REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

April 4, 1973

MACONDRAY & CO., INC.,
in its capacity as agent
of the MV "Roseville",
Petitioner,

versus

C.T.A. CASE NO. 1992

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner, in its capacity as agent of the MS "Roseville", has appealed from the decision of respondent Commissioner of Customs, dated January 20, 1969, affirming that of the Collector of Customs of Manila in Administrative Case No. V-138/67 (Customs Case No. 900), imposing on said vessel an administrative fine of ₱2,000 for conveying unmanifested cargo, in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

The facts of this case are not controverted, the same having been stipulated by the parties as follows:

> 1. Petitioner is a corporation organized and existing under the laws of the Philippines with office at Shurdut Building, Intramuros, Manila; petitioner is the shipagent

in the Philippines of the vessel MS "Roseville"; respondent is the incumbent Commissioner of Customs.

2. On January 7, 1967, the MS "Roseville" with Registry No. 36 arrived at the port of Manila and discharged her cargo thereat including sixty-five (65) packages of rubber tires and tubes marked "Goodyear," which were not entered in the Inward Foreign Cargo Manifest of the vessel.

3. The sixty-five (65) packages of rubber tires and tubes were not included in the manifest of the MS "Roseville" as the cargo was shortlanded by the MS "Tarantel", Voy. 18-A which arrived at Manila on January 2, 1967, Registry No. 8 and subsequently came forward to Manila on the MS "Roseville" on January 7, 1967, Voy. 13-A.

4. An amendment to the Inward Foreign Manifest of the MS "Roseville" was actually filed by petitioner and approved by the Bureau of Customs without prejudice to an administrative action against the vessel and the same was entered and attached to the original manifest.

5. On October 12, 1968, the Collector of Customs of Manila initiated Administrative Case No. 138 against MS "Roseville" for supposedly carrying unmanifested cargo in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, alleging that sixty-five (65) packages of rubber tires and tubes were unmanifested by said vessel.

6. On February 6, 1968, the Collector of Customs of Manila rendered a decision holding that MS "Roseville" conveyed unmanifested cargo consisting of sixty-five (65) packages of rubber tires and tubes and imposed a fine of ₱2,000.00 against petitioner.

7. Petitioner appealed said decision to respondent Commissioner of Customs. On January 20, 1969, respondent Commissioner of Customs rendered a decision affirming the decision of the Collector of Customs of Manila imposing a fine of ₱2,000.00.

8. On March 15, 1969, petitioner filed with this Honorable Court the instant Petition. (Pp. 64-66, CTA rec.)

The only issue raised in this appeal is the legality of the imposition of the administrative fine of ₱2,000.00 on the vessel MS "Roseville".

Petitioner assails the legality of the imposition of the fine on the following grounds, to wit: (1) that respondent should have charged petitioner for violation of Section 2521 in relation to Section 1005 of the Tariff and Customs Code and not vice-versa because Section 1005 is not penal or prohibitive statute but a procedural law; (2) that assuming arguendo that the charge for violation of Section 1005 is proper, respondent should have presented proof of fraud to warrant violation thereof; (3) that the failure to manifest the cargo was without any fraudulent intent, but, rather, due to an honest mistake or inadvertence; (4) that the amendment to the manifest cures the defect and relieves petitioner from liability; (5) that the proper party who should be held liable for the omission is the owner of the vessel and not petitioner who is merely the agent; and (6) that the deficiency in the manifest has been adequately supplied by the bill of lading, consular invoice, and other shipping documents. Petitioner finally claims that even if the imposition of the fine is legal, the amount of ₱2,000.00 is unconscionable.

The arguments raised by petitioner have repeatedly been rejected by this Court in numerous cases involving the same parties and similar factual and legal issues.[1] For this purpose, we deem it sufficient to quote from our decision in Macondray & Co., Inc. v. Commissioner of Customs, CTA Case No. 2067, October 6, 1972, wherein we held as follows:

> . . . 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 foreign port to have on board a complete manifest of all her cargo is found in Section 1005. We do not sub-

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[1]See Macondray & Co., Inc. v. Comm. of Customs, CTA Case No. 2079, Sept. 29, 1972; Macondray & Co., Inc. v. Comm. of Customs, CTA Case No. 2138, Sept. 30, 1972; Macondray & Co., Inc. v. Comm. of Customs, CTA Case No. 2140, Nov. 15, 1972; Macondray & Co., Inc. v. Comm. of Customs, CTA Case No. 2073, Nov. 25, 1972.

scribe 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 defense 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 commited 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 in rem, as provided in the Tariff and Customs Code. (See Secs. 2205-2212; Secs. 2301-2307; and Secs. 2312-2315, in relation to Section 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.)

With respect to the amount of the fine, it appears that the unmanifested cargo in question was originally manifested and intended to be loaded on board the MS "Tarantel" but due to oversight was not loaded on board said vessel and the same had to be shipped through the MS "Roseville." Considering the circumstances of the case, we find that a fine of ₱1,000.00, in lieu of ₱2,000.00, would be a sufficient penalty.

WHEREFORE, the decision appealed from is hereby modified, and petitioner is hereby ordered to pay the sum of ₱1,000.00 to respondent within 30 days from the date this decision becomes final.

SO ORDERED.

Quezon City, April 4, 1973.

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