REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2537

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

1/28/80

D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Customs dated June 19, 1973 (in Customs Case No. 73-39), increasing the penalty of fine imposed by the Collector of Customs of Manila on the vessel S/S "Sally Maersk" and/or its ship agent petitioner Compañia General de Tabacos de Filipinas from ₱1,000.00 to ₱2,000.00 in his decision in Administrative Cases No. V-686-72 and No. V-686-72-A, 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 borne out by the records of the Bureau of Customs, it appears that on March 20, 1972 the S/S "Sally Maersk", a foreign vessel owned and operated by the Maersk Line, a company engaged in the business of inter-ocean shipping and which is represented in the Philippines by its local ship agent, petitioner Compañia General de Tabacos de Filipinas, arrived at the Port of Manila and discharged thereat certain cargoes which were not listed in its Inward Foreign Manifest, to wit:

(a) Thirteen (13) Pallets Fireclay; and

(b) One (1) case, Parts for Industrial Forklift Truck Gasoline Powered.

In order to correct the discrepancy in the vessel's cargo manifest, the ship agent filed in April, 1972, the corresponding amendments, together with its written explanations; but the Bureau of Customs, not being satisfied with the said explanations, simply approved and accepted the amendments "Without prejudice to an administrative action against the vessel."

Subsequently, for each of these unmanifested cargoes, the Bureau of Customs instituted Administrative Cases No. V-686-72 and No. V-686-72-A against the vessel S/S "Sally Maersk", with the local ship agent as respondent, and after proper hearing, the Collector of Customs of the Port of Manila rendered a decision on April 24, 1973 holding the vessel and/or its ship agent, petitioner Compañia General de Tabacos de Filipinas, liable for a fine of ₱500.00 in each administrative case, or a total of ₱1,000.00, for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

On June 19, 1973, on appeal by petitioner, the Commissioner of Customs rendered a decision modifying the decision of the Collector by imposing an additional fine of ₱1,000.00 on the vessel for the said violation, thereby increasing the total penalty to ₱2,000.00. Hence, the present petition for review.

The only issue for resolution is whether or not the vessel S/S "Sally Maersk" and/or its local ship agent, petitioner Compañia General de Tabacos de Filipinas, are liable for the administrative fine imposed by the Commissioner of Customs for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, the pertinent provisions of which read as follows:

> 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.
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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. 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 passenger 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 have 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.
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> 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 preceeding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.
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> xxx xxx xxx xxx

The defense raised by petitioner in its petition for review and memorandum, which is similar to that interposed by it in the administrative proceedings before the Bureau of Customs, is that the failure to manifest the subject cargoes was due to the delay in the mails of the manifest sent from abroad and that the Government is responsible for such delay. Consequently, since there was no intent to defraud the Government in the failure or omission to manifest the said cargoes, the vessel should not be penalized. (See pars. 8 & 9, Petition for Review, pp. 3-4, C.T.A. records & petitioner's memorandum, pp. 43-46, C.T.A. records.)

On the other hand, respondent maintains that the fact that the failure or omission of the vessel to manifest the cargoes in question was due to the delay in the mails of the manifest sent from abroad and that there was no intent to defraud the Government will not constitute a valid defense or an exempting circumstance against the imposition of the fine because under Section 1005 of the Tariff and Customs Code, it is the imperative obligation of every vessel coming from a foreign port to have on board a complete manifest of all her cargo, and there is no mention of any exception in the statute. In support of this contention, respondent cites the cases of Macondray & Co., Inc. vs. Commissioner of Customs, G.R. No. L-31599, Feb. 10, 1970 and U.S. vs. Rubi, 32 Phil. 235-242. (p. 5, Memorandum for Respondent; p. 56, C.T.A. records.)

Furthermore, respondent invokes this argument:

> "Another strong reason for not adopting the interpretation advocated by petitioner is found in the pernicious consequence which would flow from such construction. If we are to exempt the vessel from liability for conveying unmanifested cargo by the simple reason of delay in the mails, it would embolden and encourage other vessels to deliberately load cargo without listing them in their manifests. If the unmanifested cargo is discovered, as in the present case, the manifest could be simply amended as there was no intent to defraud the government and thus

> free the vessel from any liability whatsoever; but if the unmanifested cargo is not discovered, the same would enter the country free of duties and taxes to the detriment of the Government. In both instances, the owner or master of the vessel has nothing to lose but everyting to gain. On the other hand, the Government is the loser. Such a result would not be in keeping with the evident purpose of the law in providing effective means for the collection of customs revenue." (pp. 6-7, Respondent's memorandum, pp. 57-58, C.T.A. records.)

The Court fully agrees with the position of respondent. In previous cases of similar or identical nature as the case at bar, this Court has consistently and unequivocably reiterated its commitment to the principle, as laid down by the Supreme Court, that the law makes it an imperative obligation of every vessel coming from a foreign port to have on board a complete and proper manifest of all her cargo and to this mandatory requirement no exception is mentioned or 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 manifests, 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 provisions.</u> (Smith, Bell & Co. (Phil.) Inc. vs. Commissioner of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Compañia General de Tabacos de Filipinas

vs. Commissioner of Customs, CTA Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2484, Jan. 19, 1976; Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2144, Jan. 5, 1976.) (Underlining supplied)

The rationale of the foregoing doctrine as explicitly and clearly enunciated by the Supreme Court in U.S. vs. The Steamship "Rubi", 32 Phil. 228, is:

> "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 Islands. No exception is made in the statute, and the recognition of any attempt to read an exception into the statute could hardly fail to defeat the purpose of its enactment." (Underlining supplied) (Cited in American Steamship Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 1851, May 3, 1977; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2559, December 28, 1979.)

Consequently, the fact that the omission or failure to manifest the vessel's cargo was committed in good faith or without fraudulent intent or that the vessel's manifest was amended or corrected with the approval of the Bureau of Customs or that such omission was caused by the delay in the mails of the original manifest sent from the port of loading abroad will not constitute a valid defense and exculpate the vessel from the penalty of fine prescribed under Section 2521 of the Tariff and Customs Code. (See Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Case No. 2742, September 16, 1977; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, C.T.A. Case No. 2559, December 28, 1979.)

At any rate, the Court finds petitioner's defense that the failure to manifest the cargoes in question was due to the delay in the mails of the vessel's manifests after they were airmailed to petitioner absurd and illogical. How the delay in the mails of the manifests could served as a cause for the conveyance of unmanifested cargo by the vessel has not been explained by petitioner. To our mind, however, such a defense is conclusive that the vessel did not have on board the manifests of the cargoes in question in violation of the explicit mandate of the law that every vessel from a foreign port must have on board a complete manifest of all her cargo. This patently demonstrates the absence of good faith, if not an indication of intent to defraud the Government of its revenue, on the part of petitioner. No error was therefore committed by respondent Commissioner of Customs in imposing the penalty of ₱2,000.00 as fine on the S/S "Sally Maersk" and/or petitioner herein Compañia General de Tabacos de Filipinas, for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

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

SO ORDERED.

Quezon City, Metro Manila, January 28, 1980.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge