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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITH BELL & CO. (PHILIPPINES) INC. in its capacity as agent of the S/S "ADRASTUS",
Petitioner,

July 22/69

versus

CTA CASES NOS. 1728 & 1921

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

These are separate but jointly heard appeals from the decisions of respondent Commissioner of Customs dated December 17, 1965 and February 8, 1968, affirming those of the Collector of Customs for the port of Manila in Customs Cases Nos. 712 and 695, imposing an administrative fine of ₱10,000.00 on the vessel S/S "ADRASTUS" and ordering the forfeiture of eight (8) crates of cheque paper for alleged violation of Sections 2521 and 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code.

The parties submitted these two cases for decision, primarily on the basis of the pleadings and customs records.

It appears that on September 20, 1963, the S/S "ADRASTUS", a foreign vessel owned by the Blue Funnel Lines with Registry No. 1257 and of which petitioner is the local ship agent, arrived at the port of Manila from Liverpool, England, laden with imported merchandise, among which, were eight (8) crates of cheque paper marked "TGP - 600 Manila", consigned to herein petitioner. As the eight (8) crates of cheque paper were being unloaded at Pier 9 on September 25, 1963, customs authorities discovered that they were not covered by the vessel's cargo manifest or by any other document required to be presented to the boarding officers of the Bureau of Customs. Consequently, upon order of the Collector, they were seized and subsequently made subject of forfeiture proceedings for violation of Section 2530(g) in relation to Section 1005 of the Tariff and Customs Code. Administrative proceedings were also instituted against the vessel S/S "ADRASTUS" for violation of Section 2521 of the same Code. After due hearing, the Collector of Customs rendered his decisions on these cases on January 24, 1964 and April 28, 1964, ordering the forfeiture of the cargo in question and imposing a fine of ₱10,000.00 on the S/S "ADRASTUS". On appeal to the Commissioner of Customs, the latter, in separate decisions, affirmed said decisions of the Collector. Hence, the instant appeals docketed as CTA Cases Nos. 1728 and 1921.

The fine of ₱10,000.00 on the S/S "ADRASTUS" is still unpaid. Of the eight (8) crates of cheque paper consisting of 57 reams, 56 reams have already been sold at public auction, and only one (1) ream remains in Customs custody.

The issues in these cases relate to the validity of the fine on the S/S "ADRASTUS" imposed under Section 2521, and to the validity of the forfeiture of the eight (8) crates of cheque paper under Section 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code, the pertinent portions of which sections provide as follows:

> 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 preceding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.
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> SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.—Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
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> (g) Unmanifested article found on any vessel or aircraft, if manifest therefor is required. (Underscoring supplied.)

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.

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. . . . 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 of which could not have been made until after examination of the importation has been completed.

Petitioner does not dispute the fact that the articles in question were carried on board the S/S "ADRASTUS" without being listed or included in said vessel's manifest. However, it assails the validity of the imposition of the fine upon said vessel and the forfeiture of the articles on the grounds that: (1) there was a misshipment of these articles on board the S/S "ADRASTUS" without fault or knowledge on its part and/or on the part of the owner of the vessel; (2) the manifest was sought to be amended to correct the honest mistake but the same was not allowed by the Bureau of Customs; (3) this is the first time that the S/S "ADRASTUS" has been involved in a case of this nature, and there was no clear intention to smuggle the goods into the country and to defraud the government of its lawful revenues. In support of these defenses, petitioner chiefly relies upon documentary and testimonial evidence presented during the administrative proceedings before the Bureau of Customs.

Mark Pringle, manager of the shipping department of petitioner, testified that the misshipment of the cargo in question on board the S/S "ADRASTUS" was due to the fault and negligence of the British Railways which, during the loading at Birkenhead, Liverpool, England, misplaced these cargo at the cargo sheds allocated for the S/S "ADRASTUS", instead of delivering the same to the shed intended for the S/S "PYRRHUS", another vessel also owned by the Blue Funnel Lines which was to carry the cargo in question. The documents adduced to substantiate his testimony on this point were: (1) Exh. 1, which purports to be a certified true copy of an excerpt of a letter allegedly received by petitioner from the owner of the vessel in London, explaining briefly the mistake in shipment; (2) Exhs. 2 to 9, which are the shipping and commercial documents for the vessel S/S "PYRRHUS" covering an importation consisting of eight (8) crates of cheque paper; and (3) Exh. 10, a cargo tracer.

The same witness also testified that the misshipment of cargo in question came to their knowledge only after the S/S "ADRASTUS" had sailed and that steps were taken to amend the manifest of said vessel. However, a copy of the amendment was not filed with the Bureau of Customs because they were advised that the same was too late to be received. This amendment, he said, was sent by their principal and was dated October 4, 1963 (pp. 136-137, Customs rec.; supra).

Miguel Dominguez, assistant operations manager of petitioner, whose duty it is to meet the vessels represented by petitioner upoh their arrival, and to look after the manifests, testified that he came to know of these unmanifested cargo of the S/S "ADRASTUS" when it was about to leave on September

26, 1963 but there was nothing they could do to make the necessary amendment to the manifest of said vessel because, based on his experience, they were allowed only twenty-four (24) hours after the arrival of the vessel to amend the manifest.

It is clear from the very evidence of petitioner that the S/S "ADRASTUS" arrived at Manila on September 20, 1963 with a cargo of eight (8) crates of cheque paper consigned to petitioner; that said cargo was not covered by the vessel's cargo manifest or by any other document required to be presented to the boarding officers of the Bureau of Customs; that said cargo was unloaded at Pier 9 on September 25, 1963; and that no correction or amendment of the cargo manifest to include said cargo was submitted to the Customs authorities, as provided for in Section 1005 of the Tariff and Customs Code as implemented by Administrative Order No. 184.

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 for the confiscation of unmanifested goods. 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. Thus, said the Supreme Court in the case of U. S. v. Rubi (32 Phil. 235-242):

> 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.
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> As will be seen from the foregoing citation, as well as from the citations set forth in the former case (U.S. vs. The Steamship Islas Filipinas, supra), the doctrine is well established in pursuance of which the owner of a vessel may be made to suffer for the acts or omissions of the officers and crew, "without any regard whatsoever to the character or responsibility of the owner," from "the necessity of the case, as the only adequate means of suppressing the offense or wrong."

> In many if not in most instances of violations of the provisions of Section 77 of the statute it would be practically impossible to establish the connivance or willful participation of the master in the surreptitious lading of his ship with unmanifested goods, unless they were of such bulk as to render the inference of guilty knowledge irresistible. There would be but small prospects of success in the attempt to suppress the practice of carrying unmanifested goods on vessels from foreign ports by the imposition of penalties on the ship or the master, if the imposition of such penalties were made dependent on the production of affirmative proof that such omissions had been made knowingly by the master or that the unmanifested goods had been brought aboard with his connivance. <u>Under such circumstances the legislator has seen fit to prescribe penalties in all cases where unmanifested cargo is found on the vessel, whether it appears that such cargo was placed on board with or without the consent or knowledge of the owners or ship's officers and despite the possibility of individual hardships in some instances</u>. We are of opinion that there can be no real question as to the power of the legislator to enact such legislation, and we are not greatly impressed by contentions of counsel based upon the alleged injustices and hardships which it is said must result from the rigid enforcement of the statute. (Underscoring supplied.)

With regard to the fine of ₱10,000 imposed by respondent, this fine would seem to be excessive considering the circumstances of this case. This is the maximum fine that can be imposed and it should be imposed only in serious violations. In the instant case the facts show that the failure to include the cargo in the cargo manifest was due to negligence. Then again, this is the first violation committed by the shipping line and the cargo involved is worth only $904.85. Considering everything a fine of ₱1,000 is more in keeping with the spirit of Section 2521 of the Tariff and Customs Code.)

WHEREFORE, the decision of the Commissioner of Customs imposing a fine of ₱10,000 on the vessel S/S "ADRASTUS" in C.T.A. Case No. 1728 is hereby modified by reducing the fine to ₱1,000; the decision of the Commissioner of Customs in C.T.A. Case No. 1921 ordering forfeiture of the eight (8) crates of cheque paper is hereby affirmed. With costs against the petitioner.

SO ORDERED.

Quezon City, July 22, 1969.

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ROMAN M. UMALI
Presiding Judge