REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED STATES LINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3798

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

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D E C I S I O N

Appeal by petitioner United States Lines, Inc. from respondent Commissioner of Customs' decision dated April 5, 1984 affirming that of the Collector of Customs of the Port of Manila in Administrative Case No. V-997-77, which imposed a fine of ₱10,000.00 on the vessel M/V "AMERICAN VENTURE" for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, as amended.

There is no substantial dispute as to the facts.

It appears that on October 16, 1976, the M/V "AMERICAN VENTURE", a foreign vessel operated by petitioner United States Lines, Inc., arrived at the port of Manila from Hongkong and discharged, among other cargoes, one container (covered by Bill of Lading No. 38) containing 34 cases of 100% cotton brushed denim broken twill and one container (covered by Bill of Lading No. 39) containing 44 cases of 100% cotton sulphur dyed denim, consigned to the order of the Consolidated Bank and Trust Corporation, Inc., Manila. The inward foreign manifest of said vessel, however, listed the container under Bill of Lading No. 38 as containing 38 cases of 100% cotton brushed denim broken twill, and the container under Bill of Lading No. 39 as containing only 40 cases of 100% cotton sulphur dyed denim. The vessel's cargo manifest and the bills of lading aforesaid relative to said shipment contain the specification: "Shipper's Load and Count".

In November, 1976, after being informed of the discrepancy as to the quantity of the articles listed in the vessel's manifest, petitioner filed the corresponding amendment to reflect the actual quantity of the cases in each of the containers, which amendment was allowed by the Bureau of Customs. However, in August, 1977, customs administrative proceeding (Adm. Case No. V-997-77) was instituted against the vessel M/V "AMERICAN VENTURE", with petitioner United States Lines, Inc. representing as respondent, for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, as amended.

On December 7, 1978, after proper hearing, the Collector of Customs rendered a decision finding the vessel liable for violation of said provisions of the Tariff and Customs Code and ordering it to pay a fine of ₱10,000.00.

On appeal, respondent Commissioner of Customs, in his decision dated April 5, 1984, affirmed *in toto* the collector's decision. Hence the present recourse.

The basic issue at bar is whether the vessel or her master is liable for the fine for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code as amended, the pertinent provisions of which read:

> SEC. 1005. Manifest Required of Vessel from Foreign Port.- 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. x x x.
>
> xxxx xxxx xxxx
>
> SEC. 2521. Failure to Supply Requisite Manifests.- 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 proceeding section hereof, such vessel or aircraft shall

> be fined in a sum not less than ten thousand (₱10,000.00) pesos but not exceeding thirty thousand (₱30,000.00) pesos.

The arguments raised by petitioner to buttress the proposition that the vessel or her master is not liable for the fine, could be summed up to the following.

1. The containerized shipment in question is on a "Shipper's Load and Count" basis which, as defined under Section 24 of Customs Administrative Order No. 8-75, means that:

> "a container packed with cargo by one shipper where the quantity, description and condition of the cargo is the sole responsibility of the shipper."

Under such concept, the carrier cannot have knowledge whatsoever of the actual contents of the containerized shipment it receives from the shipper because it does not in any way participate in the inventory and placing of the goods into the container.

2. The misstatement or misdeclaration as to the quantity of the articles in the manifest was a mere clerical error committed in good faith and the same was properly corrected by an amendment allowed by the Bureau of Customs.

3. There was no fraud or fraudulent intent on the part of the vessel or her master.

4. The total number of cases found in the two containers were the same, i.e. 78 cases of cotton denims.

On the other hand, respondent contends that the law mandatorily requires that every vessel arriving from a foreign port must have on board a complete and accurate manifest of all her cargo and such imperative requirement allows no exception. Thus the fact that the shipment in question is containerized under a "Shipper's Load and Count" arrangement; that a corresponding amendment to the vessel's manifest was allowed; and that there was no fraudulent intent on the part of the vessel or her master, would not constitute a valid defense and absolve the vessel from liability.

We agree with respondent's view.

Since the inward foreign manifest of the vessel M/V "AMERICAN VENTURE" did not accurately state the quantity of the articles in each container, as what were declared therein as 40 cases of 100% cotton sulphur dyed denim under Bill of Lading No. 39 and 38 cases of 100% cotton brushed denim broken twill under Bill of Lading No. 39 were actually 44 and 34 cases of said materials, respectively, the vessel has violated Section 1005 of the Tariff and Customs

Code, which makes it liable for the fine prescribed under Section 2521 thereof.

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, and to this mandatory requirement no exception is provided by law. The recognition of any attempt to read into the statute any exception would be contrary to the pervasive spirit as well as the clear language of the statute. (Smith, Bell & Co. (Phil.) Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, December 27, 1969, certiorari denied in G.R. No. L-31599, Feb. 10, 1970; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2079, Sept. 29, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2073, Nov. 25, 1972; Macondray & Co. Inc. vs. Comm. of Customs, CTA Case No. 2203, June [illegible], 1973; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2484, Jan. 29, 1976; Macondray & Co., Inc. vs. Comm. of

Customs, CTA Case No. 2472, Nov. 28, 1977; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2503, July 31, 1978; Compania General de Tabacos de Filipinas vs. Comm. of Int. Rev., CTA Case No. 2599, Dec. 28, 1979.)

Thus the defenses of clerical error, good faith and lack of fraudulent intent in cases of this nature, as well as the defense that an amendment to the vessel's manifest was allowed by the Bureau of Customs, are unavailing and futile under said provisions of Sections 1005 and 2521 of the Tariff and Customs Code, and will neither exculpate nor relieve the offending vessel from the penalty of fine. (Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, Dec. 27, 1969, certiorari denied in G.R. No. L-31599, Feb. 10, 1970; Everett Steamship Corp. vs. Comm. of Customs, CTA Case No. 1968, August 25, 1971, certiorari denied in G.R. No. L-34146, Oct. 7, 1971; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2072, Sept. 29, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2167, Oct. 6, 1972; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971, certiorari denied in G.R. No. L-33386, April 14, 1971; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970.

The rationale of such doctrine, which has been repeatedly cited by this Court, was enunciated in U.S. vs. The Steamship "Rubi", 32 Phil. 228, thus:

> 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 country. No exemption is made in the statute, and the recognition of any attempt to read an exception into the law could hardly fail to defeat the purpose of the enactment. (See also American Steamship Agencies, Inc. vs. Comm. of Customs, CTA Case No. 1851, May 3, 1977; N & E Shipping Agency vs. Comm. of Customs, CTA Case No. 2629, Oct. 30, 1978; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2559, Dec. 28, 1979; F.E. Zuellig (M) Inc. vs. The Comm. of Customs, CTA Case No. 3542, Oct. 18, 1984.)

A similar interpretation was enunciated by this Court in the recent case of Sea-Land Service, Inc. vs. Commissioner of Customs, CTA Case No. 3529, Feb. 29, 1984, where a vessel's Inward Foreign Manifest did not correctly and accurately state a containerized cargo. (See also Sea-Land Service, Inc. vs. Comm. of Customs, CTA Case No. 3583, Sept. 14, 1984.)

x x x. Indeed, there can be no further occasion to speculate upon how the peremptory demand that "Every vessel from a foreign port must have on board a complete manifest of all her cargo" (Section 1005, supra), which far from showing any mere recemblance of an illusion, should be enforced. As, "The mandate of the law is clear and we cannot settle for less. The law imposes the absolute obligation, under penalty for failure, upon every vessel from a foreign port to have 'on board complete written or typewritten manifests of all her cargo signed by the master'. Where the law requires a manifest to be kept or delivered, it is not complied with unless the manifest is true and accurate." (U.S. v. S.S. Islas Filipinas, 28 Phil. 291; cited in Macondray & Co., Inc. v. Acting Commissioner of Customs, 62 SCRA 432). x x x.

Petitioner's proffered good faith and disclaimer to any knowledge of the undeclared items in the containerized cargo can no longer be a prospect that can easily be reconciled with the intended imperative. Conveyed and discharged were unmanifested cargoes falling sharply at odds with the caveat essentially addressed and directly brought to bear upon the carriers, requiring a manifest of a true and accurate description of all the cargo. And, "Doing business in the Philippines, it behooves the master or owner of the vessel to abide by our customs laws and regulations and to ignore them is nothing short of carelessness and incompetence." Delgado Shipping Agencies, Inc. v. Commissioner of Customs, G.R. L-46262, July 6, 1977). In a ruling of similar import this Court said "We can do no less but hold the herein petitioner accountable for such deviation from the peremptory demands of the law, the proffered good faith as an encapsulating panacea in bashing the delinquency notwithstanding. This specie of irregularity was not propitious then, it cannot, now." (Delgado Shipping Agency, Inc. v. Commissioner of Customs, CTA Case No. 3089, December 28, 1981).

Petitioner must come to grip with the facts obtaining, nothing more. Having taken the responsibility petitioner must assume full accountability for the undertaking in fealty to the governing law and regulations. The Customs law could not have wished the respondent to merely rubber-stamp an imprimatur of acquiescence over a "said to contain" declaration. And we do not think that by the simple expediency of containerization the law can be flouted with impunity and its efficacy defused in a cul de sac of impotency. The chips must somehow fall and having fallen the erring vessels must bear the statutory penalty so ordained in Section 2521 of the Tariff and Customs Code, supra, which directs the imposition of a fine in the sum of ₱10,000.00 but not more than ₱30,000.00. The statute makes no distinction nor does it establish an exception as regards the vessel's failure to supply the requisite manifest. Subsequent amendment adds no insulating relief for "even granting arguendo, that the amendment was approved and therefore valid it does not in any way relieve the vessel from the liability which she already incurred prior to the amendment." (Macondray & Co., Inc. v. Actg. Commissioner of Customs, 62 SCRA 434).

Neither the fact that the containerized shipment in question is on a "Shipper's Load and Count" arrangement, i.e. that "the quantity, description and condition of the cargo is the sole responsibility of the shipper", could take this case out of the operative effects of the cited codal provisions as understood and applied. Customs Administrative Order (CAO) No. 8-75 simply defines the term "Shipper's Load and Count" without any further proviso or explicit explanation as to the scope of its applicability. While the concept may be relevant in determining responsibility in case of injury or damage to the cargo arising from loading, handling or movement of the cargo, the same cannot positively, or even impliedly, be viewed as an exception to the provisions of Sections 1005 and 2521 of the Tariff and Customs Code imposing a mandatory duty on vessels from foreign ports to have on board true and accurate manifests of their cargoes. Besides, Customs Administrative Order No. 8-75 is merely an administrative order and the same cannot certainly modify or amend a law or statute like the Tariff and Customs Code, and defeat the purpose of its enactment. In fact, to be valid, an administrative order or regulation shall not be contrary to law. (See Article 7, Civil Code of the Philippines; also David vs. Dancel, L-21485, July 26, 1966, 17 SCRA 696.)

WHEREFORE, the decision of respondent Commissioner of Customs appealed from is affirmed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, September 27, 1985.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge