REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COLUMBIAN PHILIPPINES, INC., (As Agents of the MS "Hoegh Dyke"),
Petitioner,

- versus - C.T.A. CASE NO. 2755

COMMISSIONER OF CUSTOMS,
Respondent.

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7/28/78

DECISION

Petitioner, in its capacity as agent of the MS "Hoegh Dyke" has appealed from the decision of respondent Commissioner of Customs holding it liable for the payment of the administrative fine of Ten Thousand Pesos (₱10,000.00) under Section 2518, complemented by Section 2521, of the Tariff and Customs Code.

Both parties submitted the case on the basis of the pleadings, customs records and memorandum.

The records show that petitioner is the local ship agent of the MS "Hoegh Dyke", a vessel of foreign registry.

On or about December 5, 1969, the MS "Hoegh Dyke" arrived at the Port of Manila from Singapore and left said Port on December 6, 1969.

On April 2, 1970, petitioner was notified by letter dated January 20, 1970 asking it to explain why the vessel MS "Hoegh Dyke" should not be fined for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, for conveying and discharging unmanifested cargo consisting of 170 cartons of blue seal cigarettes.

Petitioner answered above-mentioned letter of respondent on April 6, 1970 expressing surprise over the alleged violation since there has been no previous report of the alleged incident from the master of the vessel, the Customs Inspector assigned to the vessel, or any other person that may have been concerned thereto. Neither was there any search nor investigation conducted on board said vessel.

On July 31, 1970, Administrative Case No. V-56470 was initiated by the Collector of Customs against petitioner herein and/or said vessel for alleged violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code.

After the administrative hearing of said case wherein both parties submitted their respective testimonial and documentary evidence, the Collector of Customs rendered a decision on July 12, 1972 holding the MS "Hoegh Dyke" liable as charged and imposing on petitioner herein an administrative fine in the amount of Ten Thousand Pesos (P10,000.00).

On appeal, respondent Commissioner of Customs in a decision dated September 5, 1975, affirmed the decision of the Collector of Customs as to the imposition of the administrative fine of P10,000.00, but with the modification that said fine should be imposed under Section 2518 in relation to Section 2521, instead of Section 1005, of the Tariff and Customs Code. Hence, the elevation of the case to this Court.

For resolution is the issue of whether or not the MS "Hoegh Dyke" and/or Columbian Philippines, Inc. are liable for the penalty of the administrative fine of ₱10,000.00 for violation of Section 2518 and 2521 of the Tariff and Customs Code, to wit:

> Sec. 2518. <u>Unlading of Cargo at Improper Time or Place after Arrival</u>.- Any vessel or aircraft, which after arrival at her port of destination in the Philippines, discharges cargo at any time or place other than that designated by the Collector shall be fined in a sum not exceeding ten thousand pesos unless the unlading was rendered necessary by stress of weather, accident or other necessity; and if due to necessity, the subsequent approval of the proper Collector must be obtained.
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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 manifest to the customs authorities, or shall enter or depart conveying unmanifest d cargo other than as stated in the next preceeding [illegible] 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.

Respondent alleged that in the morning of December 5, 1969 members of the Anti-Hoodlum Team of the Customs Police Service, acting on a previous tip, kept the vessel MS "Hoegh Dyke" under surveillance, while it was about to depart from Pier 15; that at about 2:00 in the morning of December 6, while said vessel was already underway and was near the anchorage area of the Manila Bay, they saw cartons of cigarettes being thrown overboard from said vessel and being picked up by three men riding in a speedboat. Said speedboat was apprehended and 170 cartons of blue-seal cigarettes were confiscated and two crewmen of the speedboat were arrested while one crewman escaped. Said cigarettes were brought to the Customs Police Headquarters, inventoried and photographed and became a subject of seizure proceedings in Seizure Identification No. 11358, and were forfeited in favor of the government in a decision of the Collector of Customs rendered on February 6, 1970.

In assailing the legality of the imposition of the fine, petitioner steadfastly maintains that it was never aware of the seizure of the above-mentioned cigarettes; that neither was a report made by the Master of the vessel nor by the Customs Inspector on board the vessel of said incident; that the master of the vessel had no knowledge whatsoever of said incident; and that no search or investigation was made or conducted on the said vessel concerning the alleged incident.

Petitioner asserts that it was only on April 2, 1970, or upon receipt of the letter of the Collector of Customs dated January 20, 1970 that it was apprised of the supposed conveyance and discharge of unmanifested cargo consisting of blue seal cigarettes in violation of the Customs laws and regulations.

Since there seems to be a confusion as to which provision of the Tariff and Customs Code has been violated by petitioner, as the decision of respondent Commissioner holds that Section 2510 of the Tariff and Customs Code has been violated, while the prayer of the pleadings of counsel for both parties request for a resolution as to whether or not Section 1005 of the same Code has been violated, this Court believes that a discussion of both sections is relevant.

Under Section 1005 of the Tariff and Customs Code, quoted hereunder:

> 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 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. 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. It 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.

it is an imperative obligation of every vessel coming from a foreign port to have a complete and proper manifest of all of her cargo and from this mandatory requirement, no exception is allowed by statute. That petitioner has not violated Section 1005 has been clearly ruled upon by respondent Commissioner of Customs in his decision dated September 5, 1975, wherein it was held:

> "After a judicious study of the facts & evidence presented, this Office holds the view that the vessel M/S "Hoegh Dyke" had violated Sections 2518 and 2521 of the Tariff and Customs Code and not Section 1005 of the same Code. Records show that the lack of proper manifest was not proven by direct evidence by the prosecution although it may be presumed under the circumstances that the articles were very likely unmanifested." (pp. 121-122, Customs rec; underlining ours.)

Furthermore, the uncontroverted testimony of petitioner's witness, Vicente Gonzales, the Boarding Officer of said vessel, negated any presumption that Section 1005 has been violated when he categorically stated that all the necessary and pertinent papers were submitted to the Customs Boarding Officer who did not find anything wrong with them. (pp. 48-49, Customs rec.) Moreover, we believe that a finding on a violation of the Customs and Tariff Code, which is a penal provision, cannot be based upon a presumption; and that violations of penal provisions must be interpreted strictly. (U.S. vs. Eighty Four Boxes of Sugar, 8 L Ed. 745 cited in Manila Civil Case No. 14338, Oct. 3, 1955, G.R. L-9901, prom. on August 30, 1957.)

This Court will now tackle the issue of whether or not petitioner can be held liable for the administrative fine of ₱10,000.00 for unloading cargo at the improper time or place after arrival under Section 2518 of the Tariff and Customs Code as held in the decision of respondent Commissioner. It is a well-settled doctrine that the appellate power of review by the Commissioner of Customs under Section 2313 of the Tariff and Customs Code of the decision of the Collector includes the power to affirm, modify or reverse the decision of the Collector on other questions provided that his findings and conclusions are supported by evidence.

A careful study of the records and testimonies of witnesses fails to yield any scintilla of credible evidence showing that the vessel MS "Hoegh Dyke" had committed said alleged violation of unloading cargo at an improper time or place after arrival. In fact, the testimony of respondent's witness, apprehending SPO Antonio Montemayor, is replete with conflicting versions. According to his testimony, he was not even supposedto be on duty that evening of December 5, 1969 as his duty was supposed to be from 7 AM to 3 PM on December 6, 1969. However, he extended his duty hours from 3 PM to morning of December 6 as he was on special assignment due to a tip received only in the early evening hours of December 5, 1969. (p. 106, Customs rec.) From his own testimony, it can be gathered that his duty hours were extended even before he received a tip of the alleged incident. He likewise manifested that the speedboat, from which the cigarettes were apprehended, passed the taxi-boat being used by them (Customs Police) in following the vessel "Hoegh Dyke" to load the cigarettes being thrown from the said moving vessel (p. 103, Customs rec.). This statement shows/its incredulity to this Court for in the normal course of events, if said speedboat was actually participating in the smuggling of blue seal cigarettes, and seeing that the Customs Police taxi-boat was nearby, the normal reaction of its operator would have been to flee to avoid an encounter and escape apprehension. Heavy reliance was placed on the testimony of above-mentioned respondent's witness, the apprehending officer, which failed to establish with certainty the violation by the vessel in discharging cargo at an improper time or place after its arrival. We take note and he testified that at the time of the apprehension, or at about 2:30 AM of December 6, 1969, it was dark; in fact, they have to use binoculars (p. 97, Customs rec.); that he saw some "cartons" or "boxes" and not cigarettes being thrown into the water from another speedboat (p. 103 & 81, Customs rec.); that because it was dark, he cannot identify the persons who were throwing the cartons into the water; that he just assumed that the "cartons" or "boxes" being thrown from the vessel were cigarettes (p. 96, Customs rec.); that he was not sure that the cigarettes pictured in Exhibit A (which parenthetically, is not in the Customs records before us), were the same cigarettes that were confiscated because after turning over said cigarettes, he went home (pp. 91 & 92, Customs rec.); that he does not know if said cigarettes in the picture may have been part and parcel of another seizure proceeding; and that the apprehending officer admitted that no investigation was conducted by him after the apprehension and confiscation. (pp. 90-91 Customs rec.) Moreover, he was not even certain that the banca shown in the picture, Exhibit B, which is also not in the Customs records, before this Court, was the same speedboat which was apprehended. (p. 91, Customs rec.)

What makes the stand of respondent dubious is that despite the fact, as alleged by respondent's apprehending officer, that the speedboat following the vessel "Hoegh Dyke" was apprehended with loaded blue seal cigarettes, yet said outgoing vessel from which the blue seal cigarettes allegedly came from was not stopped and boarded for the purpose of investigating and apprehending the Master, officers or crewmembers of said vessel responsible in the unloading of the alleged smuggled cigarettes. (pp. 49, 50, 79, 89, 90 and 92 Customs rec.) Knowing that he and his co-apprehending officers have the right and power to search and seize smuggled goods, and arrest those caught in the act of smuggling the same, under Sections 2205 and 2210 of the Tariff and Customs Code, they did not take steps to arrest the perpetrators of the acts of unloading the blue seal cigarettes. Moreover, the records of the hearing will show that no prior investigation was conducted by the Customs Police where the master or responsible officer of the vessel, "Hoegh Dyke" was present, or notified by the Bureau of Customs, to answer for the alleged incident of unloading the blue seal cigarettes that occurred during the departure of said vessel from Pier 15 on December 6, 1969 (pp. 45-56, Customs rec.) until only upon the receipt of a letter, dated January 20, 1970, on April 2, 1970 (p. 6, Customs rec.) or about four (4) months after.

It has been ruled that Customs Laws which provide penalties for its violation partake of the nature of a penal law and must be strictly construed against the taxpayer, and the burden of proof is on respondent to show that there was indeed a clear violation of the said law. (U.S. vs. Eighty Four Boxes of Sugar, op. cit.) In the case at bar, this burden of proof of showing by preponderance of evidence that there was probable cause for the imposition of the fine has not been clearly met. Upon the foregoing facts, this Court entertains serious doubts as to the actual violation by the said vessel, the MS "Hoegh Dyke", of Sections 2518 and 2521 of the Tariff and Customs Code. Furthermore, there is also an assertion by the petitioner, undisputed by respondent, that the vessel MS "Hoegh Dyke" has never been charged before this case with any violation of the Customs laws.

WHEREFORE, in view of all the foregoing, the decision appealed from is hereby REVERSED. No pronouncement as to costs.

SO ORDERED.

Quezon City, July 28, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge