SULPICIO LINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2683

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Sought to be reviewed in this appeal brought by petitioner, Sulpicio Lines, Inc., is the decision of the Commissioner of Customs dated March 5, 1975, upholding the order of the Collector of Customs in Administrative Case No. V-836/74 and ordering the vessel, the M/V "Japan", to pay a fine of Two Thousand Pesos (₱2,000.00) for violation of Section 2522 of the Tariff and Customs Code.

This case had been submitted based on the pleadings and records of this case.

The facts are not in dispute. It appears that petitioner Sulpicio Lines, Inc. is an agent of Universal Shipping Lines, the owner and operator of the M/V "Japan", an inter-ocean cargo vessel which calls at the Ports of Japan, Taiwan, Europe and the Philippines. It further appears that on February 9, 1974, the M/V "Japan" arrived in the Port of Manila from Kaoshing, Taiwan, and, among its general cargo, carried two (2) van packs and one (1) unit used car owned by Lindley Vives which were plucked from the M/V "Tagalog", an ill fated vessel owned by the Maritime Company of the Philippines, which cargoes were destined for Manila.

Upon arrival in Manila, the M/V "Japan" allegedly delivered, as per two delivery cargo receipts (Exhs. "D" and "E", Envelope of Exhibits), the manifested two (2) van packs in the same condition that these were loaded in Kaoshing, Taiwan, where the transhipment took place. The consignee, however, filed a complaint against the master of the vessel due to the alleged disappearance of household and personal effects contained in the two (2) manifested van packs supposedly containing said personal effects.

The Collector of Customs charged that there is a violation of Section 2522 of the Tariff and Customs Code for disappearance of household and personal effects and in his letter dated July 19, 1974 required petitioner to explain why no administrative fine shall be imposed. In a letter dated August 10, 1974 (Exh. "B", Envelope of Exhs.) petitioner asserted that it is very likely that the

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two (2) van packs were already pilfered while still in the custody of the M/V "Tagalog".

On August 9, 1974, the Collector of Customs issued an order imposing a fine of ₱2,000.00 against the vessel M/V "Japan" for violation of Section 2522 of the Tariff and Customs Code. A motion for reconsideration was filed by petitioner on August 15, 1974, which motion was, however, denied in an order issued by the Collector of Customs dated September 11, 1974.

On appeal, the Commissioner of Customs rendered a decision dated March 5, 1975 upholding the order of the Collector of Customs. Hence, this appeal.

The sole issue to be resolved is whether or not petitioner is liable for the administrative fine of ₱2,000.00 for violation of Section 2522 of the Tariff and Customs Code.

The law involved is Section 2522 of the Tariff and Customs Code, which reads as follows:

> SEC. 2522. Disappearance of Manifested Article. - When any package or article mentioned in the manifest shall not be duly forthcoming upon the arrival of the vessel or aircraft, the vessel or aircraft shall be fined in a sum not exceeding two thousand pesos, unless the disappearance of the package or article in question was not due to

> the negligence of the master of the vessel or pilot in command of an aircraft and explained to the satisfaction of the Collector.
>
> The vessel or aircraft shall be liable for the payment of the same fine when a package or article listed in the manifest does not tally materially in character or otherwise with the description thereof in the manifest.

The above-quoted provision of law provides that when a package or article mentioned in the manifest shall not be duly forthcoming upon the arrival of the vessel or when a package or article in the manifest does not tally materially in character or otherwise with the description in the manifest, the vessel shall be fined in the sum not to exceed two thousand pesos (₱2,000.00), unless the disappearance of the package or article in question was not due to the negligence of the master of the vessel and explained to the satisfaction of the Collector.

From the above pronouncement of law, we believe that the vessel M/V "Japan" is not liable under said provision for the reason that as, per undertaking in the bill of lading and as manifested, the vessel has complied with its obligation of delivering to the consignee, through the arrastre as per two cargo receipts, the two (2) wooden van packs and there was no indication of any disappearance thereof per cargo receipts but only in their bad order or damaged condition.

It is important to take note that what was clearly manifested and covered in the cargo manifest of the vessel M/V "Japan" were the two (2) wooden van packs, which cargo were salvaged from the ill-fated vessel M/V "Tagalog" which sank somewhere in Japan. And common sense dictates that the condition of said cargoes, as originally received by M/V "Tagalog" were no longer in the same as when the same were transhipped by the M/V "Japan" to their port of destination.

The report of the Sheriff Surveyor (Exh. C, Envelope of Exhibits) at the port of transhipment which was Kaoshuing, Taiwan, had emphasized and was clear on the point that the cargoes were damaged. Although the report did not mention that the cargoes were inventoried, the report however state that the cargoes were in a damaged condition and the same were delivered to the consignee at the Manila port and duly receipted by the arrastre service.

The contents of the two (2) wooden crates van packs could not have been the manifested

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cargo referred to in Section 2522 of the Tariff and Customs Code, since there was no way to verify its contents, and considering that petitioner was not the first party to the contract of carriage but the M/V "Tagalog" and, therefore, the disappearance of said household and personal effects could not be properly imputed to the negligence of the master of the vessel.

Section 2522 of the Tariff and Customs Code is clear that a vessel shall not be fined if the disappearance of the package or article it carries, although manifested, is not due to the negligence or carelessness of the master of the vessel.

WHEREFORE, the decision appealed from is hereby reversed. Petitioner, Sulpicio Lines, Inc., is not liable for the fine imposed under Section 2522 of the Tariff and Customs Code.

No costs.

SO ORDERED.

Quezon City, May 31, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

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