REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EVERETT STEAMSHIP CORP.,
Petitioner,

- versus - C.T.A. CASE NO. 3061

COMMISSIONER OF CUSTOMS,
Respondent.
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6/25/81

D E C I S I O N

Appeal by petitioner Everett Steamship Corporation from the decision of respondent Commissioner of Customs dated December 28, 1979 in Customs Case No. 79-191, affirming the decision of the Collector of Customs of Davao dated December 11, 1978, imposing an administrative fine of ₱10,000.00 against the vessel M/S "CHALMEVERETT" for allegedly conveying an unmanifested article consisting of one (1) transistorized wall clock, in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, as amended by Presidential Decree No. 34 and Presidential Decree No. 1258-A.

The facts are not in dispute.

It appears that on June 14, 1978, the vessel M/S "CHALMEVERETT", of which petitioner is the ship agent, arrived at the port of Davao and was found to have on board an article, consisting of one (1) transistorized wall clock, which was not listed in its cargo manifest nor entered in the baggage declaration or entry forms required by the Bureau of Customs. Consequently, customs administrative proceeding was instituted against the said vessel for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, as amended.

On July 7, 1978, the Collector of Customs of Davao issued an Order imposing an administrative fine of ₱10,000.00 against the said vessel. And on December 11, 1978, after further proceedings, said Collector rendered a decision reiterating his order of July 7, 1978 holding the vessel liable for a fine of ₱10,000.00.

On January 5, 1979, petitioner appealed to the Commissioner of Customs who, on December 28, 1979, rendered a decision affirming <u>in toto</u> the decision of the Collector of Customs of Davao. Hence the present appeal.

The sole issue for resolution is whether or not the vessel M/S "CHALMEVERETT" is liable for the administrative fine of ₱10,000.00 for violation of Section 1005, in relation to Section

2521, of the Tariff and Customs Code, as amended, the pertinent provisions of which, provide:

"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.

All 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 a complete manifest 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 manifests 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."

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"Section 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 preceding section hereof, such vessel or

> aircraft shall be fined an amount not less than ten thousand (₱10,000.00) pesos but not exceeding thirty thousand (₱30,000.00) pesos. (As amended by P.D. No. 1258-A)

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Petitioner contends that the vessel M/S "CHALMEVERETT" did not violate Section 1005, in relation to Section 2521, of the Tariff and Customs Code, because:

(a) The value of said wall clock is insignificant and minimal (Yen 21,000.00) and whoever brought it on board the vessel has no intention of defrauding the government of taxes;

(b) Said wall clock partakes of the nature of "personal effects" and therefore it is not required to be listed in the manifest as it was not carried under a bill of lading;

(c) This is the first time that the vessel M/S "CHALMEVERETT" is charged with an offense or violation of this nature, and being the first offense, she merits a lighter penalty, possibly a reprimand or warning which will, it is respectfully submitted, suffice.

Furthermore, petitioner argues that even assuming for the sake of argument that there was some carelessness in carrying on board the vessel said wall clock, the imposition of the fine of ₱10,000.00 is out of proportion to the offense because the value of the article is minimal and there is no fraudulent intent to defraud the government of taxes. Hence, the said penalty is harsh and excessive. (Par. 3, Petition For Review, pp. 1-2, CTA records; also pp. 2-3, t.s.n., November 25, 1980 hearing.)

On the other hand, respondent maintains that the carrying by the vessel of the unmanifested article is a violation of Section 1005 of the Tariff and Customs Code because said law imposes an absolute obligation upon every vessel from a foreign port to have on board a complete, true and accurate manifest of all her cargo and a complete manifest of passengers and their baggage in the prescribed form setting forth their destination and all particulars required by immigration laws. And for such violation, the vessel is not relieved from the penalty of fine imposed under Section 2521 of the Code, as amended, notwithstanding that the value of the article is minimal, it is the first offense committed by the vessel and the unmanifested article is a "personal effect".

Moreover, respondent argues that the article in question is classifiable as "baggage" and, citing the case of Commissioner of Customs vs. Francisco Geronimo, L-31642, October 28, 1977, 80 SCRA 74, the same should have been entered in the baggage declaration and entry forms prescribed by the Bureau of Customs to satisfy the requirements of the law.

The Court agrees with the view of respondent and hereby sustains the same.

From the provisions of Section 1005 of the Tariff and Customs Code, as amended, which state that: "Every vessel from a foreign port must have on board a complete manifest of all her cargo" x x x, and "Every vessel from a foreign port must have on board a complete manifests of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws, x x x"(underscoring supplied), it is quite clear that a separate manifest for its cargo and separate manifest for its passengers and their baggage are required of the incoming foreign vessel. Both the vessel's cargo and the passenger's baggage cannot be mixed in, and pass under, one and the same manifest. Cargo must be listed in the vessel's inward cargo manifest;

while baggage must be entered in the baggage manifest or at least in the baggage declaration and entry forms prescribed by the Bureau of Customs. The reason for the distinction can be gleaned from the decision enunciated by the Supreme Court in the case of Commissioner of Customs vs. Francisco Geronimo, L-31642, October 28, 1977; 80 SCRA 74. Thus:

> It is easy to see that inward manifests are required by the State principally for the purpose of informing itself what dutiable goods are on board an incoming foreign vessel. As a general practice, goods of commercial quantity or value, usually covered by the corresponding bills of lading, are entered by the carrying vessel in an inward cargo manifest which is submitted to the port authorities and scrutinized by them. Upon the other hand, baggage belonging to arriving passengers is normally entered in baggage declaration and entry forms prescribed by the Bureau of Customs. (80 SCRA 74, 78)
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> The law itself recognizes a distinction between "cargo" and "baggage" when it treats them separately. Section 1005 of the Tariff and Customs Code (R.A. 1937, as amended) declares that (a) "Every vessel from a foreign port must have on board a complete manifest of all her cargo", and (b) "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 particulards required by the immigration laws; . . ." The distinction

> is by no means an idle one because the customs processing of passengers' baggage, unlike that of general cargo, must be done with dispatch, first, in order to avoid unnecessary inconvenience to the passengers accompanying them and, second, because their contents are generally considered to be of little or no taxable importance.
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> All too often the privilege of "passenger baggage" is abused by unscrupulous "travelers". The word "baggage", as we understand it, refers to "such articles of apparel, ornament, etc., as are in daily use by travelers, for convenience according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or ultimate purpose of the journey . . . only such articles of necessity or convenience as are generally carried by passengers for their personal use". As such, when entered in the baggage declaration and entry forms prescribed by the Bureau of Customs, passengers' baggage is deemed manifested in accordance with law. Dutiable goods of commercial quantity or value cannot be sure, be considered passengers' baggage which can pass under the same manifest forms. They fall within the category of general cargo and are required by law to be declared in the inward cargo manifest of the carrying vessel x x x. (80 SCRA 74, 79)

The unequivocal expression of the law in making an obligation of the vessel coming from a foreign port to have on board not only a complete manifest of all its cargo but also a complete manifest of its passengers and their baggage has obviously rendered inconsequential and unnecessary the factual determination of whether the subject article (transistorized wall clock) is cargo or baggage because, in whichever classification said article should fall, the same will have to be manifested in accordance with law. And the failure of the vessel to comply with such legal obligation in regard to the listing in the manifests of her cargo and passengers and their baggage is punishable by a fine under Section 2521 of the Code.

As a matter of fact, it would neither make any difference if said article should, conformably to petitioner's assertion, be treated as "personal effects". In the latter category, when viewed with reference to the traveler or passenger, the article can be similar to, or synonymous with, "baggage". The term "personal effects" refers to (a) "property especially appertaining to one's person and a close relationship thereto x x x"; (b) "such property as is usually or normally carried by a traveler for his use and comfort . . ." (Webster's Third International Dictionary, p. 1686.) The word "baggage" means "articles of necessity and personal convenience, usually carried by passengers for their personal use, and what they are depends upon the habits, taste, and resources of the passenger". (Johnson vs. Stone, 30 Tenn.

/11 Humph/ 419, 420; Words and Phrases, Vol. 5, p. 20.) Or, as stated in the case of Geronimo, supra: "The word 'baggage', x x x, refers to such articles of apparel, ornament, etc., as are in daily use by travelers, for convenience according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or ultimate purpose of the journey . . . only such articles of necessity or convenience as are generally carried by passengers for their personal use". In other words, the personal effects of a traveler or passenger may include his baggage or, vice versa, his baggage may include his personal effects. Hence, the requirement of the law as regards "baggage", such as a baggage manifest or baggage declaration and entry forms, etc., can be made to apply to "personal effects".

The requirement of Section 1005 of the Tariff and Customs Code as regards the vessel's cargo manifest and the manifest for its passengers and their baggage seems to be imperative and absolute. No exception is provded therein nor in Section 2521 of the same Code which, as cited heretofore, imposes a fine of not less than ten thousand

(₱10,000.00) pesos but not exceeding thirty thousand (₱30,000.00) pesos upon any vessel that 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. Consequently, petitioner's postulation that the value of the unmanifested article here involved is minimal; that there is no intention to defraud the government of revenue; and that this is the first offense commited by the vessel M/S "CHALMEVERETT", would not constitute a valid and exculpatory defense which would justly relieve the vessel from the violation of the law and the penalty imposed therein. Where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction. (Acting Commissioner of Customs vs. Manila Electric Company, L-23623, June 30, 1977, 77 SCRA 473; Insular Lumber Company vs. Court of Tax Appeals & Commissioner of Internal Revenue, L-31057 & 31137, May 29, 1981.)

Neither does this Court find any justifiable and mitigating cause to reduce further the fine of ₱10,000.00 imposed upon the vessel, inasmuch as under the explicit provisions of Section 2521 of the Tariff and Customs Code, as amended, such penalty is already the minimum for the offense. Nothing there speaks of a first offense which would merit a lighter penalty. Where the law has already specifically imposed a minimum fine for an offense, a lighter penalty should not be read into the law. The law may be harsh, but it is still the law. "Dura Lex Sed Lex." (Gonzalez v. Gonzales, 58 Phil. 67; In re: Subido, 81 Phil. 526.)

WHEREFORE, the decision appealed from is affirmed, and petitioner herein Everett Steamship Corporation and/or the vessel M/S "CHALMEVERETT" are hereby ordered to pay a fine of ₱10,000.00 to respondent Commissioner of Customs. With costs.

SO ORDERED.

Quezon City, Metro Manila, June 25, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge