

**FIREMAN'S FUND INSURANCE COMPANY,
PLAINTIFF-APPELLEE, VS. MAERSK LINE FAR EAST SERVICE
THROUGH ITS AGENT CIA GENERAL DE TABACOS, ET AL.,
DEFENDANTS, CUSTOMS ARRASTRE SERVICE, D...**

G.R. No. L-27189. March 28, 1969

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The plaintiff Fireman's Fund Insurance Company, as sub-rogee of the consignee American Asiatic Distributors, Inc., filed an action in the Court of First Instance of Manila against the alternative defendants Maersk Line Far East Service (thru its agent Cia General de Tabacos) and/ or Customs Arrastre Service and/or Bureau of Customs and/ or Republic of the Philippines, for the re-recovery of the sum of P5,755.22 representing the value of seven packages of pipe fittings which were allegedly lost while in the absolute control, custody and safekeeping of either the Maersk Line Far East Service or the Customs Arrastre Service, and which the latter failed to deliver to the consignee, plus legal interest, attorney's fees and costs. On September 27, 1966 the court a quo rendered judgment for the plaintiff and against the Customs Arrastre Service, but dismissed the case "with respect to defendant Maersk Line Far East Service."

The present appeal interposed by the Customs Arrastre Service poses only one issue of law - non-suability of the State. Parenthetically, although this appeal was interposed by the Customs Arrastre Service, we consider it as an appeal of the Republic of the Philippines because the former is merely a unit of the Bureau of Customs (a bureau under the Department of Finance), with no personality of its own apart from the National Government.[1]

Both parties failed to file their respective briefs the appellant, due to some supervening circumstances (that is, the chief of the legal division of the Customs Arrastre Service filed the printed record on appeal without coursing the same through the Office of the Solicitor General; the notice to prepare the appellant's brief was sent to the Customs Arrastre Service; the special attorney of the Office of the Solicitor General connected with the Customs Arrastre Service resigned and the preparation of the brief was not endorsed to the Office of the Solicitor General; and neither was the matter referred to the latter office when the legal division of the Customs Arrastre Service was abolished in 1967), and the appellee, due to some unexplained reason.

Nevertheless, we are of the view that the absence of briefs should not deter us from deciding this appeal. Indeed, in a case on all fours with the one at bar, this Court proceeded to render decision "without awaiting the briefs of the parties, in order to save them and, this Court needless expense of time, money and effort." [2]

We now come to the resolution of the sole legal issue.

The precedent-setting ruling first enunciated in *Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service and Bureau of Customs*, [3] which was 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 and/ or Bureau of*

Customs,[4] still controls 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 apart from, that of the national government. Its primary function is governmental, that of assessing and collecting the 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. x x x 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 pre-sentation 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, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Mobil, Philippines Exploration, Inc. vs. Customs Arrastre Service and Bureau of Customs, L-23139, December 17, 1966, 18 SCRA 1120.

[2] Domestic Insurance Company of the Philippines vs. American Pioneer Line, et al., L-28651, February 27, 1968, 22 SCRA 831.

[3] See note 1.

[4] L-29362, Sept. 27, 1968, 25 SCRA 231.

[5] See note 4.

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