

**THE NORTHERN ASSURANCE COMPANY, LTD.,
PLAINTIFF-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, ET AL.,
DEFENDANTS-APPELLANTS.**

G.R. No. 27077. October 23, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Allan Export Co. of New York shipped on May 8, 1964 to Manila 175 bundles of axle shafts and one pallet containing 10 cartons of auto ball bearings, consigned to shipper's order, with Central Auto Supply, Inc., Manila as notify party. SS "Pioneer Moon", which carried it, arrived in Manila on June 8, 1964 and thereafter fully discharged the shipment in good order condition to the Customs Arrastre. Service of the Bureau of Customs then handling arrastre operations in the port afore-stated.

The Customs Arrastre Service failed to deliver 28 bundles of axle shaft to the consignee. As a result, Northern Assurance Co., Ltd., insurer of the shipment, paid the consignee P3,724.34 for the undelivered 28 bundles of axle shafts.

Suit was then filed by said insurance company against the Republic of the Philippines, Bureau of Customs and the Customs Arrastre Service to recover said amount as subrogee to the consignee. It was dismissed by the City Court of Manila, on the ground of non-suability of defendants. Appeal by plaintiff to the Court of First Instance of Manila caused reversal of the inferior court. Defendants were, after trial, ordered to pay P2,274.07 - the C.I.F. value of the undelivered shipment - without costs. Defendants took the present appeal.

The point at issue, whether defendants may be sued in this case, has been decided by Us in the negative, in numerous cases starting with *Mobil Philippines Exploration vs. Customs Arrastre Service*, L-23139, December 17, 1966. For this reason, appellee, instead of filing its brief, submitted the case for decision in light of said ruling. Applying this doctrine, We hold that defendants herein may not be sued, without their consent, for directly engaging in arrastre operations, necessarily incidental to the prime governmental function of taxation.

WHEREFORE, the judgment appealed from is reversed and plaintiff's complaint dismissed, for reason defendants' non-suability herein, without costs.

SO ORDERED.

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

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