SMITH, BELL & CO., INC.,
in its capacity as agent of
the SS "NORMAN",
Petitioner,

- versus - C.T.A. CASE No. 2469

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - - x Dec. 27/74

D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Customs, dated November 20, 1972, affirming that of the Collector of Customs of Manila in Customs Case No. 72-19, imposing a fine of ₱7,000.00 on the vessel SS "NORMAN" and/or its ship agent, petitioner Smith, Bell & Co., Inc., for alleged violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

It appears that on July 20, 1966, the vessel SS "NORMAN", with Customs Registry No. 1085, arrived at the port of Manila carrying, among others, a shipment of 1,400 Multiwall Paper Bags. The vessel's cargo manifest shows that the gross weight of said articles was 3,620 kilos, but based on the bill of lading and custom's appraisal, the actual and correct weight thereof was 36,197 kilos. Consequently, to correct the weight declared in the manifest, petitioner, in its capacity as ship agent, filed an amendment on July 27, 1966, which amendment was approved by the Bureau of Customs without prejudice to any administrative action which might be taken against the vessel.

In 1969, the SS "NORMAN", represented by herein petitioner, was charged for violation of Section 1005, in relation to Section 2523, of the Tariff and Customs Code. However, on March 16, 1971, counsel for the Bureau of Customs sought the amendment of the charge to one for violation of Section 1005, in relation to Section 2521, of the Code.

On June 11, 1971, after hearing, the Collector of Customs rendered a decision imposing upon the vessel and/or petitioner herein a fine of ₱7,000.00 for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

On November 20, 1972, said decision of the Collector was affirmed by the Commissioner of Customs. Hence, the present petition.

The only issue is whether or not the fine imposed by the Bureau of Customs is in accordance with law.

At the outset, it should be stated that this Court has already ruled that the penalty provided in Section 2521 of the Tariff and Customs Code is imposed when there is a failure to supply the manifest required in Section 1005 of said Code. (United States Lines vs. Comm. of Customs, C.T.A. Case No. 2365, June 17, 1974.) " Copy Where the offense relates to a failure to state correctly the weight of an imported article or package already listed in the manifest, the law applicable is Section 2523 and not Section 2521. Said this Court in the case of United States Lines, supra:

> It is admitted that the shipment in question, consisting of 20 bales of cotton and rayon remnants, was declared in the manifest of the vessel as weighing only 6,664 kilos although the actual weight was 7,289 kilos, or a difference of 625 kilos. "Under Section 2523 of the Tariff and Customs Code, a fine of not more than 15% of the value of the package or article is to be imposed if the gross weight of such article or package described in the manifest exceeds by more than 20% the gross weight as declared in the manifest or bill of lading thereof, <u>provided that the Collector shall be of the opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employees of the vessel</u>. In this case, the discrepancy is not more than 10% of the actual weight of the article or package, and there is no showing that said discrepancy was due to the carelessness of the captain or any employee of the vessel. Consequently, even if the discrepancy was more than 20% of the actual weight of the article or package, no liability attaches under Section 2523 of the Tariff and Customs Code. "

It is, however, contended that petitioner is liable under Section 1005, in relation to Section 2521, of said Code, which provide:

> 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. x x x x .
>
> Section 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 manifest to the customs authorities x x x such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

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It is obvious from the foregoing provisions that Section 2523 refers to discrepancy in the weight of an article or package as <u>declared in the manifest</u>, while Section 1005, in relation to Section 2521, refers to a <u>failure to supply</u> the requisite manifest. The penalty imposed for the latter violation is more serious than the penalty imposed for the former. It is inconceivable that Congress intended to penalize under Section 2521 mere discrepancy of less than 20% in the weight of an article which is declared in the manifest and to exempt from any penalty if the discrepancy is more than 20% of the declared weight, should there be no carelessness or incompetency on the part of the ship captain or any employee of the vessel. It is, therefore, our opinion that petitioner can not be held liable for the fine imposed by respondent.”

In this case, there is neither a failure or an omission to submit the requisite manifest nor an omission to include any cargo in the manifest. The article or cargo itself and its particulars, including the weight, are listed and described in the manifest, but only the weight declared in the manifest is much less than the correct weight declared in the bill of lading. Clearly, contrary to the opinion of respondent, Section 2521 of the Tariff and Customs Code has no application to the case at bar.

May the penalty provided in Section 2523 be imposed in this case?

It appears that the cargo in question was declared in the manifest as weighing 3,620 kilos although the actual weight was 36,197 kilos. There is, however, no evidence that the underdeclaration in the weight of said cargo was due to the carelessness or negligence of the master, pilot, owner or employee of the vessel. In fact, the bill of lading covering the cargo in question reflects the correct weight. From all indications, the erroneous weight shown in the manifest was merely the result of a clerical or typographical error.

DECISION -
CTA CASE NO. 2469

WHEREFORE, finding the appealed decision not in accordance with law, the same is hereby reversed.

SO ORDERED.

Quezon City, December 27, 1974.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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