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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Sept 29/72

MACONDRAY & CO., INC.,
in its capacity as agent
of the MS "Ferncliff",
Petitioner,

- versus - C.T.A. CASE NO. 2079

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Customs, dated February 4, 1970, which affirmed that of the Collector of Customs of Manila in Administrative Case No. V-261/68, imposing an administrative fine of ₱1,000.00 against the vessel MS "Ferncliff" and/or its local agent, petitioner Macondray & Co., Inc., for alleged violation of Section 1005 of the Tariff and Customs Code, in relation to Section 2521 thereof.

The facts of this case are not controverted, the same having been stipulated by the parties as follows:

> 1. Petitioner is a corporation organized and existing under the laws of the Philippines with office at Shurdut Building, Intramuros, Manila; petitioner is the shipagent in the Philippines of the vessel MS "Ferncliff"; respondent is the incumbent Commissioner of Customs.
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> 2. On November 28, 1966, the MS "Ferncliff" with Registry No. 1846 arrived at the port of Manila and discharged her cargo thereat including four (4) reels

of radio broadcast equipment, parts and accessories which were not entered in the Inward Foreign Cargo Manifest of the vessel due to an oversight.

3. On January 26, 1967, petitioner filed with the Bureau of Customs an amendment to the Inward Foreign Cargo Manifest of the vessel to include the four (4) reels of radio broadcast equipment, parts and accessories in the vessel's manifest on file with the Entry Processing (Marine) Division.

4. On January 3, 1968, the Collector of Customs of Manila initiated Administrative Case No. V-261/68 against MS "Ferncliff" for supposedly conveying unmanifested cargo in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

5. On August 19, 1969, the Collector of Customs of Manila rendered a decision holding the MS "Ferncliff" as having conveyed unmanifested cargo consisting of four (4) reels of radio broadcast equipment, parts and accessories and imposed a fine of ₱1,000.00 against petitioner.

6. Within the time allowed by law, petitioner appealed said decision to respondent Commissioner of Customs. On February 4,1970, respondent Commissioner of Customs rendered a decision affirming the decision of the Collector of Customs of Manila imposing a fine of ₱1,000.00.

7. On March 21, 1970, within the time allowed by law, petitioner filed with this Honorable Court the instant Petition. (Pp. 28-29, C.T.A. rec.)

The only issue to be resolved is whether or not the imposition of the fine is in accordance with the law.

Sections 1005 and 1521 of the Tariff and Customs Code read as follows:

> SEC. 1005. <u>Manifest Required of Vessel From Foreign Port</u>.- 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 consignees thereof, x x x 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.
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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: <u>Provided</u>, 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. <u>Failure to Supply Requisite Manifests</u>.- 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 preceeding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

Petitioner invokes several grounds against the legality of the fine, namely: (1) that the charge for violation of Section 1005 of the Tariff and Customs Code is improper because said section imposes no penalty; (2) that assuming that the charge is proper, the failure to include in the cargo manifest the articles in question was due to a mistake committed in good faith or to a discrepancy without fraudulent intent; (3) that the amendment to the original manifest approved by the Bureau of Customs cures the defect therein and constitutes a bar to the imposition of the fine; (4) that the deficiency in the original manifest has been adequately supplied by other shipping documents such as the bill of lading, invoices and entry papers; and (5) that the proper party who should be held liable for the omission is the owner of the vessel and not the petitioner who is merely the agent. Finally, petitioner contends that even if the legality of the fine be sustained, the amount of ₱1,000.00 is unconscionable.

The question of propriety of the charge is hardly a point for an extended discussion. For one thing, said question should have been raised first in the Bureau of Customs or at least in petitioner's petition for review filed with this Court and not merely for the first time in its memorandum. Nevertheless, for the satisfaction of petitioner, we find no error in the charge prosecuted by the Bureau of Customs in this case. For, contrary to petitioner's claim, the charge here is not simply for violation of Section 1005 of the Tariff and Customs Code but for violation of said section <u>in relation</u> to Section 2521 of the same Code. As gleaned from the provisions of both laws quoted heretofore, it is clear that Section 1005 lays down the requirements in regard to a manifest of a vessel from a foreign port; while Section 2521 prescribes the administrative penalty (fine) for non-compliance with or violation of said requirements. Logically, when there is a failure or omission to manifest a cargo by a vessel from a foreign port, there is a violation of Section 1005, and said violation is punishable under Section 2521 of said Code. Thus, in the case of Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1930, December 27, 1969, this Court said:

> "x x x. 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. x x x."

Petitioner's defense of good faith as well as its defense relative to the amendment of the manifest have already been rejected by us in a number of cases involving similar or identical issues.[1] In

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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.

the recent case of Everett Steamship Corporation vs. Commissioner of Customs, C.T.A. Case No. 1968, dated August 25, 1971,[1] this Court held:

> That there was good faith in the omission to manifest cargo may be admitted. But good faith in the failure to include cargo in a ship's manifest does not relieve the vessel from liability under Section 2521 of the Tariff and Customs Code. Thus, in Macondray & Co., Inc. v. Commissioner of Customs, CTA Case No. 1930, December 27, 1969 (cert. denied in G.R. No. L-31599, Feb. 10, 1970), it was held:
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> > "Petitioner presented before this Court Dominador Bergaño, manager of its claims department, who testified that the failure to have the four (4) cartons of electrical parts included in the cargo manifest of the vessel was due to a clerical error or inadvertence in the typing of the manifest (pp. 19-20, t.s.n.). Apparently, this testimony was presented to show lack of knowledge or consent on the part of the owner or master of the vessel to the omission of the subject cargo from the manifest. Suffice it to say that the lack of knowledge or consent ofthe owner or master of the vessel in respect to such an omission is no defense against liability for the statutory penalty."
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> xxx xxx xxx
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> Also, in the case of Smith Bell & Co. (Phil.) Inc. v. Commissioner of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969, we held that -
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> > "Under Section 1005 of the Tariff and Customs Code, it is an imperative obligation of every vessel from a foreign port to

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

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. x x x."

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, supra:

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 M/S "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) car-

> tons, 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. 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. Section 1005 of the Tariff and Customs Code, supra, 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, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969.)

Petitioner's assertion that the entries in the bill of lading, invoices and/or entry papers are sufficient to supply the deficiency in the original manifest of the MS "Ferncliff" is untenable. For, if the requirement of Section 1005 of the Tariff and Customs Code for the submission of a correct manifest is so imperative and absolute that it admits of no exception, what point is there in recognizing the bill of lading or other shipping documents as sufficient compliance with said requirement? At any rate, in a previous case this Court said:

> "The fact that the whole shipment was indicated in the bill of lading does not excuse compliance from the requirement of a manifest. x x x. All these can not be accomplished by the mere use of the bill of lading inasmuch as the bill of lading is not required to be presented to the boarding customs officers." (Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1641, Nov. 15, 1965.)

With respect to petitioner's claim that, being an agent, it cannot be held liable for violation of any law committed by its principal, the same is also untenable. The proceeding conducted in the Bureau of Customs for the imposition of the fine imposed under Section 2521 of the Tariff and Customs Code is _in rem_, that is, against the offending vessel. (See Secs. 2205-2212; Secs. 2301-2307; and Sections. 2312-2315, in relation to Section 2532 of the Tariff and Customs Code.) It is for this reason that the dispositive portion of the decision of the Collector of Customs reads as follows:

> "WHEREFORE, it is ordered and decreed that an administrative fine in the amount of ONE THOUSAND PESOS (₱1,000.00) Philippine Currency be, as it is hereby declared, imposed on the MS "Ferncliff" and/or its local agent, herein respondent, and failure to remit said fine within fifteen (15) days from receipt of this decision will subject the vessel to seizure pursuant to Section 2532 of the Tariff and Customs Code of the Philippines."

The inclusion of petitioner as one who is alternately liable for the fine is due to the fact that it submitted itself to the jurisdiction of the Bureau of Customs in the administrative proceedings as agent of the vessel. But, as will be noted, it can elect not to pay the fine, in which case, the vessel will be subject to seizure under Section 2532 of the Tariff and Customs Code.

Finally, as to the amount of the fine of ₱1,000.00 which petitioner assails as excessive, this Court has no inclination to reduce the same. From the records of this case, we find no justification to modify the said penalty. On the contrary, if we take judicial notice of the fact that many cases of similar nature have been appealed to us by petitioner, the penalty herein imposed by the Commissioner of Customs appears reasonable.

WHEREFORE, the decision of respondent Commissioner of Customs dated February 4, 1970 is hereby affirmed <u>in toto</u>. With costs against petitioner.

SO ORDERED.

Quezon City, September 29, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge