REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
in its capacity as agent
of the M/S "Toreador,"
Petitioner,

- versus - C.T.A. CASE NO. 2474

COMMISSIONER OF CUSTOMS,
Respondent.
X - - - - - - - - - - - - X

10/24/77

DECISION

This is a petition, filed by petitioner Macondray & Co., Inc., in its capacity as agent of the M/S "Toreador", to review the decision of respondent Commissioner of Customs dated December 19, 1972 imposing a fine of ₱10,000.00 upon the vessel M/S "Toreador" for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

There is no dispute as to the facts of the case. As alleged in the petition for review and admitted in the answer:

> Petitioner is a corporation organized and existing under the laws of the Philippines with office at Shurdut Bldg., Intramuros, Manila and is the agent in the Philippines of the vessel M/S "Toreador"; respondent is the incumbent Commissioner of Customs and may be served with summons at the Bureau of Customs, Port Area, Manila;

II

On October 5, 1966, the M/S "Toreador" under Customs Registry No. 1540 arrived at the Port of Manila and discharged her cargoes thereat including twenty-four (24) cartons of HH Utensils Common Glasswares;

III

On March 31, 1967 the Collector of Customs of Manila initiated Administrative Case No. 118-A/67 against the M/S "Toreador" for carrying unmanifested cargo consisting of twenty-four (24) cartons HH Utensiles Common Glasswares allegedly in violation of Section 1005 of the Tariff and Customs Code in relation to Section 2521 of the same Code;

IV

Petitioner contended that the twenty-four (24) cartons HH Utensils Common Glasswares in question initially were part of the shipment on the M/S "Fernland" under Bill of Lading No. 78 which were inadvertently shortshipped at Manila on September 29, 1966; subject shipment subsequently came forward on the M/S "Toreador" which arrived at the Port of Manila on October 5, 1966; that the failure of the M/S "Toreador" to declare the subject shipment in its manifest was due to honest mistake without any intention on its part to violate customs laws;

V

That on September 1, 1969, the Collector of Customs of Manila rendered a decision holding M/S "Toreador" liable for conveying unmanifested cargo of twenty-four (24) cartons HH Utensils Common Glasswares, and imposed a fine of ₱2,000.00 against herein petitioner;

VI

On October 24, 1969, herein petitioner appealed the decision of the Collector of Customs of Manila to respondent Commissioner of Customs; respondent Commissioner of Customs, however, affirmed the decision of the Collector of Customs of Manila with the modification that the fine imposed on herein petitioner be raised from ₱2,000.00 to

₱10,000.00; a copy of said decision of the Commissioner of Customs is hereto attached as Annex "A"; (Pars. I-VI, Petition for Review, pp. 1-2, CTA rec.; pars. 1-2, Answer, p. 12, CTA rec.)

The issue is whether or not the M/S "Toreador" is liable for a fine for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, the pertinent provisions of which, respectively, read:

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. x x x. 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. 2521. Failure to Supply Requisite Manifest.- 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.

Petitioner argues that the M/S "Toreador" should not be held liable for the fine because the alleged unmanifested cargo (24 cartons HH Utensils Common Glasswares) was not part of the shipment intended to be landed or discharged at the port of Manila by the said vessel. The same was part of the shipment manifested for its sister vessel, the M/S "Fernland", and said cargo, by honest mistake or inadvertence, was shortshipped and came forward on board the M/S "Toreador." Moreover, petitioner avers that even if a fine is imposable, the amount of ₱10,000.000 is unreasonable because in the absence of motive or intention to discharge said cargo, the legal presumption of innocence should apply in its favor. (See Petitioner's Memorandum, pp. 32-34, CTA Rec.)

Although from the circumstances of this case, it would appear that the fine of ₱10,000.00, which is the maximum penalty imposable under Section 2521 of the Tariff and Customs Code, is excessive, the vessel cannot be absolved from liability for conveying and discharging unmanifested cargo in violation of Section 1005 of same Code. For it has been repeatedly and consistently emphasized by this Court in previous similar cases, having factual setting identical to that in the case at bar, that the law makes it an imperative obligation of every vessel coming from a foreign port to have a complete and proper manifest of all her cargo, and from this mandatory requirement no exception is allowed by the statute.

> 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 manifest nor in Section 2530 thereof providing the confiscation of unmanifested goods. <u>The recognition by the Court of any attempt to read into the statute any exception, such as misshipment of goods, would be contrary to the pervasive spirit as well as the clear language of the aforesaid provision</u>. (Smith, Bell & Co., (Phil.) Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, Dec. 27, 1969; Certiorari denied in G.R. No. L-31599, Feb. 10, 1970; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971; Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2079, Sept. 29, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2484, Jan. 19, 1976; Compania

General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2144, Jan. 5, 1976.) (Underlining supplied)

Thus, the fact that the failure to manifest the vessel's cargo was brought about by a short-shipment committed in good faith or without intent to defraud the government and that the vessel's manifest has been amended with the approval of the Bureau of Customs will not constitute a valid defense and thereby exculpate the vessel from the penalty. (Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2742, Sept. 16, 1977 and cases therein.)

Petitioner's averment that the cargo in question was not intended to be landed and discharged by the vessel is utterly devoid of merit. The fact is that said vessel actually carried and discharged said cargo at our ports.

Be that as it may, it is deemed just and reasonable in this case that the maximum fine of ₱10,000.00 imposed by respondent should be reduced to ₱3,000.00, considering the fact that the shortshipment was committed in good faith, without intent to defraud the government; the vessel's manifest has been amended with the approval of the Bureau of Customs; and the subject shipment was properly declared by M/S "Fernland" in her foreign inward manifest.

ACCORDINGLY, the decision appealed from is modified with respect to the amount of the fine indicated above, and petitioner Macondray & Co., Inc., in its capacity as agent of the M/S "Toreador", is hereby ordered to pay to the Bureau of Customs the sum of ₱3,000.00 as fine for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code. With costs against petitioner.

SO ORDERED.

Quezon City, October 24, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge