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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KURT NILSEN, DAGPIN LUNOGREN,
HELGE HELLOSSEN, in their
capacity as crew members of
the S/S "FERNside" and
MACONDRAY & COMPANY, INC.,
in its capacity as agent of
the S/S "FERNside",
Petitioners,

Dec. 18, 1964

versus

C.T.A. CASE NO. 1565

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition to review the decision of the respondent Commissioner of Customs dated December 14, 1964, affirming that of the Acting Collector of Customs in Seizure Identification No. 6496, decreeing the forfeiture of twelve (12) cartons Salem cigarettes, nine (9) cartons Salem cigarettes, eight (8) cartons Salem cigarettes, one (1) carton Chesterfield cigarettes, seventy nine (79) cartons Salem cigarettes and two (2) cartons Kent cigarettes for violation of Section 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code.

It appears that the cigarettes in question were discovered inside the cabin of three crew members of a foreign vessel, named S/S "FERNside", during a search conducted by a team of customs agents in the

Port of Manila on July 10, 1962. Since the said cigarettes were not manifested at the time of discovery and were found in the cabin, apparently concealed, they were seized by the customs agents for violation of Section 2530(g) of the Tariff and Customs Code, and, subsequently, were made subject of Seizure Identification No. 6496 with Kurt Nilsen, Dagpin Lunogren and Helgsesen, crew members of S/S "FERNSIDE", and Macon-dray & Company, Inc., agent of said vessel, appearing as claimants.

On July 1, 1964, after due hearing, the Acting Collector of Customs rendered a decision decreeing the forfeiture of the seized cigarettes, which decision, on appeal to the Commissioner of Customs, was affirmed by the latter in his decision dated December 14, 1964.

The principal issue raised for our determination is whether the articles in question are subject to forfeiture for violation of Section 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code, the pertinent portions of which, respectively, provide as follows:

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:

X X X X X

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

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.

x x x 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. x x x (Under-scoring supplied)

(Petitioners maintain that under the above-quoted law the cigarettes in question are not subject to forfeiture inasmuch as they do not constitute cargo of the vessel but are part of the sea stores or provision of the ship that need no manifest. ✓ We are in accord with the petitioners that sea stores need no manifest for the consistent ruling of the Supreme Court is that it is enough that they are contained in "a complete list of all ship's stores" (United States vs. S.S. *Isles Filipinas*, 28 Phil. 291; United States vs. *Steamship Rubi*, 32 Phil. 228; *Commissioner of Customs vs. Compania General de Tabacos de Filipinas*, G.R. No. L-9901, August 30, 1957).) However, it is not correct to say that said cigarettes were part of the sea stores because in point of fact they were not. The cigarettes were not found in the slope chest where generally they are kept but in the crews' cabin, apparently concealed, and were not in the list of sea stores.

We find no merit in the testimony of Dominador Bergaño, Chief of Claims of petitioner Macondray & Co. to the effect that the cigarettes in question were in the list of sea stores and that they had been released to the crews for consumption and receipted for by them. This witness learned of the seizure two days after it took place after which he conducted an investigation for petitioner Macondray & Co. that represented the vessel. He is in no position to have knowledge of his own as to what transpired during the seizure. On the other hand, considering the circumstances of this case, his testimony is hardly probable. If the same were true, for sure petitioners would have presented the sea stores list, the receipts for the cigarettes, and the crews' declaration, for these are vital pieces of evidence for them, but this was never done. It is idle for him to explain that these papers were brought by the officers of the vessel. The ship is liable to penalties for unmanifested cargoes and the ship's officers certainly had every interest to leave said papers for evidence to forestall penalties against the ship. (Port regulation, furthermore, allows the vessel to release only 1 carton of cigarettes for each member of the crew for every 25 hours of stay in port but significantly enough 12 cartons of Salem, 9 cartons of Salem, 8 cartons of Salem and 1 carton of Chesterfield

field, quantities of cigarettes far in excess of regulations, were found in the possession of Kurt Nilson, Dagfin Lunogren and Helge Helgesen, respectively, while 79 cartons of Salem and 1 carton of Kent had no claimant then.)

(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 crews' 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 or 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.)

DECISION -
CTA CASE NO. 1565

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WHEREFORE, the appealed decision of the Commissioner of Customs is hereby affirmed, with costs.

SO ORDERED.

Quezon City, December 18, 1966.

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

Roman M. Umali
ROMAN M. UMALI
Presiding Judge

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge