Library

MACONDRAY AND COMPANY, INC.,
in its capacity as agent of
the MS "ROSEVILLE",
Petitioner,

- versus - C.T.A. CASE NO. 2138

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - x

Sept 30 '72

DECISION

This is an appeal from the decision of respondent dated April 21, 1970, affirming that of the Collector of Customs of Manila imposing an administrative fine of ₱1,000.00 on the vessel MS "ROSEVILLE" for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

The facts are not in dispute, the same having been stipulated by the parties, as follows:

> 1. Petitioner is a corporation organized and existing under the laws of the Philippines with office at Shurdut Bldg., Intramuros, Manila; Petitioner is the ship agent in the Philippines of the vessel MS "Roseville"; respondent is the incumbent Commissioner of Customs;
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> 2. That on or about May 27, 1967, the vessel MS "Roseville" arrived at the port of Manila from New York, U.S.A. under Customs Registry No. 919, carrying import cargoes, part of which consisted of three (3) rolls of vulcanized rubber, which were not entered in the Inward Foreign Cargo Manifest of said vessel;
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> 3. That on July 13, 1967, the respondent filed an Amendment to Inward Foreign Manifest to include the said three (3) rolls of vulcanized rubber, and said amendment was approved by the collector's office without prejudice to an administrative action against the vessel;
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> 4. That the Collector of Customs of Manila initiated Administrative Case No. 135/67 against MS "Roseville" for supposedly convey-

ing unmanifested cargo in violation of Section 1005, in relation to Sec. 2521 of the Tariff and Customs Code;

5. On August 26, 1969, the Collector of Customs of Manila rendered a decision holding the MS "Roseville" as having conveyed unmanifested cargo consisting of three (3) rolls of vulcanized rubber and imposed a fine of ₱1,000.00 against petitioner;

6. That the unmanifested cargo consisting of three (3) rolls of vulcanized rubber were not included in the manifest because it was short-shipped at the port of loading because of oversight;

7. Within the time allowed by law, petitioner appealed the decision of the Collector of Customs of Manila to respondent Commissioner of Customs. On April 21, 1970, respondent Commissioner of Customs rendered a decision affirming the decision of Collector of Customs of Manila imposing a fine of ₱1,000.00;

8. On June 3, 1970, within the time allowed by law, petitioner filed with the Honorable Court the instant petition. (Pp. 19-20, C.T.A. Rec.)

Petitioner claims that respondent should have charged petitioner for violation of Section 2521 in relation to Section 1005 of the Tariff and Customs Code. This is so because section 1005 is not a penal or prohibitive statute but merely a procedural law. Therefore, according to petitioner, the imposition of the said penalty is not in order.

It is further argued that assuming arguendo that respondent's charge against the vessel for violation of Section 1005 is proper, it is necessary that respondent should present proof of fraud in order to warrant violation of the aforesaid section of law. Since respondent has not presented any proof of fraud, petitioner could not be held liable for violating Section 1005 of the said Tariff and Customs Code. We find petitioner's theory devoid of merit.

It is to be noted that Section 1005 of the Tariff and Customs Code imposes upon every vessel the obligation to have on board a complete manifest of all her cargo. Non-compliance with the requirement is penalized by a fine of not more than ₱10,000.00 under Section 2521 of the same Code. (See Macondray and Company, Inc., vs. Comm. of Customs, C.T.A. Case No. 1930, Dec. 27, 1969.) Therefore, failure to include cargo in the manifest is a violation of Section 1005 and not of Section 2521. The latter section provides the penalty for violation of Section 1005. Petitioner's theory that it should have been charged under Section 2521, in relation to Section 1005 of the Tariff and Customs Code, instead of vice versa, is devoid of merit.

"Petitioner's claim that, being an agent, it cannot be held liable for violation of any law committed by its principal is also untenable. The proceeding conducted in the Bureau of Customs for the imposition of the fine imposed under Section 2521 of the Tariff and Customs Code is in rem, that is, against the offending vessel. (See Secs. 2205-2212; Secs. 2301-2307; and Sections 2312-2315, in relation to Section 2532 of the Tariff and Customs Code.) It is for this reason that the dispositive portion of the decision of the Collector of Customs reads as follows:

> "WHEREFORE, it is ordered and decreed that an administrative fine in the amountof ONE THOUSAND PESOS (₱1,000.00) Philippine Currency be, as it is hereby declared, imposed on the MS "Roseville" and/or its local agent, herein respondent, and failure to remit said fine within fifteen (15) days from receipt of this decision will subject the vessel to seizure pursuant to Section 2532 of the Tariff and Customs Code.

The inclusion of petitioner as one who is alternately liable for the fine is due to the fact that it submitted itself to the jurisdiction of the Bureau of Customs in the administrative proceeding as agent of the vessel. But, as will be noted, it can elect not to pay the fine, in which case, the vessel will be subject to seizure under Section 2532 of the Tariff and Customs Code. "

Finally, petitioner contends that the three (3) rolls of vulcanized rubber were not listed in the Inward Foreign Cargo Manifest due to oversight, and not due to fraud. Respondent, on the other hand, argues that good faith or oversight is not a defense in view of the mandatory requirement of Section 1005 which does not relieve a vessel from liability for carrying unmanifested cargo.

The issue is not one of first impression. Similar cases have already been decided by this Court. To be specific, in the case of Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Nos. 1728 & 1921, July 22, 1969, it was held:

> Under Section 1005 of the Tariff and Customs Code, it is an imperative obligation of every vessel from a foreign port to have on board a complete manifest of all her cargo. No exception is mentioned in the statute. Neither is there mention of any exception in Section 2521 of said Code providing for a fine for vessels without proper manifests nor in Section 2530 thereof providing for the confiscation of unmanifested goods. The recognition by the Court of any attempt to read into the statute any exception, such as mis-shipment of goods, would be contrary to the pervasive spirit as well as the clear language of the aforesaid provision. (See also Compañia General de Tabacos de Filipinas v. Commissioner of Customs, C.T.A. No. 2131, Aug. 22, 1972.)

We find no compelling reason to deviate from the foregoing pronouncement.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed. Accordingly, petitioner is hereby ordered to pay the sum of ₱1,000.00 to the herein respondent within thirty (30) days from the date this decision becomes final.

SO ORDERED.

Quezon City, September 30, 1972.

R M Umali
ROMAN M. UMALI
Presiding Judge

We Concur:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge