

CALTEX (PHILIPPINES) INC., PLAINTIFF-APPELLEE, VS. CUSTOMS ARRASTRE SERVICE AND/OR BUREAU OF CUSTOMS AND/OR REPUBLIC OF THE PHILIPPINES, DEFENDANTS-APPELLANTS.

G.R. No. L-26947. December 26, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Plaintiff Caltex (Philippines) Inc., filed suit on February 4, 1964 in the City Court of Manila against defendants Customs Arrastre Service and/or Bureau of Customs and/or Republic of the Philippines, to recover the amount of P223.77, plus P100.00 as attorney's fees, due to alleged short delivery or loss, in the hands of defendants as arrastre operator in the port of Manila, of a shipment of goods.

The shipment was part of 99 packages taken on board SS "President Garcia" on February 16, 1963, in New York, U.S.A., to plaintiff's consignment at Manila. The carrying vessel arrived in Manila on March 24, 1963 and discharged the aforesaid shipment into the custody of defendants as arrastre operator. The specific goods allegedly short delivered or lost in the course of defendants' arrastre operations consist of one vial special reagent naphthalene and one gallon tygon thinner worth, as afore-stated, P223.77.

Defendants answered the complaint and raised as a special defense their non-suability upon the facts stated in the pleading.

Rendering judgment on January 16, 1965, the City Court ordered defendants, jointly and severally, to pay P223.77, plus interest at legal rate from demand, and P100.00 attorney's fees.

Appealing to the Court of First Instance, defendants again lost. In its decision of May 14, 1966, said court ordered defendants, jointly and severally, to pay P223.72 plus interest at the legal rate from the demand.

Defendants appealed to Us on the point of law: Are defendants suable without their consent in this case? Appellants filed their brief on November 28, 1967. Appellee, on December 4, 1967, filed a manifestation and motion submitting the case for decision without appellee's brief, in view of the ruling of this Court in *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*, L-23139, December 17, 1966, holding that the government is not subject to suit in court without its consent for damages resulting from its arrastre operations, for the reason that said operations are a necessary incident to the prime governmental function of taxation, so that public policy considerations bring them within the scope of the doctrine of government immunity from suit.

Accordingly, We have granted the aforesaid motion of appellee. Applying herein the ruling in the *Mobil Philippines Exploration* case, *supra*, as well as the subsequent cases mentioned in appellants' brief along similar lines,* We find that the court a quo erred in not sustaining defendants' special defense of non-suability.

WHEREFORE, the appealed judgment is hereby reversed and the plaintiff's complaint is dismissed for reason of non-suability herein of defendants-appellants. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Fernando, J., did not take part.

* Insurance Co. of North America v. Republic, L-26532, July 10, 1967; Insurance Co. of North America v. Republic, L-24520, July 11, 1967; Insurance Co. of North America v. Republic, L-25663, July 21, 1967; Manila Electric Co. v. Republic, L-25515, July 24, 1967; The American Insurance Co. v. Republic, L-24031, Aug. 19, 1957; Insurance Co. of North America v. Republic, L-27515, Sept. 5, 1967; Insurance Co. of North America v. Republic, L-27517, Sept. 15, 1967.

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