EVERETT STEAMSHIP CORPORATION (As owner of the SS "Fernandoeverett.")
Petitioner,

- versus - C.T.A. CASE NO. 2712

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner Everett Steamship Corporation, owner of the vessel SS "Fernandoeverett," appealed from the decision of the Acting Commissioner of Customs dated May 15, 1975, affirming that of the Collector of Customs of Manila dated November 8, 1974, imposing a fine of ₱22,617.00 upon the said vessel and/or petitioner 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 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.

The case was submitted for decision based on the pleadings and the records of the Bureau of Customs wherein it appears that the vessel SS "Fernandoeverett" arrived at the Port of Manila on April 23, 1969 and discharged thereat 50 bales of assorted textile remnants. The gross weight of said merchandise as declared in the vessel's manifest and bill of lading was 17,500 lbs but, upon examination and appraisal by customs authorities, it was found that the actual gross weight thereof was 62,869 lbs., or a discrepancy of 45,369lbs (should be 44,369 lbs.). Consequently, in a letter dated July 9, 1969, the Chief of the Law Division of the Bureau of Customs informed the herein petitioner of the discrepancy of more than 20% between the actual weight and declared weight of the subject merchandise, and required it to explain in writing within five (5) days from receipt of said letter and to show cause why no administrative fine should be imposed upon the vessel for violation of Section 2523 of the Tariff and Customs Code. In its reply dated August 18, 1969 to the Chief of the Law Division of the Bureau of Customs, petitioner asserted that the SS "Fernandoeverett" was not liable for violation of the Tariff and Customs Code, because the particulars of the subject shipment, including the weight thereof, were supplied by the shipper. Despite of petitioner's explanation, however, and administrative proceeding (Administrative Case No. 493/69) was instituted against the vessel SS "Fernandoeverett" and, upon the termination thereof, the Collector of Customs rendered a decision on November 8, 1974 finding the said vessel and/or its owner, petitioner herein, liable for a fine of ₱22,617.00, representing 15% of the total value of the importation, for violation of Section 2523 of the Tariff and Customs Code.

On appeal, the Commissioner of Customs affirmed _in toto_ the decision of the Collector of Customs. Hence, petitioner appealed to this Court.

The only issue in this case is whether or not the vessel SS "Fernandoeverett" and/or petitioner herein violated Section 2523 of the Tariff and Customs Code and, therefore, are liable for the fine.

Petitioner, in its defense of non-liability, presents to this Court the argument that the mere existence of a discrepancy in the weight of the cargo beyond the 20% limit provided for in Section 2523 of the Tariff and Customs Code does not amount to a violation thereof because the underdeclaration of the weight was not due to the carelessness or negligence of the master, owner or employee of the vessel, and in this case there is no proof or evidence

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to this effect. (Petitioner's Memo. pp. 41-42, CTA records.)

We find petitioner's contention without merit. The issue in this case and the arguments raised by petitioner are not of first impression. In the case of International Harvester Macleod, Inc. etc. vs. Commissioner of Customs, C.T.A. Case No. 2698, November 25, 1977, this court ruled:

> 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. 15, 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, January 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.
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> 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-46292, July 6, 1977, this Court ruled:
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> > 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

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> 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 of 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 the amount of the fine imposed by the Bureau of Customs quite harsh and unreasonable. The discrepancy between the actual weight and declared weight of the cargo in question is 45,369 lbs. (should be 44,369 lbs.) and based on the appraised value of $0.85 per lb. the total value of the excess weight is therefore $37,713.65. Converted into Philippine currency at the rate of ₱3.91 to a dollar, the total peso value of the weight discrepancy is ₱147,460.37, and fifteen (15%) per cent thereof, which is the maximum fine allowable by law, would amount to ₱22,119.05. However, since it appears that this is the first offense committed by the vessel SS "Fernandoeverett" under Section 2523 of the Tariff and Customs Code, and taking into consideration that the law allows latitude in the imposition of the fine, we believe that a fine of ₱5,000.00 would be just and reasonable.

ACCORDINGLY, the decision appealed from is hereby modified. The vessel SS "Fernandoeverett" and/or petitioner Everett Steamship Corporation, as owner of said vessel, are hereby ordered to pay to the Bureau of Customs the fine of ₱5,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, January 23, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge