

**THE SHELL REFINING COMPANY (PHILIPPINES) INC.,
PLAINTIFF-APPELLANT, VS. MANILA PORT SERVICE, NATIONAL
RAILWAYS COMPANY AND/OR BUREAU OF CUSTOMS, THRU ITS
CUSTOMS ARRASTRE SERVIC...**

G.R. No. L-24930. July 31, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On November 19, 1963, the Shell Refining Company (Philippines) Inc., filed a complaint in the Court of First Instance of Manila against the Manila Port Service, the National Railways Company and/or the Bureau of Customs through its Customs Arrastre Service, under thirteen causes of action for the recovery of the sum of P16,210.11 representing value of certain merchandise allegedly lost or damaged in the custody of the arrastre service, plus P5,000.00 as attorney's fees. The plaintiff did not prosecute its claim under the 3rd, 5th, 7th, 8th, 9th and 10th causes of action. With respect to the remaining seven causes of action, the parties stipulated the following facts:

"1. That the plaintiff is a corporation organized under the laws of the Philippines, with principal office at the Shell House, 1330 Roxas Boulevard, Manila; that the defendant Manila Port Service is a subsidiary of defendant Manila Railroad Company, now National Railways Company, a corporation organized under the laws of the Philippines; and that defendant Bureau of Customs is joined in this action as operator of the arrastre service in the Port of Manila.

"2. That prior to November 21, 1962, defendant Manila Port Service, as a subsidiary of defendant Manila Railroad Company, now National Railways Company, was the contractor and operator of the arrastre service of the Port of Manila and as such operator said defendant was charged with the care and custody of all cargoes discharged at the government piers in the Port of Manila, and was authorized and required to deliver said cargoes to their respective owners or consignees upon presentation by the latter of the corresponding release papers from the carrying vessel and/or the owners or consignees.

"3. That defendant Bureau of Customs terminated its management contract with defendants Manila Port Service and Manila Railroad Company, now National Railways Company, for the operation of the arrastre service in the Port of Manila on November 21, 1962 and said defendants, through its Customs Arrastre Service, has assumed the operation, control, management and direction of the arrastre service in the Port of Manila.

"4. That from November 9, 1962 to October 23, 1963, the Associated Workers Union, Associated Waterfront Supervisors Union, Arrastre Security Association and the Philippine Transport & General Workers Organization declared a strike against the defendants at the Port of Manila.

"5. That plaintiff withdraws its claim under the third, fifth, seventh, eighth, ninth and tenth causes of action.

"FIRST CAUSE OF ACTION

"6. That in or about October, 1962, the S.S. 'Neder Wesser' took on board at Amster-dam, Netherlands, six (6) packages of Steel Flanges and seventy-three (73) packages of sun-dry tools, parts, valves and accessories, for which the Nederland Line Royal Dutch Mail issued Bill of Lading Nos. 15 and 38, respective-ly, in the name of PHS, Van Ommeren N.V., as shipper, and consigned to and with arrival notice to the plaintiff.

"7. That the S.S. 'Neder Wesser' arrived in Manila on or about December 4, 1962 and all the aforementioned cargoes were unloaded on the government piers in the Port of Manila in-to the custody of defendant Bureau of Customs, thru its Customs Arrastre Service in good or-der, the last unloading being on December 6, 1962, while a provisional claim was filed with the Office of the Collector of Customs, Manila on December 4, 1962, a copy of which is hereto attached as Annex 'A' and made a part hereof.

"8. That plaintiff, as owner of the goods, had presented the necessary shipping and re-lease documents to secure delivery but up to the present defendant Bureau of Customs, thru its Arrastre Service, has failed and refused to deliver two (2) Rolls Forges Carbon Steel Socket Weld Flanges, portion of six (6) pack-ages covered by B.L. No. 15.

"SECOND CAUSE OF ACTION

"9. That in or about October, 1962, the S.S. 'Ajax' took on board at Liverpool, Great Britain, thirteen (13) packages and/or bundles of valves and conduits and other articles for which the Blue Funnel Line issued Bill of Lad-ing No. M-91 in the name of the Shell International Petroleum Company, Ltd., as shipper, and consigned to and with arrival notice to the plaintiff.

"10. That the S.S. 'Ajax' arrived in Ma-nila on or about December 7, 1962 and all the aformentioned cargoes were unloaded on the government piers in the Port of Manila into the custody of defendant Bureau of Customs, thru its Customs Arrastre Service, the last dis-charge being on December 10, 1962 while a pro-visional claim was filed on December 7, 1962 with said defendant, a copy of which is here-to attached as Annex 'B' and made a part hereof.

"11. That plaintiff, as owner of the goods, had presented the necessary shipping and re-lease documents to secure delivery but up to the present defendant Bureau of Customs, thru its Customs Arrastre Service, has failed and refused to deliver one (1) bundle of conduit and four (4) loose 6" 150# gate valves.

"FOURTH CAUSE OF ACTION

"12. That in or about November, 1962, the S.S. 'Eumaeus' took on board at Liverpool, Great Britain, thirteen (13) packages of valves and spare parts for pumps for which The Blue Funnel issued Bill of Lading No. M-32 in the name of The Shell International Petroleum Company, Ltd., as shipper, and consigned to and with arrival notice to the plaintiff.

"13. That the S.S. 'Eumaeus' arrived in Manila on or about December 22, 1962 and all the aforementioned cargoes were unloaded on the government piers in the Port of Manila in-to the custody of defendant Bureau of Customs, thru its Customs Arrastre Service, the last discharge being on December 26, 1962 while a provisional claim was filed with said defendant on December 27, 1962, a copy of which is hereto attached as Annex 'C' and made a part hereof.

"14. That plaintiff, as owner of the goods, had presented the necessary shipping and re-lease documents to secure delivery but up to the present defendant Bureau of Customs, thru its Customs Arrastre Service, has failed and refused to deliver three (3) loose 3" c/s gate valves.

"SIXTH CAUSE OF ACTION

"15. That in or about February, 1963, the S.S. 'Ferncliff' took on board at New York, U.S.A. seven (7) packages of charts and machine-ry accessories for which the Barber Line issued Bill of Lading No. 306 in the name of Asiatic Petroleum Corporation, as shipper, and consigned to and with arrival notice to the plaintiff.

"16. That the S.S. 'Ferncliff', arrived in Manila on or about March 10, 1963 and all the aforementioned cargoes were unloaded on the government piers in the Port of Manila into the custody of defendant Bureau of Customs, thru its Customs Arrastre Service, the last discharge being on March 11, 1963, while a provisional claim was filed with said defendant on March 11, 1963, a copy of which is hereto attached as Annex 'D' and made a part hereof.

"17. That plaintiff, as owner of the goods, had presented the necessary shipping and re-lease documents to secure delivery, but up to the present defendant Bureau of Customs, thru its Customs Arrastre Service, has failed and refused to deliver one (1) box honeywell charts.

"ELEVENTH CAUSE OF ACTION

"18. That in or about March, 1963, the S.S. 'Neder Rijn' took on board at Amsterdam, Nether-lands, five (5) drums of Dichloroethane for which the Nederland Line Royal Dutch Mail issued Bill of Lading No. 006 in the name of PHS Van Cameron, as shipper, and consigned to and with arrival notice to the plaintiff.

"19. That the S.S. 'Neder Rijn' arrived in Manila on or about May 24, 1963 and all the aforementioned cargoes were unloaded on the government piers in the Port of Manila into the custody of defendant Bureau of Customs, thru its Customs Arrastre Service, in good order.

"20. That plaintiff, as owner of the goods, had presented the necessary shipping and release documents to secure delivery, but up to the present defendant has delivered one (1) drum in bad order and leaking with loss of 103 kgs.; however, no provisional claim was filed with said defendant.

"TWELFTH CAUSE OF ACTION

"21. That in or about October, 1962, the S.S. 'Patroclus' took on board at Liverpool, Great Britain, one (1) case of copper tubes and one (1) loose steel tube for which the Blue Funnel Line issued Bill of Lading MO-53 in the name of The Shell International Petro-leum Company, Ltd., as shipper, and consigned to and with arrival notice to the plaintiff.

"22. That the S.S. 'Patroclus' arrived in Manila on or about November 11, 1962 and all the above-mentioned cargoes were unloaded on the government piers in the Port of Manila into the custody of defendant Manila Port Ser-vice in good order, the last discharge being on November 18, 1962, while a provisional claim was filed with said defendant on November 12, 1962, a copy of which is hereto attached as An-nex 'E' and made a part hereof.

"23. That plaintiff, as owner of the goods, had presented the necessary shipping and release documents to secure delivery of the aforementioned cargoes which plaintiff received from defendant Manila Port Service under Gate Pass No. 41220, dated December 5, 1962 and defendant Bureau of Customs, thru its Customs Arrastre Service, under Gate Pass No. 79409 dated Feb-ruary 27, 1963, hereto attached as Annex 2-MPS and Annex 3-MPS, respectively, subject to the exception taken by the plaintiff under Bad Or-der Report No. 3843, hereto attached as Annex 'F' hereof, showing that one (1) loose furnace tube was examined and found to be in bad order and beyond repair.

"THIRTEENTH CAUSE OF ACTION

"24. That in or about August, 1962, the S.S. 'Steel Flyer' took on board at New York, U.S.A., thirty-five (35) packages of pumps, tubes and other articles for which the States Marine-Isthmian Agency, Inc. issued Bill of Lading No. 1-801 in the name of the Asiatic Petroleum Corporation, as shipper, and con-signed to and with arrival notice to the plain-tiff.

"25. That the S.S. 'Steel Flyer' arrived in Manila on or about September 26, 1962 and all the aforementioned cargoes were unloaded on the government piers in the Port of Manila into the custody of defendant Manila Port Ser-vice in good order, the last discharge being on September 28, 1962, while a provisional claim was filed with said defendant on Septem-ber 27, 1962.

"26. That plaintiff, as owner of the goods, had presented the necessary shipping and release documents but defendant Manila Port Service delivered in bad order and be-yond repair or use three (3) loose tubes with a value of P257.36.

"COMMON STIPULATIONS

"27. That plaintiff admits the genuine-ness and due execution of the Manila Port Ser-vice's management contract with the Bureau of Customs, a copy of which is hereto attached as Annex 1-MPS and made a part hereof.

"28. That on October 14, 1963, plaintiff wrote a letter addressed to defendant Manila Port Service but was actually received by the Customs Arrastre Service of defendant Bureau of Customs demanding payment of the claims des-cribed in plaintiff's several causes of action. A copy of plaintiff's letter is hereto attached as Annex 'G' and made a part hereof.

"29. That on October 29, 1963, defendant Bureau of Customs, through its Customs Arras-tre Service, answered the letter mentioned in the preceding paragraph hereof advising that there were no formal claims filed with said office. A copy of said letter is hereto attached as Annex 'H' and made a part hereof.

"30. That the parties reserve their right to submit a supplemental stipulation on the va-lue of the articles covered by this agreement."

x x x x

"1. That the value of the two (2) rolls forged carbon steel socket weld flanges covered by the first cause of action is U.S. \$92.79.

"2. That the value of one (1) bundle of conduit and of four (4) loose 6" 150# gate valves covered by the second cause of action is U.S. \$91.87 and U.S. \$654.34, respectively or a total of U.S. \$746.21.

"3. That the value of the three (3) loose 3" c/s gate valves covered by the fourth cause of action is U.S. \$171.21.

"4. That the value of one (1) box Honey-well Charts covered by the sixth cause of action is U.S. \$113.14.

"5. That the value of the loss of 103 kgs. from a drum of dichloroethane covered by the eleventh cause of action is U.S. \$15.46.

"6. That the value of one (1) loose fur-nace tube covered by the twelfth cause of ac-tion is U.S. \$387.72; however, plaintiff admits that the arrastre charges on the shipment in question were paid on the basis of weight or measurement, whichever was greater, and not on the value thereof."

On July 16, 1965 the trial court rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered (a) dismissing the first, second, fourth, sixth, seventh, eleventh and twelfth causes of action; (b) on the thirteenth cause of action, ordering the defendant Manila Port Service, as a subsidiary of defendant Manila Railroad Company (now National Railways Company), to pay the plaintiff the sum of P257.36, with interest at the legal rate from November 19, 1963 until full payment. There shall be no costs."

Plaintiff appealed solely with respect to the portion of the judgment dismissing the 1st, 2nd, 4th, 6th, 7th, 11th and 12th causes of action against the Bureau of Customs and/or Customs Arrastre Service. No appeal was taken herein by the Manila Railroad Com-pany and its liability is no longer involved in this appeal. The only issue raised here is whether or not the Bureau of Customs, in connection with its arras-tre service, can be sued.

The issue is not new. In *Mobil Philippines Explo-ration, Inc. vs. Customs Arrastre Service and Bureau of Customs*, L-23139, December 17, 1966, the facts of which are similar to the instant case, We held that the Bureau of Customs, being an agency of the government rendering governmental functions, is immune from suit. In the ins-tant case We find no special reason to depart from our aforesaid ruling.

WHEREFORE, the decision appealed from, dismissing the complaint insofar as it referred to the 1st, 2nd, 4th, 6th, 7th, 11th and 12th causes of action against the Bureau of Customs, is hereby affirmed. No costs.

SO ORDERED.

Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

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