REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCY, in its capacity as ship agent of the SS "Eurygenes",
Petitioner,

- versus -   C.T.A. CASE NO. 2729

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner Delgado Shipping Agency, ship agent of the vessel SS "Eurygenes", appealed from the decision of the Commissioner of Customs dated August 5, 1975, affirming that of the Collector of Customs of Manila dated April 7, 1975, imposing a fine of ₱58,400.00 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 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.

21

This case was submitted for decision based on the pleadings and records of the Bureau of Customs, wherein it appears that the vessel SS "Eurygenes" arrived at the Port of Manila on April 14, 1970 and discharged thereat a shipment of 123 bales of assorted textile remnants. (Par. 2, Petition for Review; admitted in Par. 2, Answer, pp. 1 and 8, CTA rec.) The gross weight of the shipment as declared in the bill of lading was 61,500 pounds, (p. 3, Customs rec; Par. 3, Petition for Review; admitted in Par. 2, Answer, pp. 1 and 8, CTA rec.), but upon examination and appraisal by customs authorities, it was ascertained that the actual weight thereof was 136,343 pounds or a difference of 74,843 pounds. (Par. 3, Answer, p. 8, CTA rec.)

Consequently, in a letter dated August 17, 1970, the Acting Chief of the Law Division of the Bureau of Customs, for and on behalf of the Collector of Customs, informed herein petitioner of the discrepancy of more than 20% between the actual weight and declared weight of the subject merchandise and "required (petitioner) to explain in writing within five (5) days from receipt hereof (said letter) and show cause, why no administrative fine in the amount of ₱58,400.00, should be imposed upon your vessel" "for violation of Section 2523 of the Tariff and Customs Code. (p. 12, Customs rec.) Apparently, no reply was made by petitioner to this letter of the Collector of Customs dated August 17, 1970. Accordingly, administrative proceeding (Administrative Case No. V-594-71) was instituted against the vessel SS "Eurygenes" by the Collector of Customs. The said case was set for hearing on June 16, 1971 and all parties concerned, including petitioner, were notified of such date of hearing. (p. 14, Customs rec.)

On April 7, 1975, the Collector of Customs of Manila rendered a decision holding the vessel and/or its agent, petitioner Delgado Shipping Agency, liable for a fine of ₱58,400.00 for violation of Section 2523 of the Tariff and Customs Code. On appeal, respondent Commissioner of Customs affirmed <u>in toto</u> the decision of the Collector of Customs. Hence, petitioner appealed to this Court.

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

To begin with, as stated above, petitioner submitted this case for decision on the basis of the pleadings and of the records of the Bureau of Customs. No trial on the merits was conducted by this Court. One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115.) Petitioner must be understood to have admitted, therefore, the truth of the following material and relevant allegations of respondent found in his answer:

1. That upon examination by the Bureau of Customs of the subject shipment, it was found to weigh 136,343 pounds, or a difference of 74,843 pounds;

74

2. That "due process" was properly observed in the rendition of the decision in question;

3. That the decision under consideration is amply supported by the evidence, facts of the case as well as the applicable law, Section 2523 of the Tariff and Customs Code;

4. That petitioner, its principal, the master, owner, officer and crew of the vessel which they represent should know the exact weight of the cargo brought into the country by the said vessel; and

5. That petitioner, its principal, the master, owner, officer and crew of the vessel are presumed to know the customs laws of the country to which the goods or cargo they carry are destined to be unloaded.

At any rate, as already shown above, the Collector of Customs of Manila, thru the Acting Chief of the Law Division of the Bureau of Customs, sent petitioner on August 17, 1970, a letter informing it of the violation committed by its vessel, the SS "Eurygenes". The said letter states that the shipment of 123 bales of assorted textile remnants conveyed and discharged by the said vessel had an excess weight of more than 20% as declared in the manifest,

25

in violation of Section 2523 of the Tariff and Customs Code. In view thereof, it then required petitioner "to explain in writing within five (5) days from receipt hereof and show cause, why no administrative fine in the amount of ₱58,400.00, should be imposed upon your vessel for this violation." And if petitioner so elects, "the case will be formally investigated in which case you are given the same period of five (5) days from receipt hereof to inform this Office of such option, otherwise, your failure to do so will be construed as a waiver of your right to be heard and this case will be decided accordingly." (p. 12, Customs rec.)

Then when Administrative Case No. V-594-71 was instituted by the Bureau of Customs against the SS "Eurygenes" for conveying and discharging 123 bales of assorted textile remnants with an excess weight of more than 20% in violation of Section 2523 of the Code, with petitioner Delgado Shipping Agencies as respondent, the latter was duly notified of the hearing on June 16, 1971. As a matter of fact, the said notice of hearing contained a warning that failure to appear at the stated place, date and time and present evidence therein "will be construed as a waiver of the right to be heard and the case will be decided accordingly. (p. 14, Customs rec.)

And even more, proceedings before the Court of Tax Appeals is a trial de novo. If petitioner desired to present evidence in addition to those already filed in the Customs records forwarded to this Court, it could have easily done so instead of submitting this case based on the pleadings. (C.F. Sharp & Co. Inc. vs. Commissioner of Customs, No. L-23803, February 26, 1968, 22 SCRA 760.)

Consequently, petitioner cannot now complain that:

1. There was no hearing against the vessel so that the administrative fine of ₱58,400.00 was arbitrarily imposed.

2. The discrepancy in weight of the shipment is not due to the fault, negligence, carelessness or incompetence of the master.

3. There was no evidence to show that such discrepancy in the weight of the shipment is imputable to the vessel or its agent.

4. In any event, the sum of ₱58,400.00 administrative fine imposed against the vessel is unjust,

oppressive and confiscatory. (Paragraph 8, Petition For Review, which were all specifically denied by respondent under paragraph 5 of his Answer.)

Nevetheless, 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 ruled unequivocally that under Section 2523 of the Tariff and Customs 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 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. Zuellig, 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.)

We find no cogent and valid reason to modify, much less depart from the conclusion reached in the above-cited cases, and the same should therefore resolve the same questions now brought before us in the instant appeal.

Coming to the amount of the administrative fine of ₱58,400.00 imposed against the vessel which petitioner alleges as unjust, oppressive and confiscatory, the pleadings and the Customs records on which this case is submitted for decision are silent on the basis and computation thereof. And since petitioner failed to adduce evidence regarding this matter, although respondent specifically denied this allegation of petitioner and averred that the amount of the fine is amply supported by the evidence, facts of the case as well as the applicable law, we take it that the sum of ₱58,400.00 imposed by the Commissioner of Customs on the SS "Eurygenes" and/or the Delgado Shipping Agency is not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, in accordance with Section 2523 of the Code. Nonetheless, considering that the negligence or incompetence of the master, owner, officer or employee of the vessel does not amount to willful negligence or gross incompetence, and the law allows latitude in the imposition of the fine, we deem it just and reasonable to reduce the administrative fine imposed on the SS "Eurygenes" and/or petitioner Delgado Shipping Agency, as ship agent of the vessel, to ₱18,000.00.

WHEREFORE, the decision appealed from is MODIFIED, and the vessel SS "Eurygenes" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the administrative fine of ₱18,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, June 16, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

30