

INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, DEFENDANT-APPELLANT.

G.R. No. L-26979. May 29, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal on a question of law from the decision of the Court of First Instance of Manila rendering judgment on plaintiff's complaint against the Republic of the Philippines.

Plaintiff, as subrogee of the importer and consignee, Yucuanseh Drug Co., Inc. of Manila, filed this action originally in the City Court of Manila against defendant, as operator through the Bureau of Customs of the Customs Arrastre Service, for recovery of the insurance value of one carton of medicines in the amount of P2,167.02, which was lost while in the custody of the Customs Arrastre Service and which plaintiff had in due course paid to the importer. The City Court rendered judgment on March 31, 1965 in favor of plaintiff, as prayed for in the complaint. On appeal, the Court of First Instance of Manila likewise rendered judgment on July 5, 1966 in favor of plaintiff, notwithstanding defendant's plea of immunity from suit. Hence, this appeal.

As asserted by the Solicitor General in his Manifestation in lieu of Appellant's Brief on behalf of the State, the sole issue of non-suability of the State with respect to its operation of the Arrastre service in the Port of Manila has already been settled in the case of Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service,[1] et al. decided by this Court on December 17, 1966, and in a number of subsequent decisions. Plaintiff-appellee, apparently realizing the futility of its position, did not file its brief.

The doctrine first enunciated by this Court in the Mobil case, supra, and subsequently affirmed and reaffirmed in a long line of cases, recently in Fireman's Fund Ins. Co. vs. Maersk Line Far East Service[2] and Insurance Co. of North America vs. Osaka Shosen Kaisha, et al.[3] and most recently in Rizal Surety & Insurance Co. vs. Customs Arrastre Service,[4] promulgated on April 25, 1969 is controlling and decisive of the present appeal. By virtue thereof, the judgment appealed from must be reversed. The decision in the Mobil case indicates the remedy available to plaintiff-appellee 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:

... ..

.... 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.

... ..

"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.

... ..

"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. 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 appealed from is reversed and the complaint is dismissed, without pronouncement as to costs.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano and Barredo, JJ., concur.

Mr. Chief Justice Roberto Concepcion and Ruiz Castro, J., are on official leave.

[1] L-23139, 18 SCRA 1120.

[2] L-27189, March 28, 1969.

[3] L-22784, March 28, 1969.

[4] L-25709.

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