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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. 2629

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

10/30/78

D E C I S I O N

For violation of Section 1005 of the Tariff and Customs Code in relation to Section 2521 thereof, the Collector of Customs, Port of Aparri, in his decision dated November 13, 1973, imposed a fine of ₱10,000.00 on the vessel M/S "TUNG HO". This was affirmed by respondent Commissioner of Customs in his decision promulgated on September 11, 1974. Unsatisfied with this decision, petitioner N & E Shipping Agency, in its capacity as agent of said vessel, brought the instant appeal.

After the issues were joined with the filing of respondent's answer on January 31, 1975, this case was set for trial on the merits, upon motion of petitioner, on April 18, 1975. On this scheduled date of hearing, there was no appearance of both parties. It appeared, however, that the Clerk of this Court was informed by telephone of the inability of counsel for petitioner to attend the hearing because he was still in Cebu. The Court therefore granted the request to have the case reset for hearing on June 11, 1975, which was later postponed, upon motion of both parties, to August 11, 1975, and eventually to the next calendar of the Court.

Subsequently, upon motion of petitioner, the case was again set for hearing on May 25, 1976, later to March 13, 1977, and to the next calendar of the Court. After petitioner's motion for resetting of the case on account of the resignation of the lawyer handling this appeal from the law firm was granted, the Court postponed for the last time the hearing to March 13 and 14, 1978. At the scheduled hearing on March 13, 1978, however, both parties submitted this case for decision based on the pleadings and the Customs records. No trial on the merits was therefore conducted by the Court.

Under the well-settled rule that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115), the parties are therefore considered to have rested their motion for judgment on their own allegations taken together as are admitted, or deemed admitted, and on the basis of the facts as are shown by the Customs records.

The facts that led to the imposition of the administrative fine of ₱10,000.00 against the M/S "TUNG HO", as gathered from the pleadings and the Customs records, and stated in the decision appealed from dated September 11, 1974, a copy of which is Annex "A" of the petition for review and which is found on pages 112 and 113 of the Customs records, are as follows:

> "A. That the M/S "TUNG HO" arrived at the port of Aparri on April 3, 1972, under Registry No. 16/72;
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> "B. That part of its cargo consisting of the following articles were not manifested in its Inward Foreign Manifest:
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> 1. 14 Bales of polyester double knit fabrics and,
>
> 2. 17 more bales of polyester double knit, these were however listed in the Ship's Parcels List.
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> "C. That on April 4, 1972, while the subject vessel was still at mid-stream, 14 bales were surreptiticusly discharged onto a motorboat which then spirited away;
>
> "D. That on the same day, April 4, 1972 the same vessel discharged 17 more bales of polyester double knit fabrics.

"Considering that these two acts of discharging involved only one act of carriage as contemplated by law, that is, the ship came in carrying unmanifested cargo, these two discharges in one single voyage is considered one single act or violation of the provision of the Tariff and Customs Code.

"After due hearing, the Collector of Customs, Port of Aparri found that the subject vessel through its responsible officers had violated Section 1005 of the Tariff and Customs Code of the Philippines and therefore subject to a fine under Section 2521 of the same Code."

In assailing the decision of respondent, petitioner under paragraph XI of its petition for review, alleges that the same (decision) is erroneous and contrary to the evidence and the law on the following grounds:

1. That the 14 bales of polyester double-knit fabrics alleged to have been discharged by the vessel on a motor boat were not found on board the vessel SS "TUN HO", on the contrary it was never found by the combined PC and ASAC agents. Neither did the customs authorities see that these shipments consisting of 14 bales of polyester double-knit fabrics unloaded from the vessel but acted merely on information;

2. That the 14 of the 17 bales of polyester double-knit fabrics which were discharged by the vessel at the Port of Aparri is duly manifested as this was reflected in the ship's parcel's list which was submitted to the Bureau of Customs at the port of Aparri;

3. That the imposition of the fine of ₱10,000.00 is unjust and unreasonable in as much as there was no evidence to show that the vessel actually conveyed a total of 31 bales of polyester double-knit fabrics. Neither was there any evidence to show that the vessel discharged 14 bales of polyester double-knit fabrics on a motor boat as this was never intercepted by the combined PC and ASAC agents nor the customs authorities of the Port of Aparri. Moreover, the fine of ₱10,000.00 is unjust and unreasonable consi-

> dering that 14 of the 17 bales of polyester double-knit fabrics were duly reflected in the ship's parcel's list and in the bill of lading and the amount of ₱10,000.00 is considered unreasonable and unjust since the value of the 3 bales of PDKF which was not included in the parcel's list is minimal." (pp. 4-5, CTA records.)

This case having been submitted for judgment on the pleadings, as stated above, petitioner however offered no proof as to the truth of its own (aforesaid) allegations, notwithstanding the specific denial thereof by respondent and his special and affirmative defenses averred in his answer that petitioner's defense in paragraph XI of its petition for review, which were the same defenses raised in the seizure proceedings as well as on appeal before respondent, do not merit consideration because the law requiring all cargoes to be duly manifested by the carrying vessel is mandatory and admits of no exception; that respondent's findings of fact are based on substantial evidence; and, that the imposition of the maximum fine of ₱10,000.00 is warranted by the circumstances of the case considering that the vessel "TUN HO" or "TUNG HO" is notoriously involved in smuggling activities and in repeated violation of the law requiring cargoes to be duly manifested. (pp. 23-24, CTA records.)

The issue, therefore, is whether the imposition of the administrative fine of ₱10,000.00 against the M/S "TUNG HO" is, under the circumstances, valid, proper and in accordance with law.

The controlling provisions of Section 1005 and Section 2521 of the Tariff and Customs Code 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. x x x.
>
> 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; x x x.
>
> x x x   x x x   x x x
>
> 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.
>
> x x x   x x x   x x x

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 statuee. Neither is there mention of any exception in Section 2521 of the said Code providing for a fine for vessels without proper manifests, nor in Section 2530 thereof providing for the confiscation of unmanifested goods. The recognition of any attempt to read into the statute any exception would be contrary to the pervasive spirit as well as the clear language of the aforequoted sections of the Code. (Smith, Bell & Co. (Phil.) Inc. vs. Commissioner of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co. vs. Commissioner of Customs, CTA No. 1930, December 27, 1969; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2079, September 29, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2138, September 30, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2140, November 15, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2073, November 25, 1972.)

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 exception is made in the statute,

<u>and the recognition of any attempt to read an exception into the law could hardly fail to defeat the purpose of the enactment.</u> (See also Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, December 27, 1969; American Steamship Agencies, Inc., vs. Commissioner of Customs, CTA Case No. 1851, May 3, 1977; F.E. Zuellig, Inc., in its capacity as agent of the SS "HONGKONG EXPORTER" vs. Commissioner of Customs, CTA Case No. 2467, May 31, 1978.) And it cannot be doubted that the intention of the law is to provide for the imposition of the prescribed penalties, whether it appears that such unmanifested cargo was placed on board with or without the consent or knowledge of the owners or ship officers and despite the possibility of individual hardships in some instances. The penalty may be imposed notwithstanding the absence of affirmative proof that such unmanifested cargo was taken on board at some foreign port or place. (See U.S. vs. The Steamship "Rubi", <u>supra</u>.)

We, therefore, find no merit in petitioner's cause.

Having arrived at the conclusion that the M/S "TUNG HO" carried unmanifested cargo in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, petitioner N & S Shipping Agency, in its capacity as agent of the SS "TUNG HO", and the said vessel are therefore liable for

SO ORDERED.

Quezon City, October 30, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge