REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus - C.T.A. CASE NO. 2706

COMMISSIONER OF CUSTOMS,
Respondent.
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D E C I S I O N

Elevated on appeal by petitioner United States Lines, Inc., in its capacity as owner of the SS "PIONEER MART," is the decision of respondent Commissioner of Customs dated April 29, 1975, which affirmed that of the Collector of Customs, Port of Manila, imposing a fine of ₱12,747.35 against the said vessel and/or petitioner for violation of Section 2523 of the Tariff and Customs Code.

The case has been submitted for decision on the basis of the pleadings and of the records of the Bureau of Customs.

It appears that on April 14, 1968, the SS "PIONEER MART" with Registry No. 728, arrived at the Port of Manila and discharged, among others, a cargo of thirty four (34) bales of cotton and rayon remnants covered by Bill of Lading No. 196, and declared under Entry No. 060797(68). Upon examination of the merchandise by a Customs appraiser, it was discovered

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that there was an excess weight of more than 20% of what was declared in the bill of lading and the manifest, in violation of Section 2523 of the Tariff and Customs Code. Wherefore, a discrepancy report was sent to the Chief, Law Division of the Bureau of Customs, recommending, among others, that action be taken against the vessel for violation of Section 2523 of the Tariff and Customs Code.

In a letter dated January 23, 1969, the Collector of Customs informed petitioner that its vessel SS "PIONEER MART", which arrived at the Port of Manila on April 14, 1968, conveyed and discharged fifty (50) bales of cotton and rayon remnants with an excess weight of more than 20% as declared in the manifest in violation of the law. Petitioner was therefore requested to explain in writing within five (5) days from receipt of the letter and show cause why no administrative fine should be imposed on the vessel for this violation; or if it so elects, the case would be formally investigated, in which case, petitioner was given the same period of five (5) days from receipt thereof to inform the Collector of such option; otherwise, failure to do so would be construed as a waiver of its right to be heard and the case would be decided accordingly. (p. 5, Customs records.)

In reply, petitioner advised the Collector of Customs on January 30, 1969 "that the weights appearing on the bills of lading are declared by the shippers at the port of origin serve as the basis for manifesting the cargo." Further, cotton and rayon remnants are freighted on the measurement basis and therefore weights of these shipments become immaterial as far as freightage is concerned, and whatever weight is declared by the shipper is taken as the true and correct weight of the cargo. It follows that the vessel had not violated any Customs regulations. (p. 6, Customs records.)

After proper notice, administrative proceeding was instituted against the SS "PIONEER MART" and the same was heard together with the case of the SS "TROUBADOUR". At the initial hearing thereof on October 2, 1969, in which petitioner was duly represented, counsel for the government requested that he be allowed to have the complaint amended for an error committed in the number of bales of the subject shipment. Consequently, the Hearing Officer remanded the case to the Vessel Investigation Section of the Bureau of Customs for the preparation of the appropriate charge. (pp. 10-14, Customs records.)

Subsequently, on October 8, 1969 the Collector of Customs sent an amended letter-complaint apprising petitioner virtually of the same violation as that contained in his letter dated January 23, 1969, except with respect to the number of bales of the merchandise which was reduced to thirty four (34) bales instead of fifty (50). In the same letter, petitioner was also required to explain in writing within five (5) days from receipt thereof why no administrative fine should be imposed on the vessel; or if petitioner so elects, the case would be formally investigated, exercising its option within the same period of five (5) days; otherwise, petitioner's failure to do so would be construed as a waiver of its right to be heard and the case decided accordingly. (p. 9, Customs records.) To this amended letter-complaint, petitioner failed to reply.

On October 24, 1974, the Collector of Customs rendered a decision finding the SS "PIONEER MART" guilty of violating Section 2523 of the Tariff and Customs Code and imposing an administrative fine of ₱12,747.35 against the said vessel and/or its agent. The Collector of Customs found out that "there was a discrepancy of more than 20% between the gross weight of the subject importation and that of the declared weight thereof"; and "this discrepancy can well be attributed to the carelessness of the official of the subject vessel who is in charge of the inward manifest's preparation." (p. 20, Customs records.)

Alleging that the decision of the Collector of Customs was rendered without giving petitioner an opportunity to present its evidence, the latter moved to reconsider the said decision. On December 3, 1974, however, the Collector of Customs issued an order dismissing the motion for reconsideration for want of merit. Consequently, appeal was made to respondent Commissioner of Customs, who affirmed the decision of the Collector in his decision promulgated on April 29, 1975, which discoursed mainly on the issue of due process, the pertinent portion of which:

> The herein appellant contended that, "considering that the explanation required by the amended letter-complaint was the same as the explanation as in the original letter-complaint, respondent (now petitioner herein) did not reply. Since respondent did not reply to the amended letter-complaint, the original explanation should be considered by this Honorable Office as the explanation to the amended letter-complaint. This being the case, respondent should have been given an opportunity to present its evidence to prove its explanation."
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> The Collector of Customs was right in holding the view that:
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> > " x x x, the subject decision that is sought to be set aside by respondent is precisely predicated on the letter-answer of the herein respondent dated January 30, 1969, which by its clear and unambiguous language does not require further evidence to prove what is explained therein."

Left with no other recourse, petitioner appealed to this Court.

The issues for our determination are:

(1) Whether or not Section 2523 of the Tariff and Customs Code was violated; and

(2) Whether or not the fine imposed is

excessive and unreasonable.

As regards the first issue, petitioner raises the following defenses: (a) That the weight of the cargo is not required to be stated in the manifest under Section 1005 of the Tariff and Customs Code, and thus an erroneous declaration of the weight of the shipment does not constitute any violation of the Customs Code; (b) that there is no proof that the discrepancy in weight was due to the carelessness or incompetency of the master, owner, officer or employee of the vessel; and (c) that assuming that there was carelessness or incompetency on the part of the master, owner, officer or employee of the vessel, the same should be excused because the weight appearing in the bill of lading was declared by the shipper and the cargo was freighted on measurement basis and not on weight.

In the recently decided case of United States Lines, Inc. vs. Commissioner of Customs, CTA Case No. 2796, July 31, 1978, involving the same parties, under similar factual setting and with identical issues raised, this Court resolved the foregoing defense in this wise, to wit:

> "The question of whether, under Section 1005 of the Tariff and Customs Code, the weight of an imported article should be stated in the cargo manifest of vessels coming from a foreign port was squarely resolved in the affirmative in the case of Smith, Bell Co., Inc. vs. Commis-

sioner of Customs. (C.T.A. Case No. 2396, April 30, 1973.) As interpreted and applied by this Court in said case, the particulars or data required to be stated in the cargo manifest, under said Section 1005 of the Tariff and Customs Code, include the weight of the cargo. As a matter of fact, the Court, in making this interpretation, has made reference to the aforecited Section 2523 of the Code which imposes a fine for a discrepancy in weight of the cargo of over 20% of what was declared in the manifest or bill of lading.

As to proof or evidence of the discrepancy of more than 20% between the actual weight and declared weight of the merchandise in question, we find the appraisal report of the Customs appraiser dated October 29, 1968, forming part of the Customs record, sufficient. (See p. 2, Customs rec.) For petitioner to overthrow the findings of the Bureau of Customs as to the discrepancy in weight, it should have presented countervailing evidence during the hearing before this Court to rebut said findings of the Bureau of Customs. It cannot simply rely, to support its stand that there is no weight discrepancy, on bare allegations. Moreover, petitioner admits in its memorandum that an amendment to the vessel's manifest was submitted to, and was approved by, the Bureau of Customs. Indeed, if there was no weight discrepancy in this case, why was an amendment as to the weight filed by petitioner still necessary?

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

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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, August 31, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2575, 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.

Finally, it is no defense that the weight of the cargo declared in the manifest or bill of lading was supplied and furnished by the shipper, and that the cargo in question was freighted on measurement basis and not on weight. As explicitly stated by this Court: ' x x x 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. x x x." (F. E. Zuellig, Inc, vs. Commissioner of Customs, supra; see also 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. 2744, February 25, 1977, Certiorari denied in G.R. L-47404, May 5, 1978.) 'Anent petitioner's averment that the freightage on the subject shipment was made on a measurement basis, suffice it to state that freightage is merely the charge of 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.' (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2656, January 21, 1977, Certiorari denied in G.R. No. L-46287, June 20, 1977; Delgado Shipping Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 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. 2802, June 30, 1978.)"

We find no cogent reason to modify, much less depart from the conclusions reached in the above-cited case of United States Lines, Inc., as expressed in the above-quoted opinion of this Court there, and the same should resolve the identical issue now brought before us in this proceeding.

Apropos of the amount of the fine imposed, petitioner contends that the sum of ₱12,747.35 is excessive, unreasonable and confiscatory, considering that the duties and taxes on the subject shipment, which are based on value or ad valorem, have already been paid;

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that the amendment to the manifest was promptly submitted and approved by the Collector of Customs; that assuming that there is negligence or incompetence in this case which is not excusable, it does not amount to willful negligence or grave incompetence; that the fine imposable should be based on the value of the article in respect to which the deficiency exists and not on the total value of the whole shipment; and that this is the first violation committed by the SS "PIONEER MART."

In accordance with the provisions of Section 2523 of the Tariff and Customs Code, the rule on the computation of the fine is to the effect that "a fine of not more than fifteen <u>per centum</u> of the value of the package or article in respect to which the deficiency exists", and not on the total value of the imported merchandise, may be imposed upon the importing vessel. (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2741, February 3, 1977.) The record, however, shows that the computation of the fine imposed by respondent was based on the total value of the merchandise. (See page 15, Customs records, Memorandum dated December 10, 1968 of Appraiser Tan). On the other hand, neither the records of the case show the value of the package in respect to which the deficiency exists nor has petitioner come up with the correct computation of the amount of the fine

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which should be imposed. Nonetheless, considering that this is the first violation committed by the SS "PIONEER MART"; the negligence or incompetence of the master, owner, officer or employee does not amount to willful negligence or gross incompetence; and the law allows latitude in the imposition of the fine, we deemed it just and reasonable to reduce the administrative fine imposed on the SS "PIONEER MART" and/or petitioner United States Lines, Inc., as owner of the vessel, to ₱4,000.00 (Delgado Shipping Agency vs. Commissioner of Customs, CTA Case No. 2729, June 16, 1978; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2684, April 24, 1978.)

WHEREFORE, the decision appealed from is MODIFIED, and the vessel SS "PIONEER MART" and/or petitioner herein are hereby ordered to pay to the Bureau of Customs the administrative fine of ₱4,000.00 for violation of Section 2523 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, September 29, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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