

**DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES AND/OR
BUREAU OF CUSTOMS, DEFENDANTS-APPELLANTS.**

G.R. No. L-29362. September 27, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The plaintiff Domestic Insurance Company of the Philippines,

as subrogee of the consignee, Philippine Union Commercial, filed an action in the Court of First Instance of Manila for the recovery of the sum of P10,039.66 representing the value of the contents of three cases of dental merchandise, which the Bureau of Customs, as arrastre operator, failed to deliver, plus P2,000 as expenses of litigation, attorney's fees and costs. The court a quo so rendered judgment for the plaintiff on September 27, 1966.[1]

Appeal was interposed by the Republic of the Philippines to the Court of Appeals, which elevated the case to this Court because the sole question posed is one of law—non-suability of the State.

The plaintiff argues that (1) the arrastre service being proprietary and non-governmental in character, the Bureau of Customs and/or the Republic of the Philippines cannot claim immunity from suit, because it descended "to the level of an ordinary citizen and may be sued impliedly on obligations arising from contracts entered into by it;"[2] and (2) Commonwealth Act 327, amending Act 3038, "requiring presentation of money claims to the Auditor General is not applicable ... for the reason that the instant action is not a mere money or pecuniary claim but an unliquidated claim against the Republic of the Philippines which requires examination of evidence and use of judicial discretion."

The Solicitor General, on the other hand, invokes this Court's pronouncements in *Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service and Bureau of Customs*,[3] to support its view that the Bureau of Customs, when it operates the arrastre service as a necessary incident of the primary and governmental function of collecting taxes from imports, is immune from suit.

The pronouncement in *Mobil*, supra, which, were subsequently affirmed and reaffirmed in at least twenty cases, the latest of which is *Domestic Insurance Company of the Philippines vs. Republic of the Philippines*,[4] are controlling in the case at bar. We quote from *Mobil*:

"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.

"The Bureau of Customs, to repeat, is part of the Department of Finance (Sec. 81, Rev. Adm. Code), with no personality of its own part 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.

...

"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. (49 Am. Jur., States, Territories and Dependencies, Sec. 96, p. 314; *Petty vs. Tennessee-Missouri Bridge Com.*, 359 U.S. 275, 3 L. Ed. 304, 79 S.Ct. 785). 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."

The remedy of the plaintiff may be found in the provisions of Act 3083 and Commonwealth Act 327 which (a) permit the presentation of money claims, such as the one here sued on by the plaintiff, to the auditor General for adjudication, (b) set forth the requisites to be fulfilled, and (c) outline the procedure to be followed.[5]

ACCORDINGLY, the judgment a quo is reversed, and the complaint is hereby dismissed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Sanchez, Angeles, Fernando and Capistrano, JJ., concur.

Zaldivar, J., is on official leave.

Dizon, J., did not take part.

Judgment reversed.

[1] The judgment was rendered prior to the promulgation of this Court's decision in *Mobil*, *infra*.

[2] Plaintiff cites 59 C.J. 313; *National Airports Corporation vs. Teodoro*, L-5122, April 30, 1952; *Santos, et al. vs. Santos*, 48 O.G. No. 11, 4816-18.

[3] L-23139, December 17, 1966, 18 SCRA 1120.

[4] L-28651, February 27, 1968, 1968A PHILD 697, 22 SCRA 831.

[5] Note 4.

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