REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN STEAMSHIP AGENCIES,
I[illegible]., in its capa[illegible]
agent of the M/S "[illegible]",
[illegible]er,

- versus - C.T.A. CASE NO. 1851

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - - x May 3, 1977

D E C I S I O N

The Collector of Customs for the Port of Zamboanga del Norte, finding the following articles:

14 Pieces Wilson Golf Clubs
1 Piece Portable Television Set
2 Pieces Electric Food Heater
1 Piece Electric Toaster
1 Piece Folding Chair
7 Pieces Folding Umbrellas
30 Pieces Traveling Bags
3 Bundles Nude Pictures Calendar
3 Pieces Ham

loaded on board the M.S. "Kyokai Maru" when it arrived at the Port of Sta. Maria, Zamboanga del Norte, undeclared and unmanifested, ordered and decreed their forfeiture in favor of the Government of the Republic of the Philippines, and imposed an administrative fine of ₱5,000.00 on the said vessel for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code. Petitioner American Steamship Agencies, Inc., in its capacity as ship agent of the M.S. "Kyokai Maru", contending that the above-mentioned articles are not required to be manifested because they belong to the officers and crew members and for the ship's use, and that the amount of ₱5,000.00 fine imposed on the vessel is excessive, appealed to respondent Commissioner of Customs. However, the Commissioner affirmed the decision of the Collector.

Hence the present recourse.

To begin with, the petition for review in this case was filed on May 5, 1967. After the issues were joined with the filing of respondent's answer on June 6, 1967, this case was set for hearing on October 24, 25 & 28, 1968. Upon separate motions of petitioner, this scheduled hearing was postponed to the next calendar of the Court which was December 17, 18 & 19, 1969; later to March 23, 24 & 25, 1970; again to the next calendar of the Court which fell on December 1, 2, & 3, 1971; and eventually to the next calendar of the Court once more.

On May 5, 1972 petitioner filed a motion asking that an order be issued requiring respondent to certify and forward to this Court all the records of the case in his possession in accordance with the provisions of Section 2, Rule 7 of the Rules of the Court of Tax Appeals. After the said motion was granted by this Court in its order of May 8, 1972, and because of failure of respondent to comply with the said order, petitioner, on July 28, 1972 filed a motion to declare respondent in contempt, in case his explanation for non-compliance is not satisfactory.

During the hearing on August 5, 1972 of petitioner's motion to declare respondent in contempt, the latter requested, and was granted, in open court further time within which to certify and forward the customs records. However, on September 9, 1972 respondent filed a Manifestation:

> 1. That the customs records of the above-entitled case must have been misplaced in the Office of the Solicitor General when the preparation of the Answer was made;
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> 2. That despite diligent inquiry and search, the said records could not be located in time for the hearing;
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> 3. That at any rate, based of the pleadings, apparently, the sole issue to be decided by this Honorable Court, is whether or not the violation committed by the vessel, "KYOKAI MARU" for carrying unmanifested cargo violated the provisions of Sec. 1005 in relation to Sec. 2521 of the Tariff and Customs Code;

4. That on the basis of the pleadings filed, petitioner in effect conceded that the articles were actually found on board the vessel, "KYOKAI MARU" and were not included in its Inward Foreign Manifests, although claim has been made to the effect that the same belonged to the crew members of the vessel;

5. That in view of the above, it is hard to believe that petitioner herein, being represented by a big law firm will take advantage of a lost or misplaced customs record to avoid paying an administrative fine for carrying unmanifested cargo.

WHEREFORE, it is respectfully prayed that judgement be rendered on the basis of the pleadings filed on the case;

(a) Dismissing the petition filed;

(b) Affirming and sustaining the decision rendered on the case by respondent Commissioner; and

(c) Granting such other reliefs and remedies just and equitable on the premises.

and during the hearing of said manifestation on September 9, 1972, the Court denied the motion of petitioner to declare respondent in contempt. The case was again set for hearing on October 26, & 27, 1972; later to December 27 & 28, 1972; and upon motion of petitioner, to the next calendar of the Court.

The next calendar of the Court was February 27 & 28, 1975; later May 7 & 8, 1975. During the hearing on May 7, 1975, petitioner manifested and moved that the hearing be cancelled on the ground that the parties intend to submit a stipulation of facts. The motion was granted and the parties were given up to June 27, 1975; later up to July 7, 1975, within which to submit their stipulation of facts.

On July 7, 1975 the parties submitted the following stipulation of facts:

> The parties in the above-entitled case through their respective counsels respectfully submit the following stipulation of facts.
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> 1. That Petitioner, a corporation duly organized and existing under the laws of the Philippines with principal office at Myers Building, Port Area, Manila, Philippines, is the authorized ship agent in the Philippines of the vessel M/S "Kyokai Maru", while respondent is the Commissioner of Customs with office at the Bureau of Customs Building, Port Area, Manila;
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> 2. That the vessel M/S "Kyokai Maru" arrived at the port of Sta. Maria, Zamboanga del Norte on December 17, 1964 after she had weighed anchor at the Port of Manila on December 7, 1964. Upon her arrival at the Port of Sta. Maria, agents of the Bureau of Customs conducted a search on board the vessel and discovered the following articles which they seized for not having been duly manifested under Section 2521 and Section 2530 (f), (g) & (h) of the Tariff and Customs Code:

ARTICLE	NUMBER
Wilson golf club	14 pcs.
Electric food heater	2 pcs.
Electric toaster	1 pc.
Folding chair	1 pc.
Folding umbrella	7 pcs.
Travelling bag	30 pcs.
Calendar picture	3 bundles
Ham	3 pcs.
Portable Television Set	1 pc.

> 3. That the Collector of Customs immediately instituted the proper seizure proceedings and ordered forfeiture of said articles and the imposition of fine in the amount of ₱5,000.00;

4. That on December 27, 1964, petitioner filed a surety bond (Alpha Bond No. ZC/G-223 in the amount of ₱14,800.00 to guarantee the payment of the fine or fines to be imposed on said vessel and for the redemption of the seized articles;

5. Within the time allowed by law, petitioner appealed the decision of the Collector of Customs to the Commissioner of Customs. On September 22, 1965, the Commissioner of Customs affirmed the decision of the Collector of Customs xeroxed copy of said decision is hereto attached as Annex "A";

6. On December 13, 1965, petitioner filed a motion for reconsideration xeroxed copy of which is attached hereto as Annex "B", which motion was denied by the Customs Commissioner on February 24, 1967;

7. That on April 26, 1967, petitioner filed before this Honorable Court a petition for review the decision xeroxed copy of the said petition is attached hereto as Annex "C";

8. That on June 6, 1967, respondent answered the Petition for Review xeroxed copy of which is attached hereto as Annex "D";

9. That the parties hereby agree to present further evidence to support their respective position.

Manila, for Quezon City, June 25, 1975.

To give the parties time to present further evidence, if any, the Court set this case anew for hearing on August 7, 1975. However, at the scheduled hearing on August 7, 1975, instead of proceeding with the trial, petitioner manifested that it will try to ask the Commissioner of Customs for a reduction of the fine imposed upon it. The Court therefore transferred the hearing to September 5, 1975; later to October 7, 1975; to November 26, 1975; eventually to January 27, 1976; and finally to the next calendar of the Court, in view of the manifestation of petitioner that its offer of compromise is being studied by respondent. The next calendar of the Court was August 20, 1976, and during the hearing of this case, the Court, together with the parties, considered this case submitted for decision on the basis of the records and pleadings.

On the basis of the pleadings and records, there is no dispute that the articles in question were actually found on board the vessel M.S. "Kyokai Maru" and were not included or listed in its Inward Foreign Manifests. Petitioner claims, however, that the above-mentioned articles are not required to be manifested because they belong to the officers and crew members and for the use of the ship.

We find no merit in petitioner's cause.

1. 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 provi-

ding 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 aforesaid sections of the Code. (Smith, Bell & Co. (Phil.) Inc. vs. Commissioner of Customs, CTA Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case 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. Rubi, 32 Phil. 235, 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, and the recognition of any attempt to read an exception into the statute could hardly fail to defeat the purpose of the enactment. (See also Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1930, December 27, 1969.) To say, therefore, that the above-mentioned articles are not required to be manifested because they belong to the officers and crew members and for the use of the vessel is to ignore not only the clear and express language of the law but also the plain and unmistakable intent and purpose of the enactment.

2. And the vessel M.S. "Kyokai Maru" can never be said to be ignorant of these requirements because the records show that it had on board articles manifested in the List of Ship's Stores, List of Crew's Private Possession, Wine List, List of Opium and Narcotics, Passenger List, Crew's List, General Information, Forward Manifest-Inward and Outward Foreign Manifest. However, that portion of the cargo consisting of the above-mentioned articles was not included in any of the foregoing lists as required by law. (See Sections 1004 and 1005, Tariff and Customs Code.) As a matter of

it appears that the Master, the Chief Mate, and the Purser admitted during the course of the proceeding in the Bureau of Customs that they failed to list or manifest the said articles as required. And no evidence was presented or introduced thereat to controvert the statements of these officers of the said vessel. The fact, therefore, that the said articles have not been included or entered in the above mentioned lists or manifests, as required by law, indubitably proves that they do not belong to the officers and crew members, and certainly not for the use of the vessel. Or if they really belong to the officers and crew members or for the use of the vessel, the said articles should have been included in the proper list or manifest as required by law.

3. We do not share petitioner's view that the articles in question are not "cargoes" since they did not pay freight or were not covered by bill of lading, and hence, are not to be included in the manifest. "Cargo" has been construed by our Supreme Court to include "all goods, wares and merchandise abroad ship which do not form part of the ship's stores." (U.S. vs. Islas Filipinas, 28 Phil. 297.) It has also been said that the word "cargo" refers to the entire lading of the ship which carries it

<u>and includes all goods, wares, merchandise, effects, and indeed everything, of every kind or description, found on board,</u> except such things as are used or intended for use in connection with 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. Steamship "Rubi ", 32 Phil. 235.) The broad definition of cargo obviously embraces the articles 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 M.S. "Kyokai Maru."

The seized articles cannot also be considered as personal effects because, as stated earlier, they were not included in the Crew's Personal Effects List. 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. (See N & B Shipping Agency vs. Commissioner of Customs, CTA Case No. 2636, January 7, 1976.)

Having arrived at the conclusion that the M.S. "Kyokai Maru" carried unmanifested cargo in violation of Section 1005 in relation to Sections 2521 and 2530(g) of the Tariff and Customs Code, petitioner American Steamship Agencies, Inc., in its capacity as ship agent of the M.S. "Kyokai Maru", and the said vessel are therefore liable for the administrative fine imposed by the law. In imposing the amount of ₱5,000.00 as fine, the Collector of Customs took into account the fact that this is the vessel's first offense. Respondent Commissioner of Customs, taking into account the fact that the fine imposed did not exceed the maximum amount authorized by law, considered it as not excessive. Petitioner, having failed to offer evidence as to the unreasonableness of this amount of ₱5,000.00, the same is therefore sustained.

ACCORDINGLY, finding no reversible error in the decision appealed from, the same is hereby AFFIRMED, and petitioner American Steamship Agencies, Inc., and/or the M/S. "Kyokai Maru" are ordered to pay to the Bureau of Customs the amount of ₱5,000.00 as fine for violation of Section 1005 in relation to Sections 2521 and 2530(g) of the Tariff and Customs Code.

With costs against petitioner.

SO ORDERED.

Quezon City, May 3, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge