REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY AND CO., INC.,
(As agents of the M/S
"Fernstate"),
Petitioner,

- versus -

C.T.A. CASE NO. 2684

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

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 Cases Nos. V-526/70 and V-526/70-A, imposing administrative fines of ₱22,856.00 and ₱38,396.00, respectively, upon the vessel M/S "Fernstate" and/or petitioner herein as ship agent, for violation of Section 2523 of the Tariff and Customs Code.

The antecedent facts, as shown by the records, are as follows: The M/S "Fernstate," with Registry No. 1312, arrived at the Port of Manila on July 10, 1969, and discharged thereat, among other cargoes, two shipments of assorted textile remnants consigned to Jucicor Commercial, namely: (1) 38 bales of assorted textile remnants covered by Bill of Lading No. 2, with a declared weight of 26,638 pounds; and (2) 80 bales of assorted textile remnants covered by Bill of

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Lading No. 71, with a declared weight of 56,122 pounds. Upon actual examination of the two shipments, however, it was found by a Customs examiner that the shipment under Bill of Lading No. 2 actually weighed 36,760 pounds, or 10,122 pounds more than the declared weight (see p. 16, Customs Dec.), while the shipment covered by Bill of Lading No. 71 actually weighed 77,019 pounds, or 20,897 pounds in excess of the declared weight. (see p. 6, Customs rec.).

Consequently, on October 13, 1969, the Chief of the Law Division, Bureau of Customs, sent a letter to petitioner requiring it to explain in writing and to show cause why no administrative fines should be imposed upon the vessel M/S "Fernstate" for violation of Section 2523 of the Tariff and Customs Code. In a letter dated January 31, 1970, petitioner informed the Collector of Customs that the weights declared in the respective bills of lading covering the articles in question were supplied by the shipper, Alro Textile Export Co., Baltimore, U.S.A.; that the shipments were freighted on measurement basis and not on weight; that the weight is immaterial insofar as the freight is concerned and whatever weight was declared by the shipper was taken as the true and correct weight of the cargo by the carrier; and lastly, that the declaration of the weight of the cargo in the manifest is not required by law. Finding these explanations unsatisfactory, the Bureau of Customs instituted separate administrative cases against the vessel (Administrative Case No. V-526/70 and Administrative Case No. V-526/70-A) for its failure to declare the correct weights of the 38 bales and 80 bales of assorted textile remnants, respectively.

On November 13, 1974, the Collector of Customs rendered a consolidated decision holding the vessel and/or petitioner herein liable for a fine of ₱22,856.00 with respect to Administrative Case No. V-526/70, and a fine of ₱38,396.00 relative to Administrative Case No. V-526/70-A, for violation of Section 2523 of the Tariff and Customs Code.

Not satisfied with the decision of the Collector of Customs, petitioner appealed to the Commissioner of Customs who, in a decision dated March 18, 1975, affirmed the decision of the former. Hence, the instant appeal.

The sole issue for determination is whether or not there was a violation of Section 2523 of the Tariff and Customs Code, the provision of which states:

> SEC. 2523. Discrepancy Between Actual and Declared Weight of Manifested Articles.- If the gross weight of any article or package described in the manifest exceeds by more than twenty *per centum* the gross weights as declared in the manifest or bill of lading thereof, and the Collector shall be of the opinion

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> 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.

In its petition for review, petitioner maintains that there was no violation of the foregoing provisions of law because of the following:

> (1) That the discrepancy in weight, if any, was due to the fault or negligence of the shipper;
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> (2) That the freight was based on the measurement of the shipment and not on its weight so that the declaration of weight in the manifest is not required by law; and
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> (3) That there was no evidence presented to prove the fault, negligence, carelessness or incompetence of the master for the alleged discrepancy in weight of the cargoes in question.

Moreover, petitioner alleges that the fine imposed by the Bureau of Customs is unreasonable, unjust, oppressive and confiscatory.

The legal issue posed is not of first impression. This Court, in the case of Macondray and Co., Inc. vs. Commissioner of Customs (CTA Case No. 2656, January 21, 1977) ruled:

> 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 bases 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 the 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; 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. 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

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> 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.

Relative to the penalties, however, it appears from the Customs records that the Bureau of Customs arrived at the amounts of ₱22,856.00 and ₱38,396.00 (in the two Administrative Cases, respectively) by basing the 15% fine, which is the maximum allowable by law, on the total value of each shipment. To our mind, this procedure or interpretation is not correct as it will unjustly include as basis of the fine that portion of the values of the articles which are not included as part of the discrepancy, and thus will result to the imposition of penalties that are not only illegal but also excessive and exhorbitant. As already interpreted by us in previous cases, the 15% fine should only be based on the value of the articles where the discrepancy in weight exists, or on the difference in the values of the declared and the actual weights of the articles. (See Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2741, Feb. 3, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, C.T.A. Case No. 2685, Feb. 15, 1977.)

In this case, therefore, basing upon the data found in the Customs records, the fines to be imposed should be correspondingly reduced, as follows:

In Administrative Case No. 526/70, the discrepancy between the declared and the actual weights of the 38 bales of assorted textile remnants is 10,122 lbs. The discrepancy in pounds of these articles multiplied by the value of said articles per pound, which is $0.85, or at the conversion rate of ₱3.92 at the time, would result in a discrepancy in value of $8,603.70, or ₱39,678.24. Fifteen percent (15%) of ₱39,678.24 is ₱5,951.74, which is the fine legally imposable.

In Administrative Case No. 526/70-A, (following the aforesaid procedure), the discrepancy between the actual and declared weights of the 80 bales of assorted textile remnants is 20,897 lbs. The total value of the discrepancy in pounds, multiplied by $0.85 or ₱3.92 (the value or equivalent per pound), would result in the discrepancy of value at $17,762.15, or ₱81,916.24. Fifteen percent (15%) of ₱81,916.24 is ₱12,287.44, which is the fine legally imposable thereon.

However, from the circumstances of this case, the Court finds no compelling justification to impose the maximum 15% penalty as it does not appear that the negligence or incompetence of the master, owner, officer or employee of the vessel amounts to willful negligence or gross incompetence, and considering that the law allows latitude in the imposition of the fine, it is deemed just and reasonable that only the amounts of ₱4,000.00 and ₱9,000.00 be imposed as fines in the respective administrative cases, or a total of ₱13,000.00.

WHEREFORE, the decision of the Commissioner of Customs is hereby modified, and the vessel M/S "Fernstate" and/or petitioner Macondray & Co., Inc. are hereby ordered to pay the administrative fines of ₱4,000.00 and ₱9,000.00, or a total sum of ₱13,000.00, for violation of Section 2523 of the Tariff and Customs Code.

SO ORDERED.

Quezon City, April 24, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge