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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCIES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2692

COMMISSIONER OF CUSTOMS,
Respondent. 7/30/79
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DECISION

This is a petition for review of the decision of respondent Commissioner of Customs, dated April 22, 1975, imposing a fine of ₱30,502.00 on the vessel SS "SOKO MARU" and/or its local ship agent Delgado Shipping Agencies, Inc., herein petitioner, for violation of Section 2523 of the Tariff and Customs Code, as amended, which reads 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.

The records show that the SS "SOKO MARU" arrived at the Port of Manila on June 29, 1969, under Registry No. 1247, and discharged thereat, among other cargoes, 34 bales of assorted textile remnants, consigned to Bahaghari Marketing and covered by Bill of Lading No. KM-9. The gross weight of said article as declared in the bill of lading was 14,178 lbs., but upon examination by a customs examiner, it was found that the actual weight was 61,186 lbs., or a discrepancy of 47,008 lbs. In other words, the actual gross weight exceeded by more than 300% the declared weight of the merchandise.

Consequently, in a letter dated September 23, 1969, the Collector of Customs, Port of Manila, informed petitioner of the violation committed by the vessel of Section 2523 of the Tariff and Customs Code, and required it to explain in writing why no administrative fine should be imposed upon the said vessel. In a reply dated November 19, 1969, petitioner, through its counsel, explained that the weight of the shipment and its measurement were furnished by the shipper, and the vessel, relying on the said information, stated in the bill of lading and in the manifest the data as furnished; that the same weight and measurement were stated in the delivery permit; and that the shipment, being by its nature capable of absorbing moisture and/or water, may have so absorbed such elements that must have resulted in increase of weight.

On January 7, 1975, after instituting administrative proceedings against the vessel, the Collector of Customs rendered a decision imposing an administrative fine of ₱30,502.00 against the SS "SOKO MARU" and/or its local agent, petitioner Delgado Shipping Agencies, Inc., for violation of Section 2523 of the Tariff and Customs Code, as amended. On appeal, respondent Commissioner of Customs, in his decision dated April 22, 1975, affirmed *in toto* the Collector's decision. Hence, the present recourse.

The parties submitted this case for decision on the basis of the pleadings and the records of the Bureau of Customs, presenting the principal issue of whether or not the vessel SS "SOKO MARU" and/or its ship agent, petitioner herein, are liable for the fine for violation of Section 2523 of the Tariff and Customs Code, as amended.

In support of its defense that neither it nor the vessel is liable for the fine, petitioner presented these arguments: (1) that there is no proof that the discrepancy in weight of the subject cargo was due to the carelessness or incompetency of the master, owner, officer or employee of the vessel; (2) the weight declared in the bill of lading and the manifest was based on the information furnished by the shipper; (3) the master, owner, officer or employee of the vessel is not required under the law to check or verify the correct weight of the cargo; (4) since the customs duties on the subject importation is based on the value (ad valorem) the discrepancy in weight will not amount to smuggling or evasion of revenues due the government.

Petitioner further asserts (for the first time in its memorandum) that the amount of the fine (₱30,502.00) imposed by the Bureau of Customs has no legal basis since it is allegedly based on the total value of the 61,186 lbs. and not on the value of the discrepancy.

This case is not one of first impression. In the case of United States Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2796, July 31, 1978, this Court ruled:

> Likewise, the insistence by petitioner that there is no proof or evidence as to the carelessness or incompetence of the master, owner, officer or employee of the vessel is untenable. This court has consistently ruled 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, owner, pilot, officer or employee of the vessel. Failing in this duty, the conclusion is inevitable that there is an unexcusable laxity on the part of the master, officer or owner of the vessel in exercising the ordinary care and prudence in avoiding the underdeclaration of the weight of the ship's cargo, penalized under said Section 2523. Doing business in the Philippines, it is the solemn obligation of the master, pilot in command, owner or employee of the vessel to abide by our customs laws and regulations. In other words, if the discrepancy of more than 20% between the declared weight and actual weight of the imported article arose because of, and which could have been avoided if it were

> not for, the failure or omission of the master, pilot in command, owner, officer or employee of the vessel to perform his duty of ascertaining or verifying the weight of the cargo, the inevitable conclusion is that he is negligent or careless within the contemplation of the law. (See Citadel Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2718, June 30, 1978; Compania General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2576, April 6, 1977, Certiorari denied in G.R. L-47010, October 7, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs. CTA Case 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2685, February 15, 1977; 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, Certiorari denied in G.R. L-46287, June 20, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 2548, September 30, 1976; F. E. Zuellig, Inc. vs. Commissioner of Customs, CTA Case No. 2360, April 10, 1975.) In this case, petitioner frankly admits that the weight declared in the bill of lading and the manifest was supplied by the shipper and same was simply relied upon by the carrier. This evidently indicates that no actual verification or ascertainment of the weight of the cargo at the port of loading was made on the part of the vessel.

Then in the more recent case of Commissioner of Customs vs. Court of Tax Appeals and Delgado Shipping Agencies, Inc., in its capacity as agent of the SS "Eurybates", G.R. No. L-49462, June 29, 1979, where the facts and issues involved are identical to those in the case at bar, the Supreme Court held:

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1. Section 2523 of the Tariff and Customs Code[1/] authorizes the imposition of the administrative fine in the sum of ₱26,575.00 imposed by petitioner. The two requisites therein provided, namely, (1) that the actual gross weight exceed by more than twenty per centum the declared gross weight and (2) that the discrepancy is due to carelessness or incompetency of the master, owner or employee of the vessel, were duly found by petitioner commissioner, as well as by respondent court, to be present in the instant case. The discrepancy in the declared gross weight of the cargo (13,272 lbs.) and its actual weight (66,579 lbs.) is so grave that it constitutes per se evidence of willful negligence or gross incompetence. The actual gross weight of the shipment exceeded by more than four hundred (400%) percent its declared weight, whereas the statute allows a discrepancy of not more than twenty (20%) percent. In other words, the discrepancy of 53,307 lbs. (underdeclared weight exceeded by more than twenty (20) times the 20% discrepancy (2,654.4 lbs. or 20% of the declared weight of 13,272 lbs.) allowed by the law.

2. Here, the Collector of Customs as affirmed by petitioner Commissioner of Customs, in accordance with authority given them by the cited codal provision, duly exercised the dis-

[1/] "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 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." (Emphasis supplied).

cretion and authority vested in them by imposing the maximum fine due to the gross underdeclaration. Without a showing of grave abuse of discretion on the part of said officials, the said fine should be allowed to stand. Applying by analogy the principles of penal law, the gross underdeclaration (by more than 400%) aggravated respondent's offense and no mitigating circumstance having been shown by respondent, petitioner correctly imposed the maximum fine and there is no valid justification for respondent court's arbitrary reduction of the fine to a mere ₱6,000.00.

3. The clear purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to such underdeclarations. Hence, imposing the maximum fine on vessels which grossly fail to comply with the obligation to declare the true weight of their cargo promotes the spirit and purpose of the law, since imposing a minimum fine would only embolden would-be smugglers and foster gross negligence on the part of the master of the vessel as in this case in checking the true weight of the cargo. Respondent's claim that there could be no evasion of duties here since textile remnants are imposed duties <u>ad valorem</u> or on the basis of the dutiable value of the merchandise irrespective of the weight is untenable, since an underdeclaration of the weight of the remnants by more than 400% would make it much easier to underdeclare the dutiable value of the remnants.

4. Moreover, the Solicitor General's submission in his brief on behalf of petitioner commissioner that respondent court "should have taken cognizance of the fact that a string of cases have been filed with it, either already decided or pending decision, involving similar violations committed by the same shipping agent, the private respondent herein, such as C.T.A. Cases Nos. 2729, 2539, 2548, 2802, 2793, not to include similar cases still pending with the Bureau of Customs, namely: Customs Cases Nos. 77-31, 77-32, 77-33, 75-21, 75-65, 75-65A, 75-04, which circumstance indubitably establishes 'habituality' in the commission of the same offense and, on this basis, the maximum fine provided for by law should rightly be imposed," appears to be well taken. The existence of such numerous cases of similar violations having

been decided against respondent or pending decision against it has not been denied by respondent in its comment.

5. Finally, contrary to respondent's contention, the vessel's master, owner or employees are duty bound under the cited codal section under pain of the penalty of fine therein provided to check and verify the correct weight of the cargo or shipment so as to prevent a misdeclaration or underdeclaration of weight. The vessel master's discharge of such obligation imposed by law to properly determine and verify the weight of cargos carried by it is certainly pertinent to and important for the proper assessment of the collectible customs duties and taxes, and is not a burdensome task in the present era of containerized cargos. As ruled by respondent court itself in its decision:

> "We find petitioner's contention without merit. The issue in this case and the arguments raised 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 held as follows:
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> > 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, C.T.A. Case No. 2685, Feb. 15, 1977; Macondray & Co., Inc. vs.

Commissioner of Customs, C.T.A. Case No. 2741, Feb. 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. 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.

Thus, in the case of Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, C.T.A. Case No. 2685, February 15, 1977, certiorari denied, G.R. L-46262, July 6, 1977, this Court ruled:

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 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 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."

As to the amount of the fine, we are not in a position to sustain the mere assertion of petitioner that it has been erroneously computed or determined by the Bureau of Customs. Petitioner submitted this case on the basis of the pleadings and the Customs records, and nowhere has the issue on the correctness and reasonableness of the amount of the fine been raised. To impugn the correctness of the amount of the fine, it is not enough for petitioner to simply allege for the first time in its memorandum that the same has been wrongly computed or determined by the Bureau of Customs. This question must not only be raised in the petition for review, or during the hearing of the case, but more importantly, evidence should be adduced to support the correctness of the claim. Failing on this, and without the facts, data and information in the customs records appropriate and necessary to determine the correct amount of the fine, the Court will have to apply the presumption that the computation by the Bureau of Customs is correct and in accordance with law.

And neither can this Court justify the reduction of the maximum fine imposed by the Commissioner of Customs in this case. For like in the above-cited case of Commissioner of Customs vs. Court of Tax Appeals andDelgado Shipping Agencies, Inc., supra, the facts and issues of which are almost identical with the present case, the discrepancy between the

<u>declared</u> weight of the importation (14,178 lbs.) and its <u>actual</u> weight (61,186 lbs.), or a difference of more than 300%, "is so grave that it constitutes *per se* evidence of willful negligence or gross incompetence." Furthermore, it has not been positively shown by petitioner that the Collector and the Commissioner of Customs have gravely abused their discretion and authority in imposing the maximum fine and that there is, in this case, a mitigating circumstance.

WHEREFORE, the decision of respondent Commissioner of Customs is affirmed and the vessel SS "SOKO MARU" and/or its local ship agent petitioner Delgado Shipping Agencies, Inc., are hereby ordered to pay to the Bureau of Customs within thirty (30) days from the date this decision becomes final and executory the fine of ₱30,502.00. With costs against petitioner.

SO ORDERED

Quezon City, Metro Manila, July 30, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge