REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LINDA-MAR CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2553

COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

This is an appeal from the decision of respondent Commissioner of Customs dated August 9, 1973, affirming that of the Collector of Customs for the Port of Mariveles, Bataan, the dispositive portion of which reads as follows:

> "WHEREFORE, by virtue of the authority vested to this Office under the provisions of the Tariff and Customs Code, it is hereby ordered and decreed that an administrative fine in the amount of SIXTY-FIVE THOUSAND PESOS (₱65,000.00) based on the 15% of the value of the packages or articles in respect to which the deficiency exists be, as it is hereby declared imposed on the said vessel and/or its owner, without prejudice to the filing of a criminal case against the importer and/or the charterer should the evidence warrant. The imposable fine should be remitted to this Office within fifteen (15) days from receipt of this decision and failure to comply will subject the vessel to seizure pursuant to Section 2533 of the Tariff and Customs Code and the penal amount of the bond posted for the provisional release of the vessel shall be declared forfeited." (See page 1, CTA records.)

It appears that on November 14, 1970, the M/S "Mindanao Sea", a vessel owned by petitioner Linda-Mar Corporation, was chartered by M. Bachini Trading, a domestic firm, to carry its merchandise from Hongkong to Mariveles, Bataan, with a stipulation that the charterer would assume any liability for any violation of law arising from the said charter contract.

On November 27, 1970, the M/V "Mindanao Sea" arrived from Hongkong and discharged at the port of Mariveles various articles consigned to M. Bachini Trading. Among other things, the cargo manifest of said vessel listed the following particulars:

No. of B/L	Packages	Contents	Gross Weight (Kilos)
M-1	45	Vermicelli	1,653
M-2	250	Old Rags	23,247
M-3	80	Metal Accessories, Pins, Chains and parts, Speaker parts	2,589
M-4	350	Cheese Cakes	16,670
M-5	10	Vermicelli	3,674
M-6	1	Bed cover sheet	124
M-7	59	Confectionary, Seeds, Vermicelli	14,645
M-8	60	Battery, Radio parts	5,937
M-9	30	Confectionary	2,172
M-10	181	Metal parts, Fan parts, Record player parts, Lamp tube	9,500
M-11	30	Canned goods Vermicelli	11,662
(pkgs.)-	1,096		91,873 kgs.

(Exh. 4, p. 96, Customs rec.)

On December 22, 1970, after investigation, Major Felicisimo G. Umeñgan, head of the investigating team, submitted a report to the Chief of the Customs Intelligence and Investigation Division (CIID) alleging the following discrepancies in regard to the weight of the vessel's cargo:

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(1) AS DECLARED		AS FOUND	DISCREPANCY
Vermicelli	6,327 kgs.	73,800 kgs.	68,473 kgs.
Other various items	74,000 kgs.	85,000 kgs.	11,000 kgs.

(2) Unmanifested Item:

Electric Bread Toasters - 400 pcs.

(See p. 95, Customs rec.)

Petitioner was required to explain the alleged discrepancies, but its explanation was found unsatisfactory by the Collector of Customs who, on March 29, 1971, instituted administrative proceedings against the M/V "Mindanao Sea" and petitioner herein for violation of Section 2523 of the Tariff and Customs Code.

On the basis of said report of Major Umeñgan of December 22, 1970, the Collector of Customs of Mariveles rendered a decision dated January 19, 1972 imposing a fine of ₱65,000.00 on the M/V "Mindanao Sea" and/or petitioner "based on the 15% of the value of the packages or articles in respect to which the deficiency exists" as provided in Section 2523 of the Tariff and Customs Code.

On appeal, said decision of the Collector was affirmed by the Commissioner of Customs. Hence, the present appeal.

The only issue posed for our consideration is whether or not the fine of ₱65,000.00 imposed in this case by the Bureau of Customs is in accordance with Section 2523 of the Tariff and Customs Code which provides:

> 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 opinion that such discrepancy was due to the care-

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> lessness 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.

In resisting the legality of the fine, petitioner first contends that the alleged more than 20% discrepancy between the actual and declared weight of the manifested articles lacks legal and factual basis. Petitioner anchors this pretension on the theory that: (1) the articles in question were not actually weighed by the customs examiners; (2) the gross weight of the Vermicelli, as declared in the manifest, is not only 6,327 kilos but 37,376 kilos, to wit:

CONTENTS	GROSS WEIGHT
Vermicelli	1,635 kilos
Vermicelli	9,474 "
Confectionary, seed, vermicelli	14,615 "
Canned goods, vermicelli	11,652 "
	37,376 kilos

and (3) the discrepancy of 11,000 kilos between the declared weight of 74,000 kilos and the actual weight of 85,000 in regard to "other various items" does not exceed 20% of the actual weight.

Section 2523 of the Tariff and Customs Code imposes a fine of not more than fifteen per centum of the value of any article or package where the gross weight of such article or package exceeds by more than twenty per centum the gross weight thereof as declared in the manifest or bill of lading. For this penalty to be imposed, it is essential that the actual gross weight of the article or package be more than twenty per centum of the gross weight thereof as declared

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in the manifest or bill of lading and that the value of such article or package be established. There can be no legal basis for the imposition of a fine of not more than fifteen _per centum_ of the value of the article or package if there is no evidence of such value.

There is no question that there was a discrepancy of more than twenty _per centum_ in the gross weight of some packages, but there is no evidence as to the value of said packages. This point is, in fact, squarely raised in the petition for review, paragraph 15 of which states:

> "15. The imposition of the fine of ₱65,000.00 is arbitrary and done without any legal basis there being no satisfactory proof of actual discrepancy and _there being no proof at all presented of the value of the articles of which the alleged discrepancy exists_." (Emphasis supplied.)

While paragraph 15 of the petition for review, quoted above, was specifically denied in the answer (see Paragraph 4), no evidence was presented, either during the administrative investigation in the Bureau of Customs or in the present proceeding, regarding the value of the packages in respect of which there was a discrepancy in gross weight of more than twenty _per centum_. And neither the decision of the Collector of Customs of Mariveles nor the decision of the Commissioner of Customs has any reference been made of the value of such packages. And to cap it all, respondent did not file any memorandum to explain the failure to produce any evidence as to the value of said packages.

IN VIEW OF THE FOREGOING, we agree with counsel for petitioner that there is no legal basis for the imposition upon the vessel S/S Mindanao Sea and/or its owner of the fine of ₱65,000.00 under Section 2523 of the Tariff and Customs

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Code. Accordingly, the decision appealed from is hereby reversed.

SO ORDERED.

Quezon City, December 18, 1974.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge