REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPANIA GENERAL DE TABACOS
DE FILIPINAS (As Agents of the
MS "MARIT MAERSK" and Claimant
of the 20 Cases Unmanifested
Pall Mall Cigarettes, MS "MARIT
MAERSK," Reg. No. 283, Arrived
Manila on February 19, 1971),
Petitioner,

- versus -

CTA CASE NO. 2617

COMMISSIONER OF CUSTOMS,
Respondent.
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April 22, 1977

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated May 7, 1974, affirming that of the Collector of Customs, ordering the forfeiture of the twenty (20) cases of untaxed Pall Mall cigarettes in favor of the Republic of the Philippines and imposing upon the vessel MS "MARIT MAERSK," and collectible from its agent, Compania General de Tabacos de Filipinas, a fine of ₱10,000.00 for violation of Section 1005 in relation to Section 2530(g) of the Tariff and Customs Code.

The facts are simple and are not disputed. On February 19, 1971, the ship MS "MARIT MAERSK" arrived at the Port of Manila from Hongkong. Upon its arrival, it was boarded and searched by Customs officers. During the search on said ship, there were found twenty (20) cases of untaxed Pall Mall cigarettes, containing 50 cartoons in each case, in the linen room of said ship. The cigarettes were found to be neither listed in the cargo manifest, nor included in the ship's list of sea stores. The master of the MS "MARIT MAERSK," E.A. Stengaard, was required to explain and show why a fine should not be imposed against the vessel for carrying on board the unmanifested cigarettes and non-inclusion of said cigarettes in the store list, which he did on February 19, 1971, but which was not found to be satisfactory, the Collector of Customs instituted administrative proceedings against the vessel in violation of Section 1005, in relation to Section 2530(g) of the Tariff and Customs Code. At the same time, seizure proceedings was instituted against the cargo of Pall Mall cigarettes. During the joint hearings before the Collector of Customs, the Port Captain of petitioner testified in defense of the vessel that the Pall Mall cigarettes form part of the ship's sea stores as they were for the personal consumption of the crew, and were not to be landed; that the cigarettes were found by the boarding officers in the linen room of the vessel because the provision and store rooms of the vessel were being painted at the time.

After the hearing, the Collector of Customs, on September 24, 1973, rendered a decision ordering the forfeiture of the twenty (20) cases of cigarettes in favor of the Government and imposing upon the vessel a fine of ₱10,000.00.

On May 7, 1974, said decision of the Collector was affirmed by the Commissioner of Customs.

Hence, petitioner appealed to this Court.

The only issue presented for disposition is whether or not the MS "MARIT MAERSK" is liable for violation of Section 1005, in relation to Sections 2521 and 2530 (g) of the Tariff and Customs Code of the Philippines, for carrying untaxed Pall Mall cigarettes which were neither unmanifested nor listed in the sea stores, in the passenger baggage manifest or crew's declaration.

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 said ship's crew had in fact consumed 9 cartoons 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.

The pertinent provision of Sections 1005, 1105, 2521 and 2530(g) of the Tariff and Customs Code applicable in this case are quoted as follows:

> 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.
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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 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. 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 clearance 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 aricraft 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: <u>Provided, however</u>, 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. <u>Failure to Supply Requisite Manifests</u>.- If any vessel or aricraft 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. <u>Property Subject to Forfeiture Under Tariff and Customs Laws</u>.- Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

xxx xxx xxx

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, 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 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 areused 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 passenger 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 on 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, may criminal, neglect by the master of the vessel in violation of our Customs laws.

WHEREFORE, the decision of the Commissioner of Customs appealed from dated May 7, 1974 should be, as it is hereby, affirmed.

With costs against petitioner.

SO ORDERED.

Quezon City, April 22, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge