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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPANIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2559

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

12/28/79

DECISION

This appeal is taken by petitioner Compania General de Tabacos de Filipinas from the decision of respondent Commissioner of Customs dated September 20, 1973 (in Customs Case No. 73-28) which affirmed the decision of the Collector of Customs of the Port of Manila dated March 6, 1973, imposing an administrative fine upon each of the following vessels, in their respective administrative case, to wit:

₱ 1,000.00 - S/S "Lica Maersk" - Administrative Case No. V-600-71

1,000.00 - S/S "Cecilie Maersk" - Administrative Case No. V-601-71

1,000.00 - "Nicoline Maersk" - Administrative Case No. V-602-71

1,000.00 - "Lexa Maersk" - Administrative Case No. V-603-71

1,000.00 - "Luna Maersk" - Administrative Case No. V-604-71

1,000.00 - "Tobias Maersk" - Administrative Case No. V-605-71

₱ 1,000.00 - "Luna Maersk" - Administrative Case No. V-614-71

for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

There is no dispute as to the material facts as borne out by the records of the Bureau of Customs.

On different dates in 1969, 1970 and 1971, the vessels in question, which are all owned and operated by the Maersk Line, a company engaged in inter-ocean shipping, and represented in the Philippines by their local ship agent, petitioner Compania General de Tabacos de Filipinas, arrived separately at the Port of Manila and discharged thereat various cargoes without being listed in their respective manifest, thus:

S/S "Lica Maersk" - Registry No. 945
Date of Arrival - May 29, 1970
Cargo - 8 drums of Sodium Xanthate but only 3 drums were listed in the Inward Foreign Manifest.

S/S "Cecilie Maersk" - Registry No. 1268
Date of Arrival - October 15, 1970
Unmanifested cargo - 4 drums industrial essential oil.

S/S "Nicoline Maersk" - Registry No. 1513
Date of Arrival - August 28, 1970
Unmanifested cargo - 2 boxes personal effects consigned to Miss Beatriz Fabaya of Talisay, Cebu.

S/S "Lexa Maersk" - Registry No. 165
Date of Arrival - January 25, 1969
Unmanifested cargo - 80 drums citric acid.

S/S "Luna Maersk" - Registry No. 587
Date of Arrival - March 27, 1969
Unmanifested cargo - 11 packages recording.

S/S "Tobias Maersk" - Registry No. 978
Date of Arrival - June 20, 1970
Unmanifested cargo - 5 cases of truck parts.

S/S "Luna Maersk"-Registry No. 255
Date of Arrival - March, 1971
Unmanifested cargo - 20 cartons of truck replacement parts.

After each incident, an amendment to the manifest of the vessel concerned was filed by the ship agent, Compania General de Tabacos de Filipinas, but the Bureau of Customs approved each amendment with a notation: "without prejudice to an administrative action against the vessel."

Consequently, in the middle of 1971, the Bureau of Customs instituted administrative proceedings against the vessels, respectively, to wit: Administrative Case No. V-600-71 -- S/S "Lica Maersk"; Administrative Case No. V-601-71 -- S/S "Cecilie Maersk"; Administrative Case No. V-602-71 -- "Nicoline Maersk"; Administrative Case No. V-603-71 -- "Lexa Maersk"; Administrative Case No. V-604-71 -- S/S "Luna Maersk"; Administrative Case No. V-605-71 -- S/S "Tobias Maersk"; Administrative Case No. V-614-71 -- "Luna Maersk"; for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

The administrative cases aforesaid were consolidated and jointly heard on August 31, 1971, during which, petitioner Compania General de Tabacos de Filipinas, representing the vessels as respondent, offered the following stipulation of facts which was granted without objection on the part of counsel for the Bureau of Customs:

"1. That the Maersk Line is a shipping company that operates vessels to and from Manila to the ports of the United States;

2. That the respondent company, Compania General de Tabacos de Filipinas is the Philippine Agent of the Maersk Line;

3. That Mr. Fŕancisco de Guzman who is now present before the Honorable Hearing Officer is an employee of the Compania General de Tabacos de Filipinas in its Shipping Department, who among other things is familiar with the mailing of the correspondence and the receipt thereof;

4. That more particularly in Administrative Case No. V-600-71, we submit that the error herein, the figure 3 was typed in lieu of the figure 8 is a clerical error and that it is understandable in view of the fact that the ordinary manifest easily contains over fifty (50) pages with many hundred items, and that one clerical error in such a long document can be considered as an honest clerical mistake;

5. In cases 601-602 we submit that if Mr. de Guzman testify, he would testify that the items referred to in these cases were not included in the manifest because the original manifest sent from New York to Manila was delayed in the mail;

6. In proof of the foregoing, respondent is willing, if the Hearing Officer so wishes, to submit xerox copies of the manifest in both these cases showing the date of receipt;

7. In cases 603-604, we incorporate by reference the deposition already submitted to this Honorable Office in Administrative Case No. 476, a copy of which we will submit to this Office should this Office so desire;

8. The cross loading in both cases was due to the fact that there was confusion caused by the Pier strike that raged in New York from the last month of 1968 to the first month of 1969; the evidence in question has already been submitted to this Honorable Office in a previous case;

9. In cases 605 and 614, we submit that the Maersk Line possesses and operates a pier in New York, where only its vessels dock and that its vessels dock there in numbers so that often times cargoes intended for one (1) vessel are loaded aboard another vessel due to the usual prevailing confusion in any pier and without thought of fraud so that items may appear in the manifest of one vessel of the company when the truth is they have been loaded aboard another vessel due to the confusion in the operation of the vessel. x x x." (Par. 5, Petition for Review, pp. 2 & 3 C.T.A. records, Admitted par. 1, respondent's Answer, p. 16, C.T.A. records; also pp. 57, 60-62; Customs records & pp. 3-4, Decision of Commissioner of Customs, pp. 111-112, Customs records.)

On March 6, 1973, the Collector of Customs of the Port of Manila rendered a consolidated decision in these administrative cases imposing a fine of ₱1,000.00 upon each of the vessels for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. On appeal by petitioner, said decision of the Collector was affirmed by the Commissioner of Customs on September 20, 1973. Hence the present recourse.

The issue to be resolved is whether or not the vessels in question are each liable for the penalty of fine imposed by the Collector of Customs of the Port of Manila and affirmed by the Commissioner of

Customs for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, the pertinent provisions of which read as follows:

> 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.
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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 of delivery with the marks, numbers, quantity and description of the packages and the names of the consignees thereof. x x x. 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.
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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, 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 manifests to the customs authorities, or shall enter or depart conveying unmanifested cargo other than as stated in the next preceeding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

The arguments and defenses raised by petitioner in its petition for review and memorandum are the same as those raised by it in the administrative proceedings before the Bureau of Customs. Thus:

In Administrative Case No. V-600-71, the failure or omission to manifest the cargo was due to typographical or clerical error because instead of the figure "8" (eight /8/ drums of Sodium Xanthate) the figure "3" was typed in the cargo manifest.

In Administrative Cases Nos. V-601-71 and V-602-71, the failure to include in the manifest of the articles involved was due to the delay in mails of the original manifest sent from New York (port of loading) to Manila.

In Administrative Cases Nos. V-603-71 and V-604-71, the failure to manifest the cargoes involved was due to cross-loading because of the confusion brought about by a pier strike in the Port of New York.

In Administrative Cases Nos. V-605-71 and V-614-71, the failure to manifest the cargoes involved was also due either to cross-loading (or misshipment) because "the Maersk Line operates a pier in New York, where only its vessels dock and that its vessels dock there in numbers so that often times cargoes intended for one (1) vessel are loaded aboard another vessel due to the usual prevailing confusion in any pier and without thought of fraud so that items may appear in the manifest of one vessel of the company when the truth is they have been loaded aboard another vessel due to the confusion in the operation of the vessel."

On the other hand, respondent Commissioner of Customs contends that the requirement of Section 1005 of the Tariff and Customs Code that every vessel coming from a foreign port must have on board a complete manifest of all her cargo is an imperative obligation of the vessel, and since the law does not provide for any exception, the vessels in question are subject to the penalty of fine under Section 2521 of the Code. In support of his contention, respondent cites the case of Smith Bell and Co., Inc, vs. Commissioner of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969.

The Court agrees with the stand of respondent. In previous cases involving similar or identical issues, this Court has consistently and repeatedly ruled that the law makes it an imperative obligation of every vessel coming from a foreign port to have on board a complete and proper manifest of all her cargo, and to this mandatory requirement no exception is allowed by the statute.

> "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 the confiscation of unmanifested goods. 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. (Smith Bell, & Co. (Phil.) Inc. vs. Comm.of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; 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. 2067, Oct. 6, 1972; 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. 1, 1976; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2144, Jan. 5, 1976.) (Underlining supplied.)

The fact that the omission to manifest a cargo was due to clerical error or shortshipment committed in good faith or without fraudulent intent or that the vessel's manifest was amended or corrected with the approval of the Bureau of Customs will not constitute a valid defense and relieve the vessel from liability. (See 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; Everett Steamship Corp. vs. Comm. of Customs, CTA Case No. 1968, Aug. 25, 1971, Certiorari denied in G.R. No. L-34146, Oct. 7, 1971; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970; 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.)

And as clearly and explicitly stated by the Supreme Court in the case of U.S. vs. The Steamship "Rubi", 32 Phil. 228, 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. (American Steamship Agencies, Inc., vs. Comm. of Customs, CTA Case No. 1851, May 3, 1977.)

Consequently, the fact that the failure or omission to manifest the vessel's cargo was due to a clerical error (Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2503, July 31, 1978), cross-loading (Compania General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Case No. 2781, September

30, 1977) misshipment or delay in the mails of the original manifest sent from the port of loading (See Compania General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Case No. 2742, September 16, 1977), will not exculpate the vessel from the penalty of fine prescribed under Section 2521 of the Tariff and Customs Code.

We find no plausible reason to depart from these rulings.

WHEREFORE, the decision of respondent Commissioner of Customs is hereby affirmed *in toto*, with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1979.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

C. C. Roaquin
CONSTANTE C. ROAQUIN
Associate Judge