lit

DIONISIO LAZARO, owner of
M/B ELIZABETH I & DIVINA I,
Petitioner,

- versus - C.T.A. CASE NO. 3035

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

6/28/82

D E C I S I O N

In a decision dated April 5, 1977, the Collector of Customs of the Port of Jose Panganiban, Camarines Norte, found the vessels M/B "Elizabeth I" and M/B "Divina I" guilty of the violation of Section 1005 in relation to Section 2521 and Section 1016 in relation to Section 3610 of the Tariff and Customs Code. Accordingly, the said vessels were fined each the amounts of ₱3,000.00 for violation of Section 1005 in relation to Section 2521 and ₱1,000.00 for violation of Section 1016 in relation to Section 3610, all of the Tariff and Customs Code, as amended. Petitioner Dionisio Lazaro, as owner of the vessels M/B "Elizabeth I" and M/B "Divina I", contending that the decision of the Collector of Customs of the Port of Jose Panganiban is contrary to the law and evidence, appealed to respondent Commissioner of Customs. In a decision on reconsideration dated July 6, 1979, the latter however affirmed in toto the decision of the Collector.

Hence the present recourse.

The records show that the vessels M/B "Elizabeth I" and M/B "Divina I" arrived in the Philippines from Japan on August 21, 1974. Both vessels anchored at Camaligan, Camarines Sur, and unloaded thereat cargoes listed and described in the inventory report (pp. 139-140, Customs records) as follows:

> The following were found in the different places of FB "ELIZABETH I".
>
> Inside hatches 2 and 3 .. 137 pcs. brand new truck tires
> Inside hatch 4 .... 63 pcs. " " " "
> Inside hatch 5 .... 50 pcs. " " " "
> Total number of pieces .. 250 pcs.
>
> All of the above truck tires bears Trade Marks and Numbers, to wit:
>
> YOKOHAMA, Nylon 10.00-20, 14 PR Speed Rib 227
>
> At Galley of vessel:
>
> 1 unit TV set (used) Trade Mark NATIONAL
> 2 units electric fan (used) Trade Mark HITACHI
> 1 unit frigidaire (used) NATIONAL JET CYCLE
> 1 unit (used) vacuum cleaner, Trade Mark NATIONAL MC 355C
>
> At Pilot house:
>
> 2 units (used) car radio Trade Mark Nissan Clarion
> 3 units (new) SSB apparatus with trade marks:
> a. YAESU
> b. ANRITSU ELEC. CO. Ltd Type S 63 - A
> c. Transciever Trio (2MFM TR-7200 G) with Sony walkie talkie.
>
> 3 units electric fan
>
> At Crew's Cabin:
>
> 2 units electric fan

At Engine Room:

1 unit iron hand pump, brand new, TM- Japanese characters

At hatch No. 1:

5 units cylinder blocks (used)
1 unit piston (used)
1 unit platon ring (used)
8 units exhaust valves (used)

At forward compartment:

3 units car igniters Trade Mark NATIONAL PANASTART EUL GX2 with several switches contained in one box.
1 box colored bulbs (used)
1 box rotary car cooler
4 units tied into one bundle bearing trade mark MITSUBA ELEC. C. LTD. (contents unknown)
2 bundles of flourescent lamp holders, 40W with 2 pcs. a bundle
4 bundles wrapped with unknown contents
4 pcs. Bosch Europa-Horn contained in one carton
3 cartons of different sizes, closed and contents unknown.

<u>ON BOARD FB "DIVINA I"</u>

Forward Deck:
1 wooden crate bearing marks; YANMAR Diesel Engine, Sandoval, Cebu made in Japan (Engine Block) Gross Weight-450 kilos, Net Weight-350 kls.
1 unit Welding Machine (Yanmar) New colored yellow and red, 7 KW 82 volts.
Hatch 3:
10 bundles shovels without handles with 10 pcs. a bundle
1 bundle temple
6 bundles shackles
1 piece cutting machine (Yasakawa, Japan, No. 1147-6 (new)
1 unit new slide projector
½ box Zinc Electrode
20 boxes welding rods
3 boxes corilla
10 boxes fish finder recording paper
1 set (new pipe bender TM Chiyoda)

3 pcs. cutting blade
20 (second hand) starter.

Hatch 2:

1 unit video player inside a carton
1 box spare radar antennae
6 pcs. brand new Jeep Tires
2 bundles still wrapped (new) fish nets
14 bales still wrapped (new) ropes
several rubber bobbins of different sizes, brand new.

Inside Galley:

1 unit TV set TM Victor (used)
1 unit Frigidaire TM Toshiba (used)
1 unit washing machine TM Sanyo (used)
2 units signal lights TM Hitachi

At Deck:

2 units hand water pumps steel made (new)
1 unit washing machine TM Toyota

At Pilot house:

1 unit electric fan TM Hitachi (used)
1 unit marine radar
1 unit SSB TM Yaesu

Hatch 1

2 bales fish nets still wrapped, new
several plastic floats and various bobbins.

Under Customs Administrative Order No. 1-72 dated September 21, 1971, Camaligan, Camarines Sur, is within the jurisdictional limits of the Customs collection district of Jose Panganiban in which Jose Panganiban, Camarines Norte, is the principal port with office at Jose Panganiban. Upon being informed of the arrival of the aforementioned vessels at Camaligan, the Collector of Customs of Jose Panganiban therefore sent Mr. Cesar Abecina, Deputy Collector of Customs of the port of Jose Panganiban, to verify the truth of the information. At Camaligan, however, the vessels were already being attended to by the Customs personnel of the port of Legaspi, which has jurisdiction over the collection district of Legaspi-Tobaco, Albay. At any rate, together with the personnel of the port of Legaspi, Deputy Collector Abecina of the port of Jose Panganiban conducted an inventory of the cargoes of the vessels as shown and listed above and took pictures of the same as found on pages 123 to 136 of the Customs records.

In his report to Collector of Customs Federico B. Verzosa of the port of Jose Panganiban dated September 13, 1974, Deputy Collector Abecina stated that M/B "Elizabeth I" and M/B "Divina I" violated Section 1001 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, for not calling at a port of entry upon their arrival from Japan and also Section 1005 of the same Code for carrying unmanifested cargoes on board. Pursuant to the said report, the Bureau of Customs instituted Administrative Case Nos. 1-76 and 2-76 against the two (2) vessels for violation of Section 1005 in relation to Section 2521 and Sections 1001 and 1016 in relation to Section 3610 of the Tariff and Customs Code, as amended by Presidential Decree No. 34.

Is petitioner Dionisio Lazaro, as owner of the vessels M/B "Elizabeth I" and M/B "Divina I", liable for the administrative fines of ₱3,000.00 and ₱1,000.00 imposed upon each of the vessels by the Bureau of Customs for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code and Section 1016 in relation to Section 3610 of the same Code?

Section 1005 of the Tariff and Customs Code imposes upon every vessel the absolute obligation to have on board a complete manifest of all her cargo. Failure to comply with this mandatory provision subjects the vessel to a fine not exceeding ₱10,000.00 under Section 2521 of the Code. Here in the case at bar, since no inward foreign cargo manifest listing and describing all the cargoes of the vessels M/B "Elizabeth I" and M/B "Divina I" was produced during the hearing at the Bureau of Customs, the Collector of Customs of the Port of Jose Panganiban and respondent Commissioner of Customs considered that the cargoes of the two vessels were not manifested as required by law. Hence, a violation of Section 1005 in relation to Section 2521 of the Code.

Likewise, it appears that the two (2) vessels were compelled by stress of weather to dock at

Camaligan, Camarines Sur. While this is not controverted by respondent, the masters of the two vessels, however, did not file any protest under oath setting forth the causes or circumstances of such necessity to the Collector of Customs of Jose Panganiban or to the Collector of Customs of Legaspi in violation of Section 1016 in relation to Section 3610 of the Tariff and Customs Code.

To begin with no inward foreign cargo manifest setting forth and describing all the cargoes of the vessels was produced or presented by petitioner at the administrative investigation of this case in the Bureau of Customs or during the hearing conducted by this Court. While petitioner contends that the inward cargo manifests were delivered by the masters of the vessels to a certain Mr. Arcilla, who was allegedly the customs boarding officer or customs guard, and copies thereof were supposedly taken by the "NBI, RASAC, ISAROG TASK FORCE and the local PC and Police who intervened in the unloading of the cargoes" (p. 61, CTA records), petitioner could not show or produce a copy thereof, whether original, duplicate original, certified or authenticated copy or just plain xerox copy. It should be noted that these officers or government agencies to whom petitioner allegedly delivered copies of the inward foreign cargo manifests received such copies in the exercise of their official functions, and invariably, the manifests or copies thereof should be filed in their respective offices, or form part of their official records available for public examination and/or certification. Hence, a certified true or plain copy thereof would not be impossible to secure from at least any one of these government agencies or officials. Then these copies were delivered in the course of official transaction, and since official duty is presumed to have been regularly performed, competent evidence, oral and/or ducomentary, could easily be produced to this effect.

Existing Rules provide the various and different means of ascertaining the truth respecting a matter of fact, the machinery and procedure to implement them, precisely in order that rights might be enforced or protested. However, petitioner would have us believe that "he did not bother to keep a copy for himself as he did not consider this document so important, he being a fisherman" (p. 61, CTA records), or "that he exerted efforts to get copies thereof from the different agencies of the government which intervened in the landing of the two vessels aforementioned, altho in vain" (p. 70, CTA records). If a "fisherman" has enough know-how and means to go to Japan, buy two fishing boats there and bring them home to the Philippines properly equipped and documented, surely, he must also have enough gumption to consider that he cannot load fully two vessels with highly dutiable goods of commercial and personal nature and pass them legally through Customs without an inward foreign cargo manifest or similar document to that effect, unless he can unload the goods at a pre-assigned port of his own convenience and have the vessels attended to by Customs personnel of his own choice.

The only conclusion which could be drawn from the circumstances surrounding this case is that the vessels M/B "Elizabeth I" and M/B "Divina I" had their respective inward cargo manifest but the manifest did not correctly and completely set forth and describe their cargoes. As stated by Mr. Cesar Abecina, Deputy Collector of the port of Jose Panganiban, Camarines Norte, who was sent to Camaligan, Camarines Sur, by the Collector of Customs of Jose Panganiban, under whose jurisdiction Camaligan falls, to check the arrival and unloading of the two aforesaid vessels, when he asked for the inward manifests, the boarding party composed of Customs personnel of the port of Legaspi showed him the manifests of M/B "Elizabeth I" and M/B "Divina I" on the face of which two manifests are written the word "NIL" meaning that both vessels have no cargo on board. Xerox copies of the manifests, marked Exh. "C" for "Elizabeth I" and Exh. "D" for "Divina I", are found on page 127 of the Customs records bearing on this case. Although Exhibits "C" and "D" are merely xerox copies of the manifests, the same formed part of the official records of this case certified by and forwarded to this Court by the Bureau of Customs. These exhibits have not been controverted by petitioner although the same have been mentioned in the decision appealed from, as well as the decision of the Collector of Customs of the port of Jose Panganiban, as showing the extent of the inquiry made by Deputy Collector Cesar Abecina and "the fact that in the performance of his mission he exerted efforts in gathering pertinent documents necessary in the preparation of his report." As a matter of fact, the testimony of Abecina to this effect has not been disputed by petitioner. The presumption is that official duty had been regularly performed and all matters within at issue in this case were laid before the Deputy Collector of Customs of the port of Jose Panganiban. (Sections 5(m) & (o), Rule 131, Rules of Court.)

Much stress was placed by petitioner on an alleged affidavit or sworn statement of Collector of Customs Federico B. Verzosa of the port of Jose Panganiban wherein he stated that the interest of the Government was duly protected and the possibility of smuggling was very remote. Well, for one thing, the records show that the duties and taxes due on the cargoes of M/B "Elizabeth I" and M/B "Divina I" unloaded at Camaligan listed and described in the inventory were paid. However, as regards the charge that the vessels were carrying unmanifested cargoes on board, Verzosa merely stated that "I inquired from Appraiser Bañares and Customs Examiner Raquel of Legaspi whether the said 250 truck tires were manifested or not and they told me that it was duly manifested x x x" (p. 46, CTA records.) The alleged affidavit or sworn statement of Federico B. Verzosa was only a certified photo copy and Verzosa was not presented in Court for examination. Since he had no personal knowledge of the truth of the unmanifested 250 truck tires, much less of the other cargoes of the vessels as shown and described in the inventory, the affidavit or sworn statement of Federico B. Verzosa could, at best, be no more than hearsay. Evenmore, his decision dated April 5, 1977, as Collector of Customs of the port of Jose Panganiban, promulgated later finding M/B "Elizabeth I" and M/B "Divina I" guilty for violation of Section 1005 for carrying on board unmanifested cargo and Section 1016 of the Tariff and Customs Code for failure to file any protest negated the alleged affidavit or sworn statement. The presumption is that when he promulgated his decision in this case as Collector of Customs of Jose Panganiban, all matters at issue were laid before him and passed upon by him. (Sec. 5(o), Rule 131, Rules of Court.)

Anent the failure of the masters of the two (2) vessels to make before the Collector of Customs of Jose Panganiban or the Collector of Legaspi protests under oath setting forth the causes or circumstances which compelled them by stress of weather to dock at Camaligan, Camarines Sur, in violation of Section 1016 in relation to Section 3610 of the Code, no such protests have been produced or presented before this Court or before the Bureau of Customs, and neither can they be found in the records of this case. The law explicitly requires that the protest, *if not made before the Collector* must be produced to him, and a copy thereof lodged with him. Such protests, if duly made, should therefore form part of the records of this proceeding and a bare statement that there was a "masters' oath submitted", unaccompanied by adequate evidence, has no weight with the Court.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with the costs of this instance against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 28, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge