DELGADO SHIPPING AGENCIES, INC.,
in its capacity as agent of the
SS "TOKUKO MARU",
Petitioner,

- versus - CTA CASE NO. 2802

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

6/30/78

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs affirming the decision of the Collector of Customs in Administrative Case No. V-531/70 imposing an administrative fine of ₱10,039.00 upon the vessel SS "TOKUKO MARU" and/or petitioner herein as ship agent, for violation of Section 2523 of the Tariff and Customs Code, which reads 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 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 discrepancy exists, may be imposed upon the importing vessel or aircraft.

The facts, as shown by the records, are as follows: The SS "TOKUKO MARU" arrived at the Port of Manila on September 20, 1969 and discharged 15 bales of textile remnants imported from the United States covered by Bill of Lading No. KM-42 with a declared weight of 15,470 lbs. Upon examination of the shipment, however, it was found by a Customs Examiner that it actually weighed 19,497 lbs., or with an excess weight of 4,-027 lbs.

On January 13, 1970, Eduardo R. Gatchalian, Chief of the Law Division of the Bureau of Customs wrote a letter to petitioner requiring it to explain in writing why no administrative fine should be imposed on the vessel, the SS "TOKUKO MARU", for violation of Section 2523 of the Tariff and Customs Code.

In a letter dated February 4, 1970, petitioner asserted that there was no violation of Section 2523 of the Tariff and Customs Code reasoning out to the Collector of Customs (1) that the weight and measurement indicated in its Permit To Deliver Imported Goods is the same as that indicated in the ship's Inward Cargo Foreign Manifest and the Bill of Lading; (2) that the freight collected on the shipment was not based on cargo's weight but on its measurement; and (3) that the weight reflected in the Inward Foreign Manifest and the Bill of Lading was based upon the declaration made by the shipper to the Agent or Master of the carrying vessel.

After a hearing conducted in the Bureau of Customs, the Collector of Customs of Manila rendered a decision on October 22, 1970 against the SS "TOKUKO MARU" holding it liable for violation of Section 2523 of the Tariff and Customs Code and imposing upon it and/or its agent, petitioner herein, a fine of ₱2,008.00, and that upon failure to remit the fine, the vessel shall be subject to forfeiture.

On November 6, 1974, petitioner filed a "Motion To Set Aside Decision" of the Collector of Customs. Hearing was conducted on the motion to set aside the decision on November 26, 1970. Consequently, on November 12, 1974, the Collector of Customs, modified, his decision of October 22, 1970, by increasing the fine to ₱10,039.00 pursuant to Section 2312 of the Tariff and Customs Code against the said SS "TOKUKO MARU" and/or its local shipping agent.

On December 20, 1974, petitioner appealed to the Commissioner of Customs, who, on February 17, 1976, rendered a decision holding the SS "TOKUKO MARU" and/or its local agent, petitioner herein, liable for a fine for violation of Section 2523, affirming therefore, the decision of the Collector of Customs dated November 12, 1974. And from this decision, petitioner appealed to this Court.

The only issue in this case is whether or not the SS "TOKUKO MARU" has violated Section 2523 of the Tariff and Customs Code which will subject it and/or its local agent, petitioner herein, to a fine of ₱10,039.00.

Petitioner contends that it is not liable for a fine because (1) the discrepancy in weight was not due to carelessness or incompetence of the master or ship agent, (2) the Tariff and Customs Code does not require the statement of the weight of the cargo in the manifest, (3) the cargo was freighted on the measurement basis and not on its weight, and (4) the weight in the bill of lading as declared by the shipper was considered as basis in manifesting the cargo. Petitioner, therefore, is of the view that the declaration of the cargo was not due to the carelessness or negligence of its master, owner, or employee of the SS "TOKUKO MARU".

We have held in Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977 (Certiorari denied in G.R. L-46287, June 20, 1977) involving substantially similar facts, as follows:

> As regards the contention of petitioner that the discrepancy is not due to the carelessness or incompetence of the master, owner, or employee of the vessel because the weight declared in the bill of lading or manifest was supplied by the shipper, and that under Section 612 of the Code of Commerce, and even under the Tariff and Customs Code, the captain or master of the vessel is not required to ascertain the weight of the cargo, a similar issue was settled by this Court in the case of "F.E. Zuellig, Inc., in its capacity as agent of the M/V "Hongkong Grace", vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975, wherein it was ruled that the fact that the captain of a vessel is not careless on the basis of his duties under the Code of Commerce is no defense against this penalty. Because of its controlling effect on the present case, we will quote from the decision.
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> > . . . 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 against the captain of the vessel "Hongkong Grace" to justify the imposition of the prenalty imposed by the Tariff and Customs Code.
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> 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; <u>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</u>. 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 the 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 which it does business. (Underlining supplied.)

Anent petitioner's averment that the freightage of the subject shipment was made on a measurement basis, suffice it

> to state that freightage is merely the charge or compensation paid by the shipper or importer to the carrier, and is not a determinative factor in the assessment and imposition of duties and penalties on the imported goods. As aptly observed by the respondent, freightage is never a factor in determining the responsibility of the vessel under Section 2523 of the Tariff and Customs Code.
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> Accordingly, since it has been established that there is a discrepancy of 71,450 lbs. (24,066 lbs. in the present case) between the declared weight (59,938 lbs.) and the actual weight (131,388.lbs.) of the subject importation (51,016 lbs. and 75,152.lbs. in the instant appeal), which discrepancy is obviously more than 20% of the weight, and which is attributable to the carelessness or incompetence of the master, officer or employee of the vessel because of his reliance solely on the declared weight furnished by the shipper and failure to take steps to ascertain and verify the correct weight of the cargo before transporting the same, in utter disregard of his obligation imposed on him by the law, the vessel MS "Fernbank" and/or its ship agent are liable for the fine of not more than 15% of the value of said shipment pursuant to Section 2523 of the Tariff and Customs Code. x x x."

Considering that the imposed fine under Section 2523 of the Tariff and Customs Code should be based only on the value of the articles where the deficiency in weight exists, or in the difference in the value of the declared and the actual weight of the imported articles (Macondray and Co., Inc. as agents of the

M/S "FERNSTED" vs. The Commissioner of Customs, CTA Case No. 2684, April 24, 1978; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977), we find no showing in this case that the fine of ₱10,039.00 imposed by the Bureau of Customs is beyond the maximum limit provided in said Section 2523. However, this Court notes that the negligence or incompetence of the master, pilot in command, owner, or employee can not be considered as owing to a willful negligence or gross incompetence of such master, pilot in command, owner or employee of the SS "TOKUKO MARU" to merit the maximum fine. And considering that the law has allowed a latitude of discretion in the imposition of the fine, to our mind, the just and reasonable fine that should be imposed is ₱3,000.00.

WHEREFORE, the decision of the Commissioner of Customs is hereby modified, and the vessel SS "TOKUKO MARU" and/or petitioner Delgado Shipping Agencies, Inc. are hereby ordered to pay a fine of ₱3,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, June 30 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge