

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
agents of the vessel
SS "TOREADOR", as Owner
Claimant,
Petitioner,

Feb 15/74

- versus -

C. T. A. CASE NO. 1829

THE ACTING COMMISSIONER
OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent which affirmed that of the Collector of Customs of Manila ordering the forfeiture of 1,566 cases of "blue seal cigarettes" seized on board the vessel SS "Toreador" for alleged violation of Section 2530-g and m-(1), (4) and (5) of the Tariff and Custom Code in relation to Section 1004-f and Section 1005 of the same Code.

The facts of the case as stated in the decision of the Collector of Customs of Manila in Seizure Identification No. 8815, dated January 24, 1966, are, for convenience, reproduced below:

It appears that the manager of the Shipping Division of the Macondray & Co., Inc., through a letter request dated October 5, 1965 requested The Deputy Surveyor of this Port, that a berth be assigned to M/V "Toreador" whose estimated time of arrival (ETA) was on October 6, 1965 at 8:00 p.m.; that the letter request also stated that said vessel be boarded and entrance cleared by the Bureau of Customs and the Bureau of Quarantine on October 7, 1965 at 6:00 a.m.; that the M/V "Toreador" act-

ually arrived at the Port of Manila on October 6, 1965 and dropped anchor at 6:45 p.m.; that in the afternoon of October 6, 1965, a very reliable information was relayed to the Secret Service Division (SSD) Port of Manila, to the effect that a big quantity of blue seal cigarettes was arriving on board the M/V "Toreador" to be smuggled into the country; that acting on this information, the Chief, SSD organized a Searching Party composed of Capt. Mariano P. Almada, Jr., Team Leader, Capt. R. Rodriguez, Lt. R. Aguin, Lt. P. Egonio and Agent A. Dices; that the vessel upon arrival was placed under surveillance with specific instructions to apprehend anyone who would unload or facilitate the illegal disposal of the cigarettes; that while the members of the Searching Party were on board the customs patrol boat at the stream, they saw ten motorized bancas roaming around the vessel M/V "Toreador" and two bancas tied up in the stern of the boat as the gangplank was lowered (t.s.n., pp. 39 and 59); that when the Customs Patrol cutter approached the boat, the motorized bancas left the M/V "Toreador"; that M/V "Toreador" was actually boarded at Quarantine Anchorage, South Harbor on October 7, 1965 at 6:45 a.m. by Customs Boarding Officer Salvador Carreon, Customs Inspector Gonzalo Calma, the searching party headed by Major Almada mentioned above, and Mr. Felix Lagdamin, representative of the Shipping Agent Macandray & Co., Inc., after the vessel was released by Quarantine Officer; that upon boarding the vessel, Boarding Officer Carreon secured the necessary papers to clear the entrance of the vessel from the master of the vessel assisted by Mr. Lagdamin; that after securing the papers for the clearance of the vessel and going over them, Boarding Officer Carreon handed the copies for the Customs Inspector on board, Mr. Gonzalo Calma, including the inward cargo manifests and 3 sets of through cargo manifests (Exhibits "A", "A-1" to "A-101"), who received them (Clearance papers and manifests) at 7:00 a.m. October 7, 1965; that the searching party aforesaid was armed with a search warrant which was duly served to the Customs Inspector on board and the Deck Officer on duty of M/V "Toreador"; that Mr. Carreon went to the Master's cabin to introduce the head of the Searching Party who would search the vessel and told the Master to have an officer to accom-

pany them (searching party) and that he (Mr. Carreon) hoped that the searching party would not find anything not covered by the manifest because it would be too bad for them, and that the Captain just answered with a nod indicating that he understood what Mr. Carreon meant; that Mr. Carreon and Mr. Lagdamin left the ship at the same time at about 8:10 a.m. after the ship was tied alongside Pier 5, Berth 2, on October 7, 1965; that no other ships' papers were submitted to Mr. Carreon from 6:45 a.m. to 8:10 a.m. October 7, 1965; that the searching party after borrowing from the Customs Inspector on board copies of the inward cargo manifests and transit or through cargo manifests as duly submitted to Boarding Officer Carreon, were accompanied by an officer of the M/V "Toreador" to search the vessel; that due to the intelligence report that the vessel had on board a big amount of blue seal cigarettes intended to be smuggled into the country, the Commissioner of Customs, the Collector of Customs, the Chief of the Secret Service Division, the Chief of Customs Police Department and other Customs officials went also on board the vessel after it had already docked at Pier 5; that the searching party found that the ships' hatches Nos. 1 to 5 were without lock and not bolted; that hatch No. 6 while it has lock, was unlocked and also not bolted, and that there were blue seal cigarettes inside Hatch No. 6 all scattered and not properly piled; that the blue seal cigarettes were found at hatch No. 6 at about 10:00 a.m. after it was opened in the presence of all the members of the Searching Party; that Customs Inspector on board, the Commissioner of Customs, the Collector of Customs, the Chief Secret Service Division, the Chief Customs Police Department, other customs officials, the Captain and Chief Mate of the M/V "Toreador" and other persons on board; the customs officials asked the Captain and the Chief Mate about the manifests of the blue seal cigarettes in hatch No. 6, and while they (Captain and Chief Mate) manifested that the cigarettes were manifested, nowhere can they be found in the manifest duly submitted to the Boarding Officer Mr. Carreon; that at about 10:15 a.m., October 7, 1965, the head checker of the vessel, Mr. Nesto, presented the manifests

of the blue seal cigarettes (Exhibits "1" and "2") as transit cargo for Singapore and Bangkok to the searching team but the manifests were refused acceptance; that the manifests of the blue seal cigarettes (Exhs. "1" and "2") were actually presented by the Captain to Customs Inspector Gonzalo Calma, but it was refused acceptance because the Commissioner of Customs told him (Mr. Calma) not to acknowledge receipt of any other document except those handed to him by Boarding Officer Salvador Carreon; that on October 8, 1965 upon recommendation of the Chief Customs Police Department, Col. Abelardo Tolentino, the Collector of Customs, issued a Warrant of Seizure and Detention denominated as Manila Seizure Identification No. 8815 against the 1,566 cases of untaxed blue seal cigarettes marked ATCL and SVK found on board M/V "Toreador" Reg. No. 1437, which arrived at the Port of Manila on October 6, 1965, for alleged violation of Section 2530 (g) and (m)-1, 4 and 5 of the Tariff and Customs Code, in relation to Section 1004 (f) and Section 1005 of the same Code; and that by virtue of this warrant of Seizure and Detention the cigarettes in question were seized and discharged from the M/V "Toreador" and stored at Pier No. 7, South Harbor on October 9, 1965, after the warrant was duly served on the Captain at 8:15 p.m., October 8, 1965, and on the customs guard on board the vessel, A. Gregorio. (Decision, pp. 250-252, Customs records.)

Petitioner herein appealed in due time from the decision of the Collector of Customs of Manila to respondent who affirmed the forfeiture of 1,566 cases of "blue seal cigarettes."

Not satisfied with respondent's decision, petitioner interposed the present appeal.

The main issue to be decided in this appeal is whether or not the forfeiture of 1,566 cases of cigarettes is in accordance with law.

The pertinent portions of Section 1004, 1005 and 2530 of the Tariff and Customs Code, upon which the forfeiture of the cigarettes in question was based, provide:

SEC. 1004. Documents to be Produced by Master Upon Entry of Vessel. - For the purpose of making entry of a vessel engaged in foreign trade, the master thereof shall present the following documents, duly certified by him, to the customs boarding official:

X X X X X X X

(f.) The original of all through cargo manifest, for deposit, while in port, with customs official in charge of the vessel;

X X X X X X X

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.

X X X X X X X X

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 X

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

X X X X X X

m. Any article sought to be imported or exported:

(1) Without going through a customhouse whether the act was consummated, frustrated or attempted;

X X X X X

(4) on the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

(5) Through any other fraudulent practice or device by means of which such article was entered through a customhouse to the prejudice of the government.

Petitioner assails the correctness and legality of the decision on several grounds, namely:

1) That the cigarettes in question were manifested;

2) That the cigarettes in question were destined for Bangkok and Singapore;

3) That there was no attempt to smuggle the cigarettes into the Philippines; and

4) That the provisions of Section 2530, paragraphs g and h-(1), (4) and (5) of the Tariff and Customs Code are not applicable to this case.

In support of the contention that the cigarettes were manifested, petitioner alleged that the shipment of 1,566 cases of cigarettes were properly documented at the time they were loaded aboard the SS "Toreador" in San Francisco, U. S. A.; that the ship's documents including the manifest for the cigarettes in question were received by petitioner via airmail and were taken to the vessel SS "Toreador" upon its arrival in Manila; and that the manifests covering the shipment of 1,566 cases of cigarettes were tendered to representatives of the Bureau of Customs who unjustifiably refused to accept them.

Petitioner's contention would have been tenable had the alleged transit or through cargo manifests of the cigarettes in question been presented with other documents to the boarding officer upon entry of the vessel. The evidence and records of this case show that at about 6:45 a.m. of October 7, 1965, the SS "Toreador" while still at the anchorage area, after having been cleared by the Quarantine Authorities, was

boarded by Customs Boarding Officer Salvador Carreon, Inspector Calan, Mr. Felix Lagdamin, representative of petitioner, and members of the searching party headed by Major Almeda. The master, assisted by Mr. Felix Lagdamin, submitted to the boarding officer, shipping documents which included the inward foreign manifests and transit manifest of the cargoes laden on board the vessel. (Exhs. A, A-1 to A-101.)¹ The master was then notified of a search to be conducted on board the vessel for unmanifested "blue seal cigarettes" by virtue of a warrant and any cargo found not included in the manifest would be seized. During the inspection of the vessel 1,566 cases of "blue seal cigarettes" were found in Hatch No. 6, which were not covered by the documents submitted earlier to the boarding officer. It also appears that Exhibits 1 and 2, claimed to be transit or through cargo manifests, were presented subsequent to the discovery of the cigarettes in question, so they were not accepted by the customs authorities.

Section 1004 of the Tariff and Customs Code requires the master, upon entry of the vessel engaged in foreign trade, to present, among other documents, the original of all through cargo manifest for deposit, with the customs official in

¹pp. 1 - 101, Customs rec.

charge of the vessel; and Section 1005 imposes upon every vessel the obligation to have on board a complete manifest of all her cargo; while Section 2530 indicates the articles which are subject to forfeiture. In this case, when the master failed to deposit the through cargo manifests of the cigarettes seasonably and omitted to manifest said articles, it is clear that Section 1004 and 1005 have been violated, rendering the cigarettes in question as unmanifested articles subject to forfeiture under Section 2530.

The next point raised by petitioner is that the cigarettes in question were destined for Bangkok and Singapore. This fact, according to petitioner, is supported by copies of the non-negotiable bills of lading (Exhs. 6 & 7)² which are corroborated by the transit or through cargo manifests. (Exhs. 1 & 2)³ The allegation is claimed to be further supported by the exchange of communications between petitioner, the owners of the vessel William Wilhelmsen, and Thorsen & Co., Ltd., and Harrison Grosfield, Singapore, agents for Bangkok and Singapore, respectively. (Exhs. 12 to 19.)⁴ In short, petitioner urged that

² pp. 143 & 144, Customs rec.

³ pp. 148 & 149, Customs rec.

⁴ pp. 124 - 135, Customs rec.

the manifests for the cigarettes in question are no longer necessary.

It is to be noted that Section 1005 imposes an absolute obligation upon a vessel coming from a foreign port to have on board a complete manifest of all her cargo, passengers and their baggage, in the prescribed form, which must be presented to the proper customs official upon arrival in ports of the Philippines. The law is not complied with unless said manifest is true and accurate. (U. S. vs. S/S "Islas Filipinas," 28 Phil. 291.) The purpose of the requirement is to "x x x impose upon the owners and officers of such vessels an imperative obligation to submit the 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" (U. S. vs. Steamship "Imbi," 32 Phil. 215), and "to furnish customs officers what goods are being brought into the country, and to provide safeguards against goods being brought in on vessels and smuggled ashore." (The Sylvia II 5 U. S. Mass. 28 T 23 125, 216, cited in Vol. 26, Words and Phrases, 344-345.) All these can not be done by the presentation of the non-negotiable bills of lading and other documents not required to be submitted

to the boarding officer. Thus, in previous cases this Court said:

"The fact that the whole shipment was indicated in the bill of lading does not excuse compliance from the requirement of a manifest x x x. All these can not be accomplished by the mere use of the bill of lading inasmuch as the bill of lading is not required to be presented to the boarding customs officers." (Macondray & Co., Inc. vs. Commissioner of Customs, C. T. A. Case No. 1641, Nov. 15, 1965; Macondray & Co., Inc. vs. Commissioner of Customs, C. T. A. Case No. 2079, Sept. 29, 1972.)

Petitioner also contended that there was no attempt to smuggle the cigarettes into the Philippines. It was alleged that they were not cargoes destined for the Philippines but for some other ports as shown by the fact that prior to the arrival of the vessel SS "Toreador" in Manila, the Customs Arrastre Service and the Luzon Stevedoring Corporation were furnished with copies of the stowage plan (Exh. 22)⁵ and the hatch lists (Exhs. 4 & 5)⁶ indicating therein that the cigarettes were stored in Hatch No. 6 of the vessel and destined for Bangkok and Singapore.

We find the contention devoid of merit. The fact that the cigarettes in question were destined for Bangkok and Singapore does not exempt said articles from being manifested. Section 1005 does not make any distinction between cargo intended for delivery in any port in the Philippines and one which is intended to

⁵p. 119, Customs rec.

⁶pp. 145 & 146, Customs rec.

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be delivered in other ports. (C. F. Sharp & Co. vs. Acting Commissioner of Customs, C.T.A. Case Nos. 1469 & 1483, Dec. 29, 1964.) Because the cigarettes in question were not manifested, it is an indication that there was an attempt to import the articles in violation of law.

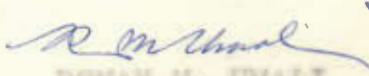
With respect to petitioner's contention that the provisions of Section 2530, paragraphs g and m-(1), (4) and (5) of the Tariff and Customs Code, are not applicable to this case, suffice it to say that as indicated earlier in our disposition of the other arguments, we find that the cigarettes in question were unmanifested when manifests therefor are required and that there was an attempt to bring the cigarettes into the country in violation of law.

Moreover, the fact that the goods seized were not manifested justifies their seizure and forfeiture. (U. S. vs. Lot Silk Umbrellas, cited in Lim Bak vs. Coll. of Customs, B.T.A. Case No. 180, August 28, 1954.)

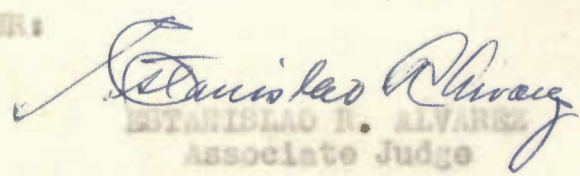
WHEREFORE, the decision appealed from is hereby affirmed with costs against petitioner.

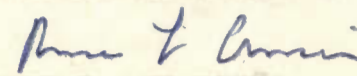
SO ORDERED.

Quezon City, February 15, 1974.


ROMAN M. UMALI
Presiding Judge

WE CONCUR:


ESTANISLAO R. ALVAREZ
Associate Judge


RAMON L. AVANCENA
Associate Judge