COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2781

COMMISSIONER OF CUSTOMS,
Respondent.
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D E C I S I O N

Petitioner Compañia General de Tabacos de Filipinas, local ship agent of the vessel M/S "Sally Maersk," has appealed from the decision of respondent Commissioner of Customs dated March 5, 1976, affirming that of the Collector of Customs, imposing a fine of ₱5,000.00 upon the said vessel for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code.

The facts, as found by the Commissioner of Customs, are not in dispute.

> On November 23, 1974, the B/S "Sally Maersk" under Reg. No. 2007 arrived in the Port of Manila carrying general merchandise from New York, U.S.A., including 11 cartons of photocopy machinery parts. Said merchandise was not declared in the Inward Foreign Cargo Manifest of the said vessel. The Collector of Customs ordered the respondent to file an amended Inward Foreign Cargo Manifest without prejudice to answer

administrative action against the vessel. Subsequently, the vessel was charged for violation of the Tariff and Customs Code. During the proceedings, the parties submitted this case on the following stipulation of facts:

"1. That the Maersk Line is a shipping company that operates vessels to and from the ports of the world to the port of the City of Manila.

2. That the Philippine agent of the Maersk Line is the Cia. Gra. de Tabacos de Filipinas.

3. That two of the vessels operated by the Maersk Line are the M/S "CHARLOTTE MAERSK" and M/S "SALLY MAERSK."

4. That on or about the month of September 1974, the "Charlotte Maersk" and the "Sally Maersk" were loading side-by-side in the Port of New York.

5. By error committed on the part of the stevedores, the cargo destined for the M/S "Charlotte Maersk" and manifested on the vessel was actually loaded aboard the M/S "Sally Maersk" where it was not manifested.

6. That from the foregoing, it is obvious that the respondent company did not act in bad faith.

7. That because of the failure of the vessel "Sally Maersk" to declare the 11 cartons subject of the instant proceedings, an amendment was submitted by the agent company and the same was approved by this Bureau with the condition "without prejudice to an administrative action against the vessel"."

In his decision dated August 8, 1975, the Collector of Customs imposed a fine of ₱500.00 upon the vessel M/S "Sally Maersk" for violation of Section 1005, in relation to Section 2521 of

23

the Tariff and Customs Code, which decision, on appeal by petitioner, was modified by the Commissioner of Customs in his decision of March 5, 1976, increasing the amount of the fine to ₱5,000.00.

The issue for determination is whether the vessel S/S "Sally Maersk" is liable for the fine of ₱5,000.00 for violation of Section 1005 taken in relation to Section 2521 of the Tariff and Customs Code, which provisions read as follows:

> 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 manifest 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. Every vessel from a foreign port must have on board complete manifests of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every such vessel shall have prepared for presentation to the proper customs official upon arrival in ports of the Philippines a complete list of all sea stores then on board. 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; 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 Manifests.- 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.
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> The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

Petitioner contends that the vessel M/S "Sally Maersk" should not be held liable for the fine because the failure to manifest its cargo was the result of crossloading and that there is good faith in the commission thereof. Furthermore, it contends that even if a fine is imposable, the amount of ₱5,000.00 is unfair and unreasonable.

Citing, in its memorandum, a minute resolution of the Supreme Court in G.R. No. L-44243 which reads:

> L-44243 (Compañia General de Tabacos de Filipinas vs. Court of Tax Appeals, et al.)-

25

> Considering the allegations, issues and arguments adduced in the petition for review on certiorari of the decision of the Court of Tax Appeals, the Court resolved to DENY the petition for lack of merit, it appearing that the justification of crossloading of allegedly manifested cargo was not raised in the original petition for review in the respondent court nor in the proceedings before the Customs Commissioner but is being raised for the first time in this Court.

petitioner avers that crossloading is a justification for the vessel's failure or omission to manifest its cargo:

> Please note that the petition was denied merely because the "justification of crossloading of allegedly manifested cargo was not raised in the original petition for review in the respondent court nor in the proceedings before the Customs Commissioner but is being raised for the first time in this Court." The Supreme Court, in its own words, denied the "justification of crossloading" merely because it was raised for the first time before it but otherwise the Supreme Court, as may be noted from its very statement, found that crossloading was a justification. Since crossloading is a justification in the words of the Supreme Court and since crossloading has been admitted, it follows that the present controversy being based on an admitted case of crossloading should be resolved in favor of the vessel.

We disagree with the view advanced by the petitioner. The Supreme Court in its aforesaid resolution did not categorically rule that under the law crossloading is a valid defense or justification for failure of the vessel to manifest its cargo. The said resolution simply means that since the ground of crossloading was raised by petitioner only for

vb

the first time before the Supreme Court in its petition on certiorari, said petition cannot be given due course. Indeed, said resolution does not imply that had the defense or ground of cross-loading been properly and timely raised in said case (G.R. L-44242), it would be a valid and legal justification for non-compliance with the statutory requirement that every vessel from a foreign port must have a complete and proper manifest of all her cargo, and thus absolve the vessel from liability. The said resolution cannot be so construed as the legality of the defense of crossloading was not squarely passed upon by the Supreme Court.

In previous cases involving similar issues, the settled doctrine, consistently repeated by this Court, is the imperative requirement that every vessel coming from a foreign port must have a proper and complete manifest of all her cargo, and the law does not provide for any exception.

> 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 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

V7

> 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.)

Consequently, applying the foregoing doctrine, it is of no consequence that the failure or omission of the vessel to manifest its cargo in this case was caused by crossloading and/or that there is good faith on the part of the vessel, or its agent Compañia General de Tabacos de Filipinas. (Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2742, Sept. 16, 1977.)

Anent the amount of the fine, the Commissioner of Customs found it necessary to increase the fine imposed by the Collector to ₱5,000.00. This is an amount still within the limitation allowed as imposable fine under Section 2521 of the Tariff and Customs Code, and we can see no valid reason to nullify and disturb the imposition made by respondent

78

Commissioner of Customs.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby AFFIRMED, with costs against petitioner.

SO ORDERED.

Quezon City, September 30, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Acting Presiding Judge