Lib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN SHIPPING LINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3734

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

D E C I S I O N

This appeal involves petitioner's liability to an imposition of ₱60,000.00 fine in Customs Administrative Cases Nos. 104416 and 104417 for violation of Section 1005 in relation to Section 2521 both of the Tariff and Customs Code, as amended.

It appears that petitioner's vessel M/S "MINICON" arrived at the Port of Manila on separate occasions - May 17, 1978 and August 14, 1979, conveying and discharging two (2) wooden cases of Resin Undercoat Syncory and 195 cases of Used and Reconditioned Industrial Sewing Machines Head Assembly with accesories and Clutch motors, respectively, without the proper and accurate manifests; that upon application of the petitioner, the manifests were amended "in order to avoid prejudicing the processing of the papers covering the importation not properly manifested, x x x without prejudice of an administrative action against the vessel."

The administrative cases were consolidated for appropriate hearing but petitioner's representative or local agent failed to appear notwithstanding the requisite notice served and a copy of the same posted in the bulletin board. As a consequence, the Collector of Customs considered the cases submitted for resolution on the basis of the documents obtaining and accordingly a fine of ₱30,000.00 for each of the cases or a total of ₱60,000.00 was imposed.

On appeal, the Commissioner of Customs affirmed the Collector's decision stating, inter alia, "the said action of the Collector was in order, for the reason that during the scheduled date of hearing, respondent's counsel or representative failed to appear despite due notice. And, on the merits of the cases the facts clearly indicate and show that respondent vessel M/S "MINICON" violated the provision of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, as amended.

Petitioner questions its liability under the cited provisions of the Customs law as well as the excessiveness of the penalty.

Petitioner avers that Section 2521 applies only when there is no "complete manifest" or when the cargo is unmanifested, not when there is only a discrepancy in the declaration of the weight of the cargo in which case, Section 2523 of the Code applies. "What the record shows is that there was an amendment to the manifest which indicates that petitioner herein observed diligence and good faith. That the amendments were approved by the Bureau of Customs is indicative that the bureau was convinced that the error was not due to carelessness and incompetence of the master and/or the owner of the vessel."

All told the same petitioner's vessel did discharge and conveyed on May 17, 1978 and on August 14, 1979 unmanifested dutiable items of merchandise at the Port of Manila. The cargoes sought to be entered in both cases have fallen short of measuring up to the statutory proscription that, "Every vessel from a foreign port must have on board a complete manifest of all her cargo." (Sec. 1005, Tariff and Customs Code), and failing to supply the same, "such vessel shall be fined in a sum not less than ten thousand (₱10,000.00) but not exceeding thirty thousand (₱30,000.00) pesos." Indeed, there can be no further occasion to speculate upon how such peremptory demand which is far from showing any mere resemblance of an illusion, should be enforced.

The mandate of the law is clear and we cannot settle for less. The law imposes the absolute obligation, upon every vessel from a foreign port to have 'on board complete written manifests of all her cargo signed by the master'. Where the law requires a manifest to be kept or delivered, it is not complied with unless the manifest is true and accurate. (U.S. v. S.S. Islas Filipinas, 28 Phil. 291; Macondray & Co., Inc. v. Acting Commissioner of Customs, 62 SCRA 432). Upon the records before Us there is nothing to take the case out of the operative effects of the cited codal provisions as understood and applied.

And We do not think that by the simple expediency of an amendment the law can be flouted with impunity and its efficacy defused in a cul de sac of impotency. The acquiescence to an amendment was precisely subject to the reservation "without prejudice to an administrative action against the vessel." Rather generous yet candid. Subsequent amendment adds no insulating relief for "even granting arguendo, that the amendment was approved and therefore valid it does not in any way relieve the vessel from the liability which she already incurred prior to the amendment." (Macondray & Co., Inc. v. Acting Commissioner of Customs, 62 SCRA 434). Petitioner cannot have the best of both worlds so to speak.

Relative to petitioner's starvelling nibble on the reduction of the excessive fines suffice it to state that the amount imposed is not without authority nor logic and as earlier ruled in analogous cases the imposition of the maximum fines on vessels which failed compliance with their obligation "promotes the spirit and purpose of the law since imposing a minimum fine would embolden would be smugglers." (Commissioner of Customs v. CTA, et al 91 SCRA 262). The chips must somehow fall and having fallen the erring vessel must bear the statutory penalty ordained in Section 2521, which directs the imposition of a fine of not more than ₱30,000.00. The administrative fines imposed in the instant case are in accordance with the cited provision and having shown no abuse of discretion on the part of Customs' officials, We leave the same to remain.

IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby affirmed with costs against the petitioner.

DECISION -
CTA CASE NO. 3734

SO ORDERED.

Quezon City, Metro Mañila, October 28, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge