REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & COMPANY, INC.,
in its capacity as agent
of the MV "Toreador",
Petitioner,

- versus - C.T.A. CASE NO. 2167

COMMISSIONER OF CUSTOMS,
Respondent.

X - - - - - - - - - - - - - X

2/14/73

D E C I S I O N

Petitioner seeks the reversal of the decision of respondent Commissioner of Customs, dated July 8, 1970, imposing an administrative fine of P5,000.00 upon the vessel MS "Toreador" for conveying unmanifested cargo, in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

The facts of this case are contained in the parties' "Complete Stipulation Of Facts" reading as follows:

1. That Macondray & Co. is the local agent of the vessels S/S Toreador and S/S Fernview;

2. That the S/S Fernview, Voy. 22-A, arrived at the port of Manila on January 26, 1969 under Reg. No. 171;

3. That the S/S Fernview was supposed to carry to and discharge at Manila from New York 9 cartons truck replacement parts for which Bill of Lading No. 43 was issued by the S/S Fernview;

4. That the S/S Fernview, however, shortshipped the 9 cartons truck replacement parts covered by her Bill of Lading No. 43 and duly manifested in her Inward Cargo Manifest;

5. That said 9 cartons truck replacement parts were forwarded to Manila on board a sistership, the MS Toreador Voy. 38-A, Registry No. 762, who discharged said cargo at Manila on April 24, 1969;

6. That the said 9 cartons were not manifested in the Inward Cargo Manifest of the M/S Toreador owing to the chaos and confusion resulting from the longshoremen's strike then obtaining at New York City, the port of origin;

7. That the corresponding customs duties were assessed on the 9 cartons and duly paid by the consignees;

8. That because of the omission to declare the 9 cartons in the "Toreador's" manifest, an amendment thereto was submitted to and approved by the Bureau of Customs "without prejudice to administrative case against the vessel". (pp. 22-23, CTA rec.)

The foregoing stipulation of facts was admitted by this Court on January 27, 1973, and on the same date, the parties submitted the case for decision without memorandum (p. 24, CTA rec.).

The sole issue is whether or not the imposition of the fine on the vessel MS "Toreador" is in accordance with law.

Petitioner assails the legality of the imposition of the fine on the grounds: (a) that the failure to manifest the cargo was not intentional but was due to an honest mistake occasioned by the chaos and confusion resulting from the longshoremen's strike then obtaining at New York City, the port of origin; (b) that the amendment to the original manifest, which was approved by the Bureau of Customs, cures all the defects found therein; and (c) that the fine of ₱5,000.00 is unreasonable and oppressive.

Petitioner's defense of good faith has been repeatedly rejected by us in a number of cases. It is sufficient for this purpose to quote the pertinent portion of our decision in the case of Everett Steamship Corporation vs. Commissioner of Customs, C.T.A. Case No. 1968, dated August 25, 1971,[1] wherein we held as follows:

> That there was good faith in the omission to manifest cargo may be admitted. But good faith in the failure to include cargo in a ship's manifest does not relieve the vessel from liability under Section 2521 of the Tariff and Customs Code. Thus, in Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, December 27, 1969 (cert. denied in G. R. No. L-31599, Feb. 10, 1970), it was held:
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> > "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 to such an omission is no defense against liability for the statutory penalty." (See also Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2072, June 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2140,

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[1] Certiorari denied in G. R. No. L-34146, Oct. 7, 1971.

Nov. 15, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2073, Nov. 25, 1972.)

On the matter of amendment of the cargo manifest, this Court in the case of Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Case No. 1939, dated February 26, 1971,[2] held:

> Petitioner further asserts that "the provision of the law on amendment is designed to protect the master, agent or consignee from the error, mistake or discrepancy committed by him in the preparation of the original manifest and that it is unfair and uncalled for to conclude, as the respondent held in this case, that the right to amend the manifest is for the principal purpose of protecting innocent importers." Whether the purpose of the law in permitting amendment of a vessel's manifest is to protect the master, agent or consignee of the vessel, or the importer of the goods, is to our mind of slight significance. Under Section 2521 of the Tariff and Customs Code, no relief from liability for the fine is granted where an amendment of the manifest is allowed.

Notwithstanding that the imposition of the fine is legal, as enunciated in the above decisions, we are of the opinion that the fine of P6,000.00 is quite excessive under the facts obtaining here. It is undisputed that the failure to manifest the cargo in question was due to the abnormal condition then prevailing at the port of origin, i.e., the chaos and confusion resulting from the logshoremen's strike at New York City. In fact, the Collector of Customs of Manila, in rendering his decision dated November 24, 1969, must have taken this abnormal condition into account when he imposed the

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[2] Certiorari denied in G.R. No. L-33386, April 14, 1971.

fine of only ₱1,000.00 on the vessel (pp. 22-24, Customs rec.). We believe that the fine of ₱1,000.00 imposed by the Collector of Customs is an adequate penalty for the offense. (See Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2143, June 30, 1972; Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2131, Aug. 22, 1972.)

WHEREFORE, the appealed decision is hereby modified by reducing the fine from ₱5,000.00 to ₱1,000.00, which petitioner is hereby ordered to pay to the Bureau of Customs, Manila, within thirty (30) days from the date the decision becomes final.

SO ORDERED.

Quezon City, February 14, 1973.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge