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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
in its capacity as ship's
agent of the S/S "TAI PING,"
Petitioner

versus

Nov. 15/65

CTA CASE NO. 1641

ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

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DECISION

This is a petition for review of the decision of respondent dated April 22, 1965, affirming that of the Collector of Customs of Manila, which imposed an administrative fine of ₱1,000.00 on the S/S "Tai Ping" for landing unmanifested cargo in violation of Section 1005, in relation to Section 2521 of the Tariff & Customs Code. This case was submitted for decision on the basis of the pleadings of the parties and the customs record.

On November 2, 1962, the S/S "TAI PING," a vessel engaged in foreign trade and of which petitioner is the agent, landed at the Port of Manila from San Francisco, California, U. S. A., with a cargo, consigned to Bogo Medellin Milling Co., Inc. under Bill of Lading No. 22 (Exh. 2, p. 42, ~~BIR~~ customs records), consisting of one (1) coil carbon steel; one (1) bundle carbon steel flat; and one (1) carton containing tool holder and carbide cutters ground. In the inward cargo manifest, the only shipment listed was one (1) coil carbon steel. The others were not manifested. Consequently, respondent required petitioner, as the local shipping agent of the vessel, to explain and show cause why no administrative fine should be imposed upon the vessel. On November 15, 1962, petitioner submitted a written explanation which was considered unsatisfactory. So, in a letter dated July 31, 1963, respondent imposed upon the vessel a fine of ₱1,000.00.

On August 15, 1963, petitioner requested reconsideration of the fine, which request was denied by the Collector of Customs, in a letter dated September 26, 1963. Accordingly, the fine of ₱1,000.00 was paid under protest on December 4, 1963.

Subsequently, the Collector of Customs, in his decision dated August 24, 1964, denied the protest. Respondent having affirmed said decision on April 22, 1965,(Annex A, Petition), the present petition for review was filed.

The only issue raised is whether or not the S/S "TAI PING" is liable under Section 1005, in relation to Section 2521 of the Tariff and Customs Code for landing unmanifested cargo in the Port of Manila.

Petitioner contends that since the bill of lading showed correctly the entire shipment, there was a substantial compliance with the provisions of

Section 1005 of the Tariff & Customs Code. In the alternative, it argues that the approval by the Bureau of Customs of the amended manifest removed the defects or faults of the original manifest. Hence, it is suggested that the imposition of the fine is not justified.

The evidence of record does not support the pretension of petitioner relative to an approved amended manifest. The testimony of Irineo Lumabi, manifest clerk of the Marine Division, regarding the supposed annotation, made by him, of the undeclared articles in the original manifest is not only uncorroborated, but lacks credibility. Despite the fact that the hearing of Protest Case No. 812 was postponed for several times to enable him to produce the alleged approved amendment, the same was not presented. Assuming arguendo that the alleged approved amendment was sent to the Auditor General as testified to by him, the same could have been produced by the use of subpoena duces tecum. And yet, not even an attempt to use this process appears in evidence.

It may be true that the amendment to the manifest was prepared by Mr. Dominador Bergaño, chief of claims of Macondray & Co. Shipping Division. To be valid, said amendment must be duly approved, entered and attached to the original manifest. In the case at bar, there is no proof that the alleged amendment was approved, entered and attached to the original manifest.

The fact that the whole shipment was indicated in the bill of lading does not excuse compliance from the requirement of a manifest. Sections 1005 and 2521 of the Tariff and Customs Code provide:

> 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.
>
> SEC. 2521. Failure to Supply Requisite Manifests.—If any vessel or aircraft enters or departs 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.

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> 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 or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

It will be noted that the afore-quoted provisions of law impose 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 custom official upon arrival in ports of the Philippines. The law is not complied with unless said manifest is <u>true</u> and <u>accurate</u> (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 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 "Rubi," 32 Phil., 235-236), and "to furnish custom officers with lists to check against, to inform revenue 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 [D. C. Mass.] 28 F

[2d] 125, 216, cited in Vol. 26, Words and Phrases, 344-345). 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.]

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

SO ORDERED.

Quezon City, November 15, 1965.

TEOFILO D. REYES, Sr.
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge Alejandro B. Afurong did not take part.