

RIZAL SURETY & INSURANCE COMPANY, PLAINTIFF AND APPELLEE, VS. AMERICAN STEAMSHIP AGENCIES, INC., ET AL., DEFENDANTS, CUSTOMS ARRASTRE SERVICE AND/OR BUREAU OF CUSTOMS, DEFENDANT...

G.R. No. L-26554. May 18, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by the Customs Arrastre Service and/or the Bureau of Customs, operator of the Arrastre Service in the port of Manila, from the judgment rendered by the Court of First Instance of Manila in its Civil Case No. 61246 – an action to recover the value of certain goods shipped to and discharged in the port of Manila, filed by the Rival Surety & Insurance Company, as subrogee to the rights of the said goods' consignee, Acme Electrical Manufacturing, against the said appellants and the American Steamship Agencies, Inc., agent of the carrying vessel.

The background facts are set forth in the decision appealed from thus:

"From the evidence presented it appears that on or about May 30, 1964, the vessel SS SHOHO MARU took on board at Yokohama, Japan, for shipment to Manila, 1,200 bags of PVC Compound covered by Bill of Lading No. YM-17 in the name of Denki Shoji Co., Ltd. as shipper and consigned to Acme Electrical Manufacturing with notice of arrival. The said cargo was insured by the consignee to the plaintiff for which Insurance Policy No. 2175 was issued therefore. On or about June 13, 1964, the vessel SS SHOHO MARU arrived at the port of Manila where the cargo was discharged into the custody of the defendant Customs Arrastre Service. After the routinary requirements for release have been duly performed, the cargo was finally delivered to the consignee thru its customs broker. Of the shipment of 1,200 bags of PVC Compound, six (6) were not delivered to the consignee. The latter filed its claim with the insurer, which paid the sum of P190.86 for the undelivered six (6) bags of PVC Compound. Hence, the instant case was filed by the plaintiff, which was subrogated to the rights appertaining to the consignee by virtue of the subrogation receipt (Exh. J), against the defendant American Steamship Agencies, Inc., as agent of the carrier and the defendant Customs Arrastre Service and/or Bureau of Customs, as operators of the Arrastre Service in the port of Manila, in the alternative.

"The case presents the sole issue: Which of the two defendants is liable to plaintiff for the loss of the six (6) bags of PVC Compound occasioned by the non-delivery thereof to the consignee?

"As to the factual non-delivery of the six (6) bags of PVC Compound to the consignee, there seems to be no material question even as the Cargo Control Manager of the defendant Customs Arrastre Service in a 'Certificate of Delivery' dated January 19, 1965 (Exhs. K and 18-Vessel) certified that only 1,194 Bags as of that date had been delivered to Acme Electrical Manufacturing thru its customs broker, Rapid Brokerage Co., Inc.

"The evidence speaks against the defendant Customs Arrastre Service. From the tally sheets, Exhs. 1 to 17, all the 1,200 bags of Compound, comprising the shipment in question, appear to have been discharged from the

vessel complete and without shortage into the possession and custody of the defendant Customs Arrastre Service. From all indications the loss of the six (6) bags occurred while the shipment was under the possession, custody and control of the defendant Customs Arrastre Service, which under its contract should, pay for the value of the cargo lost."

Against the judgment of the court aquo, appellants assign the following alleged errors:

"I. THAT THE LOWER COURT ERRED IN HOLDING THAT DEFENDANTS BUREAU OF CUSTOMS AND CUSTOMS ARRASTRE SERVICE HAVE THE PERSONALITY OR CAPACITY TO SUE AND BE SUED.

"II. THAT THE LOWER COURT ERRED IN NOT HOLDING THAT THE DEFENDANTS BUREAU OF CUSTOMS AND CUSTOMS ARRASTRE SERVICE ARE IMMUNE FROM SUIT.

"III. THAT, FINALLY, THE LOWER COURT ERRED IN NOT DISMISSING THE COMPLAINT AS AGAINST DEFENDANTS BUREAU OF CUSTOMS AND CUSTOMS ARRASTRE SERVICE."

The appeal is well taken. It is already settled that the Customs Arrastre Service and/or the Bureau of Customs is immune from suit. "We have repeatedly held that the then Customs Arrastre Service, as an arm of the Bureau of Customs, was performing services purely incidental to the governmental function of assessing and collecting customs duties, and, in engaging in such necessary incidental activity, the Government did not thereby shed its immunity from suit." (Domestic Insurance Company of the Philippines vs. Everett Siam Line, et al., G.R. No. L-23878, July 31, 1970, 34 SCRA 80) The long line of decisions of this Court on this point which started with Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service, G.R. No. L-23139, December 17, 1966, 18 SCRA 1120, includes not less than 40 cases which it would be superfluous to cite here. It may be added, however, that appellee's remedy, if any, may be found in the provisions of Act 3083 and Commonwealth Act 327. (Domestic Insurance Company of the Philippines vs. Everett Siam Line, et al., supra)

WHEREFORE, the judgment against the appellant Customs Arrastre Service and/or Bureau of Customs in this case is reversed and the complaint against it is dismissed, with costs against appellee Rizal Surety & Insurance Company.

Reyes, J.B.L., Acting C.J., Makalintal, Fernando, Teehankee, Makasiar, and Antonio, JJ., concur.

Zaldivar and Castro, JJ., took no part.

Concepcion, C.J., on official leave.

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