REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA STAR FERRY, INC.,
Petitioner,

-versus - C.T.A. CASE No. 1836

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

UNITED NAVIGATION &
TRANSPORT CORPORATION,
Petitioner,

-versus- C.T.A. CASE No. 1837

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

CEABA SHIPPING AGENCY, INC.,
Petitioner,

-versus- C.T.A. CASE No. 1839

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

Sept. 30/64

D E C I S I O N

These are appeals from the decision of respondent Commissioner of Customs which affirmed that of the Collector of Customs of Manila ordering the forfeiture in favor of the Government of the vessel S/S "Argo," the tugboat "Orestes" and the barge-lighter "UN-L-106."

The facts as narrated in the decision appealed from are as follows:

> As early as January 16, 1964 the SS "ARGO" was already involved in an investigation in connection with a seizure proceeding before the Collector of Customs, Port of Manila, against two (2) cases of its cargoes unloaded which were manifested as machinery parts but which actually contained "Union"

blue seal cigarettes (Exh. "JJ", JJ-1" and "LL"). On February 7, 1964, sixty-three (63) cartons of "Union" cigarettes were confiscated by Customs authorities on board the SS "ARGO" for violation of Section 2530(f) and (m-1) of the Tariff and Customs Code (Exh. "KK"). And on January 22 and 23, 1966 questionable shipside unloading was effected from the SS "ARGO" in which the Manila Star Ferry, Inc. and Bay Transport Inc. participated for the "Freight Forwarders", a non-existent company (Exh. "DD", "DD-1," "DD-2", "MM", "MM-1" and "MM-2"; pp. 1234-1238, 1166-1182, t.s.n.). Again, on or about April 17, 1966, another questionable shipside unloading of cargo was undertaken by the SS "ARGO" at the Manila Bay wherein more or less 200 cases of blue seal cigarettes were hauled (Exh. "R"), and in the operation the lighter service was rendered by the LVM Shipping & Stevedoring Corporation for the same non-existent company, the Freight Forwarders (Exh. "EE", "EE-1", "EE-2", "EE-3", "MM", "MM-2"; pp. 895-896, 1183-1184, 1238-1239, 1245-1248, 1284, 1298-1299, t.s.n.).

Then later, confidential reports reached the Philippine Navy authorities that the SS "ARGO" would once more illegally discharge contraband goods at the Manila Bay area on June 12, 1966; that the modus operandi would be that the SS "ARGO" would stop somewhere at the vicinity of the Quarantine Anchorage area; that the tugboat and a barge would meet the said vessel at this prearranged point; and that immediately after unloading the contraband goods the SS "ARGO" would depart. (pp. 430, 460-462, 472-473, t.s.n.).

Seizing this opportunity, the Philippine Navy authorities planned a n operation to apprehend the SS "ARGO" in the act of illegal unloading of contraband goods. Accordingly, in the evening of June 11, 1966, two PN vessels, namely the "PCF 301" and the RPS "BOHOL", started the operation and began tracking down vessels with the use of radar, that would enter the Manila Bay.

True to expectation, at about 11:00 o'clock in the evening of June 11, 1966 a vessel proceeding towards Manila was first observed on the radar screen. The vessel, which turned out to be the SS "ARGO", continued its course until about 2:00 o'clock in the morning of June 12, 1966 when it stopped at the Explosive Anchorage area of Manila Ba y. About fifteen minutes before the SS "ARGO" stopped "dead in water", the radarman on board the RPS "BOHOL" noticed another contact on the radar scope coming from the shore moving towards the SS "ARGO". This contact turned out to be the tugboat "ORESTES" towing the barge-lighter "UN-L-106". After merger of the two radar contacts the two PN vessels rushed in and apprehended the SS "ARGO", the tugboat "ORESTES" and the barge "UN-L-106" while in the act of discharging contraband goods from the SS "ARGO" onto the barge, consisting of 330 cases of "Fortune" blue seal cigarettes; 1 case of ladies' jeans; 7 bales of ladies' stockings; 2 bales of plastic bags with mark; "Rhodora's Vanity Fair, Sta. Mesa Shopping Center, Quezon City, Tel. Nos. 6-84-71 and 6-84-72 local 10"; 4 bales of girls' and ladies' shoes, sandals and steppins; 1 bale of woven fabrics "jusi" kind; and 12 bales containing Riverloft banlon jeans. The alleged corresponding assessed customs duties and taxes on these articles amounted to ₱455,365.74 for the cigarettes and ₱79,261.29 for the assorted articles. (Two wooden bancas were also at the vicinity of the SS "ARGO" when the PN vessels closed in, which were also apprehended after a brief chase).

Records further show that none of these goods were ever manifested to be discharged in Manila and neither was there any proper notice of arrival given by the vessel, nor by the shipping agent of the SS "ARGO"; so that Customs and Immigration authorities were not aware of its arrival (Exh. "U", "V" and "BB").

The Collector of Customs of Manila justified the forfeiture of the S/S "ARGO", the tugboat "ORESTES" and the lighter "UN-L-106" under Section 2530, paragraphs (a), (b) and (e), of the Tariff and Customs Code, which provide:

> Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.- Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> (a) Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry; and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner, with the approval of the department head.
>
> (b) Any vessel engaging in the coastwise trade which shall have on board a ny article of foreign growth, product or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported.
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> (e) Any vessel or a ircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination.

However, respondent Commissioner of Customs affirmed the decree of forfeiture solely under paragraphs (a) and (c) of said Section 2530 of the Tariff and Customs Code. On the other hand, petitioners allege that, under the facts established in these cases, both paragraphs (a) and (c) of Section 2530 of said Code are not applicable.

Section 2530(a) of the Tariff and Customs Code imposes the penalty of forfeiture upon two types of vessels, viz.:

> (1) Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry; and
>
> (2) Any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner, with the approval of the department head.

The first part of paragraph (a) of Section 2530 imposes the penalty of forfeiture upon any vessel or aircarft used, or attempted to be used, unlawfully in the importation or exportation of articles into or from any Philippine port or place <u>other than a port of entry</u>. The port of Manila is a port of entry. (See Sec. 701, Tariff and Customs Code.) Consequently, the vessels in question cannot be forfeited under the said statutory provision. The contention that to interpret the penal provision as applicable solely to unlawful importations effected in ports other than ports of entry would be to allow smuggling, provided it is done in a port of entry, is not quite correct. The cargo which is sought to be smuggled in a port of entry is subject to forfeiture (Section 2530, pars. (d), et seq.); the vessel carrying said cargo is subject to a fine for carrying unmanifested cargo (Sec. 2521, id.); and any person or persons responsible for the fraud or irregularity is subject to criminal penalties (see Secs. 3601, et seq.). Congress, in enacting the Tariff and Customs Code, has deemed these penalties to be adequate for the purpose of preventing or minimizing smuggling.

As to the second part of paragraph (a) of Section 2530, the penalty of forfeiture applies to any vessel used in the importation, whether legally or illegally, of articles into any Philippine port or place, if such vessel is less than 30 tons capacity, except where the importation is made into a port of the Sulu Sea, where importation in such vessel may be authorized by the Commissioner of Customs with the approval of the Secretary of Finance. The law makes illegal the use of any vessel of less than 30 tons capacity in the importation of goods from abroad, irrespective of whether the importation is legal or illegal. It appears that all the vessels in question are more than 30 tons capacity, so that forfeiture thereof cannot be justified under said provision.

Coming now to paragraph (c) of Section 2530, it is to be noted that this provision imposes the penalty of forfeiture upon any vessel into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel at her port of destination. This provision does not apply to the importing vessel but only to a vessel into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel at her port of destination. There is no question that cargo was unloaded contrary to law from the S/S "ARGO," the importing vessel, and transferred to the tugboat "ORESTES" and the lighter "Un-L-106" and that the unloading was made "prior to the arrival of the importing vessel at her port of destination." The Port of Manila was not one of the ports of destination of the S/S "ARGO." To quote from the decision of respondent:

> In the first place, evidence on record shows that the port of Manila is not a port of call of the SS "ARGO". The ship left Hongkong and was bound for Jesselton, North Borneo, Djakarta and Surabaja, Indonesia. The entry of the SS "ARGO" in the Philippine

> waters, more particularly inside Manila Bay, was not recorded in the Deck Log Book of the vessel (Exh. "H", "H-1", "H-2", and "H-3"), and no notices of entry or arrival were ever sent to the Bureau of Customs and the Bureau of Immigration (Exh. "U", "V", and "BB"). Furthermore, the cargo manifests show that no part of the cargo was ever destined to be landed into the Philippine soil, but for other foreign ports. These circumstances are a clear indication that the port of Manila is not her port of destination in the legal sense. (Pp.5-6, Decision of Respondent, February 1, 1967, annexed to the Petitions for Review.)

Accordingly, we find the tugboat "ORESTES" and the lighter "UN-L-106" subject to forfeiture under Section 2530(c) of the Tariff and Customs Code, as imported cargo was unladen into said vessels prior to the arrival of the importing vessel at her port of destination. That the offense was committed without the knowledge or consent of the owners of said vessels is immaterial. In proceedings for forfeiture of an article for violation of Customs Law, lack of knowledge or consent of the owner in regard to the violation does not relieve the offending vessel from liability, although such fact may be considered in the determination of the appropriate penalty. (U.S. v. Rubi, 32 Phil. 228.) In this case, considering that the said vessels were merely hired by persons who made use of them illegally without the knowledge or consent of the owners thereof, and in line with the decisions of this

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Court in previous cases (see Balmocena v. Commissioner, C.T.A. No. 1585, July 31, 1966; Pascual v. Commissioner, C.T.A. No. 1608, Sept. 30, 1969), we have decided to impose, in lieu of forfeiture, a fine of ₱5,000.00 each on the lighter "ORESTES" and the tugboat "Un-L-106." B

As regards the S/S "ARGO," it has been clearly established that it conveyed and discharged at the Port of Manila unmanifested cargo. Section 2521 of the Tariff and Customs Code imposes a fine of not more than ₱10,000.00 upon any vessel which shall enter or depart from a port of entry conveying unmanifested cargo. The pertinent portion of said Section provides:

> 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 preceding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos. x x x. (Emphasis supplied.)

Finding that the S/S "ARGO" conveyed and discharged at the Port of Manila unmanifested cargo, it is subject to the penalty imposed in Section 2521 of the Tariff and Customs Code. And considering that this is not the first time that said vessel committed the same or similar offenses, we have decided to impose the maximum fine of ₱10,000.00.

IN VIEW OF THE FOREGOING, the Manila Star Ferry, Inc., petitioner in C.T.A. Case No. 1836, and the United Navigation & Transport Corporation, petitioner in C.T.A. Case No. 1837, are each hereby ordered to pay a fine of five thousand pesos (₱5,000.00), and Ceaba Shipping Agency, Inc., petitioner in C.T.A. Case No. 1839, a fine of ten thousand pesos (₱10,000.00), within thirty days from the date this decision becomes final.

SO ORDERED.

Quezon City, September 30, 1969.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge