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

- versus - C.T.A. CASE NO. 2744

COMMISSIONER OF CUSTOMS,
Respondent.

2/25/77

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DECISION

This is an appeal from the decision of respondent Commissioner of Customs dated August 14, 1975 affirming that of the Collector of Customs of Manila (in Customs Case No. 75-14), imposing an administrative fine of ₱34,443.00 against the vessel M/S "TOKUKO MARU" and/or its ship agent, petitioner Delgado Shipping Agencies, Inc., for violation of Section 2523 of the Tariff and Customs Code.

The facts are not in dispute. On September 20, 1969 the M/S "TOKUKO MARU" arrived at the Port of Manila and discharged thereat 50 bales of assorted textile remnants. The gross weight of said merchandise as declared in the bill of lading and the vessel's inward cargo manifest was 21,750 lbs. However, upon actual examination by the Customs authorities, it was found that the real gross weight thereof was 59,866 lbs., which is more than 20% of the declared weight.

On January 13, 1970 the Chief of the Law Division of the Bureau of Customs, on behalf of the Collector, sent a letter to petitioner informing it that the vessel M/S "TOKUKO MARU" had conveyed and discharged a cargo with an excess weight of more than 20% of what had been declared in the manifest, and requiring it to explain in writing within five (5) days from receipt thereof why no administrative fine should be imposed upon the vessel for violation of Section 2523 of the Tariff and Customs Code.

In a reply dated February 4, 1970, Lope Velasco, claims officer of petitioner, explained that there was no violation of the law because: (1) the weight and measurement reflected in the Permit to Deliver Goods are the same as those indicated in the Inward Foreign Manifest and the Bill of Lading; (2) the freight collected on the shipment in question was not based on weight but on measurement; and (3) the weight and measurement reflected in the Inward Foreign Manifest and the Bill of Lading were based on the declaration of the shipper.

On November 21, 1974, after hearing, the Collector of Customs rendered a decision imposing an administrative fine of P34,443.00 on the M/S "TOKUKO MARU" and/or petitioner herein for violation of Section 2523 of the Tariff and Customs Code. On August 14, 1975, on appeal by petitioner, the Commissioner of Customs affirmed *in toto* the decision of the Collector. Hence, the present appeal.

During the hearing of this case on February 13, 1976, petitioner manifested, and to which respondent agreed, that the case be submitted for decision on the basis of the pleadings and Customs records. Therefore, no trial on the merits was conducted, and the parties were simply required to submit their respective memorandum in support of their positions.

The only issue to be resolved is whether or not the vessel M/S "TOKUKO MARU" and/or petitioner herein are liable for the administrative fine for violation of Section 2523 of the Tariff and Customs Code, which provides as follows:

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> "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 aircraft."

It is the stand of petitioner that neither it nor the vessel M/S "TOKUKO MARU" can be held liable for violation of the law because: (1) there is no proof that the punishable discrepancy between the declared weight and actual weight of the subject merchandise was due to the negligence, carelessness or incompetence of the master, owner, officer or employee of the vessel; (2) the vessel is under no legal obligation to ascertain the true and actual weight of the cargo; (3) the declared weight appearing on the bill of lading was supplied by the shipper; and (4) the shipment was freighted on a measurement basis.

Actually, the foregoing arguments and defenses raised by petitioner are not new. Four-

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square with the case at bar on these points by reason of the similafity of the facts involved and the question litigated, as well as the close identity of the parties, are the following cases wherein this Court ruled that:

1. DELGADO SHIPPING AGENCIES, INC. vs. COMMISSIONER OF CUSTOMS, CTA CASE NO. 2685, FEBRUARY 15, 1977.

> 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 case and prudence in the commission of excessive discrepancy in the weight of a 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. (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977; F.E. Zuelig, Inc. vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2548, September 30, 1976.)

2. <u>MACONDRAY & CO., INC. vs. COMMISSIONER OF CUSTOMS, CTA CASE NO. 2656, January 21, 1977.</u>

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. Zuelig, 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.

> . . . . 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 penalty 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 with 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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In the final analysis, however, we find no compelling reason to affirm the maximum penalty imposed by the Bureau of Customs because, from the circumstances of this case, it does not appear that the negligence or incompetence of the master, officer or employee of the vessel amounts to willful negligence or gross incompetence. Nonetheless, this is not the first case brought to this Court involving the same fine imposed on the same petitioner for violation of the same provision of law. Accordingly, it is deemed just and reasonable that a reduced fine of ₱15,000.00 be imposed on the vessel M/S "TOKUKO MARU" and/or petitioner herein Delgado Shipping Agencies, Inc.

WHEREFORE, the decision of the Commissioner of Customs is hereby MODIFIED. The vessel M/S "TOKUKO MARU" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the fine of ₱15,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, February 25, 1977.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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