

**RIZAL SURETY & INSURANCE COMPANY,
PLAINTIFF-APPELLANT, VS. CUSTOMS ARRASTRE SERVICE AND/OR
BUREAU OF CUSTOMS, DEFENDANTS-APPELLEES.**

G.R. No. L-25709. April 25, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal on questions of law from the decision of the Court of First Instance of Manila dismissing plaintiff's complaint against defendants Customs Arrastre Service and/or Bureau of Customs.

Plaintiff filed this action originally in the City Court of Manila for recovery against defendants of the insurance value of certain cargo consigned to Edward Manufacturing Corporation, which insured it against loss with the plaintiff for the amount of P2,535.39. The cargo arrived in Manila on board the SS "PIONEER MING" on December 8, 1962 and was discharged into the custody of the defendant Customs Arrastre Service which was then operated by the Bureau of Customs. Said cargo, however, was not delivered to the consignee, as it was burned with other cargo during the fire that gutted Shed B, Pier 9, on December 22, 1962. Formal claim for non-delivery was duly filed with the Customs Arrastre Service on behalf of the consignee. The consignee was paid the full insurable value of the lost cargo in the sum of P2,535.39 by plaintiff, which then filed this case as subrogee of the consignee. The City Court rendered judgment in favor of plaintiff, but on appeal, the Court of First Instance of Manila, after trial, rendered its decision of December 2, 1965 dismissing the complaint, holding that the defendants' obligation to deliver the cargo had been extinguished by virtue of the fire which had not been shown to be due to defendants' negligence and that the action at any rate, being directed against the Republic of the Philippines, of which the defendant Bureau of Customs and its arrastre service is a mere arm or agency, was barred by the State's immunity from suit.

Plaintiff, on appeal, assigned principally these two rulings of the trial court as being contrary to law.

It will readily be seen that the ruling first enunciated by this Court in *Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service and Bureau of Customs* on December 17, 1966[1] and subsequently affirmed and reaffirmed in a long line of cases, most recently in *Fireman's Fund Ins. Co. vs. Maersk Line Far East Service*[2] and *Ins. Co. North America vs. Osaka Shosen Kaisha, et al.*[3], both promulgated on March 28, 1969, is controlling and decisive of the present appeal. The decision in the Mobil case disposes of plaintiff-appellant's contentions and indicates the remedy available to it and others similarly situated, as follows:

"Now, the fact that a non-corporate government entity performs a function proprietary in nature does not necessarily result in its being suable. If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity. This is the doctrine recognized in *Bureau of Printing, et al. vs. Bureau of Printing Employees Association, et al.*, L-15751, January 28, 1961:

x x x x x x

x x x The Bureau of Customs, to repeat, is part of the Department of Finance (Sec. 81, Rev. Adm. Code), with no personality of its own apart from that of the national government. Its primary function is governmental, that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties (Sec. 602, R. A. 1937). To this function, arrastre service is a necessary incident.

x x x x x

"Clearly, therefore, although said arrastre function may be deemed proprietary, it is a necessary incident of the primary and governmental function of the Bureau of Customs, so that engaging in the same does not necessarily render said Bureau liable to suit. For otherwise, it could not perform its governmental function without necessarily exposing itself to suit. Sovereign immunity, granted as to the end, should not be denied as to the necessary means to that end.

x x x x x

"Regardless of the merits of the claim against it, the State, for obvious reasons of public policy, cannot be sued without its consent. Plaintiff should have filed its present claim to the General Auditing Office, it being for money under the provisions of Commonwealth Act 327, which state the conditions under which money claims against the Government may be filed.

"It must be remembered that statutory provisions waiving State immunity from suit are strictly construed and that waiver of immunity, being in derogation of sovereignty, will not be lightly inferred. x x x x From the provision authorizing the Bureau of Customs to lease arrastre operations to private parties, We see no authority to sue the said Bureau in the instances where it undertakes to conduct said operation itself. The Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, pursuant to express legislative mandate and as a necessary incident of its prime governmental function, is immune from suit, there being no statute to the contrary." (18 SCRA, pp. 1124-1127.)

ACCORDINGLY, the judgment of the court a quo dismissing the complaint is affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur. Castro and Capistrano, JJ., took no part.

[1] L-23139, 18 SCRA 1120.

[2] L-27189.

[3] L-22784.

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