MACONDRAY & CO., INC.,
as ship agent of the M.S.
"Fernview",
Petitioner,

- versus - CTA CASE NO. 2067

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner, in its capacity as agent of the M/S "Fernview", has appealed from the decision of respondent Commissioner of Customs, affirming in toto that of the Collector of Customs of Manila imposing on said vessel an administrative fine of ONE THOUSAND PESOS (₱1,000.00) for carrying unmanifested cargo in violation of Section 1005 of the Tariff and Customs Code, which is penalized under Section 2521 of the same Code.

The records show that the M/S "Fernview" called at the Port of Manila, under Customs Registry No. 1997, on December 25, 1966, carrying unmanifested cargo consisting of one (1) case of fittings and steel tubings. It appears that this unmanifested cargo was previously manifested on the M/S "Fernbank", another vessel of which herein petitioner is also the agent, which arrived earlier in Manila on December 10, 1966, under Customs Registry No. 1914. The said case of pipe fittings and steel tubings was, however, short-shipped on the M/S "Fernbank" for which reason

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it was loaded instead on the M/S "Fernview" which, as earlier stated, arrived on a later date, that is, on December 25, 1966. The shipment was, however, unmanifested; but to enable the consignee to take delivery thereof, the Inward Foreign Cargo Manifest of the M/S "Fernview" was amended on February 21, 1967. To give petitioner a chance to present its evidence in support of its stand, an administrative hearing was conducted before the Collector of Customs. After due hearing, the Collector of Customs found the M/S "Fernview" liable for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code and imposed a fine of ₱1,000.00 upon the said vessel. Petitioner, as agent of the vessel, appealed the Collector's decision to the Commissioner of Customs, who affirmed the same <u>in toto</u> in his decision dated October 15, 1969. On February 24, 1970, the present appeal was instituted.

The only issue presented for resolution is the legality of the administrative fine of ₱1,000.00.

Petitioner contends that it should not be penalized for violation of Section 1005 of the Tariff & Customs Code because said section is not a penal or prohibitive statute since it imposes no penalty; that the charge should have been for violation of Section 2521 in relation to Section 1005; that assuming <u>arguendo</u> that the charge for violation of Section 1005 is proper, respondent should have presented proof of

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fraud on the part of petitioner to warrant the imposition of the penalty considering that Section 1005 requires the element of fraud before it can be applied; that since petitioner in this case is merely an agent of the owner of the vessel M/S "Fernview", the proper party should be the owner of the said vessel; that the M/S "Fernview" is not subject to the administrative fine of ₱1,000.00 because the failure to manifest the cargo was without any fraudulent intent, but, rather, was due to an honest mistake or inadvertence; that an amendment to the inward manifest was filed by petitioner when it was discovered that a clerical error was committed when the said one case of pipe fittings was not included in the vessel's original inward manifest so that whatever liability it may have incurred was cured by the amendment; and that although the cargo is unmanifested, the bills of lading, consular invoices and suppliers' invoices contain the correct number of cargoes.

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

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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." Petitioner's contention that it should have been charged for violation of Section 2521 in relation to Section 1005, instead of vice-versa, is to our mind off tangent. It is clear under Section 2521 that the penalty therein provided is imposed when there is a failure on the part of a vessel to submit the requisite manifest. This requirement of vessel from a foreigh port to have on board a complete manifest of all her cargo is found in Section 1005. We do not subscribe to petitioner's theory that it should have been charged for violation of Section 2521 in relation to Section 1005. We find, therefore, that the charge against the vessel is proper.

Petitioner's contention that Section 1005 requires the element of fraud before it can be applied is devoid of merit. While fraud is mentioned therein, the same refers to the disallowance of amendment of a cargo manifest. In other words, amendment of the manifest may be allowed only in the absence of fraud in the preparation of the manifest; in the presence of fraud, no amendment may be allowed, but it does not mean that Section 1005 can not be applied.

Stated otherwise, whether or not an incomplete manifest is amended, Section 1005 is violated upon failure to submit a complete cargo manifest.

The defence of good faith for failure to manifest a cargo was already passed upon in the case of Smith Bell & Co., (Philippines) Inc. vs. Commissioner of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969, wherein it was held that -

> "Under Section 1005 of the Tariff and Customs Code, it is an imperative obligation of every vessel from a foreign port to have on Board a complete manifest of all her cargo. No exception is mentioned in the statute. Neither is there mention of any exception in Section 2521 of said Code providing for a fine for vessels without proper manifests, nor in Section 2530 thereof providing for the confiscation of unmanifested goods. The recognition by the Court of any attempt to read into the statute any exception, such as misshipment of goods, would be contrary to the pervasive spirit as well as the clear language of the aforesaid provisions."

On the matter of amendment of the cargo manifest, the Court, in the case of Compañia General de Tabacos de Filipinas vs. Comm. of Customs, C.T.A. Case No. 1939, February 26, 1971, held:

> "Petitioner further asserts that 'the provision of the law on amendment is designed to protect the master, agent or consignee from the error, mistake or discrepancy committed by him in the preparation of the original manifest and that it is unfair and uncalled for to conclude, as the respondent held in this case, that the right to amend the manifest is for the principal purpose of protecting innocent importers.' Whether the purpose of the law in permitting amendment of a vessels' manifest is to protect the master, agent or consignee of the vessels, or the importer

> of the goods, is to our mind of slight significance. Under Section 2521 of the Tariff and Customs Code, no relief from liability for the fine is granted where an amendment of the manifest is allowed."

With respect to petitioner's claim that an agent cannot be legally held liable for violation of any law committed by its principal, we believe that the same is unmeritorious. A perusal of the decision subject of this appeal will show that the fine is imposed under Section 2521 of the Tariff & Customs Code upon the offending vessel. The fine was imposed upon the vessel in a seizure proceeding, which is <u>in rem</u>, as provided in the Tariff and Customs Code. (See Secs. 2205-2212; Secs. 2301-2307; and Secs. 2312-2315, in relation to Sec. 2532 of the Tariff & Customs Code.) Petitioner was alternately held liable for the fine for the reason that it submitted itself to the jurisdiction of the Bureau of Customs as agent of the vessel. It is well to note, however, that it can choose not to pay the fine; in the event that it chooses not to pay, the vessel will be subject to seizure under Section 2532 of the Tariff & Customs Code.

Petitioner's argument that although the cargo is unmanifested, the bills of lading, consular invoices, and suppliers' invoices submitted with the manifest, reflected the correct cargo, is of no moment. On this point, this Court held:

> "The fact that the whole shipment was indicated in the bill of lading does not

> excuse compliance from the requirement of a manifest. x x x. All these cannot be accomplished by the mere use of the bill of lading inasmuch as the bill of lading is not required to be presented to the boarding customs officers. (Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1641, Nov. 15, 1965.)

In view of the above, we believe that the imposition of the fine upon the erring vessel is legal. However, considering the circumstances of the case, we are of the opinion that a fine of ₱500.00, instead of ₱1,000.00, would be an adequate penalty for the offense.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified by reducing the fine of ₱1,000.00 to ₱500.00. Accordingly, petitioner is order d to pay the sum of ₱500.00 within thirty (30) days from the date this decision becomes final, otherwise, appropriate proceeding should be taken against the vessel M/S "Fernview," pursuant to Section 2532 of the Tariff and Customs Code.

SO ORDERED.

Quezon City, October 6, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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