REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & COMPANY, INC.,
in its capacity as agent
of the M/S "FERNVIEW",
Petitioner,

versus

CTA CASE NO. 1930

COMMISSIONER OF CUSTOMS,
Respondent.

Dec 27/69

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DECISION

This is a petition for review of the decision of respondent Commissioner of Customs dated April 4, 1968, affirming that of the Collector of Customs of Manila in Administrative Case No. V-89/67 (Customs Case No. 903), imposing an administrative fine of ₱400.00 on the vessel M/S "Fernview" for carrying unmanifested cargo in violation of Section 1005 of the Tariff and Customs Code, in relation to Section 2521 of the same Code.

On December 25, 1966, the M/S "Fernview", with Registry No. 1997 and of which petitioner is the local ship agent, arrived at the Port of Manila conveying, among others, six (6) cartons of electrical parts, covered by bill of lading No. 56, and consigned to the Luzon Stevedoring Corporation, Manila. Upon arrival, the customs authorities discovered that the inward foreign manifest of the vessel listed only two (2) cartons of said articles and the other four (4) cartons were not covered by a manifest. Consequently, the Collector of Customs of Manila instituted administrative proceedings against the vessel for carrying unmanifested cargo in violation of Section 1005 of the Tariff and Customs Code, penalized under Section 2521 of the same Code. In the meantime, petitioner was able to take delivery of the entire shipment of six (6) cartons of electrical parts upon the filing of an amendment to the inward foreign manifest. After due hearing, the Collector of Customs rendered his decision imposing a fine of ₱400.00 on the M/S "Fernview", which decision, on appeal to the Commissioner of Customs, was affirmed by the latter on April 4, 1968. On May 24, 1968, the instant appeal was instituted.

The sole issue to be resolved in this case is whether or not the imposition of the fine of ₱400.00 on the vessel M/S "Fernview" is in accordance with law.

Sections 1005 and 2521 of the Tariff and Customs Code, upon which the imposition of the fine was based, provide:

> 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.

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 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 invoice and/or entry covering an 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. 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.
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> 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 or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

Petitioner contends that a clerical error was committed in good faith in the preparation of the manifest, and when respondent allowed the amendment to the manifest pursuant to Section 1005 of the Tariff and Customs Code, the same had the effect of curing or removing all the defects of the original manifest. In short, the kernel of petitioner's contention is that the liability of the vessel for carrying unmanifested cargo was wiped out by the amendment to the manifest.

We are not at all impressed with this interpretation of the law by petitioner.

There is no dispute that the four (4) cartons of electrical parts were not covered by the inward foreign manifest of M/S "Fernview", as required by Section 1005 of the Tariff and Customs Code. To enable petitioner to take delivery of the entire shipment of six (6) cartons, Mr. De Asis, Manifest Clerk, Marine Entry Processing Division, Bureau of Customs, required the amendment to the inward foreign manifest upon discovering that the number of cartons of electrical parts declared in the entry covering the disputed shipment was four (4) cartons more than what were declared in the original inward foreign manifest of the subject vessel. Although this amendment was allowed and approved by customs authorities, the same did not have the effect of obliterating the liability of the vessel incurred previous to the amendment. Section 1005 of the Tariff and Customs Code, supra, is so clear and explicit when it commands every vessel from a foreign port to have on board a complete manifest of all her cargo. Non-observance of this imperative obligation subjects a vessel to the administrative penalty under Section 2521 of the same Code. The law makes no exception and any attempt to read one into the statute would be contrary to the spirit as well as the clear language of the aforesaid provisions. (See Smith Bell & Co., Inc. v. Comm. of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969.)

> 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 Islands. 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 its enactment. (U.S. v. Steamship "Rubi", 32 Phil. 228; underlining supplied.)

Another strong reason for not adopting the interpretation advocated by petitioner is found in the pernicious consequence which would flow from such construction. If we are to exempt the vessel from liability for conveying unmanifested cargo by the simple expedient of amending its manifest after discovery of the offense, it would embolden and encourage other vessels to deliberately load cargo without listing them in their manifests. If the unmanifested cargo is discovered, as in the present case, the manifest could simply be amended and thus free the vessel from any liability whatsoever; but if the unmanifested cargo is not discovered, the same would enter the country free of duties and taxes to the detriment of the Government. In both instances, the owner or master of the vessel has nothing to lose but everything to gain. On the other hand, the Government is always the loser. Such a result would not be in keeping with the evident purpose of the law in providing effective means for the collection of customs revenue. For this reason, we are not inclined to accept the interpretation of petitioner.

Petitioner presented before this Court Dominador Bergaño, manager of its claims department, who testified that the failure to have the four (4) cartons of electrical parts included in the cargo manifest of the vessel was due to a clerical error or inadvertence in the typing of the manifest (pp. 19-20, t.s.n.). Apparently, this testimony was presented to show lack of knowledge or consent on the part of the owner or master of the vessel to the omission of the subject cargo from the manifest. Suffice it to say that the lack of knowledge or consent of the owner or master of the vessel in respect of such an omission is no defense against liability for the statutory penalty.

> "There is nothing in section 77 of the Act which indicates any intention on the part of the legislator to limit the imposition of the prescribed penalty to cases where the captain or the ship's officers knowingly or willfully omitted any part of the cargo from the manifests. <u>This section in unequivocal terms prescribes the imposition of the penalty in all cases of such omissions, and read together with section 303, which imposes penalties or forfeitures on the master of the vessels in such cases, it cannot be doubted that the intention of the legislator was to provide for the imposition of the prescribed penalties, whether such omissions occurred with or without the</u>

> <u>knowledge of the owner or the officers of the vessels</u>. Section 303 is here inserted, because both by its terms and the nature of the penalties prescribed it makes very clear the intention of the legislator to penalize omissions from the ship's manifest, whether made <u>with or without the knowledge of the owners, or of the ship's officers</u> charged with the preparation of the required manifests.
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> "x x xThere would be but small prospects of success in the attempt to suppress the practice of carrying unmanifested goods on vessels from foreign ports by the imposition of penalties on the ship or the master, if the imposition of such penalties were made dependent on the production of affirmative proof that such omissions had been made knowingly by the master or that the unmanifested goods had been brought aboard with his connivance. Under such circumstances the legislature has seen fit to prescribe penalties <u>in all cases where unmanifested cargo is found on the vessel, whether it appears that such cargo was placed on board with or without the consent or knowledge of the owners or ship's officers and despite the possibility of individual hardships in some instances</u>. x x x" (U. S. v. Steamship "Rubi", 32 Phil. 228; underlining supplied.)

What could then be the purpose of the law in allowing the amendment to the manifest? As correctly pointed out by respondent, the right to amend the manifest is granted by law in order that innocent importers would not suffer from the error or fraud committed by the master or agent of the vessel in the preparation of the original manifest.

DECISION -
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WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, December 27, 1969.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge