EVERETT STEAMSHIP CORPORATION,
in its capacity as agent of the
M/V "FERNANDO",
Petitioner,

- versus - C.T.A. CASE No. 1968

COMMISSIONER OF CUSTOMS,
Respondent.
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DECISION

Appeal from the decision of respondent Commissioner of Customs, dated August 28, 1968, affirming that of the Collector of Customs of Manila, imposing an administrative fine of ₱2,000.00 on the vessel M/V "Fernando" for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

Petitioner, a corporation duly organized and existing under and by virtue of the laws of the Philippines, is the local ship agent of the vessel M/V "Fernando". On June 14, 1964, M/V "Fernando", a foreign vessel with Registry No. 854, Voyage No. 20, arrived at the Port of Manila, from Naha, Okinawa, conveying a shipment of 409 packages consisting of surplus war materials consigned to Vera Enterprises, Manila. Upon examination by customs authorities, it was discovered that out of the shipment of 409 packages loaded on board the vessel M/V "Fernando", only 318 packages were duly manifested.

Consequently, the Collector of Customs of Manila, on July 30, 1964, imposed an administrative fine of ₱2,000.00 on said vessel for carrying unmanifested cargo consisting of 91 packages of various surplus war materials, in violation of Section 1005, penalized under Section 2521 of the Tariff and Customs Code. The aforesaid amount was paid under protest on October 15, 1964.

On October 28, 1964, petitioner requested a formal hearing, hence, an investigation was conducted by the Bureau of Customs in Customs Case No. 764 (Manila Protest No. 1688). After due hearing, the Collector of Customs rendered his decision on May 28, 1965, holding that petitioner is liable to the fine of ₱2,000.00 already imposed upon it and dismissed its protest for lack of merit. This decision was appealed to respondent Commissioner of Customs who affirmed it on August 28, 1968. Hence, the instant petition for review.

In their partial stipulation of facts, which was admitted by this Court on March 7, 1970, the following were admitted by the parties:

1. Bill of Lading No. O-12-M dated June 10, 1964 (Annex "A", Customs Record, p. 9, marked as Exh. C).

2. Manifest Correction Advice Per MV "Fernando" Voy. No. 20 (Annex "B", Customs Record, p. 15, marked as Exh. E).

3. Original of the Inward Foreign Ma-

nifest of the MV "Fernando" Voy. 20 (Annex "C").

4. Supplementary Inward Foreign Manifest of the MV "Fernando" Voy 20 (Annex "D", Customs Record, p. 14, marked as Exhs. F, F-1 and F-2).

5. That an amendment of the Inward Foreign Manifest of the MV "Fernando" was filed and duly approved by the Bureau of Customs and the same was entered and attached to the original manifest (Annex "E", Customs Record, p. 13).

6. Letter of counsel for the MV "Fernando", her owners, agents and master to the Collector of Customs dated October 28, 1964 (Annex "F", Customs Record, pp. 29-30).

7. Permit to Deliver Imported Goods (Annex "G", Customs Record, p. 8).

8. Receipt of Adm. Fine of ₱2,000.00, paid by the agents under protest dated October 15, 1964 (Annex "H"). (See pp. 19-21, CTA rec.)

The sole issue is whether or not the administrative fine of ₱2,000.00 imposed on the vessel M/V "Fernando" is in accordance with law.

There is no dispute as to the fact that the original inward foreign manifest listed only 318 packages and pieces of war surplus materials but actually 409 packages were discharged at the Port of Manila, or a discrepancy of 91 packages. Petitioner assails the validity of the imposition of the administrative fine on the vessel on the grounds that: (a) the discrepancy was due to honest mistake and oversight and without any unlawful intent; and (b) the amendment to the inward foreign manifest, which was later approved by the Bureau of Customs, cured all defects found in the original manifest.

Petitioner presented both testimonial and documentary evidence to show that the failure to include in the original inward foreign manifest 91 packages of surplus war materials was without unlawful intent but done in good faith.

As gathered from the testimony of Catalino D. Busa, petitioner's Inward Manifest Clerk, the evidence and records of this case show that the shipment in question, when loaded at the port of Naha, Okinawa, consisted of packages, units, pieces of military surplus goods in loose condition. After the vessel had already left the said port, a comparison of the tally sheets and export declaration revealed a discrepancy of 91 pieces of loose war surplus materials so that a manifest correction advice was sent by mail to petitioner, which it received on June 16, 1964. Petitioner, after receipt thereof, filed with the Bureau of Customs on June 17, 1964, a Supplemental Inward Foreign Manifest and the corresponding Amendment Manifest in order to correct the mistake, which was duly approved by respondent. The original manifest and corrected manifest show the same weight and measurement of the shipment and no additional charge for freight was required on the corrected manifest.

Mr. Busa also testified that the correction of the original manifest could not have been possible within 24 hours from the time the vessel was boarded because the Manifest Correction Advice was received only on the closing hours of June 16, 1964 and he had to work overtime in order to prepare the Supplementary Inward Manifest which was filed with the Bureau of Customs the following morning, or on June 17, 1964.

It is, therefore undisputed from the evidence and records of this case that M/V "Fernando" arrived at the Port of Manila with 409 packages and pieces of military surplus goods while the manifest of the vessel listed only 318 packages and pieces; that 91 packages or pieces were not covered by the vessel's cargo manifest or by any other document required to be presented to the boarding officers of the Bureau of Customs; and that the correction or amendment of the cargo manifest was submitted and approved by the Bureau of Customs after the lapse of 24 hours from the time the vessel was boarded by the customs authorities.

That there was good faith in the omission to manifest cargo may be admitted. But good faith in the failure to include cargo in a ship's manifest does not relieve the vessel from liability under Section 2521 of the Tariff and Customs Code. Thus, in Macondray & Co., Inc. v. Commissioner of Customs, CTA Case No. 1930, December 27, 1969 (cert. denied in G.R. No. L-31599, Feb. 10, 1970), it was held:

> Petitioner presented before this Court Dominador Bergaño, manager of its claims department, who testified that the failure to have the four (4) cartons of electrical parts included in the cargo manifest of the vessel was due to a clerical error or inadvertence in the typing of the manifest (pp. 19-20, t.s.n.). Apparently, this testimony was presented to show lack of knowledge or consent on the part of the owner or master of the vessel to the omission of the subject cargo from the manifest. Suffice it to say that the lack of knowledge on consent of the owner or master of the vessel in respect of such an omission is no defense against liability for the statutory penalty.
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> > "There is nothing in section 77 of the Act which indicates any intention on the part of the legislator to limit the imposition of the prescribed penalty to cases where the captain or the ship's officers knowingly or willfully omitted any part of the cargo from the manifests. <u>This section in unequivocal terms prescribes the imposition of the penalty in all cases of such omissions, and read together with section 303, which imposes penalties or forfeitures on the master of the vessels in such cases, it cannot be doubted that the intention of the legislator was to provide for the imposition of the prescribed penalties, whether such omissions occurred with or without the knowledge of the owner or the officers of the vessels</u>. Section 303 is here inserted, because both by its terms and the nature of the penalties prescribed it makes very clear the intention of the legislator to penalize omis-

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sions from the ship's manifest, whether made with or without the knowledge of the owners, or of the ship's officers charged with the preparation of the required manifests." (U.S. v. Steamship "Rubi", 32 Phil. 228; underlining supplied.)

Also, in the case of Smith Bell & Co. (Phil.) Inc. v. Commissioner of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969, we held that -

Under Section 1005 of the Tariff and Customs Code, it is an imperative obligation of every vessel from a foreign port to have on board a complete manifest of all her cargo. No exception is mentioned in the statute. Neither is there mention of any exception in Section 2521 of said Code providing for a fine for vessels without proper manifests, nor in Section 2530 thereof providing for the confiscation of unmanifested goods. The recognition by the Court of any attempt to read into the statute any exception, such as misshipment of goods, would be contrary to the pervasive spirit as well as the clear language of the aforesaid provisions. Thus, said the Supreme Court in the case of U.S. v. Rubi (32 Phil. 235-242):

"The evident intent and object of these requirements for the submission of manifests by all vessels from foreign ports is to impose upon the owners and officers of such vessels an imperative obligation to submit lists of the entire lading of the ship in the prescribed form, in order to facilitate the labors of the Customs and immigration officers, and to defeat any attempt to make use of such vessels to secure the unlawful entry of persons or things into the Islands. No exception is made in the statute, and the recognition of any attempt to read

> <u>an exception into the statute could hardly fail to defeat the purpose of its enactment.</u>" (See also Macondray & Co., Inc. v. Comm. of Customs, CTA Case No. 1911, April 20, 1970.)

With regard to petitioner's claim that the amendment of the original manifest cured all its faults and defects, we quote below our opinion on this point in the case also of Macondray, <u>supra</u>:

> Petitioner contends that a clerical error was committed in good faith in the preparation of the manifest, and when respondent allowed the amendment to the manifest pursuant to Section 1005 of the Tariff and Customs Code, the same had the effect of curing or removing all the defects of the original manifests. In short, the kernel of petitioner's contention is that the liability of the vessel for carrying unmanifested cargo was wiped out by the amendment to the manifest.
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> We are not at all impressed with this interpretation of the law by petitioner.
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> There is no dispute that the four (4) cartons of electrical parts were not covered by the inward foreign manifest of M/S "Fernview", as required by Section 1005 of the Tariff and Customs Code. To enable petitioner to take delivery of the entire shipment of six (6) cartons, Mr. De Asis, Manifest Clerk, Marine Entry Processing Division, Bureau of Customs, required the amendment to the inward foreign manifest upon discovering that the number of cartons of electrical parts declared in the entry covering the disputed shipment was four (4) cartons more than what were declared in the original inward foreign manifest of the subject vessel. <u>Although this amendment was allowed and approved by customs authorities, the same did not have the effect of obliterating the liability of the vessel incurred previous to the amendment.</u> Section 1005 of the Tariff

> and Customs Code, supra, is so clear and explicit when it commands every vessel from a foreign port to have on board a complete manifest of all her cargo. Non-observance of this imperative obligation subjects a vessel to the administrative penalty under Section 2521 of the same Code. The law makes no exception and any attempt to read one into the statute would be contrary to the spirit as well as the clear language of the aforesaid provisions. (See Smith Bell & Co., Inc. v. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969.)[1]

That the bill of lading of M/V "Fernando" correctly stated the number of packages loaded on the vessel is of no moment. On this point, we held that -

> The fact that the whole shipment was indicated in the bill of lading does not excuse compliance from the requirement of a manifest. x x x All these can not be accomplished by the mere use of the bill of lading inasmuch as the bill of lading is not required to be presented to the boarding customs officers. (Macondray & Co., Inc. v. Comm. of Customs, CTA Case No. 1641, Nov. 15, 1965.

WHEREFORE, the decision appealed from is hereby affirmed.

SO ORDERED.

Quezon City, August 25, 1971

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

R. L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

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[1] See also Compañia Gral. de Tabacos de Filipinas v. Comm., CTA No. 1939, Feb. 26, 1971, cert. den. in G.R. No. L-33386, April 14, 1971.