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LITONJUA SHIPPING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2703

COMMISSIONER OF CUSTOMS,
Respondent.
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10/20/78

D E C I S I O N

Petitioner Litonjua Shipping Co., Inc., in its capacity as ship agent of the vessel S/S "Iligan Bay", has appealed from the decision of respondent Commissioner of Customs dated April 23, 1975, imposing a fine of P5,000.00 upon the said vessel for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

It appears that on January 25, 1969, the vessel S/S "Iligan Bay", of which petitioner is the ship agent, arrived at the Port of Manila and discharged thereat a shipment consisting of 1,300 bundles of Galvanized Iron Wires. The weight of the said merchandise had not been declared in the vessel's Inward Cargo Manifest and the bill of lading, and so, in order to effect delivery of the goods to the consignee, an amendment to the manifest was filed by petitioner stating therein the gross weight of the said articles to be 56,550 kilos, as furnished and certified to by the consignee's customs broker. Upon examination by the Bureau of Customs, however, the said cargoes were found to have an actual gross weight of 113,100 kilos, which is more than 20% of the weight declared in the amended manifest.

On April 23, 1969, the Bureau of Customs wrote petitioner a letter requiring it to explain and show cause, within five (5) days from receipt thereof, why no administrative fine should be imposed upon the vessel for violation of Section 2523 of the Tariff and Customs Code. In reply to the aforementioned letter, petitioner explained that when the said cargoes were loaded at the port of departure, the shipper did not furnish or indicate any weight, hence no weight was declared in the manifest. However, when the consignee' requested for the release of the shipment, the consignee's customs broker certified and guaranteed that the weight should be 56,550 kilos and this was indicated in the amended manifest.

Not contented with the explanation, an administrative proceeding (Administrative Case No. V-443/69) was instituted by the Bureau of Customs against the vessel and petitioner herein for violation of Section 2523 of the Tariff and Customs Code, and on June 22, 1971, after the termination of said proceeding, the

Collector of Customs of Manila rendered a decision holding the vessel and/or its ship agent, petitioner herein, liable for a fine of ₱1,255.00 for violation of the said section of the Tariff and Customs Code. Upon appeal, the Commissioner of Customs, in his decision dated April 23, 1975, modified the decision of the Collector by holding the vessel liable for an administrative fine of ₱5,000.00 for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, instead of Section 2523 of the same Code.

Hence, the present recourse.

The legal question posed is whether or not the vessel S/S "Iligan Bay" and/or its ship agent Litonjua Shipping Co., Inc. are liable for the fine for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, the pertinent provisions of which read:

> Section 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.
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> 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 delivery with the marks, numbers quantity description of the packages and the names of the consignee thereof. x x x. (Underlining supplied.)
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> 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, or 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.
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> Sec. 2521. Failure to Supply Requisite Manifests. - If any vessel or aircraft enters or departs from a port of entry without submitting the proper manifest 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 in a sum not exceeding ten thousand pesos. (Underlining supplied.)

In support of the contention that petitioner or the vessel cannot be held liable for the administrative fine imposed under Section 1005, in relation to Section 2521, of the Tariff and Customs Code, the following defenses had been raised in petitioner's memorandum, filed after trial: (1) that petitioner or the vessel was never charged and prosecuted for violation of Sections 1005 and 2521 of the Tariff and Customs Code but for violation of Section 2523 of the said Code; (2) that while the weight of the imported articles was not declared in the original manifest, an amendment thereto was filed stating the weight as furnished and certified by the customs broker; and (3) that, if at all there was an incomplete or improper manifest, the correct taxes and duties had been paid on the importation, and therefore, the Government did not suffer any loss in revenue.

We find the stand of petitioner not well taken. When there is a failure to state the weight of an imported article in the cargo manifest, which is a fact here established and admitted, the manifest is erroneous and incomplete, and therefore, the requirements of Section 1005 and Section 2521 of the Tariff and Customs Code are not complied with. In short, such fact constitutes a violation of the law. Thus in the case of Smith, Bell Co., Inc. vs. Commissioner of Customs, CTA Case No. 2396, April 30, 1973, this Court, *inter alia*, ruled:

> It is plain that the particulars required to be included in the cargo manifest are the following: (1) port of departure; (2) port of delivery; (3) marks, numbers, quantity and description of the packages; and (4) names of the consignees. There is no specific mention in these particulars about the weight of the article. Notwithstanding this, however, it may not readily be assumed that the Legislature intended that such an equally important data as weight should be omitted or excluded as a requirement. In the first place, Section 1005 requires that there must be a "complete manifest" of all cargo, and that all cargo "must be described in separate manifests." By the legal requirement that there must be a "complete manifest" and that the "cargo must be described" therein, the object, in our opinion, is not simply to confine the particulars to the outward features, such as numberings, markings and the like, but to include such other important data as weight. A manifest, after all, is a summary of all the bills of lading for the cargo of a vessel (21 Am. Jur. 2d 809). And among the data required of a bill of lading is the weight of the article.

In any event, it is not farfetched to consider that under the term "quantity" - one of requirements to be included in the manifest - weight is deemed included, at least insofar as the Tariff and Customs Code is concerned. The authority cited by petitioner against this interpretation conversely supports the same rather than contradicts it. Thus in Sherman, S & S Ry. Co. v. Conly, supra, it is said:

> A demand for "weight or amount, or something more definite" does not necessarily include and embrace quantity. Quantity may include weights or amounts, but neither of these latter terms, are accurately synonymous with quantity. A shipment of lumber may be designated by giving the quantity in some other manners than by weight or amount . . .
> (Underlining supplied.)

In other words, the term "quantity" used in the law is broad enough to embrace or include weight. But when the law specifies only weight, the latter cannot be construed to include or embrace quantity.

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In view of our interpretation that the weight of a cargo is deemed included in the particulars required to be stated in the manifest under Section 1005 of the Tariff and Customs Code, the non-inclusion thereof in the manifest amounts to a violation of said section, and is, therefore, punishable under Section 2521 of the same Code.

Consequently, the Commissioner of Customs, after finding on appeal that the weight of the subject article was not stated in the cargo manifest, did not commit an error in rendering a decision modifying that of the Collector of Customs and holding the vessel liable for a fine under Section 1005, in relation to Section 2521, of the Tariff and Customs Code and not under Section 2523 of the same Code.

It is of no moment that the petitioner was charged and prosecuted for violation of Section 2523 of the Tariff and Customs Code before the Collector of Customs and not for violation of Sections 1005 and 2521 of the same Code. A mistake in or an impropriety of the charges in cases involving the imposition of administrative penalties under Customs law, is of no consequence where the violation was properly described which is clearly punishable. (United States Lines Co. vs. Commissioner of Customs, CTA Case No. 2365, July 17, 1974) Such doctrine was enunciated by the Supreme Court, thus:

> Petitioner finally contends that the decision of the Commissioner of Customs libeling and forfeiting the cigarettes involved in the present case for violation of Section 2530 (m-1) of the Tariff and Customs Code is unconstitutional, in view of the fact that she was allegedly not afforded an opportunity to defend the cigarettes against such charge, said section not being one of the original grounds cited by the Collector of Customs of Cebu in forfeiting the same.
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> The contention has no merit. Certainly, the appellate power of the Commissioner of Customs to review seizure and protest cases is not limited to a review of the issues raised on appeal. He may affirm, modify or reverse the decision of the Collector (Section 2313) on other questions provided that his findings and conclusions are, as in the case at bar, supported by evidence. It is of no consequence whatsoever what were the original grounds of the seizure and forfeiture if, in point of fact, the goods are by law subject to forfeiture [Wood vs. U.S., 16 Pet (U.S.) 342, 10 L. ed. 987]. As there is evidence on record showing that the cigarettes in question were imported and introduced into the country without passing through a customs house, the same

> may be forfeited under said Section 2530 (m-1) of the Code, notwithstanding that it is not one of the original charges. As we held in Que Po Lay vs. Central Bank, et al. (104 Phil. 853), what counts is not the designation of the particular section of the law that has been violated but the description of the violation in the seizure report.
> (Vierneza vs. Commissioner of Customs, G.R. No. L-24348, July 30, 1968, 24 SCRA 394; underlining supplied.)

The fact that the taxes and duties on the imported articles have been paid by the importer will not exulpate the vessel and/or the ship agent from liability for violation of Section 1005 and Section 2521 of the Tariff and Customs Code. The established principle consistently cited, which we here find applicable, is that, under Section 1005, in relation to Section 2521, of the Tariff and Customs Code, it is an imperative obligation of every vessel coming from a foreign port to have on board a complete manifest of all her cargo, and to this 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 law. Thus even the defenses of clerical error, good faith and lack of intent to defraud the government, as well as the defense that an amendment to the vessel's manifest was submitted to and accepted by the Bureau of Customs, are unavailing and futile in cases of violation of said provisions of the Tariff and Customs Code and will not relieve the offending vessel from liability and the penalty of fine. (See Macondray Co., Inc., vs. Commissioner of Customs, CTA Case No. 2503, July 31, 1978, and cases cited therein.

In any event, petitioner's defense in this case that the original manifest was amended in which the weight of the subject 1,300 bundles Galvanized Iron Wires was stated to be 56,550 kilos, cannot be accepted as a valid one. In the first place, the weight of 56,550 kilos stated in the amendment filed by petitioner was only supplied and furnished by the Customs broker in order to effect delivery of the goods to the consignee. Said data (or figure) furnished by him did not come from a competent source as it was not based on an information furnished by the person or entity responsible for the actual weighing of the cargo at the port of loading or even by the person in charge of the preparation of the original manifest. Secondly, as shown by the records of the Bureau of Customs (p. 7, Customs rec.), the actual weight of the subject merchandise was 113,100 kilos and, in fact, the very customs broker (Mr. Bayani Magsambol), whose information was relied upon by the petitioner, admitted during the customs proceedings that the weight of 56,550 kilos only represents almost one-half of the weight of 113,100 kilos as found by a customs examiner upon actual weighing of the subject articles. (See pp. 41-42, Customs rec.) In other words, the amendment to the manifest did not correct the error nor supply the deficiency in the original manifest.

In the final analysis, however, we find the reduction of the fine justifiable in view of the circumstances that: (1) this appears to be the first offense of the vessel S/S "Iligan Bay"; (2) the omission to declare the weight in the manifest could also be attributed to the failure of the shipper (or the person in charge of weighing the cargo at the port of loading) in furnishing the carrier the weight of subject articles; and (3) the correct taxes and duties had been paid to the government. Under the premises, a fine of ₱3,000.00 is deemed fair and reasonable.

WHEREFORE, the decision appealed from is modified and the vessel S/S "Iligan Bay" and/or petitioner Litonjua Shipping Co., Inc. are hereby ordered to pay to the Bureau of Customs a fine of ₱3,000.00 for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

SO ORDERED.

Quezon City, October 20, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Acting Presiding Judge