REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA GENERAL DE
TABACOS DE FILIPINAS,
in its capacity as agent
of the M/S "LEXA MAERSK",
Petitioner,

Feb. 26, 1971

versus

CTA CASE NO. 1939

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent dated May 6, 1966, affirming that of the Collector of Customs of Manila which imposed an administrative fine of ₱500.00 on the M/S "Lexa Maersk" for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

It appears that on April 22, 1966, the M/S "Lexa Maersk," a vessel engaged in foreign trade and of which petitioner is the local ship agent, arrived at the Port of Manila carrying cargoes consisting of truck parts consigned to Yutivo Sons Hardware Company, Manila. Upon examination by the Customs authorities, discrepancies in the number of packages entered and the number of packages manifested were discovered. The inward manifest of the vessel listed only 171 packages but the import entry listed 173 packages. Consequently, the Collector of Customs of Manila instituted administrative proceedings against the vessel for carrying unmanifested cargo, in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. Prior to the said proceedings, petitioner requested permission to amend the inward cargo manifest to include the other two packages not covered by the manifest, which amendment was allowed and approved by the Customs authorities.

After due hearing, the Collector of Customs rendered his decision imposing a fine of ₱500.00 on the M/S "Lexa Maersk," which decision, on appeal to the Commissioner of Customs, was affirmed on May 8, 1968. Hence, the instant petition for review.

The only issue to be resolved in this case is whether or not the administrative fine of ₱500.00 imposed on the vessel is in accordance with law.

Sections 1005 and 2521 of the Tariff and Customs Code, upon which the imposition of the fine was based, provide:

> 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. 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 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 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.

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.

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 preceding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

> The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

Petitioner assails the legality of the imposition of the administrative fine. It is argued that a clerical error was committed in good faith in the preparation of the manifest and when respondent allowed and approved the amendment, the same had the effect of curing the defects or faults appearing in the original manifest. In other words, it is the contention of petitioner that the liability of the vessel for carrying unmanifested cargo was cured or obliterated by the amendment of the manifest which was allowed and approved by the proper Customs authorities.

The issue is not new. In the case of Macondray and Company, Inc. v. Commissioner of Customs, C.T.A. Case No. 1930, December 27, 1969, which involved a similar issue, this Court held:

> There is no dispute that the four (4) cartons of electrical parts were not covered by the inward foreign manifest of M/S "Fernview", as required by Section 1005 of the Tariff and Customs Code. To enable petitioner to take delivery of the entire shipment of six (6) cartons, Mr. De Asis, Manifest Clerk, Marine Entry Processing Division, Bureau of Customs, required the amendment to the inward foreign manifest upon discovering

that the number of cartons of electrical parts declared in the entry covering the disputed shipment was four (4) cartons more than what were declared in the original inward foreign manifest of the subject vessel. Although this amendment was allowed and approved by customs authorities, the same did not have the effect of obliterating the liability of the vessel incurred previous to the amendment. Section 1005 of the Tariff and Customs Code, supra, is so clear and explicit when it commands every vessel from a foreign port to have on board a complete manifest of all her cargo. Non-observance of this imperative obligation subjects a vessel to the administrative penalty under Section 2521 of the same Code. The law makes no exception and any attempt to read one into the statute would be contrary to the spirit as well as the clear language of the aforesaid provisions. (See Smith Bell & Co., Inc. v. Comm. of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969.)

"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 <u>imperative obligation to submit lists of the entire lading of the ship in the prescribed form</u>, 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 Islands. <u>No exception is made in the statute, and the recognition of any attempt to read an exception into the statute could hardly fail to defeat the purpose of its en-</u>

> <u>actment</u>." (U.S. v. Steamship 'Rubi', 32 Phil. 228; underlining supplied.)"

> Another strong reason for not adopting the interpretation advocated by petitioner is found in the pernicious consequence which would flow from such construction. If we are to exempt the vessel from liability for conveying unmanifested cargo by the simple expedient of amending its manifest after discovery of the offense, it would embolden and encourage other vessels to deliberately load cargo without listing them in their manifests. If the unmanifested cargo is discovered, as in the present case, the manifest could simply be amended and thus free the vessel from any liability whatsoever; but if the unmanifested cargo is not discovered, the same would enter the country free of duties and taxes to the detriment of the Government. In both instances, the owner or master of the vessel has nothing to lose but everything to gain. On the other hand, the Government is always the loser. Such a result would not be in keeping with the evident purpose of the law in providing effective means for the collection of customs revenue. For this reason, we are not inclined to accept the interpretation of petitioner.

Petitioner further asserts that "the provision of the law on amendment is designed to protect the master, agent or consignee from the error, mistake or discrepancy committed by him in the preparation of the original manifest and that it is unfair and uncalled for to conclude, as the respondent held in this case, that the right to amend the manifest is for the principal purpose of protecting innocent importers." Whether the purpose of the law in permitting amendment of a vessel's manifest is to protect the master, agent or consignee of the vessel, or the importer of the goods, is to our mind of slight significance. Under Section 2521 of the Tariff and Customs Code, no relief from liability for the fine is granted where an amendment of the manifest is allowed.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, February 26, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge