

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
DURAN CITY

EASTERN SHIPPING LINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2836

THE COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

As to whether or not there was a violation of Harbor Regulations and Customs Administrative Order (CAO) No. 2-71 in relation to Section 2518 of the Tariff and Customs Code, is the simple issue in this case.

The above-mentioned Regulations and Order dated June 3, 1971 govern the "Carriage, Discharging and/or Loading of Explosives, Inflammables and other Dangerous Cargoes and Radioactive Materials" on board vessels and Section 2518 prescribes the administrative sanctions, thus,

"Unlading of Cargo at any Proper Time or Place After Arrival. - Any vessel or aircraft, which after arrival at her port of destination in the Philippines, discharges cargo at any time or place other than that designated by the Collector shall be fined in a sum of not exceeding ten thousand pesos unless the unlading was rendered necessary by stress of weather, accident or other necessity; and if due to

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necessity, the subsequent approval of the proper Collector must be obtained."

The material facts are relatively simple. On July 22, 1972, the SS "Eastern Comet" a vessel owned and operated by the herein petitioner, arrived at the Port of Manila, having for its cargo 6,667 bags of "ammonium nitrate" under covering B/L No. KMA-25 consigned to the Philippine Explosives Corporation. Shipperside Permit No. 2312 granted the consignee's broker, Luzon Brokerage Corporation, allowed the unloading of the cargo unto lighters at the explosives anchorage consistent with the regulations and order. Notwithstanding petitioner through its operations assistant had yet to push through an assignment of a berth at the piers for the SS "Eastern Comet" for the discharge of the same cargo "without indicating therein the presence of explosives on board for Manila discharge x x x contrary to the provisions of CAO No. 2-71. x x x withholding such information may have been purposely done to secure a pier berth due to the heavy arrival of ships. By so doing she was able to misled the Berthing Officer who assigned her a berth at Pier 9 where despite a shipside permit having been issued for this cargo the ship's checker allowed this cargo to be discharged to the pier in violation of said CAO No. 2-71 and

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thus endangering the safety of the pier and the people therein." (Head, Port Operations Services' Memorandum to the Collector of Customs). Apparently the situation had taken a tickling urgency of critical concern prompting the consignee's broker to request "that the above cargo be transferred to the consignee's safe magazines at Limay, Bataan"; likewise, precipitating an appropriate administrative charge filed by the Collector of Customs against the erring vessel for violation of the Harbor Regulations and Customs Administrative Order No. 2-71, and meting out a ₱10,000.00 fine as a consequence thereof, pursuant to Section 2518 of the Tariff and Customs Code, supra (Administrative Case No. V-716/72 dated June 9, 1976). On appeal, the respondent Commissioner of Customs affirmed the same (Customs Case No. 76-37 dated August 31, 1976). Hence, this petition.

Towards adding up to justification, petitioner avers that 1) the discharge of the cargo in question was duly covered by a berthing permit under the applicable Harbor regulations and Customs Administrative Order; 2) the Customs authorities were furnished a copy thereof and properly notified before the pierside discharge of the cargo; and 3) the cargo was not inflammable or explosive and the

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consignee's representative was responsible for the discharge.

The basic question is nothing more than the effective application of the pertinent provisions of the regulation and order and the corresponding administrative sanction as the same are brought to bear upon the circumstances of the case before us. The cargo of "ammonium nitrate" is not such a pretty innocent and innocuous stuff but of known and obvious attribute, i.e., an explosive. It is no piece of idle ceremony that the said cargo must come within the purview of the regulation/order which "shall be discharged unto lighters at the explosives anchorage, regardless of whether the same are through cargo or destined for Manila, before the carrying vessel shall be allowed to dock alongside the pier." Such a caveat remains prescribed and continues enforced. Petitioner having come within its scope must prove compliance with the terms peremptorily required thereby. The circumstances obtaining, however, reduced the duly issued permit into a note of ineffectuality. Petitioner's vessel effected a pierside discharge "despite a shipside permit having been issued for this cargo the ship's checker allowed this cargo to be discharged to the pier in violation of the said CAO No. 2-71 and thus endangering

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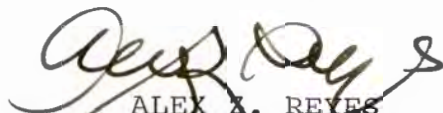
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the safety of the pier and the people therein." It was no cosmetic effort nor idle gesture for consignee's broker to have the cargo transferred after having concededly admitted that "this cargo is explosive and over exposure to the elements is dangerous and immediate transfer to a safe magazine for explosives is necessary." Petitioner substituted such a quirk of an expediency which falls short of measuring up to the compelling import and force of the rule. On the principle that legal rights must be enforced according to legal rules, petitioner cannot be entitled to a relief much less deserve any extended attention but must be held accountable and liable for a well founded breach.

WHEREFORE, the petition is hereby dismissed with costs against petitioner.

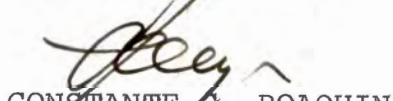
SO ORDERED.

Quezon City, Metro Manila, June 15, 1983.


ALEX A. REYES
Associate Judge

WE CONCUR:


AMANTE FILLER
Presiding Judge


CONSTANTE C. ROAQUIN
Associate Judge

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