

COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS AND EVERETT STEAMSHIP CORPORATION (AS OWNER OF THE SS "FERNANDO EVERETT"), RESPONDENTS.

G.R. No. L-47884. July 30, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

The "Fernando Everett", a vessel owned by private respondent Everett Steamship Corporation arrived on 23 April 1969 in the Port of Manila and there discharged a shipment of fifty (50) bales of assorted textile remnants. The gross weight of the shipment as declared in the vessel's Manifest and in Bill of Lading No. N-20-M was 17,500 pounds. Upon examination and appraisal by Customs authorities, the actual weight of the shipment was found to be 62,869 pounds, or 45,369 pounds more than the declared weight.

In a letter dated 9 July 1969, the Chief of the Law Division of the Bureau of Customs informed the Everett Steamship Corporation of the discrepancy between the actual weight and the declared weight of the shipment of textile remnants, said discrepancy being more than twenty percent (20%) of the declared weight, and required the shipowner to explain the discrepancy in writing within five (5) days from receipt of the letter and to show cause why no administrative fine should be imposed upon the "Fernando Everett" for violation of Section 2523 of the Tariff and Customs Code. The shipowner replied that the "Fernando Everett" was not liable for violation of the Tariff and Customs Code because the particulars of the subject shipment, including the weight thereof, were supplied by the shipper.

Obviously dissatisfied with the shipowner's explanation, the Bureau of Customs initiated an administrative proceeding (Administrative Case No. 493-49) against the "Fernando Everett". Upon termination of this proceeding, the Collector of Customs rendered a decision on 8 November 1974 finding the "Fernando Everett" or its owner liable for a fine of P22,617.00 representing fifteen percent (15%) of the total value of the shipment, for violation of Section 2523 of the Tariff and Customs Code. Section 2523 reads as follows:

"Sec. 2523. Discrepancy between actual & declared weight of manifested article. -- If the gross weight of any article or package described in the manifest exceed by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of the opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen per centum of the value of the package or article in respect to which the discrepancy exists, may be imposed upon the importing vessel or aircraft." (Underscoring supplied)

On appeal by the shipowner, the Commissioner of Customs affirmed in toto the decision of the Collector of Customs.

The Everett Steamship Corporation then went to the Court of Tax Appeals. In a decision dated 23 January 1978, the Court of Tax Appeals agreed with the Commissioner of Customs that the shipowner had violated Section 2523 of the Tariff and Customs Code, but reduced the fine from P22,617.00 to P5,000.00.

The petitioner Commissioner of Customs is now before us on a Petition for Review on Certiorari asking for modification of the decision of the Court of Tax Appeals and for reinstatement of the fine of P22,617.00 imposed by the Commissioner of Customs against private respondent ship-owner. Examination of the record reveals that three (3) issues are raised in this Petition:

- (a) Whether or not there is a duty on the part of the captain of a vessel or of a shipowner to determine the true weight of cargo to be loaded on board the vessel;
- (b) Whether or not the discrepancy in the instant case between the actual and the declared weight of the shipment involved was due to the carelessness or incompetency of the captain of the vessel; and
- (c) What is the proper scope of the authority of the Commissioner of Customs to determine the amount of the fine imposable under Section 2523 of the Tariff and Customs Code.

In respect of the first issue, private respondent shipowner argues that Articles 612 and 632 of the Code of Commerce specifying the duties of the captain, the second mate and chief engineer of a vessel, do not require the checking of the actual weight of the cargo loaded on board the vessel. The shipowner, moreover, insists that the Tariff and Customs Code similarly does not impose such a duty upon the captain of the vessel or the shipowner.

These arguments do not persuade; they have already been considered and rejected by this Court. In *Commissioner of Customs v. Court of Tax Appeals and Delgado Shipping Agencies*,^[1] this Court held that a duty of verifying the correct weight of a cargo shipment is imposed by Section 2523 of the Tariff and Customs Code itself:

"5. Finally, contrary to respondent's contention, the vessel's master, owner or employee are duty bound under the cited codal section under pain of the penalty of fine therein provided to check and verify the correct weight of the cargo or shipment so as to prevent a misdeclaration or underdeclaration of weight. The vessel master's discharge of such obligation imposed by law to properly determine and verify the weight of cargos carried by it is certainly pertinent to and important for the proper assessment of the collectible customs duties and taxes, and is not a burdensome task in the present era of containerized cargos. x x x"^[2] (Underscoring supplied)

In *Commissioner of Customs v. Delgado Shipping Agency and the Court of Tax Appeals*,^[3] the Court reiterated very recently that a vessel's master, owner or employees are indeed burdened with the duty "to check and verify the correct weight of its cargo".

Turning to the second issue, the Everett Steamship Corporation contends that for a violation of Section 2523 to arise, two (2) elements must occur, namely: (a) that the actual gross weight of any article or package must exceed the declared gross weight by more than twenty percent (20%) of the stated weight; and (b) the discrepancy must be affirmatively shown to have been due to the carelessness or incompetency of the master, owner or employees of the vessel.^[4]

It appears to the Court that private respondent shipowner has selectively read Section 2523. What Section 2523 does provide is this: "[A]nd the Collector shall be of the opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft". A difference of more than twenty percent (20%) between the actual gross weight of a shipment and its declared gross weight is not a de minimis matter; on the contrary, it is sufficiently substantial so as reasonably to give rise to a presumption juris tantum that some negligence or failure to exercise some technical duty had occurred. The actual practice of the Commissioner of Customs in cases of this kind may be seen to be based upon such presumption; where a discrepancy of more than twenty percent (20%) of the stated weight is shown, the Collector of Customs requires, as noted earlier, the vessel, its captain or owner to show cause why an administrative fine should not be imposed upon the offending vessel under Section 2523 of the Tariff and Customs Code. The greater the discrepancy between declared gross weight and actual gross weight of a shipment, the stronger that

presumption becomes until at some point it is well-nigh conclusive. In the case of the "Fernando Everett", the discrepancy amounted to 259 per centum of the declared gross weight. Given that level of discrepancy, there must have been either gross negligence amounting to bad faith, or obvious incompetence, on the part of the captain of the vessel or the shipowner or its employees in failing to detect the gross underdeclaration of the weight of the shipment. In the situation at hand, it is incumbent upon the captain of the vessel or the shipowner to show the presence of some adequate exculpatory circumstance, rather than for the Customs authority to prove affirmatively that there was carelessness or professional or technical ineptness on the part of the ship captain or the shipowner or its employees. In the case of the "Fernando Everett", no exculpatory circumstances were shown. Private respondent shipowner sought to shift the blame to the shipper who had supplied the declared weight of the shipment. To permit the shipowner to absolve itself of responsibility on that basis, would be effectively to render Section 2523 quite inutile.[5]

Addressing the third issue relating to the authority of the Commissioner of Customs to determine the amount of fine imposable under Section 2523, the Court would stress that that authority is lodged in the Collector of Customs and the Commissioner of Customs and not either in the Court of Tax Appeals or this Court. The Commissioner of Customs required the Everett Steamship Corporation to pay the maximum imposable fine amounting to fifteen percent (15%) of the value of the shipment involved -- i.e., P22,617.00. The public respondent Court of Tax Appeals was not warranted in substituting its judgment for that of the Commissioner of Customs as to the amount of the fine properly imposable in the circumstances of this case, unless, of course, a grave abuse of discretion on the part of the Commissioner of Customs had been shown. In the instant case, no such grave abuse of discretion -- no merely arbitrary and capricious exercise of power -- on the part of the Commissioner of Customs was shown. The Court of Tax Appeals simply felt that the fifteen percent (15%) fine was "harsh and unreasonable" stating that this was the first offense of the "Fernando Everett" under Section 2523. But, no mitigating circumstances were pleaded by the Everett Steamship Corporation that would rationally have justified the Commissioner of Customs in imposing a fine less than the maximum statutory fine.

In reaching this conclusion, we have taken particular account of the vitally important nature of the public policy which is sought to be promoted by Section 2523 of the Tariff and Customs Code. That public policy, which should be reinforced and strengthened rather than eroded and enfeebled, was underscored by the Court in *Commissioner of Customs v. Court of Tax Appeals and Delgado Shipping Agencies* in the following manner:

"3. The clear purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to such underdeclarations. Hence, imposing the maximum fine on vessels which grossly fail to comply with the obligation to declare the true weight of their cargo promotes the spirit and purpose of the law, since imposing a minimum fine would only embolden would-be smugglers and foster gross negligence on the part of the master of the vessel as in this case in checking the true weight of the cargo. Respondents' claim that there could be no evasion of duties here since textile remnants are imposed duties ad valorem or on the basis of the dutiable value of the merchandise irrespective of the weight is untenable, since an underdeclaration of the weight of the remnants by more than 400% would make it much easier to underdeclare the dutiable value of the remnants." [6] (Underscoring supplied)

WHEREFORE, the Court Resolved to GRANT due course to the Petition for Review and to MODIFY the Decision of the Court of Tax Appeals dated 23 January 1978 by reinstating the administrative fine of P22,617.00 imposed by the petitioner Commissioner of Customs upon the private respondent shipowner. No pronouncement as to costs.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] 91 SCRA 258 (1979).

[2] 91 SCRA at 262-263.

[3] G.R. No. L-49298, 26 April 1990.

[4] Comment of Private Respondent, Rollo, p. 80.

[5] Under Section 3 (3) (b) of the Carriage of Goods by Sea Act (Public Act No. 521, 74th Congress of the United States; made applicable to the Philippines by Commonwealth Act No. 65), the shipowner issues to the shipper a bill of lading showing, among other things, "either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper." Under Section 3 (5), *id.*, the shipper is deemed to have guaranteed to the shipowner the accuracy at the time of shipment of the weight (and other details) of such shipment as furnished by the shipper and the shipper is required to indemnify the carrier against loss, damages and expenses arising from inaccuracies in such particulars. The provision, however, goes on to state that: "the right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper."

[6] 91 SCRA at 262. See also *Commissioner of Customs v. Delgado Shipping Agency and Court of Tax Appeals*, *supra*.

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