REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD MATE HAYDEN OF
THE S/S "STEEL EXECUTIVE"
and INTERNATIONAL HAR-
VESTER MACLEOD, INC., in
its capacity as agent of
the S/S "STEEL EXECUTIVE",
Petitioners,

June 30, 1970

versus

CTA CASE NO. 1850

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - x

D E C I S I O N

From the decision of respondent in Customs Case No. 652 (Administrative Case No. V-122/62), dated March 7, 1967, affirming that of the Collector of Customs of Manila dated April 8, 1963, holding the S/S "Steel Executive" liable to an administrative fine of ₱1,000.00 for conveying unmanifested blue seal cigarettes, in violation of section 2521 of the Tariff and Customs Code, the petitioners interposed the present appeal.

Petitioner Hayden is a third mate of the vessel S/S "Steel Executive"; while petitioner International Harvester Macleod, Inc. (International Harvester for short), a corporation duly organized and existing under the laws of the Philippines, is the local ship agent of the S/S "Steel Executive".

On October 25, 1961, the S/S "Steel Executive" arrived at the port of Manila carrying, among other things, shipments of general cargo destined for discharge at the port of Manila. On the same date, agents of the Bureau of Customs, after conducting a search of the said vessel, seized the following articles:

8 cartons of Salem cigarettes
6 cartons of Chesterfield cigarettes
2 cartons of Lucky Strike cigarettes

which were found inside the cabin of petitioner Third Mate Hayden for not being manifested pursuant to section 2530(g) in relation to section 1005 of the Tariff and Customs Code.

On November 9, 1961, the Collector of Customs wrote a letter to petitioner International Harvester requiring it to explain and show cause why no administrative fine should be imposed on the S/S "Steel Executive" for conveying unmanifested cigarettes. In reply thereto, petitioner International Harvester, on November 13, 1961, wrote respondent a letter explaining that the cigarettes in question were part of the ship's sea store and included in the store list of the vessel and therefore not required by law to be manifested. Finding the explanation unsatisfactory, respondent, in a letter dated May 30, 1962, informed petitioner International Harvester that he is imposing an administrative fine of ₱1,000.00 on the vessel S/S "Steel Executive" and at the same time required it to pay the same. On June 8, 1962, petitioner's (International Harvester) counsel wrote respondent a letter requesting the investigation and hearing of its case, and thereafter to reconsider his decision imposing the fine. In the meantime, the Collector of Customs of Manila instituted seizure proceedings, S.I. No. 6290 against the blue seal cigarettes. The parties to this petition agreed to submit the present case on the basis of the evidence presented in said seizure proceedings. On November 26, 1962, the Collector of Customs rendered a decision declaring said cigarettes forfeited in favor of the Government for lack of the required manifest. Said decision appears to be still pending appeal before the Commissioner of Customs.

On April 8, 1963, the Collector of Customs rendered a decision imposing a fine of ₱1,000.00 on the S/S "Steel Executive" for conveying unmanifested cigarettes in violation of section 2521 of the Tariff and Customs Code. An appeal was taken by petitioner International Harvester to respondent Commissioner of Customs who, on March 7, 1967, affirmed the decision of the Collector of Customs. Still dissatisfied, petitioners appealed to this Court. During the hearing of this case in this Court, counsel for respondent admitted that the cigarettes in question were included in the sea store list.

Parenthetically, petitioners, on March 25, 1970, filed their memorandum; while respondent failed to file his memorandum within the time granted by the Court.

The issues raised by the pleadings are as follows:

1. Whether or not petitioner Third Mate Hayden has personality to appeal to this Court;

2. Whether or not the petition for review states a cause of action; and

3. Whether or not the imposition of the fine of ₱1,000.00 on the vessel S/S "Steel Executive" is legal under section 2521 in relation to sections 1004(c) and 1005 of the Tariff and Customs Code.

As may be gathered from what has been said hereinabove, the decision of the Collector of Customs which is affirmed by the decision which is the subject of this appeal is based on the evidence adduced in the forfeiture proceedings of the cigarettes in question. We do not have the evidence adduced in said forfeiture proceedings but we note that the appealed decision states that there is no direct evidence showing that said cigarettes were part of the sea store. Be that as it may, this statement must give way now in this appeal to the admission of counsel for the respondent that said cigarettes were part of the sea store or provision of the vessel and were included in the list thereof. We note however that in the same breath that respondent's counsel made the foregoing admission he urges that the S/S "Steel Executive" is still subject to a fine because the cigarettes were not in the slop chest but in the cabin of the third mate. No elaboration of this pretension was ever made though. None was made during the trial and none was made subsequently.

The relevant provisions of law upon which the administrative fine was imposed provide as follows:

> SEC. 1004. Documents to be Produced by Master Upon Entry of Vessel.—For the purpose of making entry of a vessel engaged in foreign trade, the master thereof shall present the following documents, duly certified by him, to the customs boarding official:
>
> x x x x x

> c. Two copies of store list;
>
> 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.
>
> . . . 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. . . .
>
> 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 preceding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos. . . . (Tariff & Customs Code; underscoring supplied.)

(Needless to say, what subjects the vessel to a fine under section 2521 of the Tariff and Customs Code is the failure to have a manifest of its cargo.)(Under section 1004 in connection with section 1005 of the same Code the provisions of the vessel need no manifest.)

It is sufficient that they are included in the vessel's list of sea stores.

> A cursory reading of the first section readily shows that what is required is a "manifest of all her (ship's) cargo." "Cargo" is what is intended to be unloaded and landed at a port. The "Manifest" contains 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." <u>As ship's provisions are not to be unloaded and delivered to consignees, they are not supposed to be included in the "manifests" as above required.</u> Under the Law, they are to be contained in "a complete list of all ship's stores.".. (Comm. of Customs v. Compañia Gen. de Tabacos de Filipinas, 101 Phil. 1135; underscoring supplied.)

> Another contention of the appellant is that the opium in question is not "cargo" within the meaning of the customs laws. The term "cargo" is not specifically defined in the Customs Administrative Act, but from the language used in several of its provisions it is clear that <u>the word "cargo" as used in the section under consideration includes all goods, wares, and merchandise aboard ship which do not form part of the ship's stores.</u>

> Black's Law Dictionary defines the term "cargo" as follows: "The load or lading of a vessel; goods and merchandise put on board a ship to be carried to a certain port." (U.S. v. S.S. "Islas Filipinas", 28 Phil. 297; underscoring supplied.)

> . . . Having in mind the context, and the purposes and objects sought to be obtained by the enactment of the statute, we are satisfied that <u>the word "cargo"</u> as used in the first paragraph of section 77 <u>refers to the "entire lading of the ship which carries it" and includes all goods, wares, merchandise, effects, and indeed everything, of every kind or description, found on board, except such things as are used or intended for use in connection with the management or direction of the vessel</u> and are not intended for delivery at any port of call, and except also, perhaps, "passengers or immigrants and their baggage." (U.S. v. Steamship "Rubi", 32 Phil. 235; underscoring supplied.)

> . . . We are in accord with the petitioners that <u>sea stores need no manifest</u> for the consistent ruling of the Supreme Court is that it is enough that they are contained in "a complete list of all ship's stores" (United States vs. S.S. Islas Filipinas, 28 Phil. 291; United States vs. Steamship Rubi, 32 Phil. 228; Commissioner of Customs vs. Compañia General de Tabacos de Filipinas, G.R. No. L-9901, August 30, 1957). (Kurt Nilsen, et als. v. Comm. of Customs, CTA Case No. 1565, Dec. 18, 1966; underscoring supplied.)

As to respondent's contention that the provisions should be in the slop chest of the vessel, suffice it to say that respondent has pointed to no law or regulation which requires that the ship's provisions should always be kept in the slop chest of the vessel. Understandably, some of the ship's provisions may not be found in the slop chest. Liquor may be in the bar while cigarettes may be found in the crews' cabins for their consumption, but that hardly convert them to cargo that should have a manifest.

Respondent challenges the personality of Third Mate Hayden to appeal to this Court, but we think it unnecessary to pass upon this point because the personality of International Harvester Macleod, Inc., another petitioner, is unquestioned.

WHEREFORE, the appealed decision is hereby reversed. No pronouncement as to costs.

SO ORDERED.

Quezon City, June 30, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge