COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2616

COMMISSIONER OF CUSTOMS,
Respondent.
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9/2/77

D E C I S I O N

This is a petition for the review of the decision of the Commissioner of Customs in Customs Case No. 73-139-A (Adm. Case No. V-585/71) affirming that of the Collector of Customs which ordered the imposition of ₱10,000.00 administrative fine on the vessel MS "MARIT MAERSK" for carrying unmanifested Pall Mall cigarettes in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, as amended.

The undisputed facts of this case are as follows: The MS "MARIT MAERSK" arrived at the Port of Manila on February 19, 1971 from Hongkong. It was there searched by the combined elements of the Water Patrol and Piers and Inspection Division of the Bureau of Customs. The search yielded twenty (20) cases of unmanifested blue seal Pall Mall cigarettes containing fifty (50) cartons each, which were found in the linen room of the vessel. On the same day, the master of the vessel was required to explain in writing and show cause why no administrative fine in the amount of ₱10,000.00 should be imposed on the vessel. Mr. E.A. Stengaard, master of the vessel, submitted a written explanation which was, however, found unsatisfactory by the Collector of Customs. Consequently, on February 24, 1971, administrative proceedings No. V-585/71 (Customs Case No. 73-139-A) was instituted against the vessel. In a joint hearing with the seizure case on the unmanifested cargo (Customs Case No. 73-139 [S.I. No. 1211]), a witness for petitioner and who is also the Port Captain of Compañia General de Tabacos de Filipinas, local ship agent of the said vessel, testified in defense of the vessel to the effect that the twenty (20) cases of Pall Mall cigarettes are for the consumption of the crew and are not supposed to be landed; that they were found in the linen room of the vessel which was made temporary storage because the Provision and Store Rooms were being painted at the time as the vessel has just undergone repairs and services in Hongkong.

On September 24, 1973, after the hearing, the Collector of Customs rendered a decision imposing a fine of ₱10,000.00 on the MS "MARIT MAERSK" to be collected from her local ship agent. Subsequently, the Commissioner of Customs, upon appeal of the case to his Office, affirmed in toto the decision of the Collector, whereupon a Petition for Review was filed by petitioner with this Court seeking the review of the decision of the Commissioner of Customs.

The issue to be resolved herein is whether the vessel MS "MARIT MAERSK" is liable for violation of Section 1005, in relation to Sections 2521 and 2530(g) of the Tariff and Customs Code, for carrying untaxed Pall Mall cigarettes which were not manifested or listed in any of the ship's documents.

It is noted that the issue in this case, which is the question of whether the administrative fine of ₱10,000.00 should be imposed on the vessel in question, is necessarily linked with the issue in the similar case of Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2617 decided adversely against same petitioner in our decision dated April 22, 1977, which affirmed the forfeiture of the unmanifested cargo. It must be mentioned too that the defenses raised by the petitioner in the aforecited case are identical to those asserted in the case at bar. We, therefore, find no valid reason to deviate from the findings and pronouncements made therein by this Court, the pertinent portions of which states, and we quote at length as follows:

> Petitioner contends that the MS "MARIT MAERSK" did not violate said provisions of the Tariff and Customs Code. It contends that the Pall Mall cigarettes were for the consumption of the ship's crew; that the ship's crew had in fact consumed 9 cartons which was a part of, and in addition to, the 20 cases of Pall Mall cigarettes; and that the said cigarettes were never intended to be discharged at the Port of Manila and the officers and crew were not foolish to smuggle the cargo of cigarettes at the Manila Port knowing that it will be subject to inspection by the Customs authorities, and that considering the big bulk of said cargo, it was easy to notice the same; and that failure of the vessel to include the cigarettes in the vessel's store list, which was claimed to be due to excusable oversight, does not subject the vessel to punishment. Petitioner, however, did not claim that the unmanifested cigarettes were placed in the passenger baggage manifest or in the crew's declaration. On the other hand, respondent contends that Section 1005 of the Tariff and Customs Code requires every vessel to have on board ship a complete manifest of all her cargo and list of all provisions for its sea stores, and the failure to list said Pall Mall cigarettes will give rise to its forfeiture under Section 1005, in relation to Section 2530(g) of the Tariff and Customs Code.
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> The pertinent provision of Section 1005, 1105, 2521 and 2530(g) of the Tariff and Customs Code applicable in this case are quoted as follows:
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> > Sec. 1005. <u>Manifest Required of Vessel from Foreign Port</u>.- 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. 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 consignee 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 invoices and/or entry covering the 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. 1105. Documents Required to be Presented in Making Entry.-

a. For the purpose of making entry, there shall be presented to the customs boarding official four copies of a general declaration which shall contain the following data:

1. Name of owner or operator of aircraft, registration marks and nationality of aircraft;

2. Points of clearance and entry and date of arrival;

3. Health and customs clearances at the last airport of departure;

4. Itinerary of aircraft including information as to airports of origin and departure dates;

5. Names and nationality of crew members;

6. List of passengers, their nationality, places of embarkation and destination, and number of accompanying baggages;

7. Cargo manifest together with information as to names of consignees, their nationalities and their addresses, numbers and marks of packages, nature of goods, destination, gross weight and value;

8. Store list.

b. The general declaration shall be written in English and certified to and duly signed by the pilot in command or operator of his aircraft or the authorized agent. If the aircraft does not carry cargo, passengers or immigrants, such facts must be shown in the manifest.

c. Cargo manifest shall in no case be changed or altered after entry of the aircraft, except by means of an amendment by the pilot in command or authorized 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 shall be allowed, except when it is obvious that a clerical error or any other discrepancy has been committed without any fraudulent intent in the preparation of the manifest, 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 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 mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.- Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

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g. Unmanifested article found on any vessel or aircraft, if manifest therefor is required.

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This issue is not new. In an analogous case where untaxed cigarettes were found neither manifested as part of the cargo, nor contained in the list of the ship's store, and there was no claim that these were included in the passenger baggage manifest or in the crew's declaration, this Court reasonably inferred therefrom, that the cigarettes were unmanifested cargo and affirmed the decision of the Commissioner of Customs holding the cigarettes subject to forfeiture for violation of Section 1005, in relation to Section 2530(g) of the Tariff and Customs Code (Kurt Nilsen, et al., vs. The Commissioner of Customs, CTA Case No. 1565, December 18, 1966, see also Seven Star Shipping Corp. (Agent of SS "Sunning") vs. Commissioner of Customs, CTA Case No. 1123, September 30,

836,
1967) for being unmanifested cargo, citing the cases of U.S. vs. Islas Filipinas, 28 Phil. 291, and U.S. vs. Rubi, 32 Phil. 228, 241. This Court cannot deviate from the rationale in the above-cited decision in the case of Kurt Nilsen et al., supra, which is quoted hereunder:

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> In fine, the cigarettes in question did not appear in the manifest, did not appear in the sea stores list, and no claim has been made that they were in the passenger baggage manifest or crew's declaration. The only reasonable inference is that they were unmanifested cargoes. Cargo has been construed by our Supreme Court to include all goods, wares and merchandise aboard ship which do not form part of the ship's stores (U.S. vs. Islas Filipinas, supra). It has also been said that "the word 'cargo' refers to the 'entire lading of the ship which carries it' and includes all goods, wares and merchandise, effects, and indeed everything of every kind of description, found on board, 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. S.S. RUBI, 32 Phil. 228.) This broad definition of cargo obviously embraces the cigarettes in question.

Consequently, we hold that the Pall Mall cigarettes in question not having been listed in the ship's stores, or manifested as part of the cargo, or in the messenger baggages manifest or crew's declaration is, therefore, considered as unmanifested cargo subject to forfeiture, and the MS "MARIT MAERSK" carrying it is subject to fine for violation of Sections 1005, 1105, in relation to Sections 2521 and 2530(g) of the Tariff and Customs Code.

Petitioner's excuse or defense against the forfeiture and imposed fine that the said Pall Mall cigarettes were not listed in the ship's stores because of excusable oversight cannot be believed, even were it based in the thinking of a man of just ordinary intelligence, considering the big bulk (20 cases) of the cigarettes in question. We are constrained to believe instead that the non-listing of the cigarettes in the ship's documents is due to unexcusable, nay criminal, neglect by the master of the vessel in violation of our Customs laws.

WHEREFORE, premises considered, the decision of the Commissioner of Customs appealed from is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, September 2, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Acting Presiding Judge