Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. E. ZUELLIG (M), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3542

THE COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - x

10/18/84

D E C I S I O N

For violation of Section 1005, in relation to Section 2521, as amended, of the Tariff and Customs Code, the Collector of Customs for the Port of Manila imposed an administrative fine of ₱30,000.00 on the vessel SS "Hong Kong Container". The decision was affirmed upon appeal by respondent Commissioner of Customs, in his decision promulgated on September 16, 1982. Not satisfied with this decision, petitioner F. E. Zuellig (M), Inc., interposed its appeal to this Court.

This case was submitted by the parties for decision on the basis of the pleading and Customs records.

As the facts are gathered from the pleadings and records of the case, (pars. 1 to 7, Petition for Review, pp. 1-2, CTA rec., Admitted in par. 1, Answer, p. 23, CTA rec.) as follows:

> 1. Petitioner herein is the local ship agent of the vessel SS "Hong Kong Container" which arrived at the Port of Manila on August 3, 1978 under Registry No. 1666 carrying, among

others, fourteen (14) pallets said to contain 758 cartons with marks "Pfizer Laboratory, Inc." consigned to the Order of Commercial Bank and Trust Company, Makati, Metro Manila, covered by Bill of Lading No. 803.

2. In the Inward Foreign Manifest of the abovementioned vessel, only fourteen (14) pallets were declared but the number of carton was not indicated.

3. Because of the failure to declare the 758 cartons contained in the 14 pallets, an amendment to the Inward Foreign Manifest was submitted by the shipping company and approved by the Bureau of Customs with the condition: "without prejudice to an administrative action against the vessel."

4. Due to the inaccurate declaration of the shipment covered by Bill of Lading No. 803, the Bureau of Customs sent a letter-complaint dated August 17, 1978 to the petitioner herein informing it of its violation of Sec. 1005 in relation to Section 2521 of the Tariff and Customs Code, as amended.

5. After hearing, the Collector of Customs imposed an administrative fine of ₱30,000 on the vessel SS"Hong Kong Container".

6. Petitioner herein filed a Motion for Reconsideration which was denied. On appeal, the Commissioner of Customs affirmed the decision of the Collector of Customs. Hence, this petition for review. (Pp. 1 & 2, Petition, admitted in p. 23 Answer).

Petitioner herein have raised the argument that the declaration in the original manifest of the cargo as "14 Pallets Pen Type Vial" is a substantial compliance of the provisions of Section 1005 of the Tariff and Customs Code. It asserted that to require a more detailed description would be too strict an interpretation of the law and would only hamper commerce and serves no purpose since the custom authorities are already apprised of the subject shipments, as "palletized" and, therefore, containing a number of cartons readily determinable as to the number and declared weight.

It further alleged that subject manifest was, at any rate amended which is allowed under Section 1005, of the Tariff and Customs. And this fact did not in any way deprived the government of the taxes and duties due thereon. It finally insists that the amendment only shows that there exists no intention to misdeclare the subject shipment and, therefore, it did not violate any provision of law.

Respondent, on the other hand, contends that petitioner had failed to comply with the requirement of law that every vessel coming from a foreign port must have a complete and accurate manifest of all its cargoes, and that the manifest should include the quantity as well as the description of the packages. Respondent further contends that subject shipment should have been manifested as containing 14 pallets of 758 cartons containing 114,000 pcs. Pen Type Vials No. 50 Type III instead of only "14 Pallets Pen Type Vials" stated in the cargo manifest.

The sole issue before this court is whether or not the vessel SS "Hong Kong Container" had conveyed the said cargo without its proper and accurate manifest, in violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code.

We find respondent's contention meritorious. The pertinent provisions of the law applicable in this case is Section 1005, taken in relation to Section 2521, of the Tariff and Customs Code, provides as follows:

> "Sec. 1005. <u>Manifest Required of Vessel From Foreign Port</u>. - Every vessel from a foreign port must have on board a complete manifest of all her cargo.
>
> All of the cargo intended to be landed at a port in the Philippines must be described in separate manifests for each port of call therein. Each manifest shall include the port of departure and the port of delivery with the marks, numbers, quantity and description of the packages and the names of the consignees thereof. Every vessel from a foreign port must have on board complete manifests of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every such vessel shall have prepared for presentation to the proper customs official upon arrival in ports of the Philippines a complete list of all sea stores then on board. If the vessel does not carry cargo or passengers the manifest must show that no cargo or passenger, as the case may be, is carried from the port of departure to the port of destination in the Philippines.
>
> A cargo manifest shall in no case be changed or altered after entry of the vessel, except by means of an amendment by the master, consignee or agent thereof, under oath, and attached to the original manifest: Provided, however, That after the invoice and/or entry covering an importation have been received and recorded in the office of the appraiser, no amendment of the manifest shall be allowed, except when it is obvious that a clerical error or any other discrepancy has been

> committed in the preparation of the manifest, without any fraudulent intent, discovery of which could not have been made until after examination of the importation has been completed.

And Section 2521, of the Tariff and Customs Code, as amended, provides as follows:

> Sec. 2521 - <u>Failure to Supply Requisite Manifests</u>. If any vessel or aircraft enters or departs from a port of entry without submitting the proper manifests to the customs authorities, or shall enter or depart conveying unmanifested cargo other than as stated in the next preceding section hereof, such vessel or aircraft shall be fined an amount not less than ten thousand pesos (₱10,000.00) but not exceeding thirty thousand (₱30,000.00) pesos.
>
> The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Commission on Audit a true copy of the manifest of the incoming or outgoing cargo, as required by law. (As amended by P.D. No. 1258-A.)

The issue in the case at bar is not one of first impression. Numerous cases involving the same issue had already been decided by this Court to the effect that every vessel coming from a foreign port must have a <u>complete and correct manifest</u>. In this instant case, it is to be noted that the Inward Foreign Manifest of the vessel only mentions a cargo of fourteen (14) pallets, but did not declare or state the number of cartons in the aforesaid fourteen (14) pallets. Definitely, the manifest is not, therefore, considered complete and correct. It had not met the requirement of Section 2521 of Tariff & Customs Code to the effect that the shipment should be marked, numbered, and the quantity as well as the description thereof should be stated.

If only to be specific, we shall only cite one of the cases decided by this court, and that is the case of Compania General de Tabacos de Filipinas vs. The Commissioner of Customs, C.T.A. Case No. 2522, February 9, 1977, wherein we held thus -

> The issue before us is not one of first impression. It is already well settled that when a vessel from a foreign port carries and discharge unmanifested cargoes at our ports, it is liable for violation of Section 1005 and 2521 of the Tariff and Customs Code. The defense of honest mistake, lack of fraudulent intent to defraud the government, or good faith, is futile and will not relieve the vessel from liability. The law clearly makes it an imperative obligation of every vessel coming from a foreign port to have on board a <u>complete and correct</u> manifest of all its cargo. No exception is made in the statute and any attempt to read one into it, could hardly fail to defeat the purpose of its enactment. (U.S. vs. Steamship "Rubi", 32 Phil. 228, 235-236; Smith Bell & Co. (Phil.) Inc. vs. Comm. of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Comm. of Customs, C.T.A. Case No. 1930, Dec. 27, 1969; Compania General de Tabacos de Filipinas vs. Comm. of Customs, C.T.A. Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, C.T.A. Case No. 2082, Sept. 17, 1974; Compania General de Tabacos de Filipinas vs. Comm. of Customs, C.T.A. Case No. 2144, Jan. 5, 1976.)

It is hardly necessary to add:

> 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 am 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 an exception into the statute could hardly fail to defeat the purpose of its enactment. (U.S. v. Rubi, 32 Phil. 235-242; see also Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, Dec. 27, 1969.)

As regards the argument of the petitioner to the effect that with the amendment of the manifest allowed under Section 1005 of the Tariff and Customs Code, the government was not deprived of its proper taxes and duties, and that the amendment would only show the absence of any intention to misdeclare the subject shipment or to violate any law is of no significance. The rule is settled that under the aforesaid provision of Section 2521 of the Tariff and Customs Code, no relief from liability for fine is granted even if an amendment to the manifest is allowed.

In the case of Macondray & Company, Inc., vs. Commissioner of Customs, C.T.A. Case No. 2167, February 14, 1973, this Court held as follows:

> On the matter of amendment of the cargo manifest, this Court in the case of Compania General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Case No. 1939, dated February 26, 1971, held:

> Petitioner further asserts that "the provision of the law on amendment is designed to protect the master, agent or consignee from the error, mistake or discrepancy committed by him in the preparation of the original manifest and that it is unfair and uncalled for to conclude, as the respondent held in this case, that the right to amend the manifest is for the principal purpose of protecting innocent importers." Whether the purpose of the law in permitting amendment of a vessel's manifest is to protect the master, agent or consignee of the vessel, or the importer of the goods, is to our mind of slight significance. <u>Under Section 2521 of the Tariff and Customs Code, no relief from liability for the fine is granted where an amendment of the manifest is allowed.</u> (Underlining supplied.)

Taking however into consideration the entire circumstances of the violation, we find that the imposed administrative fine in the amount of Thirty Thousand Pesos (₱30,000.00) under the circumstances, and to our mind, harsh and excessive. We are of the opinion and so hold that the reasonable administrative fine should only be Ten Thousand Pesos (₱10,000.00).

WHEREFORE, the appealed decision is hereby modified by reducing the imposed administrative fine from ₱30,000.00 to ₱10,000.00 which petitioner is hereby ordered to pay to the Bureau of Customs, Manila, within thirty (30) days from the date the decision becomes final.

SO ORDERED.

Quezon City, October 18, 1984.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge