

**UNION INSURANCE SOCIETY OF CANTON, LTD.,
PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, AND/OR
BUREAU OF CUSTOMS AND/OR CUSTOMS ARRASTRE SERVICE, IN
THEIR CAPACITY AS ARR...**

G.R. No. L-26409. July 31, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

These four (4) cases have one main issue in common, namely, whether the Republic of the Philippines, or the Bureau of Customs, or the Manila Railroad Company, or the Customs Arrastre Service, as agencies of the Bureau of Customs, may be sued for acts performed or omissions committed while engaged in the arrastre service in connection with imported goods. Hence, this joint decision.

L-26409 — Union Society of Canton, Ltd. vs. Republic of the Philippines, the Bureau of Customs and the Customs Arrastre Service.

This case involves two (2) shipments: (a) one consisting of 33 cartons of electrical wiring devices and soldering elements, shipped on board the vessel "LUNA MAERSK," covered by Maersk Line Bill of Lading No. 6 and consigned to Yu Eng Kao Electrical Supply and Hardware; and (b) the second, consisting of twelve (12) packages of assorted merchandise shipped on board the "JEPPESEN MAERSK," covered by Maersk Line Bill of Lading No. 20 and consigned to Atlantic Gulf & Pacific Co. of Manila. Both shipments were insured with the Union Insurance Society of Canton, Ltd. against the risk of loss and/or damage. It is alleged that the shipment consigned to Yu Eng Kao Electrical Supply and Hardware sustained losses, through shortage, in the aggregate sum of P7,711.66, whereas the goods consigned to Atlantic Gulf & Pacific Co. had suffered losses, through pilferage, in the total sum of P6,688.14. On demand, the insurance company paid the insured consignees their aforementioned respective losses, and, thereafter, as their subrogees, instituted the present action to recover from the Republic of the Philippines, the Bureau of Customs and its branch office or subsidiary, the Customs Arrastre Service, in the operation of the arrastre service at the Port of Manila, the amounts thus paid to the insured. The defendants moved to dismiss the complaint, upon the ground, among others, that the State cannot be sued without its consent. The motion having been granted, plaintiff interposed the present appeal.

L-26550 — Domestic Insurance Company of the Philippines vs. Republic of the Philippines

As subrogee of Silvertown Auto Supply, the Domestic Insurance Company of the Philippines brought this action, in the Court of First Instance of Manila, to recover from Barber Line, Macondray & Co., Inc., and the Republic of the Philippines, the sum of P6,350.76 paid by the plaintiff to the Silvertown Auto Supply as the value of four (4) undelivered cartons of "Timken Roller Bearings" forming part of a shipment of 20 cartons of the same products, brought to the Port of Manila on May 9, 1963, on board "SS GRANVILLE" of the Barber Lines the agent of which in Manila is Macondray & Co. under Bill of Lading No. 14, consigned to the aforementioned Silvertown Auto Supply and insured with the plaintiff against loss and/or damage and allegedly discharged unto the custody

of the Republic of the Philippines through its Bureau of Customs. Overruling the immunity from suit invoked by the Republic of the Philippines, the Court of First Instance of Manila rendered, in due course, judgment for the plaintiff, ordering the "Republic of the Philippines, thru the Bureau of Customs," to pay to the plaintiff said sum of P6,350.76, with interest thereon at the legal rate, aside from attorney's fees in the sum of P1,500 and the costs, and dismissing the case insofar as defendants Barber Line and Macondray & Co. are concerned. Hence, this appeal taken by the Government, which was originally elevated to the Court of Appeals and, thereafter, forwarded by the latter to the Supreme Court, the only issue involved therein being one of law.

L-26587 — Insurance Company of North America vs. Republic of the Philippines and/or Bureau of Customs and/or Customs Arrastre Service.

Alleging that on March 11, 1963, the "SS JEPPESEN MAERSK" had discharged unto the custody of the defendants herein, as arrastre operators, sixteen (16) cases of locks and hardware — all valued in the aggregate sum of US \$2,869.60 — covered by Bill of Lading No. 3, consigned to the order of Uy Tit and Company, Inc., Manila, and insured with the Insurance Company of North America against loss and damage, and that said shipment had suffered losses - which later appeared to consist of four (4) packages — valued at P4,863.35, which the insurance company paid, on demand, to the insured, said insurance company, as subrogee of the consignee, filed this action in the City Court of Manila to recover said sum of P4,863.35. The city court having rendered judgment for the plaintiff, despite the special defense — set up by defendants Republic of the Philippines, Bureau of Customs and Customs Arrastre Service - of immunity from suit without its consent, these defendants appealed to the Court of First Instance of Manila, which, after due trial, reduced the award to the sum of P2,000 only, upon the ground that defendants liability, under its management contract with the Customs Arrastre Service, is limited to P500 per package, and held that plaintiff is not entitled to attorney's fees and expenses of litigation. The case is now before Us on appeal taken by said defendants.

L-31157 — British Traders Insurance Co., Ltd. vs. Barber Line, Macondray & Co., Inc., Manila Port Service and/or Manila Railroad Company and/or Republic of the Philippines

On November 2, 1962, ten (10) cases of Underwood electric typewriters, covered by Barber Line Bill of Lading No. 18, in the name of Smith, Bell & Co. (Phils.), were shipped on board "SS ROSEVILLE," of the Barber Line, whose agent in the Philippines is Macondray & Co., and consigned to the order of the First Insular Bank of Cebu, Cebu City, as well as insured, by Smith, Bell & Co. (Phils.), against loss or damage, with the British Traders Insurance Co., Ltd. Discharged from the vessel, upon its arrival at Manila, on December 8, 1962, unto the custody of the Customs Arrastre Service, a subsidiary of the Manila Railroad Co., which, in turn, was an agency of the Bureau of Customs, the goods were stored at Shed B of Pier 9, in the Manila Port Area, which shed was burned on December 22, 1962, together with said electric typewriters. The insurance company indemnified Smith, Bell & Co. (Phils.) in the sum of P14,851, as the value of said typewriters, and, then, as subrogee of the rights of the insured, commenced this action in the Court of First Instance of Manila against the vessel's owner, the Barber Line, and its agent in Manila, Macondray & Co., Inc., and the other defendants above-mentioned. Despite the plea of immunity from suit set up by the Republic of the Philippines, said court rendered judgment for the plaintiff, sentencing the Republic of the Philippines to pay thereto the sum of P10,920.50 — as the value of the typewriters already adverted to — with interest thereon at the legal rate. Accordingly, said defendant interposed the present appeal.

The main reason given by the plaintiff-appellant in L-26409 and the plaintiffs-appellees in the other cases, in refutation of the immunity from suit invoked by the Republic and its branches or instrumentalities — the Bureau of Customs and the Customs Port Service — is that in the performance of arrastre operations, under the jurisdiction of the Bureau of Customs, in connection with goods imported thru the port of Manila, said offices or

instrumentalities of the Government discharge functions that are proprietary and non-governmental in nature.

This pretense overlooks the fact that said arrastre operations are a necessary incident of the primary duty of the Bureau of Customs to enforce our Customs Laws, enacted in the exercise of the sovereign power of the State to control and regulate the import of goods into the Philippines and tax the same. As postulated in a previous case, "(t)he 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." [1] This view has been reiterated many times, one of the latest being *Champion Auto Supply Co., Inc. vs. Bureau of Customs*. [2]

Elucidating on the non-suability of the State and its instrumentalities as regards the arrastre service rendered in connection with goods imported thru our Bureau of Customs, this Court [3] pointed out that it is well-settled:

"* * * that the State cannot be sued without its consent and that the Bureau of Customs and the Customs Arrastre Service are offices of the Government. Plaintiffs argue that in handling the arrastre operations for the Port of Manila, the Bureau of Customs had acted in a proprietary capacity, for which reason it cannot invoke the immunity of the government from suit; but this theory has been consistently rejected in a long line of cases. In the language of *Mobil Philippines Exploration Inc. vs. Customs Arrastre Service* (supra):

* * * 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.

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"The cases of *Associated Workers Union, et al. vs Bureau of Customs* (L-21397, Aug. 6, 1963), the *National Airports Corp. vs. Teodoro* (91 Phil. 203), the *Manila Hotel Employees Association vs. Manila Hotel Co.* (73 Phil. 374), and the *Price Stabilization Corp. vs. CIR* (102 Phil. 515), cited by appellants herein, are not in point. The suability of the Government was not in issue in the case of *Associated Workers Union*. Upon the other hand, the *National Airports Corp.* had been held to come 'under the category of a private entity, the function of which is 'essentially a business,' and not a 'necessary function of government.' Similarly, the issue in the case of the *Manila Hotel Company* was whether or not the CIR had jurisdiction over controversies affecting the relationship between said company and its employees and laborers as such. The question was decided in the affirmative, upon the theory that, when the Government enters into 'commercial business,' it abandons its sovereign capacity and is to be treated like any other corporation.' Again, the *Price Stabilization Corporation* was held to be a government-owned corporation 'run and operated like any ordinary corporation,' which, as such, is subject to the provisions of the Eight-Hour Labor Law and the jurisdiction of the CIR.

"Apart from the foregoing, pursuant to Act No. 3083, as amended, and Commonwealth Act 327, the Government may not be sued in court for the recovery of a sum of money unless a claim therefor has been previously filed with the Office of the Auditor General. No such claim has been filed with the Auditor General by plaintiffs herein."

WHEREFORE, the appealed decision in L-26409 should be, as it is hereby affirmed, with costs against therein appellant Union Insurance Society of Canton, Ltd., and the appealed decisions in L-26550, L-26587 and L-31157 are, conversely, reversed, with costs against the respective plaintiffs-appellees therein.

SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Barredo, J., took no part.

[1] Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service, L-23139, December 17, 1966. Italics supplied.

[2] L-26287, April 27, 1972.

[3] Universal Mills Corp. vs. Bureau of Customs, L-24005, and Fireman's Fund Insurance Co. vs. Republic of the Philippines, L-25339 both decided on Jan. 29, 1972, citing Insurance Co. of North America vs. Republic L-27515, Sept. 5, 1967; Philippine First Insurance Co., Inc. vs. Customs Arrastre Service, L-26951, Sept. 12, 1967; Insurance Co. of North America vs. Republic, L-27517, Sept. 15, 1967; Insurance Co. of North America vs. Republic, L-25477, Oct. 23, 1967; American Insurance Co. vs. Republic, L-25478, Oct. 23, 1967; American Insurance Co. vs. Republic, L-25695, Oct. 23, 1967; Firemen's Insurance Co. vs. Republic, L-25784, Oct. 23, 1967; Fireman's Fund Insurance Co. vs. Republic, L-25844, Oct. 23, 1967; Insurance Co. of North America vs. Republic, L-25871, Oct. 23, 1967; Fireman's Fund Insurance Co. vs. Republic, L-26618, Oct. 23, 1967; Northern Insurance Co. Ltd. vs. Republic, L-27077, Oct. 23, 1967; Insurance Co. of North America vs. Warner, Barnes & Co., Ltd., L-24106, Oct. 31, 1967; Hartford Fire Insurance Co. vs. P.D. Marchessini & Co. (New York), Inc., L-24544, Nov. 15, 1967; Royal Insurance Co. vs. American Pioneer Line, L-25323, Nov. 15, 1967; Home Insurance Co. vs. United States Lines Co., L-25593, Nov. 15, 1967; Atlantic Mutual Insurance Co. vs. Republic, L-25663, Nov. 15, 1967; Insurance Co. of North America vs. Republic, L-26794, Nov. 15, 1967; Domestic Insurance Co. of the Phil. vs. Barber Line, L-23879, Nov. 18, 1967; Fireman's Fund Insurance Co. vs. United States Lines Co., L-26533, Jan. 30, 1970; Caltex (Phil) inc. vs. Customs Arrastre Service, L-26632, May 29, 1970; Gloren, Inc. vs. Republic, L-26811, July 31, 1970; Domestic Insurance Co. of the Philippines vs. Everett Siam Line, L-23878, July 31, 1970.

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