REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
in its capacity as
Agent of the MS "TEMERAIRE",
Petitioner,

versus

C.T.A. CASE NO. 2189

COMMISSIONER OF CUSTOMS,
Respondent.

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4/5/73

D E C I S I O N

Petitioner, as agent of the MS "Temeraire", has appealed from the decision of respondent Commissioner of Customs, affirming in toto that of the Collector of Customs of Manila, which imposed on said vessel an administrative fine of FIVE HUNDRED PESOS (₱500.00) for carrying unmanifested cargo in violation of Section 1005 of the Tariff & Customs Code, which is penalized under Section 2521 of the same Code.

The facts are not in dispute, the same having been stipulated by the parties, as follows:

> 1. That the ship agent in the Philippines of the vessel MS "Temeraire" is petitioner herein;
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> 2. That said vessel MS "Temeraire" discharged cargo at the Port of Manila on October 22, 1963, including one (1) case of Machinery Spare Parts;
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> 3. That said one (1) case of Machinery Spare Parts was not among the cargoes declared in the ship's

Inward Foreign Manifest for its voyage of October 22, 1963 submitted to Customs authorities;

4. That the ship's Inward Foreign Manifest, dated October 22, 1963, was amended, which amendment was submitted in conformity with the rules and regulations of the Bureau of Customs, subject to the condition: "Without prejudice to action against the vessel"; and

5. That said one (1) case Machinery Spare Parts was not included in the Manifest of the MS "Temeraire" because the cargo was inadvertently over carried by the said vessel when she arrived at Manila on September 18, 1963; that this cargo subsequently came forward to Manila on her second call at Manila on October 22, 1963.

On October 29, 1964, the Collector of Customs of Manila instituted administrative proceedings against MS "Temeraire" for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. The decision of the Collector of Customs on the case was rendered on July 29, 1968, holding that the MS "Temeraire" conveyed unmanifested cargo consisting of one (1) case machinery spare parts and imposed a fine of ₱500.00 against the vessel. Petitioner, as agent of the vessel, appealed the Collector's decision to the Commissioner of Customs, who affirmed the same _in toto_ in his decision dated September 29, 1970. Hence, this appeal.

The issues raised in this appeal are:

1. Can there be a violation of Section 1005 of the Tariff and Customs Code?

2. Is the fine of ₱500.00 imposed by the Bureau of Customs legal or proper?

3. Can an agent be legally held liable for violation of any law committed by its principal?

Petitioner claims that since Section 1005 of the Tariff & Customs Code imposes no penalty, respondent should have charged petitioner for violation of Section 2521 in relation to Section 1005 of the same Code; that assuming arguendo that the charge is proper, to warrant violation of Section 1005, respondent should have presented proof of fraud on the part of petitioner, considering that Section 1005 requires the element of fraud before it can be applied; that the amendment to the manifest of the subject vessel cured any defect in the manifest and constitutes a bar to the imposition of an administrative fine on the vessel; that the authority to amend the manifest under Section 1005 and its corollary right to amend, convert or substitute an entry already filed, but before the same is received or recorded in the appraiser's office, is designed to provide the master, consignee or agent not only the right to correct a legitimate error or discrepancy but also to provide him an opportunity to desist from the commission of acts allegedly calculated to defraud the government of its revenues; that the vessel enjoys the presumption of good faith, innocence of wrong, and regularity of transaction under Rule 131 of the Rules of Court; that being merely an agent of the owner of the vessel MS "Temeraire", the proper party should be the owner of the said vessel for the reason that an agent cannot be bound by the acts of his principal; and that while the vessel did not originally manifest the entire cargo, the bills of lading, consular invoices, suppliers' invoices submitted with the manifest and the entry did so; thus, the deficiency of the vessel's original manifest was adequately supplied by the entries in the bill of lading, consular invoice, suppliers' invoices and entry; that should this Court sustain the legality of the imposition of the fine on herein petitioner, the amount of ₱500.00 imposed by respondent is unconscionable.

Respondent, on the other hand, argues that good faith is not a defense in avoiding the liability incurred for submitting an incomplete manifest; that the manifest required by Section 1005 of the Tariff & Customs Code cannot be substituted by any other document which a vessel may submit; that the fine of ₱500.00 imposed on the vessel is just and reasonable considering that practically all vessels of herein petitioner had been found guilty of the same offense in the past; that the right to amend an incomplete manifest is granted solely for the benefit of the innocent importer who is not a party to the negligence of the vessel or its ship agent; that every foreign vessel is required by the Tariff & Customs Code to submit a complete manifest of all her cargo upon arrival; and that a manifest submitted by a vessel for one voyage cannot be used again for another voyage.

This Court had passed upon the same issues raised herein in several cases involving the same parties. We believe it is sufficient for this purpose to quote the pertinent portions of the decisions in the said cases.

On the first issue, whether or not there can be a violation of Section 1005 of the Tariff &

Customs Code, we quote hereunder the Court's opinion in the case of Macondray & Co., Inc. v. Commissioner of Customs, C.T.A. Case No. 2067, October 6, 1972:

> Section 1005 of the Tariff and Customs Code imposes upon every vessel the absolute obligation to have on board a complete manifest of her cargo. That the vessel failed to comply with this imperative obligation is a clear violation of Section 1005. While said section does not provide for a penalty, it defines the act punishable under Section 2521. In the case of Macondray & Co., Inc., vs. Commissioner of Customs, C.T.A. Case No. 1930, Dec. 27, 1969, which involved a similar issue, the Court held: "x x x Section 1005, of the Tariff & 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 x x x."

On the issue of whether or not an agent may be legally held liable for violation of any law committed by its principal, this Court, in Macondray & Co., Inc. v. Commissioner of Customs, C.T.A. Case No. 2138, Sept. 30, 1972, stated:

> Petitioner's claim that, being an agent, it cannot be held liable for violation of any law committed by its principal 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 <u>in rem</u>, that is, against the of-

fending 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 'Roseville' 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."

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 proceeding 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.

In connection with the propriety of the amount of fine imposed upon petitioner, we find no reason to modify the same.

WHEREFORE, the decision appealed from is hereby affirmed *in toto*. With costs against petitioner.

SO ORDERED.

Quezon City, April 5, 1973.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge