

**WISE & COMPANY, INC., PLAINTIFF-APPELLEE, VS. CUSTOMS
ARRASTRE SERVICE AND/OR BUREAU OF CUSTOMS AND/OR
REPUBLIC OF THE PHILIPPINES, DEFENDANTS-APPELLANTS.**

G.R. No. L-27127. June 07, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is an arrastre case. On August 13, 1963 the vessel Missouri Maru arrived in Manila with a shipment of 275 sacks of synthetic resin consigned to Wise & Company, Inc. The shipment was landed in good order and delivered to the Customs Arrastre Service. However, when the arrastre operator delivered it to the consignee, twenty-nine bags were missing.

On April 3, 1965 Wise & Company, Inc. sued the Customs Arrastre Service, the Bureau of Customs, and the Republic of the Philippines in the city court of Manila for the recovery of the value of the missing cargo in the sum of P985.08 plus P200 as attorney's fees.

The Solicitor General in his answer pleaded several defenses among which is that the State is immune from suit. After hearing, the city court rendered judgment in favor of Wise & Company, Inc. It ordered the defendants to pay solidarily to the consignee the sum of P985.08 plus fifty pesos as attorney's fees.

The Government appealed to the Court of First Instance. After hearing, the lower court held that the doctrine of State immunity from suit is not applicable to the Bureau of Customs as arrastre operator. The defendants were ordered to pay solidarily to Wise & Company, Inc. the sum of P989.95 with legal rate of interest from the filing of the complaint, plus P200 as attorney's fees. (Civil Case No. 61863).

From that decision, the government appealed to this Court. Instead of filing a brief, the Solicitor General submitted a manifestation dated July 28, 1967 wherein he invited attention to the ruling that "the Bureau of Customs, in operating the arrastre service, does so as an incident of a prime governmental function and as such may not be sued" and that "the same holds true with the Republic of the Philippines" (Manila Electric Co. vs. Customs Arrastre Service, L-25515, July 24, 1967, 20 SCRA 767).

In view of that ruling, plaintiff-appellee Wise & Company, Inc. deemed it unnecessary to file any brief.

We hold that the lower court erred in ordering the State or the Republic of the Philippines, as arrastre operator, to pay the value of the missing cargo to Wise & Company, Inc. The rule that "the State may not be sued without its consent" (now found in section 16, Article XV of the Constitution) applies to this case.

The consignee's remedy is to file a claim with the Commission on Audit as contemplated in Act No. 3083 and Commonwealth Act No. 327 (Gloren, Inc. vs. Republic, L-26811, July 31, 1970, 34 SCRA 26; Travelers Indemnity Company vs. Barber Steamship Lines, Inc., L-27019, May 6, 1977).

WHEREFORE, the lower court's judgment is reversed and set aside. No costs.

SO ORDERED.

Fernando, (Chairman), Antonio, Muñoz Palma, and Martin, JJ., concur.

Barredo, J., no part.

Concepcion, Jr., J., on leave.

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