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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

(3)

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

- versus - C.T.A. CASE NO. 2503

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

7/31/78

D E C I S I O N

Petitioner Macondray & Co., Inc., in its capacity as ship agent of the vessel S/S "Temeraire", has appealed from the decision of respondent Commissioner of Customs dated February 22, 1973, imposing a fine of P5,000.00 upon the said vessel for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

It appears that on June 20, 1964, the vessel S/S "Temeraire", of which petitioner is the ship agent, arrived at the Port of Manila and discharged thereat a shipment consisting of ten (10) packages of Tractor Parts. The inward foreign manifest of said vessel, however, listed only eight (8) packages of Tractor Parts and petitioner, after discovery of the discrepancy, submitted an amendment to the manifest to correct the error, explaining to the Bureau of Customs that the failure to manifest the correct number of packages was due to oversight or honest mistake. The amendment was accepted and approved by the Bureau of Customs, but subsequently, an administrative proceeding (Administrative Case No. V-193/64) was instituted against the vessel for violation of Section 1005, in relation to Section

2521, of the Tariff and Customs Code.

On January 9, 1973, after the termination of said proceeding, the Collector of Customs of Manila rendered a decision holding the vessel and/or its ship agent, petitioner herein, liable for a fine of ₱1,000.00 for violation of said sections of the Tariff and Customs Code. Upon appeal, the Commissioner of Customs in his decision dated February 22, 1973, sustained the decision of the Collector as to the violation incurred by the vessel but increased the amount of the fine to ₱5,000.00. Hence, the present appeal.

The legal question posed is whether or not the vessel S/S "Temeraire" and/or its ship agent Macondray and Co., Inc., are liable for the fine for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, the pertinent provisions of which read:

> 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 consignee thereof. x x x.
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> 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.
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> SEC. 2521. Failure to Supply Requisite Manifest. - 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.

Petitioner, in its petition for review (or appeal), maintains that there was no violation of the foregoing provisions of law because its failure or omission to manifest the two (2) packages of Tractor Parts was due to clerical error committed in good faith and without fraudulent intent; and that the amendment to the vessel's cargo manifest, which was accepted and approved by the Bureau of Customs, cured the defect therein and relieved the vessel from liability. Moreover, petitioner argues that the fine of ₱5,000.00 imposed by the Commissioner of Customs is unjust and unreasonable because there was clearly no intention on the part of the vessel to smuggle the goods. (See Par. VII, pp. 3 & 4, Petition for Review, pp. 3 and 4, CTA rec.)

Indeed, there is nothing novel in the present controversy. Cases of similar or identical nature brought to this Court have consistently been resolved against the offending vessel and/or its agent, the reason or principle enunciated by the Court being that, 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, and to this mandatory requirement no exception is provided by law. The recognition of any attempt to read into the statute any exception would be contrary to the pervasive spirit as well as the clear language of the law. (Smith, Bell & Co.(Phil.) Inc. vs. Commissioner of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, December 27, 1969; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2079, September 29, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2138, September 30, 1972; Macondray & Co., vs. Commissioner of Customs, CTA Case No. 2140, November 15, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2073, November 25, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2203, June 15, 1973; Macondray & Co., Inc. vs. Commissioner of Customs, CTA No. 1992, April 4, 1973; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2082, September 17, 1974; Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2144, January 5, 1976; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2484, January 19, 1976; American Steamship Agencies, Inc. vs. Commissioner of Customs, CTA Case No. 1851, May 3, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2444, March 3, 1978; American President Lines, Ltd. vs. Commissioner of Customs, CTA Case No. 2721, May 31, 1978; F.E. Zuellig, Inc. vs. Commissioner of Customs, CTA Case No. 2467, May 31, 1978.)

Consequently, the defenses of clerical error, good faith and lack of intent to defraud the government in cases of this character and nature, as well as the defense that an amendment to the vessel's Manifest was accepted and approved by the Bureau of Customs, are unavailing and futile under the provisions of Sections 1005 and 2521 of the Tariff and Customs Code, and will neither exculpate nor relieve the offending vessel from the penalty of fine. (See Everett Steamship Corporation vs. Commissioner of Customs, CTA Case No. 1968, August 25, 1971 [Certiorari denied in G.R. L-34146, October 7, 1971]; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2079, September 29, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2134, June 30, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, December 27, 1969 [Certiorari denied in G.R. L-31599, February 10, 1970].)

However, on account of the circumstances shown in this case that the omission to manifest the articles in question was committed in good faith and without intention to defraud the Government, and that an amendment correcting the error in the vessel's cargo manifest was duly filed with and approved by the Bureau of Customs, the Court deems it just and equitable that the administrative fine of ₱5,000.00 imposed by respondent Commissioner of Customs be reduced to ₱2,000.00. (See Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2444, March 3, 1978.)

IN VIEW OF THE FOREGOING, the decision appealed from is hereby modified and the vessel S/S "Temeraire" and/or its ship agent, petitioner Macondray & Co., Inc. are ordered to pay the Bureau of Customs the fine of ₱2,000.00 for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, July 31, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge