

**THE SHELL COMPANY OF THE PHILIPPINES LIMITED,
PLAINTIFF-APPELLANT, VS. THE NEDLLOYD LINES AND/OR
COLUMBIAN PHILIPPINES, INC. AND/OR REPUBLIC OF THE
PHILIPPINES, DEFENDANTS-APPEL...**

G.R. No. L-25087. July 21, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal pursuant to the provision of Section 2, Rule 42 of the Revised Rules of Court, from the Order dated August 7, 1965 of the Court of First Instance of Manila, Branch XI in Civil Case No. 61845 (For Sum of Money), granting the Motion to Dismiss filed by the defendant Republic of the Philippines on August 16, 1965, as only a question of law is herein involved.

The records of the case show the following indisputable facts:

The M/S "NEDER RIJN", operated by the Nedlloyd (Lines, and represented in the Philippines by Columbian Philippines, Inc., took on board at Rotterdam, Netherlands, twenty-three (23) drums of luboil and additive consigned to the plaintiff Shell Company of the Philippines, Ltd. The cargo was discharged from the ship and received by the Bureau of Customs and/or Customs Arrastre Service, an instrumentality of the Republic of the Philippines. When the latter delivered the cargo to the plaintiff, there was a shortage of three (3) drums of lubricating oil additives valued at P1,154.40. To recover this loss, plaintiff sued The Nedlloyd Lines, Columbian Philippines, Inc. and the Republic of the Philippines, as alternative defendants. Its cause of action is based on the negligence of either of said defendants.

Defendants moved to dismiss the complaint. Defendant Republic of the Philippines anchored its motion to dismiss on the principle of state immunity from suit. As prayed for, the trial court ordered the dismissal of the complaint as against the Republic of the Philippines on the ground aforesaid, but denied the motion to dismiss of the other defendant, The Nedlloyd Lines, Columbian Philippines, Inc.

Plaintiff, petitioner herein, appealed this order of dismissal apropos the defendant Republic of the Philippines. It contends that since defendant Republic of the Philippines was engaged in a proprietary function which is that of operating a customs arrastre service, it has divested itself of its immunity.

The issue in this case, therefore, is whether or not the Republic of the Philippines, as operator of the Customs Arrastre Service, can be sued in court without its consent.

We affirm the order of the trial court dismissing the complaint against the Republic of the Philippines. Clearly in point is the case of Mobil Philippines Exploration, Inc. v. Customs Arrastre Service^[1] which stressed that whereas Section 1, Rule 3 of the Rules of Court provides that only natural and juridical persons or entities authorized by law may be parties in a civil action, neither the Bureau of Customs nor (a fortiori) its function unit, the Customs Arrastre Service, is a person. They are merely parts of the machinery of Government. 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 government function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity. (*Bureau of Printing vs. Bureau of Printing Employees Assn.*, L-15751, Jan. 28, 1961). From the provision authorizing the Bureau of Customs to lease arrastre operations to private parties (Section 1213 of Republic Act 1937 - Tariff and Customs Code which took effect on June 1, 1957), there is no authority to sue the said Bureau in the instances where it undertakes to conduct said operation itself. Clearly, therefore, 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 doctrine upholding the immunity from suit of the Bureau of Customs, as arrastre operator has been adhered to in a host of subsequent cases,[2] a recent case on the subject being that of *Wise and Company, Inc. v. The Customs Arrastre Service*[3] where this Court held that: "The Bureau of Customs, in operating the arrastre service, does so as an incident of a prime governmental function and as such may not be sued and the same holds true with the Republic of the Philippines. The rule that the State may not be sued without its consent (now found in section 16, Article XV of the Constitution) applies to this case. The consignee's remedy is to file a claim with the Commission on Audit as contemplated in Act 3083 and Commonwealth Act 327."

WHEREFORE, the order of dismissal appealed from is hereby affirmed with costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] No. L-23139, December 17, 1966, 18 SCRA 1123, 1124, 1127.

[2] *Insurance Company of North America*, 20 SCRA 627, 648, 699; *North British & Mercantile Insurance Co., Ltd. vs. Isthmian Lines, Inc.*, 20 SCRA 629; *Manila Electric Co. vs. Customs Arrastre Service*, 20 SCRA 767; *Shell Refining Co. (Phil.) Inc. vs. Manila Port Service*, 20 SCRA 919; *Equitable Insurance & Casualty Co., Inc. vs. Smith, Bell & Company, (Phil.) Inc.*, 20 SCRA 1121; *Insurance Company of North America vs. Republic*, 21 SCRA 40; *Philippine First Insurance Co., Inc. vs. Republic*, 21 SCRA 49; *Insurance Company of North America vs. Republic*, 21 SCRA 125; *Royal Insurance Co. vs. Republic*, 21 SCRA 847; *American Insurance Co. vs. Republic*, 21 SCRA 854; *Hartford Fire Insurance Co. vs. P.D. Marchesini & Co.*, 21 SCRA 860; *Domestic Insurance Co. vs. Barber Line*, 21 SCRA 961; *Domestic Insurance Co. of the Philippines vs. Republic*, 25 SCRA 231; *Union Insurance Society of Canton, Ltd. vs. Republic*, 27 SCRA 446; *Fireman's Fund Insurance Co. vs. Maersk Line Far East Service*, 27 SCRA 519; *Insurance Co. of North America vs. Osaka Shosen Kaisha*, 27 SCRA 780; *Rizal Surety & Insurance Co. vs. Customs Arrastre Service*, 27 SCRA 1016.

[3] No. L-27127, June 7, 1977, 77 SCRA 346.

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