MACONDRAY & CO., INC.,
in its capacity as agent
of the M/S "Tagus",
Petitioner,

- versus - C.T.A. CASE NO. 2472

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - x

11/28/77

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated December 9, 1972, affirming that of the Collector of Customs dated July 13, 1971, imposing an administrative fine of P7,000.00 upon the vessel M/S "Tagus" and/or petitioner Macondray & Co., Inc., in its capacity as agent of the vessel, for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

The undisputed facts of this case are as follows: The M/S "Tagus", under Customs Registry No. 452, arrived on April 3, 1963 at the Port of Manila carrying imported cargoes destined thereat, part of which is one (1) F/Drum Medicine (Chloral Hydrate). After processing the inward foreigh manifest of the vessel, the customs authorities discovered that the drum of chloral hydrate was not entered therein. Consequently, on April 10, 1963, petitioner as ship agent of the vessel filed an amendment to the inward foreign manifest to include therein the shipment of chloral hydrate, with an accompanying letter explaining that the merchandise was covered by M/S "Fernstate" Bill of Lading No. 94, but was shortshipped due to oversight done in good faith and came forward on board the M/S "Tagus". The amendment to the manifest was approved; nevertheless, Administrative Case No. V-66/66 was instituted by the Collector of Customs against the vessel for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

On July 13, 1971, the Collector of Customs, after formal hearing, rendered a decision finding the M/S "Tagus" liable for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, and imposed upon the said vessel and/or petitioner herein, Macondray & Co., Inc., a fine of ₱7,000.00. On appeal to respondent Commissioner of Customs, the latter affirmed the said decision. Hence, the present recourse.

For resolution is the issue of whether or not the M/S "Tagus" and/or petitioner are liable for the penalty of fine for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

It is contended by petitioner that the M/S "Tagus" did not violate Section 1005 of the Tariff and Customs Code because the alleged unmanifested cargo of one (1) Drum Medicine (Chloral Hydrate) was actually covered by the bill of lading of the vessel M/S "Fernstate" but due to accident was shortshipped and came forward to Manila on board M/S "Tagus". Hence, it is maintained that the vessel M/S "Tagus" had no duty to declare the subject shipment in her manifest of cargoes intended to be landed at the Port of Manila. Further, petitioner argues that assuming arguendo that the M/S "Tagus" has violated Section 1005 of the Tariff and Customs Code, the fine of P7,000.00 imposed by the Commissioner of Customs is unreasonable in the absence of any intention to convey the cargo in question into the Philippines. (See Petitioner's Memorandum pp. 39-42, CTA rec.)

Indeed, the issue for resolution is not one of first impression. In the recently decided case of Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2474, October 24, 1977, involving the same issue and identical parties, this Court, citing a long line of cases where the factual background is similar to that in the instant case, unequivocally held that it is an imperative duty of every vessel from a foreign port to have on board, without exception, a complete manifest of all her cargo. To quote:

> x x x x For it has been repeatedly and consistently emphasized by this Court in previous similar cases, having factual setting identical to that in the case at bar, that the law makes it

an imperative obligation of every vessel coming from a foreign port to have a complete and proper manifest of all her cargo, and from this mandatory requirement no exception is 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 manifest 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 provision</u>. (Smith, Bell & Co., (Phil.) Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, Dec. 27, 1969, Certiorari denied in G.R. No. L-31599, Feb. 10, 1970; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970, Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971; Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2079, Sept. 29, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co. Inc. vs. Comm. of Customs, CTA Case No. 2484, Jan. 19, 1976; Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2144, Jan. 5, 1976.) (Underlining supplied.)

> Thus, the fact that the failure to manifest the vessel's cargo was brought about by a short-shipment committed in good faith or without intent to defraud the government and that the vessel's manifest has been amended with the approval of the Bureau of Customs will not constitute a valid defense and thereby exculpate the vessel from the penalty. (Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2742, Sept. 16, 1977 and cases therein.)
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> Petitioner's averment that the cargo in question was not intended to be landed and discharged by the vessel is utterly devoid of merit. The fact is that said vessel actually carried and discharged said cargo at our ports.

We find no plausible reason to depart from this rule.

However, in view of the attendant circumstances to the case at bar, which are: (1) that the short-shipment was done in good faith, without intention to defraud the government; (2) that the vessel's manifest was accordingly amended with the approval of the Bureau of Customs; and (3) that the cargo in question was properly manifested by M/S "Farnstate", we find it justified and reasonable to reduce the fine of ₱7,000.00 imposed by the Commissioner of Customs upon petitioner Macondray & Co., Inc., in its capacity as agent of the M/S "Tagus", to ₱1,500.00.

WHEREFORE, the appealed decision is hereby MODIFIED and the vessel M/S "Tagus" and/or petitioner herein are ordered to pay to the Bureau of Customs a fine of ₱1,500.00 for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, as amended. With costs against petitioner.

SO ORDERED.

Quezon City, November 28, 1977.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Constante C. Roaquin

CONSTANTE C. ROAQUIN
Associate Judge