

## **ATLANTIC MUTUAL INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, BUREAU OF CUSTOMS AND UNITED STATES LINES COMPANY, DEFENDANTS-APPELLEES.**

*G.R. No. 25663. November 15, 1967*

Ponente: BENGZON, J.P., J.

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### **BENGZON, J.P., J.:**

In April of 1964, forty-three (43) cases of Globe Leather worth \$85,563.33 were shipped from New York on board SS "Pioneer Mart", a vessel of the United States Lines Company. The shipment was consigned to Crown Embroidery Corporation in Manila. Arriving here, the ship discharged the cargo to the Bureau of Customs, which was then arrastre operator.

Subsequently, when the goods were delivered by the Bureau of Customs to the consignee, the great portion of it was, assertedly, found to have been damaged. Atlantic Mutual Insurance Company, insurer of the cargo, paid the consignee \$3,855.97 for such damage. As subrogee, it filed in the Court of First Instance of Manila on March 26, 1965, against the Republic of the Philippines, the Bureau of Customs and, in the alternative, the United States Lines Co., an action to recover the amount of \$3,855.97 or its peso equivalent.

Answering, the United States Lines Co. alleged that the entire shipment was discharged to the Bureau of Customs in good order condition. And in the event that it be held liable, it included a cross-claim against the Bureau of Customs.

The Republic of the Philippines and the Bureau of Customs, on the other hand, moved to dismiss the case on the grounds that the Republic may not be sued without its consent; that the Bureau of Customs has no personality to be sued; and that there was no previous filing of the claim with the Auditor General pursuant to Act 3083 as amended by Commonwealth Act 327.

Ruling that the claim should have been first lodged with the Auditor General under Act 3083 and Commonwealth Act 327, the Court of First Instance dismissed the complaint. To quote the dispositive part of its order: "Wherefore, the Court orders the dismissal of the complaint, without special pronouncement as to costs."

After denial of its motion for reconsideration, plain-tiff appealed to Us from said order of dismissal. Appel-lant argues that its claim is not cognizable by the Auditor General, since it is an unliquidated claim, the amount of which cannot be determined by arithmetical computation but calls for the appreciation of the weight of evidence and the application of judgment and discretion as to the amount of damages sustained by the cargo.

The point that controls, however, is that, as ruled by this Court in *Mobil Philippines Exploration v. Customs Arrastre Service*[1] and subsequent cases,[2] arrastre operations, when done, as in this case, by the Bureau of Customs as a necessary incident of the prime governmental function of taxation, - the assessment and collection of lawful revenues, tariffs and fees - is an activity protected from suit by reason of public policy. If at all, that is, if the claims are money claims of the kind provided for in Act 3083 and Commonwealth Act 327, the same should

be presented with the Auditor General; otherwise, the Republic or its agencies in question, cannot be sued without their consent. Consequently, even assuming that appellant's claim is unliquidated, since it does not involve loss of cases with definite, fixed value per case as shown in the shipping documents but rather damage to a great portion of the cargo, the amount of which cannot be reached by a simple computation but involves discretion in appreciating evidence as to the extent of said damage, the result for this case is still the same: the Republic or the Bureau of Customs cannot be sued without its consent.

Appellant's suit, however, should not have been dis-missed as against the United States Lines Co., which did not file any motion to dismiss; a reading of the dismissal order in toto clearly shows that the dismissal was premised only on the non-suability of the Republic and the Bureau of Customs. Appellant, in its brief, assigned as error the dismissal of its complaint; it points out that it was suing in the alternative; and it argued and prayed that the dis-missal order be set aside and its complaint reinstated. And in its reply brief, in answer to appellee United States Lines Co.'s brief, it elaborates the same point. All this convinces Us that a fair interpretation of the rules and the dismissal order demands that the dismissal should not extend to defendant United States Lines Co.

WHEREFORE, the dismissal order is affirmed as to the Republic of the Philippines and the Bureau of Customs only; but the case is remanded for further proceedings against defendant-appellee United States Lines Co. No costs.

**SO ORDERED.**

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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[1] L-23139, December 17, 1966.

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

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