REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED STATES LINES,
INC., in its capacity
as agent of the SS
"PIONEER MYTH",
Petitioner,

versus

C.T.A. CASE NO. 2529

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - x

D E C I S I O N

Under Section 2523 of the Tariff and Customs Code, a fine of not more than 15% of the value of a package or article is to be imposed if the gross weight of such article or package described in the manifest exceeds by more than 20% the gross weight as declared in the manifest or bill of lading, provided that the Collector of Customs 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. For alleged violation of this section of the Code, the Collector of Customs of Manila in Customs Case No. 73-06 imposed an administrative fine of ₱8,830.00 upon the vessel SS "PIONEER MYTH" which is equivalent to 15% of the value of the entire shipment involved consisting of 19 bales of assorted textile remnants. Recourse to respondent Commissioner of Customs by petitioner United States Lines, Inc., in its capacity as agent of the SS

"PIONEER MYTH", resulted in the affirmance of the decision of the Collector. Hence, this appeal.

It appears that the SS "PIONEER MYTH" arrived in Manila from New York, USA, on March 1, 1968 under Registry No. 410. Among its cargoes were 19 bales of assorted textile remnants. The gross weight of said importation as appearing in its Import Entry and Internal Revenue Declaration No. 021014 was 2,950 kgs., or its equivalent of 6,424 lbs. (pp. 4, 60, 93, Customs record). When the entry papers covering said imported goods were processed by customs authorities, it was found that the actual weight of the cotton and rayon remnants was 6,460 lbs. and not 6,424 lbs. as declared therein, or a difference in weight of 36 lbs. This was attested to by CPS Captain Alberto Fallorina. (Exh. D, p. 60; Exh. C, p. 93; pp. 123-129, Customs record.)

In her memorandum for the Chief Appraiser dated November 19, 1968, appraiser Mercedes Tan stated that upon examination, the weight of the imported cotton remnants was 6,270 lbs. and the declared weight was 5,700 lbs. (Exh. E, p. 92, Customs record.) Noted in the said memorandum is an explanation of the Chief Appraiser to the Collector that the "Discrepancy is due to appraisal of Item I(a) exceeding 20%" and the "Increase in weight (is) less than 10%." (Exh. E-1, p. 92, Customs record.) Subsequently, on November 27, 1968, appraiser Mercedes Tan sent another memorandum for the Chief Appraiser by

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way of a supplementary report stating that the total weight is 13,680 lbs. and with a notation made by the Chief Appraiser that the "Discrepancy is due to reappraisal of Item I(a) exceeding 20% and increase in weight by 118%" due to "error in classification". (Exh. B, B-1, p. 94, Customs record.)

On December 10, 1968, the Collector of Customs notified petitioner that the vessel SS "PIONEER MYTH" conveyed and discharged the 19 bales of assorted textile remnants in question with an excess weight of more than 20% as declared in the manifest, in violation of Section 2523 of the Tariff and Customs Code. Petitioner was therefore required to explain why no administrative fine should be imposed on the vessel. (P. 98, Customs record.)

On December 13, 1968, Romeo A. Bala, Inward Freight Manager of petitioner, explained in writing that the weights appearing in the bills of lading were declared by the shippers at the port of origin which served as the basis for manifesting the cargo; that the remnants were freighted on the measurement basis which necessitated the actual measurement of the cargo prior to loading; and that the weight of this shipment becomes immaterial insofar as freightage is concerned and whatever weight was declared by the shipper is taken as the true and correct weight of the cargo. (P. 100, Customs record.)

During the hearing of the administrative case against the SS "PIONEER MYTH" at the Bureau of Customs, CPS Agent Bernardino Asuncion testified that he participated in the examination and weighing of the imported remnants in question. He stated that the actual weight was 6,460 lbs. and the weight as declared was 6,424 lbs. or a discrepancy between the actual and declared weight of 36 lbs. (Pp. 123-125, Customs record.) Consequently, counsel for petitioner moved for the dismissal of the case on the ground that the discrepancy between the actual and declared weight was only 36 lbs. which is not more than 20% the gross weight as declared. (P. 104, Customs record.)

On January 15, 1973, the Collector of Customs denied petitioner's motion to dismiss and instead rendered a decision imposing a fine of ₱8,830.00 on the vessel SS "PIONEER MYTH" and/or petitioner herein. (Pp. 197-200, Customs record.) The said decision was affirmed by respondent Commissioner of Customs on April 5, 1973.

The administrative fine provided in Section 2523 of the Tariff and Customs Code is imposed 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 if the gross weight of such article or package exceeds by more than twenty *per centum* the gross weight

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as described in the manifest or bill of lading, it is necessary to determine whether such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the carrying vessel or aircraft. Consequently, our decision turns upon whether the actual gross weight of the 19 bales of assorted textile remnants in question exceeded by more than twenty _per centum_ the gross weight as declared in the manifest or bill of lading, and if so, whether the Collector of the Port of Manila is of the opinion that such discrepancy was due to the carelessness or negligence on the part of the master, captain, owner or employee of the SS "PIONEER MYTH". Since the applicable provision of the law seems clear, in the end, the decision in this case rests only upon its own peculiar facts and circumstances.

As stated above, the declared weight of the subject shipment consisting of 19 bales of assorted textile remnants was 6,424 lbs. but was found upon actual examination thereof by the Customs Police Service (CPS) to weigh 6,460 lbs., or a discrepancy between the actual and declared weight of 36 lbs. The gross weight of the imported article therefore exceeds only by 0.56% the gross weight as declared in the bill of lading and inward foreign manifest and this discrepancy falls short of the minimum excess weight of more than 20% provided for in Section 2523.

It is true that in her supplementary report, Customs Appraiser Mercedes Tan stated that the total weight is 13,680 lbs. and not 6,424, but she testified during the hearing of this case before the Bureau of Customs that she did not actually weigh the subject shipment nor even see the merchandise. The only probable implication derivable from this admission is that Appraiser Tan had no actual knowledge of the exact weight of the cargo when she prepared her supplementary report in the form of a memorandum for the Chief Appraiser. This is bolstered by the fact that in her original memorandum for the chief appraiser, she reported that the weight of the imported article was 6,270 lbs. and indicated that the excess in weight was less than 10% the weight as declared. It will thus be seen that Appraiser Tan did not even bother to check or verify her figures when she prepared her reports.

Even the explanation as to the reappraisal of "Item I(a) exceeding 20% and increase in weight by 118%" due to "error in classification" is flimsy, if not anomalous, considering that the reappraisal of an imported article cannot alter the weight of the same. What may be altered is the value or price of the imported article, in case of reappraisal, but certainly not the weight as shown by the return of weighers. As against the testimony and report of CPS agent Bernardino Asuncion that he actually participated in the weighing of the subject shipment, there is more reason to believe that the actual weight of the 19 bales of assorted textile remnants was 6,460 lbs., which is 36 lbs. more than the declared weight of 6,424 lbs. This was attested to by CPS Captain Alberto Fallorina. Considering that the actual weight of the shipment in question exceeded by only 0.56% the weight declared in the manifest and bill of lading, there is no valid justification for the imposition of the administrative fine of ₱8,830.00 upon the SS "PIONEER MYTH".

With this finding, we see no necessity of resolving whether, in the light of the evidence presented, the Collector of Customs of the Port of Manila is of the opinion that such discrepancy was due to the carelessness or negligence on the part of the master, captain, owner or employee of the SS "PIONEER MYTH". Under Section 2523 of the Tariff and Customs Code, a fine of not more than 15% of the value of the package or article is to be imposed if the gross weight of such article or package described in the manifest exceeds by more than 20% the gross weight as declared in the manifest or bill of lading thereof, <u>provided that 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</u>. (United States Lines v. Comm. of Customs, C.T.A. Case No. 2365, June 17, 1974; Smith, Bell & Co. Inc., etc. v. Comm. of Customs, C.T.A. Case No. 2469, Dec. 27, 1974.) In this case, the discrepancy is not even more than 1% of the actual weight of the shipment in question.

Accordingly, the appealed decision is hereby reversed. No Costs.

SO ORDERED.

Quezon City, January 2, 1976.

R M Umali
ROMAN M. UMALI
Presiding Judge

I CONCUR:

Estanislao R Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge