

**INSURANCE COMPANY OF NORTH AMERICA,
PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES,
BUREAU OF CUSTOMS, UNITED STATES LINES COMPANY AND/OR
LUZON STEVEDORING CORPORATION, DE...**

G.R. No. L-27515. September 05, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Plaintiff Insurance Co. of North America filed, on October 14, 1965, in the Court of First Instance of Manila, an action for the recovery of P86,081.30, the insured value of a shipment of eighty-two (82) cartons of goods, allegedly lost in the custody of the carrier, defendant United States Lines, Co., or of the lighter operator, defendant Luzon Stevedoring Corporation, or of the arrastre operator, defendant Bureau of Customs, an agency of defendant Republic of the Philippines.

Republic of the Philippines and the Bureau of Customs, on their part, moved to dismiss the complaint, claiming State immunity from suit. These defendants also filed an answer, raising the same point as a special defense. Plaintiff opposed the aforesaid motion to dismiss.

Defendant United States Lines Co., filed an answer with a cross-claim against the Republic of the Philippines and the Bureau of Customs. Said defendants filed answers to the cross-claim.

Defendant Luzon Stevedoring Corporation filed an answer and later an amended answer with a counterclaim. And plaintiff answered the counterclaim.

On December 18, 1965, the court denied the Republic's and Bureau of Customs' motion to dismiss. Subsequently, however, on February 1, 1967, said court, taking notice of Our decision in *Mobil Philippines Exploration, Inc. vs. Bureau of Customs and Customs Arrastre Service*, G.R. No. L-13139, December 17, 1966, dismissed the case with respect to the Republic of the Philippines and the Bureau of Customs.

Plaintiff appealed from the order of dismissal. We affirm.

The first question regarding the suability of defendants Republic of the Philippines and the Bureau of Customs has been squarely passed upon and resolved in the *Mobil* case, *supra*. As We held therein, the Bureau of Customs, in operating the arrastre service itself, does so in the performance of a necessary incident to the prime governmental function of taxation, and, as such, is not suable for alleged losses resulting therefrom. A fortiori neither is the Republic suable for said activity of the Bureau of Customs.

Appellant would however next take issue with the statement in the *Mobil* case that plaintiff therein should have filed its claim thru the Auditor General, it being for money, under the provisions of Commonwealth Act 327. It is now urged that the claims for that may be filed with the Auditor General under said law, in relation to Act No. 3083, are only those accounts subject to liquidation by an arithmetical computation and only where the liability of

the Government is not in issue. Appellant cites *Compañia General de Tabacos v. French*, 39 Phil. 34.

The principle recognized in the *Compañia General de Tabacos* case, *supra*, was that a money claim for damages the amount of which cannot be readily determined from vouchers, reports or other means within reach of accounting officers, but calls for the application of judgment and discretion upon the measure of damages, is not within the competence of the Auditor General to decide. In the present case, the amount of the claim is already fixed and is readily determinable from the bills of lading and other shipping papers. Accordingly, such a claim should be addressed to the Auditor General.

Neither did said case, *Compañia General de Tabacos* hold that where the liability of the Government is in issue, the claim cannot be filed with the Auditor General. It is precisely for the Auditor General to determine whether the claim is tenable or not, and if not to deny the same.

The real issue in said *Tabacalera* case was whether the Auditor General (then Insular Auditor) may offset against a specific, liquidated and undisputed debt of the Government, an unliquidated claim for damages in favor of the Government against the creditor; and the ruling stated that he not. Such ruling does not apply to bar a case, like the present, where no question of offset is involved, but simply that, of allowing or disallowing a specific and liquidated claim against the Government. Rather, it in effect sustains the power of the Auditor General to take cognizance of such a claim, for if the same be found in order and allowable, the amount recoverable is fixed and liquidated, as determined or readily determinable from papers and invoices available to him, instead of being subject to his discretion, as would be the case in an unliquidated claim for damages.

Stated otherwise, where the existence of a specific and fixed debt is the issue, the Auditor General has power to act on the claim; but when not only the existence but also the amount of an unfixed and undetermined debt is involved, said official has no competence to consider such a claim. The present case is of the first kind, the assertion of the existence of a specific and fixed indebtedness on the part of the Government. It should therefore be lodged with the Auditor General.

WHEREFORE, the appealed order of dismissal is hereby affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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