARVESTER
MACLEOD, INC., in its capacity
as agents of the SS "MAYO LYKES",
Petitioner,

- versus - C.T.A. CASE NO. 2698

COMMISSIONER OF CUSTOMS,
Respondent.

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11/25/77

DECISION

Appeal from the decision of respondent Commissioner of Customs dated April 16, 1975 affirming that of the Collector of Customs of Manila (in Customs Case No. 75-31) imposing an administrative fine of ₱62,419.00 on the vessel SS "Mayo Lykes" and/or petitioner herein, International Harvester Macleod, Inc., in its capacity as agents of the S/S "Mayo Lykes," for violation of Section 2523 of the Tariff and Customs Code.

There is no dispute as to the essential facts of the case. As borne out by the pleadings and customs records on which this case was submitted for decision by the parties, it appears that:

On June 4, 1970, the vessel S/S "Mayo Lykes", of which petitioner is the local ship agent, arrived at the Port of Manila and discharged thereat, among other cargoes, 238 bales of high density compressed cotton. The gross weight of the said merchandise as declared in the vessel's cargo manifest was 5,908 kilos but, upon examination by customs authorities, it was discovered that the gross weight thereof was 59,076 kilos, or a discrepancy of more than 53,000 kilos.

In a letter to the Bureau of Customs dated July 29, 1971, petitioner explained that the discrepancy was due to clerical error. Thus:

> The shipment of 238 bales Raw Cotton averaged 248.218 kolos per bale and in extending the total weight of the said 238 bales which weighed a total of 59,075.8840 kilos, the product thereof was erroneously taken as 5,908 kilos due to an obvious error in rounding up the last figure "7" to "8" resulting in the diminution of the figures by one digit. The figure that should have been rounded up should have been the last whole number of "5" instead of the figure "7" and the correct figure should have been 59,076 kilos.

On August 2, 1971, petitioner filed an amendment to the inward foreign manifest stating therein the correct weight of the cargo, and the same was approved by the Collector of Customs "without prejudice to an administrative action against the vessel."

On January 9, 1975, after proper hearing (in Administrative Case No. V-631/71), the Collector of Customs of Manila rendered a decision holding the vessel S/S "Mayo Lykes" and/or petitioner herein liable for a fine of ₱62,419.00, representing 15% of the total value of the shipment, for violation of Section 2523 of the Tariff and Customs Code.

On April 16, 1975, said decision of the Collector, upon appeal in due course by petitioner, was affirmed by the Commissioner of Customs. Hence, the present recourse.

The issue for resolution is whether or not the S/S "Mayo Lykes" and/or its ship agent petitioner herein are liable for the fine 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 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.

Petitioner contends that although there is a discrepancy of more than 20% between the declared weight and the actual weight of the cargo in question, neither it nor the vessel can be held liable for violation of the law because: (1) the discrepancy was due to clerical error; and (2) there is no proof of the carelessness or incompetency of the master, owner or employee of the vessel.

We find petitioner's defenses untenable.

The explanation that the discrepancy in weight was due to a clerical error, as alleged by petitioner in its letter of July 29, 1971, was objected to by respondent's counsel during the administrative proceedings in the Bureau of Customs, and petitioner did not substantiate it with competent and convincing evidence. To be relevant and of probative value, said explanation should have come from the person in-charge of the preparation of the manifest or the one who noted the weight of the cargo in the inward foreign manifest at the port of loading and not from petitioner herein who, as ship agent in the Philippines, had no hand in the preparation of the manifest or listing down the weight of the cargo. In the absence of competent evidence, such explanation, coming as it is from petitioner who admittedly does not know of its own personal knowledge as ship agent in the Philippines the fact of the clerical error, has no evidentiary weight or probative force. Accepting or admitting such a defense, which can easily be alleged or concocted, violates the rule that testimony should generally be confined to personal knowledge. In this case, petitioner simply entrenched itself in the explanation that there was "an obvious error in rounding up the last figure "7" to "8" resulting in the diminution of the figures by one digit" (p. 2, Bureau of Customs records), but because of lack of knowledge of how and why it was committed, and who committed the error, petitioner cannot be obliged to explain obscurities, remove uncertainties, reconcile differences and solve difficulties.

Hence, assuming that the "inadvertence by the vessel to write the correct weight of the shipment was due to clerical error" (par. VIII, Petition for Review), the element of carelessness or incompetency still prevails.

1. Had the officer or employee of the vessel charged with the duty of listing or noting down the weight of the cargo in the manifest or return been careful or prudent in observing simple rules of elementary arithmetic, he could not have committed, in rounding up figures, the grave and serious error of deleting or omitting 5.8840 from 59,075.8840. Rounding up 59,075.8840 cannot by any stretch of the imagination, even by the exercise of simple care and prudence, be 5,908. This evidently demonstrates carelessness, if not incompetency, on the part of the officer or employee of the vessel incharge of the preparation of the manifest or return of the weight of the cargo.

2. As alleged by respondent under paragraph 3 of his Answer, which is deemed admitted because this case was submitted based on the pleadings (Aquino vs. Blanco,

79 Phil. 648; Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115.), the gross weight of the 238 bales of high density compressed cotton as reflected in the Inward Foreign Manifest which is only 5,908 kgs., instead of 59,076 kgs. which is the true and correct gross weight is evidently due to carelessness or incompetency of petitioner and/or its employees for the reason that even by the mere appearance of the cargo alone, such weight of only 5,908 kgs. is obviously incredibly low or inaccurate.

3. Again, as averred by respondent under paragraph 4 of his Answer, and which may also be considered admitted by petitioner, the defense of inadvertence due to clerical error is unacceptable not only because of the obvious improbability of 5,908 kgs. as the correct weight, but also because the discrepancy of the entered weight and the actual weight is so astronomical, 5,908 kgs. as against 59,076 kgs., or a marked difference of 50,000 kgs. more or less. Hence, the discrepancy in question cannot be for any reason but gross carelessness or incompetence, if not deliberate misrepresentation occasioned by other motives.

4. And lastly, under paragraph 5 of respondent's Answer, which is likewise deemed admitted by petitioner, the filing of an amendment by petitioner is an admission of the incompetency or carelessness of the employees of petitioner and does not have the effect of curing or

erasing the liability of petitioner as provided for by law which aims to eliminate all attempts to open avenues of fraud and/or anomalies in the field of trade and importation of goods.

At this juncture, it is hardly necessary to add that under Section 2523 of the Tariff and Customs Code, the declaration, ascertainment or verification of the correct weight of the cargo at the port of loading is the duty or obligation of the master, pilot, owner, officer or employee of the vessel. If he omits or disregards this duty and a punishable discrepancy between the declared weight and actual weight of the cargo exists, the inevitable conclusion is that he is negligent or careless. (See Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, Feb. 2, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, Feb. 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, Jan. 21, 1977 and cases cited therein.) Similarly, if in the exercise or performance of this duty, he is negligent or careless resulting in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law, carelessness or incompetency is, nonetheless, imputable to him.

Thus, in the case of Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977, certiorari denied, G.R. L-46262, July 6, 1977, this Court ruled:

> "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 the 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."

In the final analysis, however, we find no compelling reason to sustain the maximum penalty imposed by the Bureau of Customs, it appearing that this is the first offense of petitioner of Section 2523 of the Tariff and Customs Code brought by it to this Court. Under the premises, and as the law allows latitude in the imposition of the fine, it is deemed just and reasonable that a reduced fine of ₱25,000.00 be imposed on the vessel S/S "Mayo Lykes" and/or petitioner herein.

ACCORDINGLY, the decision appealed from is hereby MODIFIED. The vessel S/S "Mayo Lykes" and/or petitioner

International Harvester Macleod, Inc., in its capacity as agent of the S/S "Mayo Lykes," are hereby ordered to pay to the Bureau of Customs the fine of ₱25,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, November 25, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge