REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARITIME COMPANY OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 2124

THE ACTING COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - x

11/28/77

D E C I S I O N

This is an appeal from the decision of respondent Acting Commissioner of Customs dated June 3, 1969, affirming that of the Collector of Customs of Manila imposing an administrative fine of P3,000.00 against the vessel M/V "General Lim" and/or its ship agent, the Maritime Company of the Philippines, the petitioner herein, for alleged violation of Section 2521, in relation to Section 1005, of the Tariff and Customs Code, as amended.

The records show that the vessel, the M/V "General Lim," arrived at the Port of Manila on December 28, 1966 laden with various import cargoes, one of which was a crate of used Caterpillar No. 12 Road Grader weighing 20,000 lbs., with a measurement of 984 cubic feet. In the inward manifest forwarded to the Bureau of Customs, the said shipment of Caterpillar Road Grader was manifested as weighing 904 lbs., instead of the actual gross weight of 20,000 lbs. (See Exh. A, p. 5, Customs records.)

Petitioner, in a certification dated January 4, 1967 submitted to the Bureau of Customs, it sought to correct the weight of the Road Grader by the submission of an amendment to the Inward Manifest, through one Hector Cordero, on the ground that the declared weight was a typographical error. (Exh. A, p. 5, Customs records.) This amendment in the inward manifest was approved by the Bureau of Customs "without prejudice to an administrative action against the vessel." (Exhs. B & B-1, p. 4 Customs records.)

Petitioner, as shipagent, was later sent a notice that an administrative case (No. V-105/67) was instituted against the vessel M/V "General Lim" which was heard on July 12, 1967. The charge against the vessel was for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code. (See p. 17, Customs rec., p. 1, t.s.n., administrative hearing.) After the hearing, however, the Collector of Customs rendered a decision finding the master of the vessel M/V "General Lim" negligent in not properly and correctly manifesting the vessel's cargo of one crate Caterpillar Road Grader, in violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended, resulting in a discrepancy of more than

20% between the declared weight of the cargo (904 lbs.) in the inward manifest, and its actual weight of 20,000 lbs. and imposing a fine of ₱3,000.00. From this decision, petitioner appealed to the Commissioner of Customs, who, in turn, affirmed the decision of the Collector of Customs. Hence, petitioner appealed to this Court.

It seems that, from the foregoing facts, the question in issue in this case is not whether there was a failure to submit a required manifest in violation of Section 1005, and punishable under Section 2521 of the Tariff and Customs Code, as amended, because there was neither here a failure to submit a required inward foreign manifest, nor a neglect to include the cargo in the manifest. The real and only issue in this case is whether or not the actual weight of the cargo in question exceeds, by more than twenty (20) per centum, the gross weight as shown to have been declared in the manifest, and that the discrepancy in weight was due to the carelessness or incompetence of the master or pilot in command, owner or employee of the vessel, punishable under Section 2523 of the Tariff and Customs Code, as amended. Said Section 2523, the law involved in the determination of this issue, and not Section 2521, provides as follows:

> Sec. 2523. Discrepancy Between Actual and Declared Weight of Manifested Article. - If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of the opinion that such discrepancy was due to the carelessness or incompetence of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft.

Petitioner contends that the error in declaring the weight of the cargo as 904 lbs., in the inward foreign manifest, instead of its actual weight of 20,000 lbs., was done in good faith, or was committed without any fraudulent intent, and that such mistake was accounted for the rush and hurry in the preparation of the inward foreign manifest by the clerk-in-charge, who at the time was under pressure as two other vessels have arrived for unloading on the same day. It asserts that instead of placing the weight of the crate of road grader in question as 20,000 lbs., therefore, what was consequently the basis of the declared measurement was the measurement of the cargo in cubic feet. Petitioner further asserts that the error was committed in good faith and this was clearly reflected when it immediately caused the amendment of the inward foreign manifest immediately upon its attention having been called by the consignee of the error of the declared weight, and the amendment was forthwith made before said cargo was released, and also before all the corresponding duties and taxes were duly paid by it.

On the other hand, respondent contends that the gross disparity between the weight of the road grader as declared in the inward foreign manifest and its true or actual weight is a clear indication of the carelessness or incompetency of the master or pilot of the vessel M/V "General Lim"; that what was copied in the manifest is neither the actual measurement of "984" cubic feet of the road grader as what was reflected therein as the weight was the number of "904," nor its actual weight of 20,000 lbs.; that while the Collector of Customs had approved the amendment of weight in the manifest, it was without prejudice to the filing of an administrative action against the vessel and, as such, the Collector has not waived his right to hold petitioner liable for its gross negligence in the preparation of the manifest.

There is no dispute in the fact that there was indeed an error committed in the preparation of the inward foreign manifest in so far as the declared weight of the road grader is concerned.

This was never denied by petitioner before this Court. However, petitioner maintains in defense that the freight manifest shows correctly the weight of the road grader to be 20,000 lbs. which was as its basis the original manifest forwarded to it by petitioner's agent abroad, and this claim was never rebutted by respondent. (see Exh. A, p. 5, Customs rec; pp. 17-20, t.s.n., Feb. 12, 1973.) The Manifest Clerk, one Ignacio Cruz of petitioner testified under oath before us, that when he prepared the inward foreign manifest, the original ship's manifest upon which the inward foreign manifest was based reflected the weight to be 20,000 lbs. (p. 17, t.s.n., Feb. 12, 1973) This was never contradicted by respondent. There is good reason, therefore, to believe or conclude that Ignacio Cruz miscopied what should truly be the correct weight, or instead copied erroneously the measurement of the cargo which had resulted in the discrepancy in weight. The act committed by said clerk, who prepared the inward foreign manifest, is clearly a typographical error which can be attributable to, or on account of the pressure of his work and not with any intention to commit fraud. This conclusion by this Court is arrived at after a concise, long and serious consideration of the following facts and circumstances, as reflected by the transcript of stenographic notes and the records of this case:

(1) The original manifest from which a copy was made indicates the correct weight of the shipment. This was attested by the testimony of Ignacio Cruz, the clerk of petitioner who was in charge of the preparation of the inward foreign manifest. He testified thus:

Q What was the basis and what reference did you have at the time when you were preparing this original inward foreign manifest?

A Our basis was the original manifest forwarded to us by our agent from abroad.

Q And, recalling now, would you say that the entry made in the manifest forwarded to you from abroad contained the true weight of the shipment?

WITNESS: Will you please repeat the question?

JUDGE ALVAREZ:

Please read back the question.

STENOGRAPHER reads the last question to wit.:

And, recalling now, would you say that the entry made in the manifest forwarded to you from abroad contained the true weight of the shipment?

A Based on the original manifest we consider that all the declarations there are all true.

Q Of course.

In so far as the weight of the shipment is concerned - in that manifest that you received from abroad - do you remember what was described or entered weight?

A Yes.

Q What?

A 20,000 lbs.

Q And notwithstanding the fact that you have this basis or reference you committed the error of entering the weight in the figure "904lbs." instead - yes or no?

A Yes - we committed a mistake because as shown in our original manifest, there are columns for the measurement and the declared weight. So, as I was too busy attending to other works, I copied the cubic measurement instead of the pounds.

Q But you placed also the entry "904 lbs." which was the mistake made?

A Yes.

Q When you presented the original Inward Foreign Manifest to Mr. Artade, did you have with you also that manifest you received from abroad containing the true and actual weight of the shipment?

A No more.

Q And upon seeing what you prepared, Mr. Artade immediately signed the same?

A I myself did not notice it because the vessel was already arriving. (See pp. 17-20, 22-24, t.s.n., dated Feb. 12, 1973.)

(2) And upon being informed of the above error by the consignee or consignee's broker,

petitioner, voluntarily and immediately applied for an amendment of the manifest which respondent approved. (See pp. 9-10, 33, t.s.n., Feb 12, 1973.)

(3) The amendment of the manifest was accomplished even before release of the cargo. Accordingly, all the duties and taxes due from the importation of the road grader were correspondingly, paid. (See par. 9, Pet. for Review, admitted in Par. 4, Answer to Petition for Review.)

(4) No other error was committed in preparation of the inward foreign manifest except for the weight of the cargo in question. All other particulars of the cargo were in order including the valuation thereof. (See pp. 18, 48, t.s.n. Feb. 12, 1973.)

(5) That it is not impossible for the manifest clerk to have committed such a mistake as he was under pressure of work (see t.s.n. pp. 16-17, Feb. 12, 1973.) and that reasonable allowance must be given to normal human failure.

Apart from the fact that the original freight manifest of the vessel sent to petitioner correctly carried the weight of the cargo as 20,000 lbs., it is also observed that the error of declaring the wrong weight was committed by the manifest clerk or an employee of the petitioner, who, under the context of Section 2523, of the Tariff and Customs Code, as amended is neither the master/~~pilot~~, owner, or employee of the vessel, and whose act of misdeclaring the weight of the ship's cargo in question by more than 20% at the port of loading will give rise to the imposition of an administrative fine. (Macondray & Co., Inc. etc., vs. Commissioner of Customs, CTA Case No. 2575, April 6, 1977; Macondray & Co.

Inc. vs. Comm. of Customs, CTA Case No. 2741, Feb. 3, 1977; Delgado Shipping Agencies, Inc. etc. vs. Comm. of Customs, CTA Case No. 2685, Feb. 15, 1977; Delgado Shipping Agency, Inc. vs. Comm. of Customs, CTA Case No. 2744, Feb. 25, 1977; International Harvester Macleod, Inc., etc. vs. Comm. of Customs, CTA Case No. 2698, Nov. 25, 1977.) The error in reflecting the correct weight in the inward foreign manifest not having been committed by the master, pilot, owner or employee of the M/V "General Ronnel Lim," it cannot, therefore, be said that the error is attributable to the negligence or incompetence of said master, pilot, owner or employee of said M/V "General Lim." Consequently, said vessel or its agent, petitioner Maritime Company of the Philippines, is not liable for any administrative fine.

WHEREFORE, the decision of the Commissioner of Customs appealed from holding petitioner liable for a fine of P3,000.00 should be, as it is hereby, reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 28, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge