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MACONDRAY & COMPANY, INC.,
in its capacity as agent of
the MS "TAGAYTAY",
Petitioner,

- versus -

C.T.A. CASE NO. 2134

June 30/72

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

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs, dated April 14, 1970, affirming that of the Collector of Customs of Manila in Administrative Case No. 340/68 (Customs Case No. 975), imposing an administrative fine of ₱2,000.00 on the vessel MS "Tagaytay" for carrying unmanifested cargo in violation of Section 1005 of the Tariff and Customs Code, in relation to Section 2521 thereof.

Petitioner, a domestic corporation, is the local ship agent of the vessel MS Tagaytay. On July 15, 1967, MS Tagaytay, with Customs Registry No. 1210, Voyage No. 25-A, arrived at the Port of Manila, conveying imported cargoes. Upon examination by customs authorities, it was discovered that a portion of said cargoes, consisting of one (1) bale of rayon and cotton remnants, was not entered in the Inward Foreign Manifest submitted by said vessel. Petitioner, by way of explaining its failure to manifest said cargo, wrote the Collector of Customs a letter, dated October 24, 1967, alleging the following:

> We refer to the shipment covered by New York/Manila B/L No. 50 ex MS FERNLAND Voy. 8-A, which arrived on July 8, 1967 under Customs Registry No. 1180. This shipment consists of 41 bales Rayon and Cotton Remnants.
>
> Due to inadvertence one (1) bale out of the above shipment was short-shipped. It subsequently came forward ex MS TAGAYTAY Voy. 25-A, which arrived on July 15, 1967 under Customs Registry No. 1210.
>
> In this connection, and in order to enable the consignee to take delivery of the complete shipment, we are submitting to you herewith the corresponding amendment to the inward manifest.

The Collector of Customs, in a letter dated March 8, 1968, informed petitioner that he found its explanation not satisfactory and consequently instituted administrative proceedings against the vessel for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. After due hearing, the Collector of Customs, on October 8, 1969, rendered a decision holding that MS Tagaytay violated Section 1005, in relation to Section 2521, of the Tariff and Customs Code, and imposed an administrative fine of ₱2,000.00. Petitioner appealed the said decision to the respondent, who, on April 14, 1970, affirmed the decision of the Collector of Customs. Hence, the present appeal.

There is no dispute as to the facts. It appears that one bale containing rayon and cotton remnants which was originally intended to be loaded on board the MS FERNLAND was not actually loaded thereon but was loaded on board the MS TAGAYTAY which arrived in Manila one week after the former's arrival.

The sole issue involved here is whether or not the administrative fine of ₱2,000.00 imposed on the vessel MS "Tagaytay" is in accordance with law.

Petitioner questions the legality of the imposition of the administrative fine on the vessel MS Tagaytay on the ground, among others, (a) that the failure to manifest the cargo was due to an honest error without fraudulent intent; (b) that respondent failed to present proof of fraud on the part of petitioner; and (c) that the amendment to the inward foreign manifest, which was later on approved by the Bureau of Customs, cured all defects found in the original manifest.

The arguments raised by petitioner to defeat the imposition of the administrative fine have already been brushed aside by this Court in numerous cases,[1] one of which is the case of Everett Steamship Corporation vs. Commissioner of Customs, CTA Case No. 1968, August 25, 1971,[2] wherein we held:

> That there was good faith in the ommission to manifest cargo may be admitted. But good faith in the failure to include cargo in ship's manifest does not relieve the vessel from liability under Section 2521 of the Tariff and Customs Code.

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[1] Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, Dec. 27, 1969; Smith Bell & Co., Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969.

[2] Certiorari denied in G.R.No. L-34146, Oct. 7, 1971.

With regard to petitioner's claim that the amendment of the original manifest cured all its faults and defects, we quote below our opinion on this point in the case also of Macondray & Co. v. Commissioner of Customs, C.T.A. No. 1930, Dec. 27, 1969, cert. denied in G.R. No. L-31599, Feb. 10, 1970:

> Petitioner contends that a clerical error was committed in good faith in the preparation of the manifest, and when respondent allowed the amendment to the manifest pursuant to Section 1005 of the Tariff and Customs Code, the same had the effect of curing or removing all the defects of the original manifests. In short, the kernel of petitioner's contention is that the liability of the vessel for carrying unmanifested cargo was wiped out by the amendment to the manifest.
>
> We are not at all impressed with this interpretation of the law by petitioner.
>
> There is no dispute that the four (4) cartons of electrical parts were not covered by the inward foreign manifest of MS "Fernview", as required by Section 1005 of the Tariff and Customs Code. To enable petitioner to take delivery of the entire shipment of six (6) cartons, Mr. De Asis, Manifest Clerk, Marine Entry Processing Division, Bureau of Customs, required the amendment to the inward foreign manifest upon discovering that the number of cartons of electrical parts declared in the entry covering the disputed shipment was four(4) cartons more than what were declared in the original inward foreign manifest of the subject vessel. <u>Although this amendment was allowed and approved by customs authorities, the same did not have the effect of obliterating the liability of the vessel incurred previous to the amendment.</u> Section 1005 of the Tariff and Customs Code, <u>supra</u>, is so clear and explicit when it commands every vessel from a foreign port to have on board a complete manifest of all her cargo. Non-observance of this imperative obligation subjects a vessel to the administrative penalty under Section 2521 of the same Code. The law makes no exception and any attempt to read one into the statute would be contrary to the spirit as well as the clear language of the aforesaid

provisions. (See Smith Bell & Co.,Inc. v. Comm. of Customs, CT.A. Cases Nos. 1728 & 1921, July 22, 1969; Compañia Gral. de Tabacos de Filipinas v. Comm., CT.A. No. 1939, Feb. 26, 1971, cert. den. in G.R. No. L-33386, April 14, 1971.)

Considering, however, the circumstances surrounding the case, we believe that a fine of ₱500.00,in lieu of ₱2,000.00, would be an adequate penalty for the offense.

WHEREFORE, the decision appealed from is hereby modified by reducing the amount of the fine from ₱2000.-00 to ₱500.00. With costs against petitioner.

SO ORDERED.

Quezon City, June 30, 1972.

ROMAN M. UMALI
Presiding Judge

We Concur:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge