C.F. SHARP & COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3697

COMMISSIONER OF CUSTOMS,
Respondent.

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# D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue dated March 8, 1983, affirming that of the Collector of Customs for the Port of Manila, imposing a fine of ₱30,000.00 on the vessel S/S "Gosei Maru", represented by said vessel's local agent in the Philippines, the C.F. Sharp & Co., Inc., for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended.

It appears that the vessel S/S "Gosei Maru" arrived at the Port of Manila on February 16, 1981, loaded with, among others, an unmanifested cargo consisting of one (1) unit Toyota Hi-Ace.

As manifested in the Inward Foreign Manifest, the shipment contained one (1) package personal effects of used engine 1 cyl. and parts. The said unmanifested Toyota Hi-Ace was not included therein. An examination of the shipment, however, later revealed that it actually consisted of one (1) unit Toyota Hi-Ace, personal effects, used engine, cyl. and parts, consigned to Ramon S. Velasco, contrary to what is contained in the inward manifest.

On March 9, 1981, petitioner filed with the Collector of Customs an amendment to the Inward Foreign Manifest by including therein the aforesaid unmanifested one (1) unit Toyota Hi-Ace, which was approved by said Collector but without prejudice to the filing of an administrative action against the vessel, the S/S "Gosei Maru".

On March 11, 1981, in accordance with proper due process, petitioner was informed of the vessel's violation and was given five (5) days within which to explain and to show cause why no administrative fine should be imposed on the said vessel.

Petitioner, on April 8, 1981, wrote a letter to the Collector of Customs, thru its Manager, Abelardo R. Velez, explaining why it should not be liable to a fine (pp. 12-13, Customs rec.), as follows, and which we hereby quote in full:

8 April 1981

Bureau of Customs
M a n i l a

Attention: Atty. Raymundo R. Mendoza
Chief, Law Division

Gentlemen:

We refer to your registered letter dated March 11, 1981 which we received only on April 4, 1981 requiring this office to explain in writing within five (5) days from receipt thereof why no administrative fine should be imposed on the SS "GOSEI MARU" which arrived at this port on February 16, 1981 under Registry No. 297 for carrying one (1) Toyota Hi-Ace and Personal Effects & Used Engine 1-CYL and part allegedly without proper and accurate manifest in violation of Sec. 1005 in relation to Sec. 2521 of the Tariff and Customs Code of 1970.

We respectfully submit that there was no intentional violation of the Tariff and Customs Code by the above vessel. The same is simply a clerical error on the part of the clerk who prepared the original bill of lading and the customs manifest. Upon receipt of the original bill of lading by the consignee, the discrepancy was immediately noticed and therefore the consignee made proper representation with this office to correct the same. We telexed our principal at once and requested them for advice in this regard. They acknowledge the error and therefore authorized us to amend the manifest accordingly.

Unfortunately, the error was discovered only after the carrying vessel has already left the Port of Manila and after the corresponding customs manifest have already been submitted to the Bureau of Customs. We reiterate that there was no intentional violation on the Tariff and Customs Code and precisely requested for the amendment of the manifest in order to place everything in order.

In view of all the foregoing, we respectfully submit that no deliberate intent to violate any customs laws was made by the vessel and therefore no administrative fine should be imposed on said carrier.

Very truly yours,

C. F. SHARP & COMPANY, INC.
As Agents

(SGD.) ABELARDO R. VELEZ
Manager, Claims

The Collector of Customs, apparently finding the aforesaid explanation of petitioner not satisfactory, an Administrative Case No. V-46-81 was filed against the vessel, the S/S "Gosei Maru", represented by herein petitioner, the C.F. Sharp & Co., Inc., being the local agent, for carrying unmanifested cargo consisting of one (1) unit Toyota Hi-Ace in violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended.

Hearing was thereafter conducted in the Bureau of Customs from August 19, 1981 through October 22, 1982, after which hearing the Acting Collector of Customs of the Port of Manila, Bienvenido P. Alano, Jr., rendered judgment finding the vessel, S/S "Gosei Maru" and subjecting the same for an administrative fine of Thirty Thousand Pesos (₱30,000.00), for violation of the provisions of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended.

From this decision, petitioner appealed to the Commissioner of Customs, who on March 8, 1983, rendered a decision affirming that of the Acting Collector of Customs for the Port of Manila. Hence, from this later decision of the Commissioner of Customs, petitioner appealed to this Court.

The only issue in this case is whether or not the vessel S/S "Gosei Maru" is liable for administrative fine of ₱30,000.00 for conveying an unmanifested cargo of one (1) unit Toyota Hi-Ace under

Section 1005, in relation to Section 2521 of the Tariff and Customs Code, as amended.

Petitioner contends rather presumptuously that it had submitted an Inward Foreign Manifest in the form and substance required by Sections 1005 of the Tariff and Customs Code, as amended; that the omission in manifesting the Toyota Hi-Ace, which it did not deny as having been committed in this case, was mainly due to clerical error or on account of oversight and honest mistake which was properly remedied by amendment of the manifest; and that such amendment having been approved by the Collector of Customs the alleged defect therefore was cured; and that the manifest having been prepared based upon the bill of lading, the particulars of which were furnished by the shipper, said vessel should not therefore be held accountable for the ommission that occurred which was beyond its control; and the error or discrepancy having been rectified immediately by consignor and shipper, the said carrier cannot be held liable thereto. Moreover, petitioner contends that the government was in no way prejudiced or deprived of the taxes due from the cargo, and, consequently, the vessel in question is not liable for a fine.

On the other hand, it is the view of respondent Commissioner of Customs that, under Sections 1005 in relation to Section 2521 of the Tariff and Customs Code, it is incumbent upon the master of the vessel arriving from a foreign port to have a complete and accurate manifest of all cargoes on board his vessel, and the filing of an amendment to the manifest by including therein the one (1) unit of Toyota Hi-Ace does not obliterate the liability of the vessel already incurred prior to the amendment, which is intended only to protect innocent importers who are not parties to the master's negligence in the preparation of the manifest and the non-observance of this imperative obligation subjects the said vessel to the administrative penalty of fine under Section 2521 of the Tariff and Customs Code, as amended.

We have examined the records of this case to find out whether there was in fact a clerical error committed in the preparation of the Inward Foreign Manifest and found none. The evidence of petitioner presented before the administrative hearing, does not present, to our view, of the situation or otherwise convinced us that where there was a commission of a clerical error by the master of the vessel in the non-inclusion of the vehicle, the Toyota Hi-Ace, which is by itself a huge cargo of the vessel the S/S "Gosei Maru", in the Inward Foreign Manifest filed, and which clerical error or discrepancy, if truly it was, may excuse or exculpate said vessel from the charge of negligence of said master thereof and the consequential non-imposition of the penalty of administrative fine under Section 2521 of the Tariff and Customs Code, as amended. We are constrained, in view of the lack of evidence showing the commission of clerical error, to presume and conclude that the non-inclusion of the Toyota Hi-Ace was not due to clerical error, oversight, or discrepancy or even due to ignorance, deficiency, or accident caused by an employee preparing the Inward Manifest resulting in an unintentional omission. We, therefore, strongly adhere to the unmistaken opinion that the non-inclusion of the vehicle the Toyota Hi-Ace in the Inward Manifest was tainted with the intention of the shipper and consignor to commit fraud against revenue, and the manifest negligence of the master of the "Gosei Maru" in his failure to prepare a complete manifest which includes the Toyota Hi-Ace, and that if the said unmanifested cargo was not only discovered and was eventually released, without the usual meticulous inspection of the customs authorities, then the said Toyota Hi-Ace would have been released without the required payment of the legitimate taxes or duties due thereon. There is in this case a very clear violation of Section 1005 of the Tariff and Customs Code, as amended, which provides that "Every vessel from a foreign port must have on board a complete manifest of all her cargo" and that "xxx 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 consigner thereof. xxx" (Italics ours), in relation to Section 2521, which provides that "If any vessel or or aircraft enters or departs from a port of entry (in the Philippines) without submitting the proper manifest (which means complete manifest[1]) to the customs authority, 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 an amount not less than ten thousand pesos (₱10,000.00) but not exceeding thirty thousand (₱30,000.00) pesos." (Underlining ours.) Clearly, the vessel S/S "Gosei Maru" had submitted in this case an incomplete manifest in violation of Section 1005 of the Tariff and Customs Code, as amended, and which can subject the S/S "Gosei Maru" to the maximum fine of ₱30,000.00 under Section 2521 of the Customs Code, as amended, which we so hold.

WHEREFORE, the decision of the Commissioner of Customs appealed from imposing a fine on the

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[1] Comm. of Customs vs. Court of Tax Appeals, et al., G.R. No. L-41861, March 26, 1987; East Asiatic Co., Ltd. vs. Comm. of Customs, CTA 3762, July 15, 1987.

vessel S/S "Gosei Maru", represented by petitioner C.F. Sharp & Co., Inc., its local agent, in the amount of ₱30,000.00 should be, as it is hereby AFFIRMED.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, July 30, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge