

COMMISSIONER OF CUSTOMS, PETITIONER, VS. DELGADO SHIPPING AGENCY AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. NO. L-49298. April 26, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

The question to be resolved in this petition for review is whether or not the respondent Court of Tax Appeals erred in reducing the administrative fine imposed by petitioner on the SS “Eurygenes”, from P58,400.00 to P18,000.00 under Section 2523, Tariff and Customs Code.

The facts, as stated in the petition, are the following:

On 14 April 1970, the vessel SS “Eurygenes” arrived in the port of Manila and discharged thereat a shipment of 123 bales of assorted textile remnants. The gross weight of the shipment as declared in the Bill of Lading was 61,500 pounds. But upon examination and appraisal by customs authorities, it was found that the actual weight thereof was 136,343 pounds, or 74,843 pounds more than the weight declared in the bill of lading.

Based on the above undisputed facts, respondent Court of Tax Appeals in its decision* dated 16 June 1978 in CTA Case No. 2729, correctly found, as the petitioner Commissioner of Customs earlier did, the vessel SS “Eurygenes”, represented by its agent, the private respondent Delgado Shipping Agency, to have violated Sec. 2523 of the Tariff and Customs Code. But respondent Court of Tax Appeals in its said decision imposed a fine of only P18,000.00, thereby reducing the fine of P58,400.00, as originally imposed by petitioner Commissioner of Customs.[1]

In other words, petitioner does, not assail, in this petition, the basis of the appealed decision of respondent court but questions it only insofar as it reduced the fine from P58,400.00 to only P18,000.00.

Section 2523 of the Tariff and Customs Code 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.”[2]

Petitioner contends that the respondent court erred in reducing the administrative fine imposed by him on the vessel, with the finding that the negligence of the master or owner of the vessel did not amount to “willful negli-gence.” Petitioner calls attention to the fact that the respondent court itself found there was inexcusable laxity on the part of the master or owner of the vessel, resulting in the excessive discrepancy in the declared weight of the cargo, which is penalized under the law,[3] and held that the administrative fine of P58,400.00

imposed by petitioner was not really unjust, oppressive and confiscatory and not more than fifteen (15) per centum of the value of the merchandise in respect to which the deficiency existed. Further, petitioner states that while the law allows some latitude in the imposition of the fine, such latitude or discretion to reduce the fine must be exercised only in the presence of extenuating and mitigating factors; that the indiscriminate reduction of the fine, without proof of extenuating circumstances, is contrary to the spirit of the above-quoted Section 2523.

It is also petitioner's submission that, in imposing the fine of only P18,000.00, notwithstanding absence of any extenuating and mitigating factors, respondent court disregarded the spirit and purpose of the law and created an atmosphere that could only embolden would-be smugglers to further their nefarious activities knowing that they could get away with such activities under a minimum fine.

We agree with the petitioner Commissioner of Customs.

The evident purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to underdeclarations. Hence, imposing the maximum fine on vessels which grossly fail to comply with the obligation to declare the correct weight of their cargo truly 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 in checking the true weight of the cargo.[4]

Private respondent argues that since there was no hearing conducted by petitioner, it follows that no evidence was presented to prove that the discrepancy in weight was due to the carelessness and incompetence of the master, owner or employees of the vessel. The records do not sustain this argument.

The decision of the Court of Tax Appeals clearly states that the Collector of Customs informed private respondent about his finding of a discrepancy of more than 20% between the declared weight and the actual weight of the disputed cargo discharged by SS "Eurygenes" and required the latter to explain in writing and show cause why no administrative fine should be imposed on the vessel. Since no reply was made by private respondent, administrative proceeding was instituted against the vessel and private respondent was duly notified of the hearing. On appeal to respondent court, private respondent submitted the case for decision based on the pleadings and records of the Bureau of Customs.

"xxx No trial on the merits was conducted by this Court. One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 836; Evangelista vs. De la Rosa, et al., 76 Phil. 115)."[5]

"And even more, proceedings before the Court of Tax Appeals is a trial de novo. If petitioner desired to present evidence in addition to those already filed in the Customs records forwarded to this Court, it could have easily done so instead of submitting this case based on the pleadings. (C.F. Sharp & Co. Inc. vs. Commissioner of Customs, No. L-23803, February 26, 1968, 22 SCRA 760)."[6]

It cannot be overstressed that it is the duty of the vessel's master, owner or employees to check and verify the correct weight of its cargos.

"x x x the vessel's master, owner or employees 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 cargoes.”[7]

WHEREFORE, the decision of respondent court is hereby MODIFIED by setting aside the reduction in fine therein ordered, and REINSTATING the administrative fine of P58,400.00 imposed in the petitioner’s decision.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Amante Filler. Acting Presiding Judge, with the concurrence of Associate Judge Constante Roaquin.

[1] P. 19, Rollo.

[2] P. 20, *ibid*.

[3] P. 21, *ibid*.

[4] Commissioner of Customs v. Court of Tax Appeals, L-49462, June 29, 1979, 91 SCRA 258

[5] P. 29, *ibid*.

[6] P. 32, *ibid*.

[7] Commissioner of Customs v. CTA, *supra*, p. 259

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