REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCIES, INC.
and CITADEL LINES, INC., in their
capacity as shipagents of the
SS "EURYBATES",
Petitioners,

- versus - C.T.A. CASE NO. 2747

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Appeal by petitioners Delgado Shipping Agencies, Inc., and Citadel Lines, Inc., in their capacity as shipagents of the SS "Eurybates", from two separate decisions of respondent Commissioner of Customs in Customs Case No. 75-72 and Customs Case No. 75-73 both dated September 2, 1975, imposing upon the SS "Eurybates" and/or its ship agents administrative fines of ₱40,088.00 and ₱28,940.00, respectively, for violation of Section 2523 of the Tariff and Customs Code, in relation to Section 2521 of the same Code.

Petitioners are corporations duly organized and existing under the laws of the Philippines. The Delgado Shipping Agencies, Inc., was the ship agent of the vessel SS "Eurybates" at the time of the alleged violation of the law, while the Citadel Lines, Inc., is the ship agent of the vessel at present. On or about November 13, 1969, the SS "Eurybates" arrived at the Port of Manila and discharged thereat, among other cargoes, two shipments of assorted textile remnants with their corresponding weights declared in the bills of lading as follows:

(1) 86 bales of assorted textile remnants consigned to Jose Ligon, covered by Bill of Lading No. 99, Declared Weight 35,549 lbs. (p. 1, Customs Case No. 75-72, Customs Rec.)

(2) 62 bales of assorted textile remnants also consigned to Jose Ligon, covered by Bill of Lading No. 97. Declared weight: 24,677 (p. 1, Customs Case No. 75-73, Customs Rec.)

Upon examination of the said merchandise by the customs authorities concerned, it was discovered that said shipments actually weighed 78,587 lbs. and 55,615 lbs., respectively, which are more than 20% of the corresponding weights declared in the Bills of Lading. (pp. 1, 2, 3, Customs Cases Nos. 75-73 & 73-72, Customs rec.)

On March 5, 1970, the Bureau of Customs, thru the Chief of the Law Division, sent a letter dated March 5, 1970, to petitioner Delgado Shipping Agencies, Inc., informing it that the SS "Eurybates" had discharged cargoes with an excess in weights of more than 20% of what had been declared in the bills of lading, and requiring it to explain in writing within five (5) days from receipt thereof and show cause why no administrative fines should be imposed on the vessel for violation of Section 2523 of the Tariff and Customs Code, or to inform the Bureau of Customs, within the same period, if it prefers to have the case formally investigated; otherwise, its failure to do so would be construed as a waiver of the right to be heard and the case decided accordingly. (pp. 11, 12, Customs Cases Nos. 75-73 & 73-72, Customs Rec.) However, despite the lapse of the period stated in the said letter, petitioner Delgado Shipping Agencies, Inc., did not bother to explain its side of the case. Thus, two administrative cases, Administrative Case No. V-554-70 (Customs Case No. 75-72) and Administrative Case No. 555-70 (Customs Case No. 75-73), were instituted against petitioners, which were deemed submitted for decision by the Collector of Customs on the basis of the records.

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On February 4, 1975, the Collector of Customs rendered a decision in Administrative Case No. V-554-70 finding the SS "Eurybates" and/or its local agent Delgado Shipping Agencies, Inc., liable for an administrative fine of ₱40,088.00 in regard to the excess in weight of the 86 bales of assorted textile remnants, and another decision in Administrative Case No. V-555-70, likewise holding the same vessel and/or its local agent liable for a fine of ₱28,940.00 with respect to the excess in weight of the 62 bales of assorted textile remnants, for violation of Section 2523 of the Tariff and Customs Code. Resort to respondent Commissioner of Customs in both instances having proved unavailing, petitioner appealed to this Court.

For resolution is the lone question of whether or not the SS "Eurybates" and/or its ship agents, petitioners herein, are liable for the administrative fines for violation of Section 2523 of the Tariff and Customs Code.

It must be noted that petitioners have submitted this case for decision on the basis of the records of the Bureau of Customs bearing on the case and on the pleadings. No trial therefore was conducted by the Court on the merits of the case. The parties were, however, allowed to file their respective memorandum in support of their positions.

Section 2523 of the Tariff and Customs Code reads as follows:

> Section 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.

Under paragraph IX of their petition for review, petitioners assail the decisions of respondent Commissioner of Customs as contrary to law and the evidence for the following reasons:

> 1. Petitioners were deprived of their right to due process inasmuch as the Collector of Customs failed to conduct a hearing and petitioners were not given a chance to explain the alleged weight discrepancy;
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> 2. There is no evidence on record to prove the alleged discrepancies in weight;
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> 3. There is no evidence on record to show that the discrepancies in weight were due to the carelessness, negligence, incompetence or fault of the master;
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> 4. The master had no participation whatsoever in the declaration of weight of the shipments, and freight were based on measurement, not weight; and

> 5. In any event, the administrative fines imposed against the vessel are excessive, unjust and confiscatory. (Pp. 3-4, Paragraph IX, Petition for Review, C.T.A. Rec.)

In specifically denying these allegations of petitioners, respondent under paragraph 2 of his answer avers "that the Collector of Customs required the petitioner to explain in writing why no action should be taken against petitioner for violation of Section 2523 of the Tariff and Customs Code, but petitioner did not submit any explanation; that the decision of the Collector is based on documentary evidence, that is, the discrepancy report duly prepared by the examiner and the appraiser who passed upon the shipment; that in petitioner's notice of appeal requesting the Commissioner to review their case, the issue of lack of hearing was never raised; and that, therefore, petitioner cannot now raise this issue for the first time on appeal."

And by way of special and affirmative defenses, respondent in his answer alleges that:

1. On November 13, 1969, the S/S "Eurybates" unloaded at the Port of Manila, 86 bales of assorted textile remnants, declared to weigh 35,549 lbs. but actually weighing 78,587 lbs. or a difference of 43,038 lbs.;

2. Also in the same vessel S/S "Eurybates" were 62 bales of textile materials likewise consigned to Jose Ligon, declared as weighing 24,677 lbs. but, upon actual examination, was found to weigh 55,615 lbs. or a difference of 30,938 lbs. The difference of 43,038 lbs. in the first case, and 30,938 lbs. in the second case, between the declared and the actual weights is more than 20% of the declared weights, hence, there is a violation of Section 2523 of the Tariff and Customs Code;

3. There is no merit to petitioner's contention that the vessel had no opportunity to pass upon the weight of the shipment, because as this Honorable Court has held in a similar case:

> "Accepting petitioner's terse explanations as a valid defense is virtually nullifying Section 2523 of the Tariff and Customs Code. It will provide the shipping company with a handy defense because it is well-neigh impossible for our government to verify the veracity of the explanation. The least that can be said is that the explanation reveals a careless disregard of Section 2523 of the Tariff and Customs Code, an omission of the concern of its obligations under said Section by one of ordinary prudence." (Macondray & Co., Inc. as agent of the M/S "Fernlake" vs. Commissioner of Customs, C.T.A. Case No. 2428, Oct. 31, 1973)

3. The amount of the fine imposed is legal and just considering that Section 2523 explicitly provides for a fine of "not more than fifteen per

centum of the value of the package in respect to which the deficiency exists."

Since petitioners prayed for judgment on the pleadings without offering proof as to the truth of their own allegations, and without giving respondent an opportunity to introduce evidence, petitioners must be understood to have admitted the truth of all the aforesaid allegations of respondent, and to have rested their motion for judgment on these allegations taken together with such of their own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115)

Petitioner's position calls to mind the case of Delgado Shipping Agencies, Inc., in its capacity as agent of the SS "Eurybates" vs. Commissioner of Customs, C.T.A. Case 2685, February 15, 1977, certiorari denied, L-46262, July 6, 1977, the factual setting and issue of which, including the parties, are on all fours with the case at bar, and where this Court disposed of the same charges and contentions in clear and unequivocal terms, in the following wise:

> 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

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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 that:

1. Petitioner cannot now be heard to complain of the non-observance of due process in this case.

2. The decision of respondent appealed from is amply supported by the undisputed fact that there was actually a discrepancy of weight between the actual and declared weight of the cargoes exceeding the allowable 20%. Furthermore, under Section 2523 of the Tariff and Customs Code, responsibility is lodged not only on the master or pilot of the vessel for the discrepancy between the actual and declared weight of the manifested articles, but also on the owner or employee of the vessel. It is, therefore, incumbent upon these persons to see to it that no discrepancy beyond the allowable limit of 20% exists.

3. Petitioner should know the exact weight of the cargoes brought into the country by its vessel.

4. Petitioner is presumed to know the Customs laws of the country to which the goods or cargoes its vessel carries are destined for unloading.

At any rate, as already shown above, and stated in the decision appealed from, which is Annex "A" of the petition for review, the Collector of Customs of Manila, thru the Chief of the Law Division of the Bureau of Customs, sent petitioner on October 13, 1969 a letter informing it of the violation committed by its vessel, S/S "EURYBATES". The said letter, which states in detail the discrepancies between the actual and declared weights of the shipments under consideration as found by the customs examiner, required petitioner to explain in writing within five (5) days from receipt thereof and show cause why no administrative fine should be imposed on the vessel. Petitioner "was likewise granted an alternative option to elect a formal investigation thereon, which option must be exercised within the same period of time stated in the aforesaid letter, otherwise, the same shall be construed as a waiver of petitioner's right to be heard and the case will be decided accordingly." In spite of the lapse of the period stated in the said letter, petitioner failed and continued to fail to comply therewith. Since the proceedings before the Court of Tax Appeals is a trial de novo, and if petitioner desired to present evidence in addition to those already filed in the Customs records forwarded to this Court, it could have done so (C.F. Sharp & Co. Inc. vs. Commissioner of Customs, No. L-23803, February 26, 1968, 22 SCRA 760), petitioner cannot now complain that:

1. It was not afforded due process of law.

2. It cannot be held liable because respondent has not presented competent proof that the discrepancy between the actual and declared weight of subject cargoes was more than 20%.

3. There is no proof on record presented by respondent to show that the alleged weight discrepancy of more than 20% was due to the carelessness or incompetency of the master or pilot in command.

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4. The subject bill of lading covering the subject cargoes reflects the correct weight so that any erroneous weight declaration was merely the result of a clerical or typographical error.

5. The imposition of the fines is unjust, unreasonable and confiscatory.

We find no cogent reason to modify, much less depart from the principles laid down in the Delgado Shipping Agencies case, as expressed in the above-quoted opinion of this Court there, and the same should resolve the identical problems now brought before us in this appeal. By opting to submit this case for decision on the pleadings and Customs records, petitioner cannot now deny the truth of the findings of facts of the Bureau of Customs and the allegations of respondent Commissioner of Customs in his answer. (See also Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2555, December 18, 1975; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1971.) Consequently, it cannot validly be asserted by petitioner that it was denied of due process and the discrepancies in weights of the subject shipments are not supported by evidence.

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Anent petitioner's pretenses that there is no evidence on record to show that the discrepancies in weights were due to the carelessness, negligence or incompetence or fault of the master, owner or employee of the vessel, and that the master had no participation whatsoever in the declared weights of the shipments, this Court, in the Delgado Shipping Agencies case, supra, has likewise unequivocably 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 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. (See also 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.)

Relative to the fines imposed by the Bureau of Customs, it is observed that the amounts seemed to have been based on the total value of the shipments in question. We have already ruled that the fine of not more than fifteen per centum imposed for violation of Section 2523 of the Tariff and Customs Code should be based on "the value of the package or article in respect to which the deficiency exists", in accordance with the express provision of the law. (See Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, *supra*; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977.) However, there being no evidence presented in the instant case as to which of the bales of the assorted textile remnants in respect to which the deficiencies exist, fifteen per cent of the value of the discrepancy between the actual

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and declared weights of the subject shipments would be ₱21,445.52 as regards the 86 bales and ₱15,423.37 with respect to the 62 bales. (p.2, Customs records of Customs Case No. 75-72; p. 2, Customs records of Customs Case No. 75-73.)

Nonetheless, considering the circumstances of this case, the Court finds no compelling reason to impose the maximum penalty because the negligence or incompetence of the master, owner, officer or employee of the vessel does not seem to amount to willful negligence or gross incompetence. Accordingly, a total fine of ₱20,000.00 is deemed just and reasonable for the discrepancies in the weights of the two shipments of assorted textile remnants: ₱12,000.00 with respect to the 86 bales and ₱8,000.00 as regards the 62 bales.

WHEREFORE, the appealed decision is hereby MODIFIED and the vessel SS "Eurybates" and/or petitioners herein as shipagents of the vessel are ordered to pay to the Bureau of Customs a total fine of ₱20,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, April 5, 1978.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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