

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

COMPANIA GENERAL DE TABACOS
DE FILIPINAS, ET AL.,
Plaintiffs-Appellants,

versus -

MANILA
CIVIL CASE NO. 14338

COMMISSIONER OF CUSTOMS,
Defendant-Appellee.

(See G.R. No. L-9901)
1-30-57.

DECISION

This case arose from the Decision (Seizure Identification No. 913) of the Collector of Customs dated October 16, 1950 which decreed and ordered, under the provisions of Section 1363 (g) of the Revised Administrative Code, the forfeiture of the 420 cartons of cigarettes and which decision was affirmed in a Decision on Appeal of the Commissioner of Customs promulgated on June 5, 1951. This case was originally filed before the Court of First Instance of Manila (Branch VII) and was subsequently certified to this Court for final disposition pursuant to Section 22 of Republic Act No. 1125.

From the evidence adduced during the hearing of this case, it appears that on July 27, 1950, a group of customs secret agents headed by Fernin Villalon, upon written order of the acting chief of the Customs Patrol Service, boarded and searched the M/V "Crete Maersk". The agents seized and withdrew from the alob chests of the vessel 420 cartons of cigarettes: 192 cartons of "Chesterfield" cigarettes, 120 cartons of "Lucky Strike" cigarettes, and 8 cartons of "Philip Morris" cigarettes, allegedly on the ground that the same were not "manifested nor included in the ship's store list". After the seizure and withdrawal, the remainder of the cigarettes were returned to the alob chests which were sealed by

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the boarding officer, Manuel Lopez.

On July 28, 1950 at around 8 o'clock in the evening (t.s.n. page 44), customs inspector Silvestre de la Rosa, with 3 other customs inspectors, without authority, and in the presence of Pablo A. Velez, special agent of the plaintiff-appellant Compañia General de Tabacos, recounted the cigarettes that were in the sealed slob chests. In a report (Exhibit "C") signed by him and countersigned by his four attending companions, Customs Inspector de la Rosa certified the number of cartons of cigarettes rechecked and recounted to be 2,755.

For the proper determination and disposition of this case, we find it imperative to pass and rule on the three issues brought out by the parties-litigants:

1. Whether or not the 420 cartons of cigarettes are an excess of and over the 3,260 cartons of cigarettes which were entered in the Manifest (Exhibit "A").

2. Whether or not the 420 cartons of cigarettes are required by law to be entered in the Manifest.

3. Whether or not the 420 cartons are subject to forfeiture under Section 1363 (g) of the Revised Administrative Code.

Plaintiffs-appellants claim that there was no actual counting of all the cigarettes by the customs secret agents on July 27, 1950. Accordingly, what was counted were merely the 420 cartons, which were seized and taken ashore.

We cannot subscribe to the truth of this claim. Much as we try hard, we cannot harmonize the recitation of facts in Exhibit "F", the receipt for the seized 420 cartons of cigarettes. Exhibit "F" recites: "The above described cigarettes had been seized for not being manifested nor included in the ship's store-list." It was given to Edward Bosch, assistant manager of the shipping

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department of the plaintiff-appellant Compañia General de Tabacos. It is an unassailable disputation of the plaintiffs-appellants allegation and pretension that there was no actual counting of all the cigarettes. If, as alleged by the plaintiffs-appellants, there was no actual counting of all the cigarettes, how could the customs secret agents arrive at the conclusion that said 420 cartons of cigarettes were not manifested or included in the ship's store-list, until and unless the agents have actually counted all the cigarettes carton by carton? Why did not Bosch inquire from the secret agents how they arrive at that conclusion? Again it may be asked: Why did not Bosch protest this act, alleged to be arbitrary or irregular. Under the situation then obtaining, if it was so, the least that Edward Bosch, the representative and the assistant manager of the vessel's agents should have done, was to protest such act. Failing to do so, we believe that he was thereby estopped from raising that issue, and consider that the original counting was correct.

We now come to the second issue of whether or not the 420 cartons of cigarettes are required by law to be entered in the manifest. Plaintiffs-appellants contend that, being part of the ship's stores, they are not so required. In support of their contention, they quote section 1228 of the Revised Administrative Code (R.A.C.) which reads thus:

"Sec. 1228. Manifest required of vessel from foreign port. - Every vessel from a foreign port or place must have on board complete written or typewritten manifests 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 or place must have on board complete manifests of passengers, immigrants, and their baggage, in the

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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 ship's stores then on board. If the vessel does not carry cargo, passengers, or immigrants, there must still be a manifest showing that no cargo is carried from the port of departure to the port of destination in the Philippines." (underscoring supplied.)

On the other hand, the defendant-appellee contends the contrary and underscores the words "must have on board complete written or typewritten manifests of all her cargoes" (see first par., see. 1228, R.A.C.) and accordingly, the 420 cartons of cigarettes in question, being a part of the vessel's cargo, should be manifested.

(Article VI, Chapter 39 of the Revised Administrative Code clearly and freely speaks of lists and manifests. Yet, it does not define and delimit them. In the absence of codal or statutory definitions and delimitations of lists and manifests, resort may be had to well recognized lexicographers (see *Kuenale & Streiff vs. Collector of Customs*, 32 Phil. 510).

" 'List', in its common ordinary sense, means to put into a list or catalogue, register, or enroll. *Strout Co. v. Gay*, 72 A. 881, 882, 105 Me. 108, 24 L.R.A., N.S., 562." (Words and Phrases, Vol. 25, p. 392)

"A 'manifest' is a declaration of the entire cargo; a 'bill of lading' is a declaration of a specific part of the cargo. A manifest is essentially a summary of all the bills of lading. *New York & Cuba Mail S. S. Co. v. United States*, 125 F. 320." (Words and Phrases, Vol. 26, p. 529)

Technically and legally, a manifest differs from a list. A manifest is more comprehensive, more embracing and more exacting. It recites particulars which are not found in a list. It indicates, among others, the port of departure and the port of delivery with the marks, numbers, quantity and description of the

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packages and the names of the consignees. A list is simpler and shorter; it is merely enumerative.)

For the resolution of the second issue, it becomes necessary to determine whether the 420 cartons of cigarettes are embraced within the expression "all her cargo" as to require, according to defendant-appellee's contention, a manifest under the provisions of Section 1228 of the Revised Administrative Code or are part of the ship's store as not to require a manifest.

(Pursuant to section 1413, of the Revised Administrative Code, we believe that reference to accepted regulations prior to 1946 may be considered as persuasive, if not authoritative, in the determination of the character of the goods in question. Under section 4.7 (a) of the U.S. regulations on this matter (19 C.F.R. section 4.7), articles belonging to the officers and crew of the ship, remaining on board the vessel, form part of the "list of sea stores" and not part of the cargo to be detailed in a manifest.

"(a) All articles on board the vessel acquired by officers and members of the crew, except such articles as are exclusively for use on the voyage, shall be specified in the list of sea stores in the following form:-

<u>"Name of officer or Member of Crew</u>	<u>Description of Articles</u>	<u>Cost or Value"</u>
(underscoring supplied.)		

We believe that the list of "Private Articles belonging to the Officers and Crew" (Exhibit "E", plaintiff) presented by the plaintiffs upon arrival at Manila to the customs officers substantially conform to the requirement of the list of sea stores. As a matter of fact, the evidence show that the 420 cartons of cigarettes are a part of the ship's store is not disputed and denied by the defendant-appellee.

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The fact that said cigarettes were not landed or taken ashore by the plaintiffs-appellants lends added weight and credit to the claim that same are a part of the ship's or sea store. Under such circumstances, we find and hold them to be thus — to be a part of the ship's store.)

(To the contention of the defendant-appellee that the 420 cartons of cigarettes fall within the codal expression (par. 1, Sec. 1228, Revised Administrative Code), "of all her cargo", we refer the defendant-appellee to the limitation placed by the Supreme Court on the word "cargo". In the case of U. S. v. S.S. Ialas Filipinas, (28 Phil. 291) the Supreme Court stated thus:

"The term 'cargo' is not specifically defined in the Customs Administrative Act, but from the language used in several of its provisions it is clear that the word 'cargo' as used in the section under consideration includes all goods, wares, and merchandise aboard ship which do not form part of the ship's store." (See also U. S. v. S. S. Rubi, and the Collector of Customs, 32 Phil. 228.)

Since the 420 cartons of cigarettes in question form part of the ship's store, we believe and so hold that the same are not required by law to be entered in a detailed manifest.)

We now come to the third and last issue, i.e. whether or not the 420 cartons of cigarettes are subject to forfeiture under Section 1363 (g) of the Revised Administrative Code. This codal provision provides:

"Sec. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:

x x x x x

"(g) Unmanifested merchandise found on any vessel, a manifest therefor being required."

(We have already ruled that the 420 cartons of cigarettes in question, being part of the ship's store, are not required by law

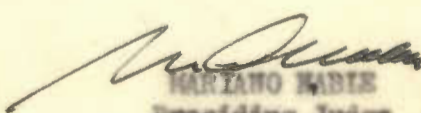
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to be manifested in detail. Clearly and logically, it follows that the said 420 cartons of cigarettes cannot be forfeited for the reason that they were unmanifested. Moreover, it has been stated that "on an information against specific articles as sea stores forfeited, the Court cannot adjudge them to be forfeited as part of the cargo or merchandise, or as part of the tackle of the ship" (see U. S. v. Twenty Four Coils of Cordage, Fed. Case No. 16, 566). This follows from the theory that statutes forfeiting goods for violation of the revenue laws are penal, and are to be interpreted strictly (U. S. v. Eighty Four Boxes of Sugar, 32 U. S. (Pet.) 453; 8 L Ed 745).

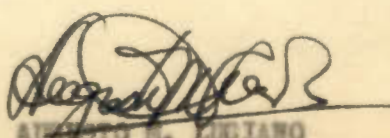
IN VIEW OF THE FOREGOING, the decision of the Commissioner of Customs dated June 5, 1951 is hereby reversed. The restitution of the 420 cartons of cigarettes to the plaintiffs-appellants, or the delivery of the proceeds realized from the public sale of the same, if any, is hereby ordered.

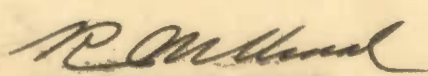
SO ORDERED.

Manila, Philippines, October 3, 1955.


MARIANO MABIE
Presiding Judge

We concur:


AUGUSTO M. LUCIANO
Associate Judge


ROMAN M. UNALI
Associate Judge