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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

December 29, 1964

C. F. SHARP & COMPANY, in its capacity as ship agent of the S/S "BAYERNSTEIN", and AMBROSE PINDUR, in his capacity as Chief Steward of the S/S "BAYERNSTEIN",
Petitioners,

- versus -

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

C. T. A. CASE NO. 1469

x- - - - - - - - - - - - - - - - x

C. F. SHARP & COMPANY, in its capacity as ship agents of the S/S "BAYERNSTEIN",
Petitioner,

- versus -

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

C. T. A. CASE NO. 1483

x- - - - - - - - - - - - - - - - x

D E C I S I O N

These are appeals from the decisions of respondent affirming decisions of the Collector of Customs of Manila which decreed the forfeiture of 800 Monopol lighters and 12 ball pens and upheld the imposition of a fine of ₱5,000.00 on the S/S "Bayernstein." For the reason that these cases arose from the same set of facts, the same will be considered jointly.

On June 24, 1960, a team of Customs agents, who boarded the S/S "Bayernstein" while it was in the port of Manila, found unmanifested 800 Monopol lighters and 12 ball pens inside the cabin of the chief steward. The articles were seized and an administrative fine of ₱5,000.00 was imposed on the said vessel.

Seizure and forfeiture proceedings were instituted and, after hearing, the Acting Collector of Customs decreed the forfeiture of the articles for being unmanifested, pursuant to Section 2530(g), in relation to Section 1005 of the Tariff and Customs Code, and imposed an administrative fine of ₱5,000.00 on the S/S "Bayornstein" under Section 2521 of the same Code. From these decisions, petitioners appealed to the Acting Commissioner of Customs who sustained the findings and the decisions of the Acting Collector of Customs. Hence, these appeals.

The only issue to be resolved in these cases is whether or not the forfeiture of the said articles and the imposition of the fine on the said vessel are in accordance with law.

There is no dispute as to the facts of the cases. It was admitted by petitioners that the articles in question were not included in the inward cargo manifest, store list, passenger baggage manifest, crew declaration, list and curio list of the vessel. However, it was claimed that they were not cargoes for which a manifest was required. It was alleged that they were parcels, merely entrusted to the chief steward to be delivered to some friends in Hongkong and Japan, and therefore need not be included in the inward cargo manifest submitted to the Bureau of Customs of Manila. On the other hand, it was contended by respondent that the said articles were cargoes which should be included in the manifest of the vessel.

The pertinent portions of Sections 1005 and 2530(g) of the Tariff and Customs Code, upon which the forfeiture of the articles was based, provide:

> "Sec. 1005. Manifest Required of Vessel From Foreign Port. - Every vessel from a foreign port or place must have on board a complete manifest of all her cargo. (Underscoring supplied.)
>
> x x x x x
>
> "Sec. 2530. Property Subject of Forfeiture Under Tariff and Customs Laws. Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> x x x x x
>
> "g. Unmanifested article found on any vessel or aircraft, if manifest therefor is required." (Underscoring supplied.)

We find the contention of petitioners to be without merit. Section 1005 requires every vessel from a foreign port to have on board a complete manifest of all her cargoes and Section 2530 indicates the articles that may be the subject of forfeiture. While the law is silent as to the precise definition of "cargo," our Supreme Court has construed "cargo" to include all goods, wares, and merchandise aboard ship which do not form part of the ship's stores. (U.S. vs. "Islas Filipinas," 28 Phil. 291). Similarly, it was held that "the word 'cargo' refers to the 'entire lading of the ship which carries it' and includes all goods, wares, merchandise, effects, and indeed everything of every kind or description, found on board, except such things as are used or intended for use in connection with the management or direction of the vessel, and are not intended for delivery at any port of call, and except also, perhaps, 'passengers or immigrants and their baggage'." (U. S. v. S.S. Rubi, 32 Phil., 228). The articles in question were neither part of the ship's stores nor were they used or intended for use in connection with the management or direction of the vessel. ]

Assuming, *arguendo*, that the articles in question were really intended to be delivered in Hongkong or Japan, such fact does not exempt said articles from being manifested. We agree with respondent that the afore-quoted portion of Section 1005 does not make any distinction between a cargo intended for delivery in any port in the Philippines and one which is intended to be delivered, in other ports.

Finally, petitioners contended that the vessel S. S. "Bayernstein" has never been involved in any customs violation, and insinuated that the fine of ₱5,000.00 was unreasonable. Section 2521 of the Tariff and Customs Code authorizes the imposition of a fine of not exceeding ₱10,000.00 upon a vessel which enters or departs from a port of entry conveying unmanifested cargo. We see no plausible reason to warrant a modification in the amount of the fine imposed in this case it not appearing that there was an abuse of discretion in the determination of the proper penalty as authorized by law.

WHEREFORE, the decisions appealed from are hereby affirmed, with costs against petitioners.

SO ORDERED.

Quezon City, December 29, 1964.

R. M. Umali
ROMAN M. UMALI
Associate Judge

I CONCUR:

Augusto M. Luciano
AUGUSTO M. LUCIANO
Acting Presiding Judge