

**DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLEE, VS. AMERICAN PIONEER LINE, ET AL.,
DEFENDANTS, REPUBLIC OF THE PHILIPPINES,
DEFENDANT-APPELLANT.**

G.R. No. L-28651. February 27, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Eight cases of truck replacement parts consigned to the Silvertown Auto Supply in Quezon City were on March 18, 1963 discharged from the vessel "SS Pioneer Ming" into the custody and possession of the Customs Arrastre Service of the defendant Republic of the Philippines. When the shipment was delivered by the Customs Arrastre Service to the broker of the consignee, one of the 8 ca-ses was found empty. The plaintiff Domestic Insurance Company of the Philippines, as insurer, thereafter indemnified the consignee in the sum of P3,210.09. By virtue of such payment, the plaintiff was subrogated to the rights of the consignee. Demand for payment was made on the Customs Arrastre Service. Because the latter refus-ed to pay, the plaintiff filed the present action in the Court of First Instance of Manila to recover the amount of P3,210.09 with interest, attorney's fees, expenses of litigation and costs. The court on September 8, 1966 adjudged "in favor of the plaintiff and against the Republic of the Philippines, ordering the latter to pay the former the sum of P3,210.09 with legal interest there-on, the sum of P500 as and for attorney's fees and li-tigation expenses, and costs."

The sole issue in this appeal brought by the Republic of the Philippines is, by formulation of the Solicitor Gen-eral, "whether or not in the operation of the arrastre service through the Bureau of Customs," the Republic "may be sued without its consent." We now proceed to resolve this issue, without waiting the briefs of the parties, in order to save them and this Court needless expense of time, money and effort.

The rule announced in *Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service and Bureau of Customs*,^[1] which was subsequently affirmed and reaffirmed in at least ten cases, is hereunder quoted:

"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 gov-ernment 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 apart from that of the national government. Its primary function is governmental, that of assessing and collecting law-ful 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 with-out 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. 804, 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."

We see no valid reason why the doctrine expounded in Mobil should not control the case at bar.

The remedy of the plaintiff is to 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.

ACCORDINGLY, the judgment a quo is set aside, and this case is dismissed without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] L-23139, December 17, 1966 18 Sup. Ct. Reps, Ann. 1121, 1124, 1125, 1126, 1127.

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