REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE EAST ASIATIC COMPANY, LTD.,
in its capacity as agent of the
S/S "SIENA DAN",
Petitioner,

- versus - C.T.A. CASE NO. 3762

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

7/15/87

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated February 17, 1984, affirming that of the Collector of Customs in Administrative Case No. V-16-81, imposing an administrative fine of ₱30,000.00 against the vessel, the S/S "SIENA DAN", for alleged violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended.

On November 12, 1980, said vessel arrived at the Port of Manila and among the cargoes it unloaded were 100 Bags Borax and 240 Bags of Boric Acid. These goods were covered by a Bill of Lading showing the quantity, kind of packaging and description of goods as such 100 bags of Borax with gross weight in kilos as 5,057 kgs. and 240 Boric Acid as 12,137 kgs., respectively (Exh. A, p. 39, CTA rec.) and the corresponding computerized manifest was received by petitioner, the East Asiatic Co., Ltd., on October 30, 1980. (Exh. B, p. 40, CTA rec.) The Inward Foreign Manifest, which was subsequently prepared by the manifest clerk of the petitioner, the East Asiatic Company, Ltd., as agent of the S/S "Siena Dan" (Exh. C, p. 40, CTA rec.), there appeared under column 5 thereof entitled "CONTENTS" in the said Manifest (Exh. C-1, p. 42, CTA rec.), the following:

BORAX
BORIC ACID
12 M/TONS BORIC ACID
GRANULAR TECHNICAL
EP522.25-005/M/TONS
DEHYBOR ANHYDROUS BORAX
EP-52328-00
20 CONTAINER UNDER
PIER TO PIER BASIS

On November 18, 1980, the consignee, Mariwasa Manufacturing, Inc., through its customs brokers, requested the petitioner the East Asiatic Co. Ltd., (Exh. D, p. 43, CTA rec.), to correct the Inward Foreign Manifest which shows:

100 BAG BORAX
240 BAG BORIC ACID 12,137 kgs.

and which "SHOULD BE' corrected as follows:

| | |
|---|---|
| 100 BAG BORAX | 5,057 Kgs. |
| 240 BAG BORIC ACID | 12,137 kgs. |
| | 17,194 kgs. |

in order to effect delivery in its favor of the aforesaid cargoes at the earliest possible time. Pursuant to the request, the said Inward Foreign Manifest was amended by petitioner on November 18, 1980. (Exh. E, p. 44 CTA rec.)

Based on the above circumstances, the Collector of Customs of Manila, filed an Administrative Case against the vessel, the S/S "Siena Dan", for carrying cargo consisting of the aforesaid 100 Bags of Borax and 240 Bags of Boric Acid without proper and accurate manifest, allegedly in violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended.

During the administrative hearing before the Bureau of Customs, petitioner, the said East Asiatic Co. Ltd., presented its Manifest Clerk, Celia Posadas, to testify in its favor. Said Celia Posadas testified that she had prepared the said Inward Foreign Manifest right after "All Saints Day"; that in view of her work which at the time had increased tremendously, she inadvertently failed to copy the actual weights of the cargoes found in the bill of lading; that she overlooked copying the "5,057 kgs." weight found in the said bill of lading and was able to copy only the 12,137 kgs. weight found therein.

Another corroborating witness, Moises Fratejas, Documentation Manager of the same Company, was presented by petitioner and testified that his function was to supervise all clerks in the department where said Manifest Clerk, Celia Posadas, belongs and that he was the one who signed and approved the manifest in question; that he had inadvertently failed to notice the discrepancy between the "Contents" column and the "Weight" column of said Manifest; that it is a standard accepted practice in trade that the weights of goods in one shipment are usually consolidated and stated in one single figure, such as the placement of 12,137 kgs. in column "Weights" in the manifest in this case; hence, he had therefore the impression that everything in the manifest was in order; that he learned only of the discrepancy from the broker of consignee who aforesaid presented a request for amendment in the Inward Foreign Manifest; and that petitioner never received a notice of discrepancy from the Bureau of Customs and which would have required, under traditional due process, to explain this discrepancy before the filing by the Collector of Customs of an administrative case against petitioner. The decision of the Collector of Customs who imposed a fine of ₱30,000.00 against the vessel having been affirmed by respondent Commissioner of Customs, petitioner appealed to this Court.

The only issue is whether or not, based upon the aforecited facts of this case, the vessel S/S "SIENA DAN", through its local agent, the East Asiatic Company Ltd., is liable under Section 1005, in relation to Section 2521 of the same Code, to a fine of ₱30,000.00.

Sections 1005 and 2521 of the Tariff and Customs Code, as amended, involved in this instant case, respectively provides 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. Every vessel from a foreign port must have on board complete manifests of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every such vessel shall have prepared for presentation to the proper customs official upon arrival

in ports of the Philippines a complete list of all sea stores then on board. 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 offwhich could not have been made until after examination of the importation has been completed.

SEC. 2521. - Failure to Supply Requisite Manifests. If any vessel or aircraft enters or departs form 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 an amount not less than ten thousand pesos (₱10,000.00) but not exceeding thirty thousand (₱30,000.00) pesos.

The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Commission on Audit a true copy of the manifest of the incoming or outgoing cargo, as required by law. (As amended by P.D. No. 1258-A.)

Section 1005 lays down the indispensable requirement that every vessel coming from a foreign port must have on board a complete manifest of all her cargo; and that it further provides the required contents of each manifest intended to be submitted to the customs authorities such as the "xxx marks, numbers, quantity and description of the packages and the names of the consigner thereof. xxx." It also provides as a rule, that no amendment of the manifest shall be allowed, except only where there is a (1) clerical error, or (2) discrepancy of any kind is committed in the preparation of the manifest, and in both cases, the clerical error or discrepancy is not tainted with fraudulent intent and the discovery thereof could not have been made until after the examination of the importation has been completed.

Under said Section 2521, fine is imposed in an amount not less than ₱10,000.00 but not exceeding ₱30,000.00 upon any vessel or aircraft that enters or departs from a port of entry without submitting the proper or complete manifest to the customs authorities or shall otherwise convey unmanifested cargo.

A complete manifest of a cargo under Section 1005 is the same as the proper manifest of a cargo to be submitted to the customs authority. Where there is a manifest filed declaring the weight of the cargo, but it appears that the weight was underdeclared, or even if is not declared at all, this circumstance cannot be considered a violation of Section 2521 and that, for all legal purposes, this will still be a case where a proper manifest has been filed covering the cargo. In this wise, the Supreme Court, in the case of Commissioner of Customs vs. Court of Tax Appeals, et. al. G.R. No. 41861, promulgated on March 26, 1987, held that -

> "xxx The proper manifest as provided in Section 2521 should be interpreted to mean a complete manifest as provided in Section 1005 aforecited, the pertinent portion of which provides:
>
> > '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 consignors thereof. (Underscoring supplied.)
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> The law (Section 1005) does not even require the weight of the cargo to be specified, Thus, the inclusion of the weight of the cargo in the manifest in a lesser amount than its actual gross weight does not thereby render the manifest incomplete. There is under the circumstances of this case no breach of Section 2521 aforesaid.

In this instant case of East Asiatic Co., Ltd., the weight of the 100 bags of Borax as reflected in the bill of lading (Exh. A, p. 39 ISN.) which is 5/M/TONS, was recorded in the Inward Foreign Manifest (Exh. C-1. op.cit.) but was not in accordance with its true and actual weight which should have been 5,057 kgs.

Specifically, the Boric Acid and Borax had equivalent weights indicated in the Inward Foreign Manifest (Exh. C & C-1, Ibid.) As shown in said Inward Foreign Manifest, the weight of both 240 Bags of Boric Acid and 100 Bags of Borax is "12/M/TONS Boric Acid Granular Technical and 5/M/TONS Dehybor Anhydrous Borax", respectively (See column 5, "CONTENTS" of Inward Foreign Manifest; Exh. C-1, ibid.) Although there was non-disclosure of the actual weight, there was disclosure of the weight nevertheless and that under these circumstances, it cannot be said that there is a non-filing of a complete or proper manifest by the simple non-inclusion of the weight of a cargo under the column "Weight" in the said manifest. Moreover, the weight as indicated in the bill of lading, was reflected in the inward foreign manifest by Celia Posadas, petitioner's employee (See Exh. C-1, ibid.), but that a more specific disclosure of its actual weight was not made by her due to a clerical mistake or error committed by her in the preparation of the said manifest or documentation and not on account of her negligence, or that of her supervisor, Documentation Manager Moises Fratejas, which error or mistake committed can truly be the proper subject of an amendment which petitioner did, on the strength of the last paragraph of Section 1005 of the Tariff and Customs Code, as amended.

The aforesaid testimonies of the two (2) witnesses of petitioner, not having been contradicted and/or the truth thereof destroyed by cross-examination, or by countervailing evidence, the non-inclusion of the actual weight of the 100 bags of Borax in the manifest was, therefore, conclusively shown to be due to clerical error or mistake and not attended with fraudulent intent, which commission of a clerical error or mistake, excuses the vessel S/S "Siena Dan", from the imposition of fine.

However, respondent counters that he found everything (in the vessel's Inward Foreign Manifest) had been filled up, with exception of column 8, where the cargos' total gross weight in kilos should have been indicated, and it was only the actual weight of the 240 bags of Boric Acid of 12,137 kgs. that was indicated therein, and the actual weight of 5,057 kgs. of the 100 bags of Borax was left out. Hence, he concluded that there was a violation of Section 1005 of the Revised Tariff and Customs Code which gives rise to the legality of the imposition of the fine of ₱30,000.00 against the vessel.

The evidence of petitioner, both documentary and testimonial, have shown truthfully circumstances which fully evidenced the lack of intent of petitioner, acting for the vessel, the S/S "Siena Dan", to commit fraud by its failure to place in the vessel's Inward Foreign Manifest, the actual weight of the 100 bags of Borax since this failure on the part of petitioner's employee to type the weight in the manifest was due to accident and/or clerical oversight brought about by pressure of too much work of the said manifest clerk, Celia Posadas, who testified under oath that she worked on the said manifest only after "All Saints Day", or the holidays. When she typed the weight of the Boric Acid which was 12,137 kgs., she believed then that was the total weight of the whole cargo including the weight of the Borax. Indeed, this must have been an unintentional error and which have caused a very little or insignificant deviation from the truth. Anyway, the law, Section 1005 of the Tariff and Customs Code, as amended, does not require the weights to be placed in the manifest and which, upon failure to place such weight, can be a ground for the imposition of fine under Section 2521 of the Tariff and Customs Code. (Comm. of Customs vs. Court of Tax Appeals, op. cit.) There being no improper or incomplete manifest filed by petitioner in this case under the provisions of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended, we are of the opinion and so hold that the vessel, S/S "Siena Dan" is not liable for the imposition of an administrative fine.

WHEREFORE, the decision of the Commissioner of Customs appealed from, imposing a fine of ₱30,000.00 on the S/S "SIENA DAN", represented by petitioner, its local agent, The East Asiatic Co., Ltd., is hereby reversed.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 15, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge