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F.E. ZUELLIG, INC., in
its capacity as agent of
the SS "HONGKONG EXPORTER",
Petitioner,

- versus - C.T.A. CASE NO. 2467

COMMISSIONER OF CUSTOMS,
Respondent.

5/31/78

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D E C I S I O N

On July 10, 1970, the Collector of Customs of Manila, finding that the SS "Hongkong Exporter" carried undeclared cargo consisting of 8 cases and 15 loose cartons of untaxed cigarettes, rendered a decision holding that the said vessel conveyed unmanifested cargo in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, and imposed a fine of ₱10,000.00 against it. F.E. Zuellig, Inc., in its capacity as agent of the SS "Hongkong Exporter", contending that the untaxed blue seal cigarettes in question were confiscated by Customs police authorities from individuals who are not crewmembers of the vessel and the imposition of the fine of ₱10,000.00 is unjust, excessive and unreasonable, appealed to respondent Commissioner of Customs. However, the Commissioner affirmed <u>in toto</u> the decision of the Collector of Customs.

Hence the present recourse.

To begin with, after the issues were joined with the filing of respondent's answer on January 18, 1973, this case was set for trial on the merits, upon motion of petitioner, on August 26 and 27, 1974. On the scheduled dates of hearing, there was no appearance on the part of petitioner or its counsel. Consequently, respondent moved to have the appeal dismissed for lack of interest to prosecute. It appeared, however, that the Clerk of this Court was informed by telephone that counsel for petitioner could not be present at the trial on account of sickness, and was requested to have the case reset for hearing on another date. The Court therefore set this case for hearing on November 10 and 11, 1975, later postponed to January 9, 1976, and then to March 5, 1976, all because petitioner or counsel failed to appear. When this appeal was called for hearing on March 5, 1976, counsel for petitioner manifested that the parties intend to settle the case amicably. The Court gave the parties up to May 28, 1976 within which to settle the case; but on this date when this proceeding was called for hearing, petitioner manifested that the parties instead intend to file a stipulation of facts. The Court postponed for the last time the hearing of this case to May 11, 1977. At the scheduled hearing on May 11, 1977, however, both parties submitted this case for decision based on the pleadings and the Customs records after they have filed their respective memorandum in support of their positions. No trial was therefore conducted by the Court on the merits of the case.

The facts and circumstances that led to the imposition of the administrative fine of ₱10,000.00 against the S/S "Hongkong Exporter", as gathered from the Customs records by respondent Commissioner of Customs and stated in his decision appealed from dated November 22, 1972, copy of which is Annex "A" of the petition for review, are as follows:

> (1) On September 10, 1969, the S/S "Hongkong Exporter", an ocean-going vessel of British Registry, arrived in the port of Manila carrying general cargo 1,700 tons of which were intended for local dishcarge. The vessel's last port of call prior to entry was Los Angeles, California, and upon compliance with customs, immigration and quarantine requirements was docked at North 4, Pier No. 5, (Exhs. "F"; "I", pp. 1-25, 316 rec.; pp. 51-52 tsn).
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> (2) In the early morning of September 12, 1969, between the hours of 1:30 and 1:45, customs police officers in the persons of Hilario Dumaual and Demetrio de la Paz, acting on a confidential report that blue seal cigarettes will be unloaded from the S/S "Hongkong Exporter", boarded the vessel and apprehended five persons in the act of unloading or or removing cases of cigarettes unto a barge then tied alongside, (Exh. "A-3", "B", "B-1", pp. 327-332, rec. pp. 14-20, 24-25, tsn).

(3) The cigarettes already unloaded and found on the barge, and those about to be removed from the S/S "Hongkong Exporter", and the persons apprehended unloading the cigarettes, later on identified to be Warlito Tayag, Ventura Villera, Ricardo Yap, Jose Enriquez and Almario Aguas, were all brought to the Customs Police Headquarters for examination and investigation, (Exh. "A", "A-1", "A-3"; "B"; "B-1"; "C"; "D" pp. 323-334 rec.; pp. 19-23, 24-26 tsn). The confiscated cigarettes consisting of 8 cases and 15 loose cartons, subsequently verified and found to be untaxed blue seal cigarettes, "Pall Mall" brand, were turned over to the official police custodian for safekeeping, (pp. 129-132, 138-140 tsn).

(4) On September 15, 1969, a Warrant of Seizure and Detention was issued by the Collector of Customs of Manila, directed against the 8 cases and 15 cartons of untaxed blue seal cigarettes and against the S/S "Hongkong Exporter", the former for violation of paragraphs (g) and (m) 1 and 5 of Section 2530 of the Tariff and Customs Code, and the latter, for violation of paragraph (a) of the same section of the Code (pp. 26-27, 32 rec.)

(5) On September 20, 1969, the Collector of Customs, acting on a letter-request of the F. E. Zuelling Inc., local agents of the S/S "Hongkong Exporter", authorized the release of the detained vessel upon the posting of a ten thousand peso bond. The release of the vessel was allowed upon consideration of the fact that, the vessel and its cargo was suffering demurrage; that on the basis of the initial report of the Customs Police Service, the unloading of the blue seal cigarettes was committed by "cumbancheros", and that the maximum fine imposable against the detained vessel for carrying unmanifested cargo under Section 2521 of the Tariff and Customs Code is, ₱10,000.00 (pp. 279, 288-289, rec.).

(6) Several hearings on the seizure was conducted, however, no one appeared to claim the seized cigarettes. The S/S "Hongkong Exporter"

upon the other hand, was duly represented by counsel retained by her local agents.

On July 10, 1970, a decision was rendered by the Collector of Customs of Manila decreeing, the forfeiture of the 8 cases and 15 cartons of untaxed blue seal "Pall Mall" cigarettes covered by Seizure Identification No. 11208 in favor of the government for violation of the provision of the Code cited as cause for its seizure.

With respect to the S/S "Hongkong Exporter" however, on a finding that the vessel may not be validly forfeited under the provision of the Code cited as cause of her seizure, the Collector of Customs therefore, ordered that the warrant of seizure and detention issued against the vessel be lifted, (S.I. No. 11208-A) and instead, on the basis of the evidence presented, decreed that an administrative fine in the maximum amount as provided for in Section 2521 of the Tariff and Customs Code of the Philippines be imposed, the same to be directed against the sum previously deposited by the agents of the vessel pursuant to the Order of the Collector of Customs dated September 20, 1969 (Dec. pp. 406-407 rec.).

While petitioner, under paragraph VIII of its petition for review, alleges that the 8 cases and 15 loose cartons of untaxed cigarettes were not found on board the vessel but were found on the speed boat which was moored alongside the S/S "Hongkong Exporter"; and the imposition of the fine of P10,000.00 is unjust and unreasonable, respondent, after denying these allegations, avers by way of special and affirmative defenses in his answer:

a. That on September 10, 1969, the S/S "Hongkong Exporter" an ocean-going vessel of foreign registry arrived in the Port of Manila from Los Angeles, California carrying general cargo;

b. That on the night of September 12, 1969, between the hours of 1:30 and 1:45, said vessel was boarded by Customs Police Officers and there apprehended 5 persons in the act of unloading or removing cases of untaxed blue seal cigarettes from the vessel;

c. That said untaxed blue seal cigarettes were not listed in the Inward Cargo Manifest of the vessel as cargo destined for this port, hence, does not form part of her legitimate cargo; nor were they listed in the store list as part of the vessel's provisions; nor were they for that matter, listed in any document or paper of the ship as part of her lawful cargo;

d. That in view of the above, the confiscated untaxed blue seal cigarettes being unloaded from the S/S Hongkong Exporter" constituted unmanifested cargo of the said vessel which were in fact forfeited under Manila Seizure Identification No. 11208 for violation of the provisions of the Tariff and Customs Code;

e. That for carrying unmanifested cargo, the imposition of the administrative fine against the vessel S/S "Hongkong Exporter" is valid and proper as provided for in Section 2521 of the Tariff and Customs

Code;

f. That moreover, the imposition of the administrative fine, in this case, in the maximum amount, is just, warranted and proper, in view of the circumstances present at bar, and, further "to serve as a deterrent to ocean-going vessels which enter Philippine shores, abuse her hospitality and violate her laws with such notorious acts with the minimum responsibility or liability x x x."

Since petitioner prayed for judgment on the pleadings without offering proof as to the truth of its own allegations, and without requiring or giving respondent an opportunity to introduce evidence, petitioner must be understood to have admitted the truth of all the aforesaid findings of facts and allegations of respondent, and to have rested the motion for judgment on those findings and allegations taken together with such of its own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115.) And on the basis of the pleadings and records of the Bureau of Customs on which this case was submitted for decision by the parties, it is clear that the following essentials facts of this appeal are beyond dispute:

1. The 8 cases and 15 loose cartons of untaxed blue seal cigarettes were confiscated by Customs police authorities while being unloaded or removed from the SS "Hongkong Exporter" by persons who were likewise apprehended by the Customs police in the early morning hours of September 12, 1969.

2. The said untaxed blue seal cigarettes were not listed in the Inward Cargo Manifest of the vessel as cargo destined for the port of Manila; nor were they listed in the store list as part of the vessel's provisions; nor were they listed in any document or paper of the ship as part of her lawful cargo.

3. On September 16, 1969, the Collector of Customs of Manila initiated Administrative Case No. 72-80 against the SS "Hongkong Exporter" for conveying unmanifested cargo in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, the confiscated untaxed blue seal cigarettes unloaded from the vessel having been carried and conveyed by the SS "Hongkong Exporter".

4. On July 10, 1970, the Collector of Customs of Manila rendred a decision holding that the SS "Hongkong Exporter" conveyed unmanifested cargo consisting of 8 cases and 15 loose cartons of untaxed cigarettes and im-

posed a fine of ₱10,000.00 against petitioner F.E. Zuellig, Inc., in its capacity as agent of the vessel.

5. Petitioner appealed said decision to respondent Commissioner of Customs, and on November 22, 1972, the latter rendered a decision affirming that of the Collector of Customs of Manila imposing a fine of ₱10,000.00.

Is the administrative fine of ₱10,000.00 imposed against the SS "Hongkong Exporter" and/or its local agent, petitioner F.E. Zuellig, Inc., in accordance with law?

In their controlling provisions, Section 1005 and Section 2521 of the Tariff and Customs Code provide as follows:

> Section 1005.- <u>Manifest Required of Vessel From Foreign Port</u>.- Every vessel from a foreign port must have on board a complete manifest of all her cargo.
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> 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. x x x
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> 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; x x x x
>
> Sec. 2521. <u>Failure to Supply Requisite Manifest</u>.- 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.

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 the 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 of any attempt to read into the statute any exception would be contrary to the pervasive spirit as well as the clear language of the aforequoted sections of the Code. (Smith, Bell & Co. (Phil.) Inc. vs. Commissioner of Customs, CTA Cases Nos. 1723 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Nos. 1930, December 27, 1969; Macondray & Co., Inc. vs. Commissioner of Custtms, CTA Case No. 2079, September 29, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2138, September 30, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2140, November 15, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2073, November 25, 1972.)

As clearly and explicitly stated by the Supreme Court in the case of U.S. vs. The Steamship "Rubi", 32 Phil. 228, the evident intent and object of these requirements for the submission of manifests by all vessels from foreign ports is to 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 country. No exception is made in the statute, and the recognition of any attempt to read an exception into the law could hardly fail to defeat the purpose of the enactment. (See also Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1930, December 27, 1969, American Steamship Agencies, Inc., vs. Commissioner of Customs, CTA Case No. 1851, May 3, 1977.) And it cannot be doubted that the intention of the law is to provide for the imposition of the prescribed penalties, whether it appears that such unmanifested cargo was placed on board with or without the consent or knowledge of the owners or ship officers and despite the possibility of individual hardships in some instances. The penalty may be imposed notwithstanding the absence of affirmative proof that such unmanifested cargo was taken on board at some foreign port or place. (See U.S. vs. The Steamship "Rubi", supra.)

We, therefore, find no merit in petitioner's cause.

Having arrived at the conclusion that the SS "Hongkong Exporter" carried unmanifested cargo in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, petitioner F.E. Zuellig, Inc., in its capacity as shipagent of the SS "Hongkong Exporter", and the said vessel are therefore liable for the administrative fine imposed by the law. In sustaining the decision of the Collector of Customs of imposing the maximum fine of P10,000.00, respondent considered its deterrent effect to would-be-violators of revenue laws and the prevention of smuggling. It appears, however, that this is the first offense of the SS "Hongkong Exporter" and the untaxed blue seal cigarettes in question were confiscated and seized from persons who were not officers or crewmembers of the vessel. Furthermore, the fine under consideration is imposed against the SS "Hongkong Dxporter", and the records of the case do not show that its officers and crewmembers had knowledge of the presence of the unmanifested cargo on board the vessel or a hand in the unloading thereof. Under the circumstances, it is deemed just and reasonable to reduce the administrative fine of ₱10,000.00 imposed against the SS "Hongkong Exporter" by the Bureau of Customs to ₱8,000.00, the appraised value of the cigarettes including taxes and duties, which had already been forfeited to the Government.

WHEREFORE, the decision appealed from is hereby modified, and petitioner F.E. Zuellig, Inc., and/or the SS "Hongkong Exporter" are ordered to pay to the Bureau of Customs, within thirty (30) days from the date this decision becomes final and executory, the amount of ₱8,000.00 as fine for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, May 31, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge