REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

versus C.T.A. CASE NO. 2186

COMMISSIONER OF CUSTOMS,
Respondent.

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July 20/73

D E C I S I O N

This is a petition for review of the decision of the Commissioner of Customs dated September 7, 1970 which raised from ₱3,000 to ₱7,000 the administrative fine of the vessel MS "Troubadour", for violation of Section 1005 of the Tariff and Customs Code in relation to Section 2521 of the same Code.

Petitioner is the local agent of the MS "Troubadour", which arrived at Manila on December 20, 1964. The vessel declared in her Inward Cargo Manifest the following cargo:

> (a) Two (2) corrugated steel-strapped cartons, and
>
> (b) Two (2) steel-strapped wooden cases.

However, among the cargo discharged from said vessel on December 20, 1964 were five (5) packages educational textbooks itemized as follows:

(a) Three (3) corrugated steel-strapped cartons, and

(b) Two (2) steel-strapped wooden cases.

Each package or case consisted of educational text-books.

On January 18, 1965, petitioner filed with the Bureau of Customs an amendment to the Inward Foreign Manifest upon request by the consignee of the shipment. In the requested amendment the 2 corrugated steel-strapped cartons became 3 corrugated steel-strapped cartons but the 2 steel strapped wooden cases still remained as 2 steel-strapped wooden cases. Petitioner informed the Bureau of Customs in writing that the discrepancy was a result of the loosening up of one of the packages and its breaking up into two packages, and that the customs examiner would not authorize the release of the textbooks without the aforesaid amendment.

An administrative case for violation of Section 1005 in relation to section 2521 of the Tariff and Customs Code was filed against the SS "Troubador" and after due hearing, the Collector of Customs rendered a decision dated July 21, 1970, imposing a fine of ₱3,000.00 on said vessel, which decision, on appeal to the Commissioner of Customs, was modified on September 7, 1970, increasing the fine to ₱7,000.00. Hence, the instant petition for review.

The parties submitted this case on the basis of a stipulation of facts, and the pleadings and records thereof, waiving their right to file memoranda.

The sole issue to be resolved is whether or not the administrative fine of ₱7,000.00 imposed on the vessel is in accordance with law.

Petitioner urges that the amendment of the Manifest was filed because one of the packages loosened and broke up into two cartons and the customs examiner would not authorize their release without an amendment of the manifest as stated in the Stipulations of Facts submitted during the hearing before the Collector of Customs. A perusal of said stipulations readily shows that the truth of the alleged breaking up of one package into two is not stipulated. What was stipulated was that a letter of petitioner to the Bureau of Customs explained that one of the packages broke up. Since no evidence was presented by petitioner to substantiate the statements in said letter, the Collector of Customs correctly gave them no value. Indeed the letter was a self-serving hearsay evidence that should merit no credence.

Petitioner also urges that since there is no evidence of fraudulent intent the vessel should not be held liable for the fine provided in section 2521 of the Tariff & Customs Code. In answer to this suffice it to quote the following:

> 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 on consent of the owner or master of the vessel in respect of such an omission is no defense against liability for the statutory penalty.

"There is nothing in section 77 of the Act which indicates any intention on the part of the legislator to limit the imposition of the prescribed penalty to cases where the captain or the ship's officers knowingly or willfully omitted any part of the cargo from the manifests. <u>This section in unequivocal terms prescribes the imposition of the penalty in all cases of such omissions, and read together with section 303, which imposes penalties or forfeitures on the master of the vessels in such cases, it cannot be doubted that the intention of the legislator was to provide for the imposition of the prescribed penalties, whether such ommissions occurred with or without the knowledge of the owner or the officers of the vessels.</u> Section 303 is here inserted, because both by its terms and the nature of the penalties prescribed it makes very clear the intention of the legislator to penalize omissions from the ship's manifest, whether made <u>with or without the knowledge of the owners, or of the ship's officers</u> charged with the preparation of the required manifests." (U.S. v. Steamship 'Rubi', 32 Phil. 228; underlining supplied.)

(Everett Steamship Corporation, in its capacity as agent of the M/V "FERNANDO", v. The Comm. of Customs, CTA Case No. 1968.)

As regards the defense that the amendment to the manifest approved by the Bureau of Customs cured the defect in the original manifest and thus relieved the vessel from its liability for the violation, we reiterate what we have said in Macondray and Company, Inc. v. The Commissioner of Customs, C.T.A. Case No. 1911:

> 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 manifest. 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.
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> We are not at all impressed with this interpretation of the law by petitioner.
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> There is no dispute that the four (4) cartons of electrical parts were not covered by the inward foreign manifest of M/S "FERNVILLE," 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. 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, CTA Cases Nos. 1728 & 1921, July 22, 1969.)

WHEREFORE, the decision appealed from is hereby affirmed with costs.

SO ORDERED.

Quezon City, July 20, 1973.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge