MACONDRAY & COMPANY, INC.,
in its capacity as agent
of the SS "FERNPOINT",
Petitioner,

-versus- C.T.A. CASE No. 1911

COMMISSIONER OF CUSTOMS,
Respondent.
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April 20/70

D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Customs, dated November 22, 1967, imposing a fine of ₱1,000.00 on the vessel SS "FERNPOINT" for alleged violation of Section 1005 of the Tariff and Customs Code, in relation to Section 2521 of the same Code.

The facts may be briefly stated as follows: On September 16, 1963, the SS "FERNPOINT", a foreign vessel with Registry No. 1235 and of which petitioner is the local ship agent, arrived at the port of Manila with a cargo consisting of three (3) cartons of rubber medicament and surgical articles not listed in its foreign manifest. On November 15, 1963, after the discovery of the omission to manifest said cargo, petitioner, as ship agent, filed an amendment to the manifest of the SS "FERNPOINT" with the explanation that said cargo was part of the shipment supposed to be carried by the SS "ROSEVILLE" (another vessel represented by petitioner), but that it was not loaded on said vessel and was instead carried by the SS "FERNPOINT." This amendment to the manifest was accepted and approved by the Bureau of Customs but with a reservation that the same shall be "without prejudice to adm. action against the carrying vessel."

On August 25, 1965, after proper hearing, the Collector of Customs rendered his decision holding the SS "FERNPOINT" liable for violation of Section 1005 of the Tariff and Customs Code, and imposed a fine of ₱1,000 pursuant to Section 2521 of the same Code. This decision, on appeal to the Commissioner of Customs, was affirmed by the latter on November 21, 1967. Hence, the instant appeal.

The only issue is whether or not the imposition of the aforesaid penalty is in accordance with law.

Petitioner stoutly maintains that the SS "FERNPOINT" is not subject to the fine because: (1) the failure to manifest the cargo in question was not deliberate or intentional but was due to an honest mistake in the shipment of said cargo; and (2) the amendment to the manifest of the SS "FERNPOINT" approved by the Bureau of Customs cures the defect in the manifest and constitutes a bar to the imposition of the fine under Section 2521 of the Tariff and Customs Code. The reason advanced by petitioner in support of the latter is that, if the amendment to the manifest is not curative and does not exempt the vessel from liability, the remedy of amendment provided in Section 1005 of the said Code would merely be an empty formalism and a useless law.

We find these contentions without merit. The defense of good faith in the omission to manifest a cargo has already been passed upon and carefully considered in the case of Smith Bell & Co., Inc. vs. Commissioner of Customs (CTA Cases Nos. 1728 & 1921, July 22, 1969) wherein it was held:

> 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. <u>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.</u> Thus, said the Supreme Court in the case of U. S. v. Rubi (32 Phil. 235-242):
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>> 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 obli-

> gation 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. <u>No exception is made in the statute, and the recognition of any attempt to read an exception into the statute could hardly fail to defeat the purpose of its enactment</u>. (Underlining supplied; see also Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, Dec. 27, 1969.)

As regards the defense that the amendment to the manifest approved by the Bureau of Customs cured the defect in the original manifest and thus relieved the vessel from its liability for the violation, the same has likewise been resolved in the case of Macondray & Co., Inc., <u>supra</u>. We reiterate what we said in that case:

> 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 manifest. 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 "FORTVIEW," 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. 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. 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.)

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Another strong reason for not adopting the interpretation advocated by petitioner is found in the pernicious consequence which would flow from such construction. If we are to exempt the vessel from liability for conveying unmanifested cargo by the simple expedient of amending its manifest after discovery of the offense, it would embolden and encourage other vessels to deliberately load cargo without listing them in their manifests. If the unmanifested cargo is discovered, as in the present case, the manifest could simply be amended and thus free the vessel from any liability whatsoever; but if the unmanifested cargo is not discovered, the same would enter the country free of duties and taxes to the detriment of the Government. In both instances, the owner or master of the vessel has nothing to lose but everything to gain. On the other hand, the Government is always the loser. Such a result would not be in keeping with the evident purpose of the law in providing effective means for the collection of customs revenue. For this reason, we are not inclined to accept the interpretation of petitioner.

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What could then be the purpose of the law in allowing the amendment to the manifest? As correctly pointed out by respondent, the right to amend the manifest is granted by law in order that innocent importers would not suffer from the error or fraud committed by the master or agent of the vessel in the preparation of the original manifest. (Underscoring supplied.)

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, April 20, 1970.

R. M. Umali

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez

ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña

RAMON L. AVANCEÑA
Associate Judge