

**PHILIPPINE FIRST INSURANCE COMPANY, INC.,
PLAINTIFF-APPELLEE, VS. CUSTOMS ARRASTRE SERVICE AND
REPUBLIC OF THE PHILIPPINES, DEFENDANTS-APPELLANTS.**

G.R. No. L-26951. September 12, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On September 1, 1964, the Philippine First Insurance Company, Inc. (hereafter referred to as Insurance Company), a subrogee of the Ong Yet Mua Hardware Co., Inc., filed an action against the Customs Arrastre Service (hereafter referred to as Customs Arrastre) and the Republic of the Philippines in the City Court of Manila for recovery of a total sum of P4,461.14 in three causes of action, the facts of which are as follows:

First Cause of Action. - Ong Yet Mua Hardware Co., Inc. imported from Mohwinckel, Milano, Italy three pack-ages containing 300 pieces of water meters worth \$3,649.25. Said importation which was insured against all risks with the Insurance Company arrived in Manila on board SS "Main Lloyd" on September 5, 1963 and was dig complete and in good order to the Customs Arrastre. However, deli-very to the consignee was short by 28 pieces of water me-ters.

A provisional claim for the loss was filed with the Customs Arrastre. Upon demand, the Insurance Company paid to the consignee tie sum of P1,224.67 representing the va-lue of the short delivered cargo for which the consignee assigned to the Insurance Company all its rights of action against the Customs Arrastre. However, despite repeated demands Customs Arrastre failed to pay the Insurance Com-pany the aforesaid amount of P1,224.67.

Second Cause of Action. - Ong Yet Mua Hardware Co., Inc. was a consignee of 16 packages containing pieces of plane iron, spokeshaves, hammers and screw drivers, va-lued at \$4,560.50, shipped on board SS "Maron" from Eng-land which arrived in Manila on September 5, 1963. The cargo was discharged to the Customs Arrastre complete and in good order but delivery to the consignee was short by three cases.

A provisional claim was filed with the Customs Arras-tre. For the loss, the Insurance Company meanwhile paid the consignee P3,168.78. Customs Arrastre however refused to pay to the Insurance Company said sum of P3,168.78 despite demands.

Third Cause of Action. - Tokyo Tsusho Kaisha, Ltd. at Osaka, Japan shipped on board SS "Tindalo" 150 pack-ages containing round point shovels worth \$2,749.50 to Ong Yet Mua Hardware Co., Inc. The shipment which was insured with the Insurance Company against all risks, arrived in Manila on September 8, 1963 and was discharged to the Customs Arrastre complete and in good order. As delivery to it was short by two dozen shovels, the consignee filed a claim for the loss with the Customs Arrastre. However, said loss was indemnified by the Insurance Company in the amount of P67.69. And as subrogee, the Insurance Company repeatedly demanded upon the Customs Arrastre to pay the said amount of P67.69 but the latter failed to comply with the demands of the former.

On February 20, 1965 the City Court of Manila rendered judgment dismissing the case for insufficiency of evidence.

The Insurance Company appealed to the Court of First Instance which court found for the plaintiff and ordered the Customs Arrastre to pay a total amount of P4,461.14. From said judgment defendants Customs Arrastre and the Republic of the Philippines appealed to this Court interposing the defense of the State's immunity from suit.

The defense is meritorious. In *Equitable Insurance and Casualty Co., Inc. v. Smith, Bell & Co. (Phil.), Inc.*,^[1] We held that -

“x x x the Bureau of Customs cannot be a party defendant in a suit. Because, it is neither a natural nor a juridical person nor an entity authorized by law to be sued. An arm of the Department of Finance, it has no personality of its own, apart from the national government. Arrastre service, it is true, is a proprietary function. But just the same, it is a necessary incident to the primary governmental job of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines, and penalties. x x x”

The Republic of the Philippines can only be sued with its consent. But We see no indication in this instance that the Republic has consented to be impleaded as party defendant. Moreover, the claim herein being one for money, the remedy of the claimant is to address its demand upon the Auditor General pursuant to Act 3083 and Commonwealth Act 327.^[2]

WHEREFORE, the judgment appealed from is set aside and a new one entered dismissing the complaint. Without costs.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] G.R. No. L-24383, August 26, 1967.

[2] *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*, G.R. No. L-23139, December 17, 1966.

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