

**EQUITABLE INSURANCE & CASUALTY CO., INC.,
PLAINTIFF-APPELLANT, VS. SMITH, BELL & CO., (PHILIPPINES)
INC., IN ITS CAPACITY AS AGENTS IN THE PHILIPPINES FOR
KLAVENESS LINE, OWNER/...**

G.R. No. 24383. August 26, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Alternative suit. The pivotal averments of the complaint are these: A cargo of divers merchandise was imported by Manila Auto Supply Co., Inc., as consignee. The carrier thereof, s/s "Bonne-ville", dropped anchor at the Port of Manila on June 18, 1963. Plaintiff, subrogee of the consignee, seeks recovery of the value of undelivered merchandise amounting to P23,420.84. Unable to ascertain whether the cargo was lost in the care and custody of the carrying vessel or the Bureau of Customs, plaintiff now sues defendants in the alternative.[1]

Defendant Bureau of Customs moved to dismiss. Its ground: Non-suability. The lower court's order of December 3, 1964 dismissed the case as against defendant Bureau of Customs. Recon-sideration failed. Plaintiff appealed.

By all means, the question thus raised is not untrodden ground. We have heretofore declared that the Bureau of Customs cannot be a party defendant in a suit. Because, it is neither a natural nor a juridical person nor an entity authorized by law to be sued. An arm of the Department of Finance, it has no personality of its own, apart from the national government. Arrastre service, it is true, is a proprietary function. But just the same, it is a necessary incident to the primary governmental job of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines, and penalties. Thus, regardless of the merits of plaintiff's case, obvious reasons of public policy dictate that the present action should not be allowed standing in court - it is a claim for money against the State itself. And the State has not consented to the suit.

Statutory provisions waiving State immunity are construed in strictissimi juris. For, waiver of immunity is in derogation of sovereignty. And, this claim should have been lodged with the Auditor General, upon the procedure delineated in Commonwealth Act 327.

So it is that we have ruled, upon situations parallel to the present, that action against the Bureau of Customs must be dismissed. There is by now impressive unanimity of jurisprudence on this point.[2] No new argument has been advanced which would give cause or reason for us to override our previous decisions. We do not now propose to depart from the ruling therein expressed.

For the reasons given, the order of December 3, 1964 dismissing this case as against the Bureau of Customs, and the order of February 8, 1965 denying reconsideration thereof, are hereby affirmed.

Without costs.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case 58595, Court of First Instance of Manila.

[2] Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service, L-23139, December 17, 1966; North British & Mercantile Insurance Co., Ltd. vs. Isthmian Lines, Inc., L-26237, July 10, 1967; Insurance Company of North America vs. Republic, L-26532, July 10, 1967; Insurance Company of North America vs. Republic, L-24520, July 11, 1967; Insurance Company of North America vs. Republic, L-25662, July 21, 1967; Manila Electric Company vs. Customs Arrastre Service, L-25515, July 24, 1967; Shell Refining Co. (Phil.) Inc. vs. Manila Port Service, L-24930, July 31, 1967; The American Insurance Company vs. Macondray & Co., Inc., L-24031, August 19, 1967.

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