REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC.,
in its capacity as agent
of the MS "FERNVIEW",
Petitioner,

- versus - C.T.A. CASE NO. 2170

COMMISSIONER OF CUSTOMS,
Respondent.
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11/27/81

D E C I S I O N

Petitioner Macondray & Co., Inc., in its capacity as ship agent of the vessel MS "FERNVIEW", has appealed from the decision of respondent Commissioner of Customs dated June 30, 1970, imposing an administrative fine of ₱10,000.00 against the said vessel for conveying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

It appears that on January 26, 1969, the vessel MS "FERNVIEW", with Registry No. 171 and of which petitioner is the ship agent, arrived at the Port of Manila carrying, among other cargoes, one (1) box containing twenty (20) packages of various machinery parts which, although covered by a bill of lading, was not listed in the vessel's inward cargo manifest. On July 14, 1969, in order to correct the discrepancy, petitioner submitted an amendment to the vessel's manifest, which amendment was accepted and approved by the Collector of Customs of Manila "without prejudice to an administrative action against the vessel." On December 10, 1969, an administrative proceeding (Administrative Case No. V-503/69) was instituted against the MS "FERNVIEW" for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

On February 24, 1970, after the termination of said proceeding, the Collector of Customs of Manila rendered a decision holding the said vessel liable for an administrative fine of ₱3,000.00 for violation of said sections of the Code.

On June 30, 1970, on appeal by petitioner, the Commissioner of Customs rendered a decision modifying the decision of the Collector of Customs by increasing the amount of the fine to ₱10,000.00, for the reason that the vessel MS "FERNVIEW" "has been cited in several instances for violating Section 1005 of the Tariff and Customs Code". Hence, the present recourse.

The issue to be resolved is whether or not the vessel in question is liable for the fine imposed by respondent Commissioner of Customs for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code, the pertinent provisions of which state as follows:

> 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, number, quantity and description of the packages and the names of the consignees thereof. x x x. 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.
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> 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.
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> 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 preceeding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.
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The defenses and arguments raised by petitioner in its petition for review and memorandum may be summarized as follows:

1. The failure to manifest the cargo in question was due to clerical error committed in good faith or without fraudulent intent because of a longshoreman strike at the port of loading.

2. The amendment to the cargo manifest approved by the Bureau of Customs cured the defect thereof and relieved the vessel from liability.

3. The charge against petitioner for violation of Section 1005 of the Tariff and Customs Code is improper because said section is not penal nor prohibitive but merely procedural. Instead, the charge should have been for violation of Section 2521 in relation to Section 1005 of the Code and not vice versa.

4. The Bureau of Customs failed to prove that there was fraud in the omission to manifest the cargo in question, hence, there is no violation of Section 1005 of the Code.

5. The petitioner, as ship agent, should not be held liable for the offense of the vessel.

6. The bill of lading covering the said shipment supplies the deficiency in the cargo manifest.

7. Even if the vessel is guilty of the violation, the amount of ₱10,000.00 imposed by the Commissioner of Customs as fine is unconscionable and excessive, and, hence, the same should be reduced.

On the other hand, respondent maintains that under Section 1005 of the Tariff and Customs Code, it is an imperative obligation of every vessel coming from a foreign port to have on board a complete and correct manifest of all its cargo and that no exception is provided by the statute. Therefore, the defenses of honest mistake, clerical error, good faith, lack of fraudulent intent and amendment to the manifest are futile and will not relieve the vessel from liability. And as to the amount of the fine, the imposition of the maximum penalty of ₱10,000.00 under Section 2521 of the Tariff and Customs Code is justified because the vessel MS "FERNVIEW" has been cited in several instances for conveying unmanifested cargo in violation of Section 1005 of the Code, specifically in Customs Cases Nos. 903, 967, 970 and 989, now

C.T.A. Cases 1930, 2067, 2064 and 2170, respectively. (See Respondent's Memorandum, pp. 83-87, C.T.A. records.)

The issue and the arguments presented are not of first impression. In previous cases of similar or identical nature as the case at bar, this Court has repeatedly and consistently ruled that the law makes it an imperative obligation of every vessel coming from a foreign port to have on board a complete and proper manifest of all her cargo, and to such mandatory requirement, no exception is provided by the statute.

> "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 the confiscation of unmanifested goods. <u>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</u>

> <u>clear language of the aforesaid provisions</u>. (Smith, Bell & Co. (Phil.) Inc. vs. Commissioner of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; (underlining supplied) [1]

The rationale of the foregoing pronouncement of this Court was explicitly enunciated by the Supreme Court in the case of U.S. vs. The Steamship "Rubi", 32 Phil. 228, thus:

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[1] See also Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2484, Jan. 19, 1976; Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2144, Jan. 5, 1976; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2522, February 2, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2471, April 28, 1977; Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2742, Sept. 16, 1977; Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2781, Sept. 30, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2474, Oct. 24, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2528, Oct. 28, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2069, Nov. 28, 1977; Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2472, Nov. 28, 1977; Litonjua Shipping Co., Inc. vs. Commissioner of Customs, CTA Case No. 2703, Oct. 20, 1978; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2559, Dec. 28, 1979; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2699, Jan. 24, 1980; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2537, Jan. 28, 1980.)

> The evident intent and object of these requirements for the submission of manifests by all vessels from foreign ports is to impose upon the owners and officers of such vessels an imperative obligation to submit lists of the entire lading of the ship in the prescribed form, in order to facilitate the labors of the Customs and Immigration officers, and to defeat any attempt to make use of such vessels to secure the unlawful entry of persons or things into the Islands. No exception is made in the statute, and the recognition of any attempt to read an exception into the statute could hardly fail to defeat the purpose of its enactment. (underlining supplied.)

Consequently, the fact that the failure to manifest the vessel's cargo was due to clerical error or inadvertence committed in good faith or without fraudulent intent and that an amendment to the vessel's manifest was approved and accepted by the Bureau of Customs would not constitute a valid defense and exculpate the vessel from liability. (See Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2503, July 31, 1978; Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, CTA Case No. 2559, Dec. 28, 1979; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2699, Jan. 24, 1980; Compañia General de Tabacos de Filipinas vs. The Commissioner of Customs, CTA Case No. 2537, Jan. 28, 1980.)

Besides, on the matter of amendment of the vessel's cargo manifest, this Court said:

> Another strong reason for not adopting the interpretation advocated by petitioner is found in the pernicious consequence which would flow from such construction. If we are to exempt the vessel from liability for conveying unmanifested cargo by the simple expedient of amending its manifest after discovery of the offense, it would embolden and encourage other vessels to deliberately load cargo without listing them in their manifests. If the unmanifested cargo is discovered, as in the present case, the manifest could simply be amended and thus free the vessel from any liability whatsoever; but if the unmanifested cargo is not discovered, the same would enter the country free of duties and taxes to the detriment of the government. In both instances, the owner or master of the vessel has nothing to lose but everything to gain. On the other hand, the government is always the loser. Such a result would not be in keeping with the evident purpose of the law in providing effective means for the collection of customs revenue. For this reason, we are not inclined to accept the interpretation of petitioner. (Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 1930, Dec. 27, 1969; Petition for review on certiorari denied, G.R. No. L-31599, Feb. 10, 1970.)

Neither would there be tenability and justification in the contentions of petitioner that the charge for violation of Section 1005 in relation to Section 2521 of the Code is improper; that proof of fraud in the omission to manifest the cargo is necessary to constitute a violation of the law; that petitioner, as ship agent, should not be held liable for the offense of the vessel; and that the bill of lading covering the shipment in question supplies the deficiency of the cargo manifest. For as categorically stated by this Court in rejecting said defenses in the case of Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2067, October 6, 1972, which involves a similar violation by the same vessel, MS "FERNVIEW":

> 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 involved a similar issue, the Court held: "x x x Section 1005, of the Tariff and 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 foreign port to

have on board a complete manifest of all her cargo is found in Section 1005. We do not subscribed 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.

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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 Sec. 2521 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, CTA Case No. 1641, Nov. 15, 1965.) (Underlining supplied) [2/]

Finally, as to the amount of fine, which petitioner assails as unconscionable and excessive, the Court notes that the vessel MS "FERNVIEW" has indeed been cited on several occasions for the same violation of law. Such being the case, the imposition of the maximum fine of ₱10,000.00 under Section 2521 of the Tariff and Customs Code (i.e., prior to the amendment by Presidential Decree No. 34

[2/] See also Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2079, Sept. 29, 1972.

and Presidential Decree No. 1464) is in order.

WHEREFORE, the decision of respondent Commissioner of Customs is affirmed *in toto* with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, November 27, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge