REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED STATES LINES CO.,
Petitioner,

- versus -

C.T.A. CASE NO. 2365

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

June 11/74

DECISION

This is an appeal from the decision of respondent Commissioner of Customs dated October 27, 1971, holding the vessel SS "AMERICAN CORSAIR" and/or petitioner, as ship agent thereof, liable for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, and imposing a fine of ₱2,000.00 .

It appears that on November 2, 1966, the vessel SS "AMERICAN CORSAIR" arrived at the port of Manila and discharged thereat a cargo consisting of twenty (20) bales of cotton and rayon remnants. The gross weight of said importation was declared in the vessel's cargo manifest as 6,664 kilos but it was discovered that the actual (gross) weight thereof was 7,289 kilos, or a difference of 625 kilos. Consequently, on December 19, 1966, an amendment to the vessel's cargo manifest was filed by petitioner so as to correct the discrepancy, which amendment was approved by the Bureau of Customs without prejudice to an administrative action against the vessel.

In August, 1969, an administrative proceeding (Customs Case No. 71-21) was instituted against the SS "AMERICAN CORSAIR", with petitioner representing it as respondent, for violation of Section 1005, in relation to Section 2523, of the Tariff and Customs Code.

On October 9, 1969, during the hearing, petitioner moved for the dismissal of the case on the ground that the actual weight of the importation (7,289 kilos) did not exceed by more than 20% the weight declared in the cargo manifest, so that there was no violation of Section 2523 of the Tariff and Customs Code, which provides that -

> "If the gross weight of any article or package described in the manifest exceeds by more than twenty _per centum_ the gross weight as declared in the manifest or bill of lading thereof, and the collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen _per centum_ of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft."

On May 25, 1971, the Collector of Customs of Manila rendered a decision brushing aside petitioner's motion to dismiss and imposing a fine of ₱5,000.00 on the vessel and/or petitioner on the ground that, although there was no violation of Section 2523 of the Tariff and Customs Code, there was a violation of Section 1005 thereof which requires that every vessel from a foreign port must have on board a complete manifest of all her cargo and that the quantity and description of every package (or article) must be stated therein.

On October 27, 1971, after an appeal to the Commissioner of Customs, the latter promulgated a decision sustaining the Collector's opinion that Section 2523 of the Tariff and Customs Code is not applicable to the case but only Sections 1005 and 2521 thereof. However, respondent Commissioner of Customs reduced the fine imposed by the Collector from ₱5,000.00 to only ₱2,000.00.

Still not satisfied with the Commissioner's decision, petitioner appealed to this Court.

In this appeal, petitioner has raised the issue whether or not it can be held liable for violation of Section 2521, in relation to Section 1005, of the Tariff and Customs Code, although the original charge was for violation of Section 2523, in relation to Section 1005, of the same Code. Petitioner alleges that it can not be held "liable for a violation of which (it) has not been properly informed."

> Indeed, it is difficult to justify a verdict holding someone liable for violation of a provision of law of which he has not been properly informed. Undeniable is the fact that petitioner herein was charged of violation of <u>Section 2523</u> (Transcripts of hearings on August 9 and 21, 1969; Caption, Decision of Collector of Customs dated May 25, 1971; Caption, Decision of Commissioner of Customs dated October 27, 1971). All the

> while petitioner was made to believe and was convinced that it was being charged of violation of Section 2523, hence its defense that the discrepancy was only 8%, way below the punishable discrepancy of 20%. (Page 4, Memorandum of Petitioner, Jan. 25, 1974.)

While it is true that the original and formal charge against petitioner was for violation of Section 2523 of the Tariff and Customs Code, counsel for petitioner was informed during the hearing of the administrative case that petitioner was being held liable, not for violation of Section 2523 but of Section 2521, in relation to Section 1005, of the Tariff and Customs Code. In fact, the decision of the Collector of Customs of October 27, 1971, imposed a fine of ₱5,000 under Section 2521, in relation to Section 1005, of the said Code. Petitioner can not, therefore, complain that it was denied due process of law.

At any rate, it is now a settled doctrine that a mistake in or impropriety of the charge, in cases involving the imposition of administrative penalties under Customs Law, is of no consequence where the violation was properly described which is clearly punishable. Said the Supreme Court:

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> Petitioner finally contends that the decision of the Commissioner of Customs libeling and forfeiting the cigarettes involved in the present case for violation of Section 2530 (m-1) of the Tariff and Customs Code is unconstitutional, in view of the fact that she was allegedly not afforded an opportunity to defend the cigarettes against such charge, said section

not being one of the original grounds cited by the Collector of Customs of Cebu in forfeiting the same.

The contention has no merit. Certainly, the appellate power of the Commissioner of Customs to review seizure and protest cases is not limited to a review of the issues raised on appeal. He may affirm, modify or reverse the decision of the Collector (Section 2313) on other questions provided that his findings and conclusions are, as in the case at bar, supported by evidence. It is of no consequence whatsoever what were the original grounds of the seizure and forfeiture if, in point of fact, the goods are by law subject to forfeiture [Wood vs. U.S., 16 Pet (U.S.) 342, 10 L. ed. 987]. As there is evidence on record showing that the cigarettes in question were imported and introduced into the country without passing through a customs house, the same may be forfeited under said Section 2530 (m-1) of the Code, notwithstanding that it is not one of the original charges. As we held in Que Po Lay vs. Central Bank, et al. (104 Phil. 853), what counts is not the designation of the particular section of the law that has been violated but the description of the violation in the seizure report. (Vierneza vs. Commissioner of Customs, G. R. No. L-24348, July 30, 1968, 24 SCRA 394; underlining supplied.)

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We will now consider the question whether or not the fine of ₱2,000 imposed for the said violation, pursuant to Section 2521 of the Tariff and Customs Code, is proper.

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, 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 employee of the vessel. 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. Manifest Required of Vessel From Foreign Port.- Every vessel from a foreign port must have on board a complete manifest of all her cargo . x x x.

> Section 2521. Failure to Supply Requisite Manifest.- 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.

It is obvious from the foregoing provisions that Section 2523 refers to discrepancy in the weight of an article or package as declared in the manifest, while Section 1005, in relation to Section 2521, refers to a failure to supply 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.

Respondent cites the case of U.S vs. SS "Islas Filipinas", 28 Phil. 291, in support of his decision against petitioner. That case is not in point. Said case involves a failure to include in the manifest of the vessel a shipment of opium, and not one involving a discrepancy in the weight of a shipment declared in

the manifest
declared

For the foregoing considerations, we find the decision appealed from not in accordance with law, and, accordingly, the same has to be, as it is hereby, reversed. No costs.

SO ORDERED.

Quezon City, June 17, 1974.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge