

**INSURANCE COMPANY OF NORTH AMERICA,
PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES AND/OR
BUREAU OF CUSTOMS AND/OR CUSTOMS ARRASTRE SER-VICE,
DEFENDANTS-APPELLEES.**

G.R. No. L-24520. July 11, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Six cases of hand tools, ten cases of portable electric tools, consigned to the order of shipper Dayton Price & Co., Ltd., were discharged on May 20, 1963 from the vessel SS "Turandot" and delivered to the Customs Arrastre Service, Bureau of Customs, then handling arrastre operations in the Port of Manila.

Not all of the shipment were delivered by the Customs Arrastre Service to the consignee. For the loss of tools valued at P3,261.21, the consignee filed a claim with its insurer. Insurance Co. of North America, the insurer, paid the claim.

As subrogee to the consignee, said insurance company, on July 20, 1964, filed before the City Court of Manila a suit for the same amount, plus attorney's fees and costs, against the Republic of the Philippines and/or Bureau of Customs and/or Customs Arrastre Service. After said court decided for the plaintiff, defendants appealed to the Court of First Instance, alleging immunity from suit and stating that recovery, if at all due, should be thru the filing of a claim with the Auditor General under Act No. 3083 as amended by Com. Act No. 327.

Sustaining this contention, on March 3, 1965, the Court of First Instance issued an order dismissing the complaint on the ground that defendants agencies of the Philippine Government have no juridical capacity to be sued; and that the Philippine Government may only entertain a money claim upon compliance with the provisions of Act No. 3083 as amended by Com. Act No. 327.

Appeal from said order direct to Us was thus taken by plaintiff.

In *Mobil Phil. Exploration, Inc. v. Customs Arrastre Service*, L-23139, December 17, 1966, this Court squarely ruled on the point raised herein and held that the Bureau of Customs, acting as part of the governmental machinery in its operation of the arrastre service as an incident of a prime governmental function, is immune from suit. And we there pointed out that the claim involving money should have been filed with the Auditor General under Com. Act No. 327.

WHEREFORE, the appealed order of dismissal 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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