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UNITED STATES LINES, INC.
(as agents of the SS "PIONEER MOOR"),
Petitioner

- versus - C.T.A. CASE NO 2715

COMMISSIONER OF CUSTOMS,
Respondent.
X - - - - - - - - - - - - - - X

1/20/78

D E C I S I O N

Petitioner, United States Lines, Inc., agent of the SS "Pioneer Moor," appealed from the decision of the Commissioner of Customs dated May 27, 1975, affirming that of the Collector of Customs dated January 7, 1975, imposing a fine of ₱13,977.00 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.

This case was submitted for decision based on the pleadings and the customs records. It appears from the said pleadings that the vessel SS "Pioneer Moor" arrived at the Port of Manila on March 30, 1968 and discharged thereat 35 bales of assorted textile remnants consigned to Chuchi's Lingeries, Pasig, Rizal and covered by Bill of Lading No. 102 dated February 23, 1968. The gross weight of said merchandise as declared in the ship's manifest and bill of lading was 5,837 lbs. (p. 27, Customs rec.), but upon examination and appraisal by customs authorities, it was found that the actual gross weight thereof was 22,470 lbs. (pp. 34, 36, 37, Customs rec.), which was 79% more than what was declared, or a discrepancy of 16,633 lbs. The record does not disclose the value in our currency of the weight discrepancy of the cargo per lb. Neither had the parties pointed out the value per lb. of the discrepancy. But in a letter dated December 10, 1968, the Acting Chief, Law Division of the Bureau of Customs informed the petitioner that there was a discrepancy of more than 20% between the actual declared weight and the weight as found by the Collector of Customs of the subject merchandise, and required the latter to explain in writing and show cause why no administrative fine should be imposed upon the vessel. Petitioner, in its reply to the Collector of Customs dated December 13, 1968, asserted that the weight appearing in the bill of lading was declared by the shipper at the port of origin and this served as basis in manifesting the cargo. It also defended itself by stating that the textile remnants were freighted on the measurement basis; that the weight is immaterial as far as freightage is concerned, and whatever weight declared by the shipper was taken as the true and correct weight of the cargo. Despite this explanation, however, Administrative Case No. V-416/69 was filed against the SS "Pioneer Moor" for violation of Section 2523 of the Tariff and Customs Code, and upon termination thereof, the Collector of Customs rendered a decision on January 7, 1975, finding the vessel and/or its agent, petitioner herein, liable for a fine of ₱13,977.00. On appeal, the Commissioner of Customs, in his decision dated May 27, 1975, affirmed <u>in toto</u> the decision of the Collector of Customs. Hence, this appeal.

The only issue in this case is whether or not the vessel SS "Pioneer Moor" and/or petitioner herein violated Section 2523 of the Tariff and Customs Code and, therefore, liable for the imposed fine.

Petitioner, in its defense of non-liability, asserts that the vessel SS "Pioneer Moor" is not

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liable under Section 2523 of the Tariff and Customs Code because there is no proof of carelessness or incompetency of the master in command, owner or employee of the vessel. In the alternative, it contends and argues that assuming that there was carelessness or incompetency on the part of the master, owner or employee of such vessel, such is excusable because the weight in the bill of lading which served as basis for manifesting the cargo was freighted on the measurement basis and not on a basis of its weight. Finally, it stood upon the proposition that the fine of ₱13,977.00 imposed against it and/or the vessel is excessive and unreasonable. Respondent, on the other hand, contended otherwise.

We find petitioner's contention without merit. The issue in this case and the arguments raised by petitioner are not of first impression to us. In the case of International Harvester Macleod, Inc. etc. vs. Commissioner of Customs, C.T.A. Case No. 2698, November 25, 1977, this court ruled:

> 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, CTA Case No. 2685, Feb. 15, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, Feb. 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA 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, CTA 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 unequivocally 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.

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Neither the records nor the parties show the value of the excess weight discrepancy. We take it, therefore, that the imposed fine of ₱13,977. 00 is equal to, or not more than 15% computed from the value of the excess weight discrepancy of the imported cargo allowed under Section 2523 of the Tariff and Customs Code against the vessel SS "Pioneer Moor." However, since it appears that this is the first offense committed by this vessel under Section 2523 of the Tariff and Customs Code and taking into consideration the fact that the law allows just and reasonable latitude in the imposition of a fine, we believe that ₱3,000.00 would be just and reasonable.

ACCORDINGLY, the decision appealed from is hereby modified. The vessel SS "Pioneer Moor" and/or petitioner United States Lines, Inc., as agent of said vessel, are hereby ordered to pay to the Bureau of Customs the fine of ₱3,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, January 20, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge