

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

N & E SHIPPING AGENCY, in  
its capacity as agent of  
the SS "TUN HO",  
Petitioner,

- versus - C.T.A. CASE NO. 2636

COMMISSIONER OF CUSTOMS,  
Respondent.

x - - - - - x

1/3/76

D E C I S I O N

From the decision of respondent Commissioner of Customs in Customs Case No. 74-11-A(S.I. No. 9/72), affirming that of the Collector of Customs, Port of Aparri, declaring the forfeiture of the 9 decks of playing cards and 1 umbrella to the government and reducing the fine of P10,000.00 to P2,000.00 for carrying unmanifested cargo, petitioner appealed to this Court.

Petitioner is a shipping agency located at 99 Dasmarinas Building, Dasmarinas St., Manila. It is the agent in the Philippines of the vessel SS "TUN HO".

The SS "TUN HO", a foreign vessel of Panamanian registry, arrived in the Port of Aparri on October 9, 1972 from Taiwan. The ship's manifest declared that it had no import or through cargo. After the boarding formality and routinary

DECISION  
C.T.A. CASE NO. 2636

- 2 -

inspection on the vessel, it proceeded to Abulug, Cagayan, which is within the customs district of Aparri, for the purpose of loading logs.

On October 13, 1972, the Collector of Customs, Port of Aparri, received a letter from Brig. General, Godofredo F. Mendoza, AFP (Ret.), Director, RASAG-NEL, which reads as follows:

13 October 1972

The Collector of Customs  
Port of Aparri  
Aparri, Cagayan

Sir:

Quoted hereunder is an intelligence information received from one of our agents in the field for your information, guidance and for whatever action you may deem proper to take on the premises:

"In the evening of October 12, 1972 while I and Agent Pascual Francisco were assigned on board the foreign vessel SS Tung Ho the 3rd Officer of said vessel who gave his name as FOO KOK CHEN contacted us to look for buyers of smuggled goods like folded umbrellas, face powder and attache cases. According to FOO KOK CHEN, these smuggled goods are in the possession of some of the crew members of the said vessel. Because of this deal, I informed Mr. Benjamin Aglugub, the Customs Inspector assigned on board said vessel and his two (2) Customs guard companions. All of us decided to let the crew members of the vessel

DECISION  
C.I.A. CASE NO. 2636

- 3 -

SS TUNG HO so that when the negotiations are being made they will be caught red handed."

Thank you for this and other favors.

Very truly yours,  
GODOFREDO F. MENDOZA  
Brig. General, AFP(Ret)  
Director, RASAC-NEL

On October 14, 1972, Customs personnel of the Port of Aparri, composed of Joel Macatiag, Pedro Lansi and Vicente Cudala, Jr., together with some ASAG agents and three enlisted men of the Coast guard, proceeded to Abulug, Cagayan, and conducted a thorough search of the said vessel and subsequently seized 9 decks of Taiwanese playing cards and one (1) Taiwan made folding umbrella which were cleverly hidden near the rudder of the vessel.

The seized articles were not entered in the Manifest of the vessel, the Parcel Lists, and in the Crew's Personal Effects List. The said search and seizure were certified to by the Master of the boat, Chang Hai Ming, as having been conducted in the presence of the Chief Engineer and Chief Officer of the boat. Thereafter, the goods were seized for violation

DECISION  
C.T.A. . CASE NO. 2636

- 4 -

of Section 2530(g) of the Tariff and Customs Code, as amended by Presidential Decree No. 34, authorizing the forfeiture thereof. The vessel likewise violated Section 1005 of the Tariff and Customs Code in relation to Section 2521 of the same Code, which authorizes the imposition of a fine not exceeding ₱10,000.00.

On November 12, 1973, the Collector of Customs, Port of Aparri, rendered a decision and declared the forfeiture of the said 9 decks of Taiwanese Playing Cards and one (1) Umbrella to the government for violation of Section 2530 (g) of the Tariff and Customs Code and imposed the maximum fine of ₱10,000.00 upon the vessel or its agent considering that the vessel in question has been tagged as a notorious carrier of smuggled articles.

On appeal, the Commissioner of Customs rendered a decision, dated October 7, 1974, affirming that of the Collector of Customs, Port of Aparri. He reduced, however, the fine of ₱10,000.00 to ₱2,000.00 considering that the unmanifested articles of 9 decks of playing cards and one (1) umbrella are meager in quan-

DECISION  
C.T.A. CASE NO. 2636

- 5 -

tity and of small value.

Petitioner, not satisfied with respondent's decision, appealed to this Court on November 22, 1974. Respondent filed his answer to the petition on February 20, 1975, and alleged that this Court has no jurisdiction over the present petition since it was filed out of time because respondent's decision, dated October 7, 1974, was received by petitioner on October 10, 1974 while the petition for review was filed with this Court only on November 22, 1974 or beyond the 30-day period prescribed by Section 11 of Republic Act No. 1125.

The two issues submitted to this Court for resolution are the followings:

- 1) Whether or not this Court has jurisdiction over the present appeal; and
- 2) Whether or not the SS "TUN HO" carried unmanifested cargo.

FIRST ISSUE:

Respondent contends that this Court has no jurisdiction to take cognizance of the present appeal since the decision of the Commissioner of Customs dated October 7, 1974, was received by

DECISION  
C.T.A. CASE NO. 2636

- 6 -

petitioner on October 10, 1974 while the petition for review was filed with the Tax Court only on November 22, 1974, or beyond the 30-day period for appeal.

We find the view of respondent untenable because the petition for review dated November 8, 1974 was mailed to this Court on the same date. We have already ruled that the date of mailing the petition for review, not the date of actual receipt of the pleadings by this Court, is considered the date of filing the appeal (*Gigare v. Comm. of Customs*, CTA Case No. 1047, March 4, 1963).

When the decision of respondent Commissioner of Customs, dated October 7, 1974, was received by petitioner either on October 9, 1974 as contended by petitioner, or October 10, 1974, as alleged by respondent, the said petition for review dated November 8, 1974 and mailed to this Court on the same date was filed seasonably within the 30-day period prescribed by Section 11 of Republic Act No. 1125. This Court has, therefore, jurisdiction to take cognizance of petitioner's appeal.

DECISION  
C.T.A. CASE NO. 2636

- 7 -

SECOND ISSUE:

Petitioner maintains in its amended petition for review that the decision of the respondent Commissioner of Customs is erroneous, contrary to law and the evidence since the vessel SS "TUN HO" did not carry unmanifested cargo for the 9 decks of playing cards and 1 umbrella seized on board the vessel because they constitute the crew's personal effects and, therefore, they need not be included in the Cargo Manifest.

Respondent maintains the opposite view. He contends that the apprehending officers discovered and verified that the 9 decks of playing cards and 1 umbrella, found near the rudder of the vessel are not part of the crew's personal effects.

Respondent's view is well taken. From the facts and records of this case, it was established that the SS "TUN HO" carried unmanifested cargo, in violation of Section 1005, in relation to Sections 2521 and 2530(g) of the Tariff and Customs Code.

It is very clear from the ship's manifest that it declared no Import and Through Cargo.

DECISION  
C.T.A. CASE NO. 2636

- 8 -

However, after the search, the apprehending officers seized 9 decks of Taiwanese playing cards and 1 Taiwanese folding umbrella which were not entered in the Cargo Manifest, Parcel List, or in the Crew's Personal Effects List. Consequently, the cargoes in question were unmanifested. In fact when the 9 decks of playing cards and 1 Taiwanese umbrella were discovered and seized by the apprehending officers near the rudder of the vessel, Customs officer Joel Macatlag even informed and showed the master of the vessel the articles seized on board thereof and the said master of the vessel willingly admitted and certified that the seized articles were not manifested. He further certified that said search and seizure were conducted in the presence of the Chief Officer and Chief Engineer of the vessel in question.

Petitioner's allegation that the 9 decks of playing cards and 1 Taiwanese folding umbrella found on board the vessel in question constitute the crew's personal effects is misleading and untenable. <sup>copy</sup> "Cargo" has been construed by our Supreme Court to include <sup>all</sup> goods, wares and merchandise aboard ship which do not form part

- 9 -

of the ship's stores." (U.S. vs. Islas Filipinas, 28 Phil. 291.) It has also been said that the word "cargo refers to the "entire lading of the ship which carries it" and includes all goods, wares, merchandise, effects, and indeed everything, of every kind or description, found on board, except such things as are used or intended to be used in the management or direction of the vessel and are not intended for delivery at any port of call, and except also, perhaps passengers or immigrants and their baggage." (U.S. vs. Rubi, 32 Phil. 228.) The broad definition of cargo obviously embraces the playing cards and umbrella in question inasmuch as those articles are neither part of the ship's store nor were they used or intended to be used in connection with the management or direction of the ship in question.

The seized articles cannot also be considered as personal effects because they were not included in the Crew's Personal Effects Lists. Moreover, the crew's personal effects are those articles or things carried or brought in by any of them as necessary for their personal convenience and use. The place, however, where the 9 decks of

DECISION  
C.T.A. CASE NO. 2636

- 10 -

playing cards and the umbrella were seized belies the claim that they are personal effects because they were hidden in secret compartment and not in the crew's quarters.

// Under Section 1005 of the Tariff and Customs Code, it is an imperative obligation of every vessel to have on board a complete manifest of all her cargoes. No exception is mentioned in the statute. (Smith Bell & Co., (Phil.) Inc. v. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969). The vessel SS "TUN HO " failed to comply with this imperative obligation and, therefore, non-observance thereof subjects the vessel to the administrative penalty under Section 2521 of the same Code. (Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2140, Nov. 15, 1972.) // However, the fine of P2,000.00 imposed upon the agent of the vessel appears harsh and excessive under the facts and circumstances of this case.

WHEREFORE, the decision of the respondent Commissioner of Customs, appealed from is modified. Petitioner as agent of the vessel

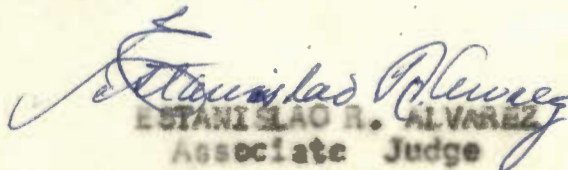
DECISION  
CTA CASE NO. 2636

- 11 -

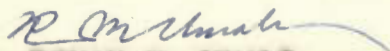
SS "TUN HO", is hereby ordered to pay said respondent a fine of P1,000.00. With costs.

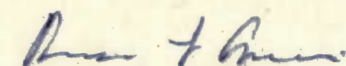
SO ORDERED.

Quezon City, January 7, 1976.

  
ESTANISLAO R. ALVAREZ  
Associate Judge

WE CONCUR:

  
ROMAN M. UMALI  
Presiding Judge

  
RAMON L. AVANCENA  
Associate Judge