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FIRST DIVISION

[G.R. No. L-49462. June 29, 1979]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **COURT OF TAX APPEALS and DELGADO SHIPPING AGENCIES, INC., in its capacity as agent of the SS "EURYBATES,"** *respondents.*

SYLLABUS

1. TAXATION; TARIFF AND CUSTOMS CODE; SECTION 2523 THEREOF ALLOWS THE IMPOSITION OF FINE; REQUISITES.— Section 2523 of the Tariff and Customs Code authorizes the imposition of the administrative fine in the sum of ₱26,575.00 imposed by petitioner. The two requisites therein provided, namely, (1) that the actual gross weight exceed by more than twenty per centum the declared gross weight and (2) that the discrepancy is due to carelessness or incompetency of the master, owner or employee of the vessel, were duly found by petitioner commissioner, as well as by respondent court, to be present in the instant case.

2. ID.; ID.; WHEN DOES MISDECLARATION OF THE GROSS WEIGHT OF THE CARGO CONSTITUTE WILLFUL NEGLIGENCE; CASE AT BAR.— The discrepancy in the *declared* gross weight of the cargo (13,272 lbs.) and its actual weight (66,579 lbs.) is so grave that it constitutes *per se* evidence of willful negligence or gross incompetence. The actual gross weight of the shipment exceeded by more than four hundred (400%) percent its declared weight, whereas the statute allows a discrepancy of not more than twenty (20%) percent. In other words, the discrepancy of 53,307 lbs. (underdeclared weight) exceeded by more than twenty (20) times the 20% discrepancy (2,654.4 lbs. or 20% of the declared weight of 13,272 lbs.) allowed by the law.

3. ID.; ID.; PURPOSE OF THE PROVISION REQUIRING VESSELS TO DECLARE THE CORRECT WEIGHT OF THEIR CARGO.— The clear purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to such underdeclarations. Hence, imposing the maximum fine on vessels which grossly fail to comply with the obligation

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to declare the true weight of their cargo 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 as in this case in checking the true weight of the cargo.

DECISION

TEEHANKEE, *J.*:

The Court sets aside as grave abuse of discretion the respondent court's reduction of the maximum administrative fine of ₱26,575.00 imposed by petitioner Commissioner to a practically token fine of ₱6,000.00. The *actual* gross weight of the shipment exceeded by more than 400% its *declared* weight, whereas the customs code allows a discrepancy only of not more than 20%. The underdeclaration is so gross that it constitutes *per se* evidence of willful negligence or gross incompetence on the part of the vessel's master and there is no valid justification for an arbitrary reduction of the fine justly imposed.

The records show that on July 16, 1969, the vessel SS "EURYBATES" arrived at the port of Manila and discharged thereat 72 bales of textile remnants consigned to Balin Commercial of Manila and covered by a bill of lading. The gross weight of said merchandise as *declared* in the bill of lading was 13,272 lbs., but it was reported after examination and appraisal that the *actual* weight was 66,579 lbs. or a discrepancy of 53,307 lbs. Hence, the actual gross weight of the merchandise exceeded by more than 400% the declared weight.

Respondent Delgado Shipping Agencies, Inc., in its capacity as agent of the vessel, was accordingly required by the Bureau of Customs to show cause why an administrative fine of ₱26,575.00 on the vessel should not be imposed, which is the maximum fine that can be imposed against the vessel under Section 2523 of the Tariff and Customs Code. After hearing, the Collector of Customs rendered his decision of October 17,

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1974 finding the vessel SS "EURYBATES" liable under the cited section of the Tariff and Customs Code and ordering respondent Delgado Shipping Agencies, Inc. as its agent to remit the said fine within ten days from finality of the decision. On appeal, petitioner Commissioner of Customs in his decision dated February 19, 1976 affirmed that of the Collector of Customs.

Said respondent appealed the petitioner's decision to respondent Court of Tax Appeals. In its decision of August 25, 1978, respondent court affirmed the findings of petitioner commissioner and found that the vessel did violate Section 2523 of the Tariff and Customs Code. Nevertheless, respondent court reduced the fine imposed against private respondent from ₱26,575.00 to ₱6,000.00 on the basis of its opinion that "it does not appear that the negligence or incompetence of the master, owner, officer or employee of the vessel amounts to willful negligence or gross incompetence, and considering further that the law allows a latitude in the imposition of the fine. To our mind, the reasonable fine to be imposed against said vessel is ₱6,000.00."

Hence, this petition of February 9, 1979 filed by petitioner Commissioner of Customs to set aside such reduction of the fine on the ground that respondent court gravely abused its discretion when it so reduced the administrative fine by more than 75% from ₱26,575.00 to ₱6,000.00. Upon receipt of respondents' comment and petitioner's reply, the Court granted due course to the petition and, dispensing with the filing of briefs or memoranda, declared the case submitted for decision per its Resolution of June 20, 1979.

The Court finds that respondent court did act with grave abuse of discretion when it reduced the administrative fine notwithstanding the gross misdeclaration of the weight of the manifested merchandise and therefore grants the petition.

1. Section 2523 of the Tariff and Customs Code[1] authorizes the imposition of the administrative fine in the sum of ₱26,575.00

[1] "Sec. 2523. Discrepancy Between Actual and Declared Weight of Manifested Article. — If the *gross weight* of any article or package described in the manifest *exceeds by more than twenty per centum* the gross weight

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imposed by petitioner. The two requisites therein provided, namely, (1) that the actual gross weight exceed by more than twenty per centum the declared gross weight and (2) that the discrepancy is due to carelessness or incompetency of the master, owner or employee of the vessel, were duly found by petitioner commissioner, as well as by respondent court, to be present in the instant case. The discrepancy in the *declared* gross weight of the cargo (13,272 lbs.) and its *actual* weight (66,579 lbs.) is so grave that it constitutes *per se* evidence of willful negligence or gross incompetence. The actual gross weight of the shipment exceeded by more than four hundred (400%) percent its declared weight, whereas the statute allows a discrepancy of not more than twenty (20%) percent. In other words, the discrepancy of 53,307 lbs. (underdeclared weight) exceeded by more than twenty (20) times the 20% discrepancy (2,654.4 lbs., or 20% of the declared weight of 13,272 lbs.) allowed by the law.

2. Here, the Collector of Customs as affirmed by petitioner Commissioner of Customs, in accordance with authority given them by the cited codal provision, duly exercised the discretion and authority vested in them by imposing the maximum fine due to the gross underdeclaration. Without a showing of grave abuse of discretion on the part of said officials, the said fine should be allowed to stand. Applying by analogy the principles of penal law, the gross underdeclaration (by more than 400%) aggravated respondent's offense and no mitigating circumstance having been shown by respondent, petitioner correctly imposed the maximum fine and there is no valid justification for respondent court's arbitrary reduction of the fine to a mere ₱6,000.00.

3. The clear purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to such underdeclarations. Hence, imposing the maximum

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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 deficiency exists, may be imposed upon the importing vessel or aircraft." (Italics supplied).

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fine on vessels which grossly fail to comply with the obligation to declare the true weight of their cargo 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 as in this case in checking the true weight of the cargo. Respondents' claim that there could be no evasion of duties here since textile remnants are imposed duties *ad valorem* or on the basis of the dutiable value of the merchandise irrespective of the weight is untenable, since an underdeclaration of the weight of the remnants by more than 400% would make it much easier to underdeclare the dutiable value of the remnants.

4. Moreover, the Solicitor General's submission in his brief on behalf of petitioner commissioner that respondent court "should have taken cognizance of the fact that a string of cases have been filed with it, either already decided or pending decision, involving similar violations committed by the same shipping agent, the private respondent herein, such as C.T.A. Cases Nos. 2729, 2539, 2548; 2802, 2793, not to include similar cases still pending with the Bureau of Customs, namely: Customs Cases Nos. 77-31, 77-32, 77-33, 75-21, 75-65, 75-65A; 75-04, which circumstance indubitably establishes 'habituality' in the commission of the same offense and, on this basis, the maximum fine provided for by law should rightly be imposed," appears to be well taken. The existence of such numerous cases of similar violations having been decided against respondent or pending decision against it has not been denied by respondent in its comment.

5. Finally, contrary to respondent's contention, 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 cargos. As ruled by respondent court itself in its decision:

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"We find petitioner's contention without merit. The issue in this case and the arguments raised are not of first impression. In the case of *International Harvester Macleod, Inc., etc. vs. Commissioner of Customs*, C.T.A. Case No. 2698, November 25, 1977, this Court held as follows:

> At this juncture, it is hardly necessary to add that under Section 2523 of the Tariff and Customs Code, the declaration, ascertainment or verification of the correct weight of the cargo at the port of loading is the duty or obligation of the master, pilot, owner, officer or employee of the vessel. If he omits or disregards this duty and a punishable discrepancy between the declared weight and actual weight of the cargo exists, the inevitable conclusion is that he is negligent or careless. (See *Delgado Shipping Agencies, Inc. vs. Commissioner of Customs*, C.T.A. Case No. 2685, Feb. 15, 1977; *Macondray & Co., Inc. vs. Commissioner of Customs*, C.T.A. Case No. 2741, Feb. 3, 1977; *Macondray & Co., Inc. vs. Commissioner of Customs*, C.T.A. Case No. 2656, January 21, 1977 and cases cited therein.) Similarly, if in the exercise or performance of this duty, he is negligent or careless resulting in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law, carelessness or incompetency is, nonetheless, imputable to him.
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> Thus, in the case of *Delgado Shipping Agencies, Inc. vs. Commissioner of Customs*, C.T.A. Case No. 2685, February 15, 1977, *certiorari* denied, G. R. L-46262, July 6, 1977, this Court ruled:
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> And as to petitioner's insistence of proof on the part of respondent of the negligence or carelessness of the master, owner or employee of the vessel, suffice it to say, additionally, that this Court has already unequivocably ruled that under Section 2523 of the Code, the ascertainment or verification of the weight of the ship's cargo at the port of loading is the duty or obligation of the master, pilot, owner or employee of the vessel. Failing thus, the conclusion seems to be inevitable that there is an unexcusable laxity on the part of the master or owner in exercising the ordinary care and prudence in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law. Doing business in the Philippines, it behooves the master or owner of a vessel to abide by our customs laws and regulations and to ignore them is nothing short of gross carelessness or incompetence."

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ACCORDINGLY, judgment is hereby rendered modifying the decision of respondent court by setting aside the reduction in fine therein granted and reinstating the administrative fine of ₱26,575.00 imposed in petitioner commissioner's decision.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-49678. June 29, 1979]

ALLIED INVESTIGATION BUREAU, INC., *petitioner, vs.* **HON. BLAS F. OPLE, in his capacity as Minister of Labor; HON. AMADO G. INCIONG, in his capacity as Deputy Minister of Labor; NATIONAL LABOR RELATIONS COMMISSION; LABOR ARBITER APOLONIO L. REYES; and VICTORIANO VELASQUEZ,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; RETIREMENT BENEFITS; PROVISION THEREON UNDER THE LABOR CODE SHOULD BE GIVEN RETROACTIVE EFFECT.**— Petitioner's insistence that the retirement benefits should date only from the time that the present Labor Code came into force could be based on the assumption that it should not be given a retroactive effect. That would be to ignore the well-settled principle that police power legislation intended to promote public welfare applies to existing contracts.

2. **ID.; ID.; ID.; RIGHT TO RETIREMENT BENEFITS EMANATES FROM THE SOCIAL JUSTICE AND PROTECTION TO LABOR PROVISIONS OF THE 1935 CONSTITUTION.**— Nor