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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

April 20/73

SMITH, BELL CO., INC.,
in its capacity as agent
of the SS "CHANGSA",
Petitioner,

versus

C.T.A. CASE NO. 2396

COMMISSIONER OF
CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs, dated July 14, 1971, holding the vessel SS "CHANGSA" and/or petitioner, as ship agent thereof, liable for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, and imposing a fine of ₱5,000.

It appears that on March 31, 1968, the vessel SS "CHANGSA" arrived at the port of Manila with various merchandise, among which, was a case of compressor the weight of which was not stated in the cargo manifest. On April 16, 1968, an amendment to the manifest was filed by petitioner with the Bureau of Customs so as to show the weight of said cargo,[1] which amendment was accepted

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[1] 38 kilos.

without prejudice to an administrative action against the vessel. On May 6, 1971, after the termination of the administrative proceedings, the Collector of Customs rendered a decision imposing a fine of ₱5,000.00 against the SS "CHANGSA" and/or its agent on the ground that the omission to include the weight of the compressor was a violation of Section 1005 of the Tariff and Customs Code, punishable under Section 2521 of the same Code. Upon appeal by petitioner, said decision of the Collector was affirmed by the Commissioner of Customs. Hence, this appeal.

The principal issue is whether the non-inclusion of the weight of a cargo in the manifest is a violation of Section 1005 of the Tariff and Customs Code punishable under Section 2521 thereof.

The opinion of respondent is that when the law requires that the manifest shall include the "quantity" and "description" of the packages (or articles), the weight thereof is deemed covered by the requirement. In other words, the terms "quantity and description" include weight of the cargo. Consequently, when the weight of the cargo is not shown in the manifest the same constitutes a violation of Section 1005 of the Tariff and Customs Code which is punishable by a fine under Section 2521 thereof.

Petitioner seeks to impugn respondent's interpretation that weight is deemed included in "quantity and description" by differentiating the three terms in the light of certain authorities. For instance, on quantity and weight, petitioner invokes the case of Sherman, S & S Ry. Co. v. Conly (37 S.W. 253-254) wherein it was held:

> A demand for "weights or amount, or something more definite" does not necessarily include and embrace quantity. Quantity may include weights or amounts, but neither of these latter terms, are accurately synonymous with "quantity". A shipment of lumber may be designated by giving the quantity in some other manners than by weight or amount. The rule is well established in this state that statutes of the character sought to be enforced in this case must be strictly and literally complied with in order to recover the penalty.

And on weight and description, the definition of the latter by Bouvier has been cited thus:

> A written account of the state and condition of personal property, titles, papers, and the like. It is a kind of inventory, but is more particular in ascertaining the exact condition of the property, and is without any appraisement of it. (Bouvier's Law Dictionary, Vol. 1, p. 853, 1914 ed.)

Finally, it is contended that the lawmakers did not intend to include weight in Section 1005 as a requirement for a manifest because there is a separate provision on weight in Section 2523 of the Tariff and Customs Code imposing a penalty on certain discrepancies in weights.

We are not insensible to the force of petitioner's argument but, we think, the more logical and plausible interpretation is that taken by respondent.

Section 1005 provides:

> 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.
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> All of the cargo intended to be landed at a port in the Philippines must be described in separate manifests for each port of call therein. Each manifest shall include 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. 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. If the vessel does not carry cargo or passengers the manifest must show that no cargo or passenger, as the case may be, is carried from the port of departure to the port of destination in the Philippines.

> A cargo manifest shall in no case be changed or altered after entry of the vessel, except by means of an amendment by the master, consignee or agent thereof, under oath, and attached to the original manifest: Provided, however, That after the invoice and/or entry covering an importation have been received and recorded in the office of the appraiser, no amendment of the manifest shall be allowed, except when it is obvious that a clerical error or any other discrepancy has been committed in the preparation of the manifest, without any fraudulent intent, discovery of which could not have been made until after examination of the importation has been completed.

2 It is plain that the particulars required to be included in the cargo manifest are the following: (1) port of departure; (2) port of delivery; (3) marks, numbers, quantity and description of the packages; and (4) names of the consignees. There is no specific mention in these particulars about the weight of the article. Notwithstanding this, however, it may not readily be assumed that the Legislature intended that such an equally important data as weight should be omitted or excluded as a requirement. In the first place, Section 1005 requires that there must be a "complete manifest" of all cargo, and that all cargo "must be described in separate manifests". By the legal requirement that there must be a "complete manifest" and that the "cargo must be described" therein,

the object, in our opinion, is not simply to confine the particulars to the outward features, such as numberings, markings and the like, but to include such other important data as weight. A manifest, after all, is a summary of all the bills of lading for the cargo of a vessel (21 Am. Jur. 2d 809). And among the data required of a bill of lading is the weight of the article.

In any event, it is not farfetched to consider that under the term "quantity" - one of the requirements to be included in the manifest - weight is deemed included, at least insofar as the Tariff and Customs Code is concerned. The authority cited by petitioner against this interpretation conversely supports the same rather than contradicts it. Thus in Sherman, S & S Ry. Co. v. Conly, supra, it is said:

> A demand for "weight or amount, or something more definite" does not necessarily include and embrace quantity. Quantity may include weights or amounts, but neither of these latter terms, are accurately synonymous with quantity. A shipment of lumber may be designated by giving the quantity in some other manners than by weight or amount. . . (Underlining supplied.)

In other words, the term "quantity" used in the law is broad enough to embrace or include weight. But when the law specifies only weight, the latter cannot be construed to include or embrace quantity.

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There are some provisions in the Tariff and Customs Code which lend support to the construction that the weight of a cargo must be stated in the manifest. For example, Sections 1105 and 2523, respectively, provide as follows: x x x

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> SEC. 1105. Documents Required to be Presented in Making Entry.—
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> a. For the purpose of making entry, there shall be presented to customs boarding official four copies of a general declaration which shall contain the following data:
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> x x x x x
>
> 7. Cargo manifest together with information as to names of consignees, their nationalities and their addresses, numbers and marks of packages, nature of goods, destination, gross weight and value.
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> SEC. 2523. Discrepancy Between Actual and Declared Weight of Manifested Article.—If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft. (Underlining supplied.)

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The provisions of Section 2523 certainly brings the thought that weight of a cargo is a requirement for a manifest. Otherwise, there would be no point in providing for a penalty, assuming that the declared weight in the manifest is wrong and is due to the carelessness or incompetency of the owner, officer or employee of the vessel.

In interpreting and construing the provisions of the Tariff and Customs Code, this Court should not be strict in the sense that the same are treated as penal laws. Rather, this Court must be fair and reasonable to carry out the legislative intention.

> . . . Statutes to prevent frauds upon the revenue are considered to be enacted for the public good, and therefore, although they impose penalties or forfeitures, are not to be construed like penal laws generally, but are to be fairly and reasonably construed so as to carry out the legislative intention. (21 Am. Jur. 2d. Sec. 124, p. 866.)
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> Statutes imposing customs duties are remedial in character rather than penal, since they are intended to prevent fraud, suppress public wrong, and promote the public good. They should be so construed as to carry out the intention of Congress in passing them and most effectually to accomplish these objects . . . Hence the language of such a statute must be construed in a large and liberal spirit. (Id., Sec. 23, p. 752; underlining supplied.)

Courts will not cling to the letter of a statute and give it a literal interpretation when it will not serve the true intent and purpose of the legislature. The primary consideration in the interpretation of law is the intent and purpose of the lawmaking body.)(See Yellow Taxi and Pasay Transportation Workers' Union v. Manila Yellow Taxi Cab. Co., 80 Phil. 833; Salaysay v. Castro, 52 Off. Gaz. 3075; Tañada v. Cuenco, G.R. No. L-10520, Feb. 28, 1957; Phil. Sugar Centrals Agency v. Collector of Customs, 51 Phil. 131; Gomez v. Government Insurance Board, 78 Phil. 216; Ledesma v. Pictain, 79 Phil. 95.) In the case of Torres v. Limjap (56 Phil. 141), the Supreme Court, citing Sutherland, the foremost authority on statutory construction, said:

> In the interpretation and construction of a statute the intent of the law-maker should always be ascertained and given effect, and courts will not follow the letter of a statute when it leads away from the true intent and purpose of the Legislature and to conclusions inconsistent with the spirit of the Act. On this subject, Sutherland, the foremost authority on statutory construction, says:
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> > "The Intent of a Statute is the Law.—If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The

> intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to that intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature." (Vol. II Sutherland, Statutory Construction, pp. 693-695.)

The rule that the expression of one thing is the exclusion of others is merely an aid to the ascertainment of the meaning of a law and must yield whenever a contrary intention on the part of the lawmaker is present. (Springer v. Government of P. I., 277 U.S. 189, 72 L. ed. 845, 48 Sup. Ct. Rep. 480.) In a case wherein the respondents contended "that Rule 27 is not applicable because it is not mentioned in Section 19 Rule 4. . ., and inclusio unius est exclusio alterius, enumeration of certain rules, excludes others", the

Supreme Court held:

> That legal maxim is well-known, and respondents' position seems at first blush tenable. But the maxim is no more than an auxiliary rule of interpretation to be ignored where other circumstances indicate the enumeration was not intended to be exclusive. (Manabat v. De Aquino, etc., et al., 92 Phil. 1025; underlining supplied.)

In view of our interpretation that the weight of a cargo is deemed included in the particulars required to be stated in the manifest under Section 1005 of the Tariff and Customs Code, the non-inclusion thereof in the manifest amounts to a violation of said section, and is, therefore, punishable under Section 2521 of the same Code.

We find, however, that the fine of ₱5,000.00 imposed by the Bureau of Customs for said violation is excessive under the circumstances of this case. This case is of first impression and involves a difficult question of law. Accordingly, it is our opinion that a fine of ₱200.00 upon the vessel should serve as an adequate penalty.

WHEREFORE, the decision of respondent Commissioner of Customs is hereby modified by reducing the amount of the fine from ₱5,000.00

to ₱200.00. No costs.

SO ORDERED.

Quezon City, April 30, 1973.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge