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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA MARITIMA,
Petitioner,

- versus -

C.T.A. CASE NO. 2577

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

2/28/78

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D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Customs in Customs Case No. 72-47 (Adm. Case No. V. 567/70), affirming that of the Collector of Customs of Manila, imposing an administrative fine of ₱10,000.00 upon the vessel M/V "Guimaras" and/or its owner/operator, petitioner Compañia Maritima, for violation of Section 907, in relation to Section 2521, of the Tariff and Customs Code.

It appears that on February 28, 1970, the M/V "Guimaras", a domestic vessel owned and operated by petitioner Compañia Maritima, loaded various cargoes at the Port of Cotabato, including 28 mail bags destined for Manila. On March 3, 1970, after said vessel arrived at Pier 8, North Harbor, Manila, elements of the Philippine Coast Guard, headed by Lt. Araw Bernabe, boarded the vessel and conducted an inspection of its cargoes. In the course thereof, it was discovered that the 28 mailbags contained several boxes of blue seal "Champion" cigarettes. Consequently, the investigating team confiscated the cigarettes in question and several officers of the M/V "Guimaras" were investigated at the headquarters of the Philippine Coast Guard.

On May 28, 1970, after being called upon by Customs authorities to explain in writing and show cause why no administrative fine should be imposed upon the said vessel, Mr. R.R. Melo of petitioner's Legal Department wrote a reply requesting the Collector of Customs that a formal hearing be conducted in connection with the said incident.

On August 12, 1970, administrative proceeding No. V-567/70 (Customs Case No. 72-47) was instituted against the vessel and, after several hearings, the Collector of Customs rendered a decision on October 25, 1972, imposing a fine of ₱10,000.00 on the vessel M/V "Guimaras" and/or petitioner herein for violation of Section 907, in relation to Section 2521, of the Tariff and Customs Code.

On August 8, 1973, after appeal by petitioner, the Commissioner of Customs affirmed <u>in toto</u> the decision of the Collector. Thereafter, petitioner filed a motion for reconsideration, which was denied. Hence, on January 24, 1974, petitioner filed the instant petition for review.

The issue posed for resolution is whether or not the vessel M/V "Guimaras" and/or petitioner herein are liable for carrying unmanifested cargo in violation of Section 907, in relation to Section 2521, of the Tariff and Customs Code, the pertinent provisions of which read:

> "Sec. 907. Manifests Required Upon Departure From Port of Entry.- Prior to departure from a port of entry, the master of a vessel licensed for the coastwise trade shall make out and subscribe duplicate manifests of the whole of the cargo. x x x, specifying in the cargo manifests the marks and numbers of packages, the port of destination, and the names of the consignees, together with such information as may be required, x x x. He shall deliver such manifests to the Collector, or other customs official duly authorized, before whom he shall swear to the best of his knowledge and belief, in respect to the cargo manifests, that the goods therein described, if foreign, were imported legally and that the duties, taxes and other charges thereon have been paid or secured, x x x. Thereupon, the Collector, or customs official, shall certify the same on the manifests, the original of which he shall return to the master with a permit specifying therein, generally, the lading on board such vessel, and authorizing him to proceed to his port of destination, retaining the duplicates." (Underlining supplied.)

> "Sec. 2521. Failure to Supply Requisite Manifest.- If any vessel x x x enters and departs from a port of entry without submitting the proper manifest to the customs authorities, or shall enter or depart conveying unmanifested cargo x x x, such vessel x x x shall be fined in the amount not exceeding ten thousand pesos.

xxx xx x xxx."

In disclaiming liability under the aforequoted provisions of law, petitioner contends that the (28) mailbags are not required to be manifested because they are not cargoes or merchandise to be covered by bills of lading and subject to customs duties and taxes; that pursuant to Regulation No. 105 of the Revised Philippine Merchant Marine Regulations, the master of the vessel shall only enter the number of sacks (or bags) of mails received and delivered in the ship's logbook, and that the mailbags were covered by an accompanying waybill. Moreover, petitioner avers that the mailbags were sealed and that since the officers and crew members of the vessel are not authorized to examine and check the contents thereof, they have no knowledge that the mailbags contained blue seal cigarettes.

For his part, respondent, however, argues that (1) Section 907 of the Tariff and Customs Code is clear and explicit in requiring the master of the vessel licensed for coastwise trade to make out and subscribe duplicate manifests of the whole of the cargo and that said law makes no exception; (2) the requirements of Regulation No. 105 of the Revised Philippine Merchant Marine Regulations pertains only to mails transported by the vessel and not to smuggled items as those in the present case; (3) even if the mailbags were supported by a "Waybill", the same will not exempt the mailbags from being manifested under Section 907 of the Tariff and Customs Code, (4) nevertheless, the alleged "waybill" was never presented during the administrative hearing of the case; (5) the lack of knowledge on the part of the owner or officers of the vessel that the mailbags contained blue seal or smuggled cigarettes is not a defense for failure or omission of the vessel to manifest said cigarettes, citing, in support thereof, the decision of the Supreme Court in U.S. vs. S/S Islas Filipinas, 28 Phil. 291. (See Respondent's Memorandum, pp. 53-58, CTA rec.)

From our careful appraisal of the facts and the issue involved, we believe the question of whether or not the mails and mailbags are exempt from the requirement of a manifest is not material and determinative in the disposition of this case. Because even assuming that said mailbags are exempt from the requirement of the manifest, the blue seal cigarettes found inside the mailbags are not exempt from the requirement. So too, even if the mails and mailbags are not exempt from the said requirement, the manifest covering thereof, if any, will not serve as the proper manifest for the cigarettes. Consequently, whatever points have been raised and discussed herein by the parties relative to the mails and mailbags, such as the provisions of Regulation No. 105 of the Revised Philippine Merchant Marine Regulations and the accompanying waybill, will not, in any way, defeat the requirement of the law insofar as the unmanifested champion blue seal cigarettes are concerned.

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For the vessel's failure to manifest the blue seal cigarettes, we perceive that petitioner's defense of lack of knowledge is not entirely devoid of rationality. For if it is true that the mailbags in which the cigarettes were hidden were sealed, and the officers or employees of the vessel are not authorized to examine and check their contents, it would be plausible that said officers and/or employees of the vessel would not know the existence of said cigarettes and, eventually, would not be able to prepare the manifest thereof. Indeed, the evidence adduced by the petitioner during the customs administrative hearing would sustain the defense that the officers of the vessel did not know that the mailbags contained blue seal cigarettes. And neither the evidence of the Bureau of Customs could pinpoint directly and positively a particular officer of employee of the vessel who had any knowledge of the said cigarettes.

Nevertheless, we find a piece of evidence which, at least, creates a prima facie presumption that anyone of the officers or crewmembers of the vessel knew, or must have known, the existence of the blue seal cigarettes on board the vessel. This evidence, which appears unrebutted, stems from the testimony of Lt. Araw Bernabe, head of the investigating team, to the effect that when he found the mailbags in Hatch No. 1 of the vessel, one mailbag was already opened and it contained blue seal cigarettes, and that after the discovery thereof, none of the vessel's officers or representatives at the time could be found on board the vessel. The testimony of Lt. Araw Bernabe follows:

> Q: When you found the mailbags in hatch No. 1, did you open the said mailbags?
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> A: We did not open the mailbags but we found one mailbag already opened and it was hidden.
>
> Q: That opened mailbag, do you know if contained cigarettes?
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> A: Yes, since the opened mailbag is the same as the other mailbags which we found, we suspected that all of them contained blue seal cigarettes. (pp. 346-347, Customs rec.; underlining supplied.)
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> x x x x x x x x x x x x
>
> Q: But you stated that there was an officer?
>
> A: There was, but after the discovery there was none, and in fact it is a regulation that there must always be somebody on board, a duty officer all the time. (p. 348, Customs rec.)

The foregoing unrebutted and unclarified testimony of Lt. Bernabe elicits a persuasive and irresistible impression that the particular mailbag must have been opened by anyone of the persons, officers, or crew connected with the vessel at any time after the mailbags were loaded on board the vessel, or during transit, or when the vessel touched the port of Manila, and the contents thereof could have been known by him. And this presumption of knowledge is borne out by the fact that upon the discovery of the cigarettes, not even one of the officers of the vessel, and no officer was on duty, was around to make a spontaneous explanation of the contraband cigarettes to the authorities. Ordinarily, or in the usual and natural course of things, a person or officer, even though connected with the vessel, will be present to explain the violation if his conscience is clear and has nothing wrongful to hide.

At any rate, it is felt that petitioner's defense of lack of knowledge must yield to the spirit and policy of the law, and thus, must be rejected. Section 907 of the Tariff and Customs Code, as heretofore quoted, uses the word "shall" in requiring cargoes to be manifested, which is an imperative and mandatory obligation on the part of the master of the vessel. There is no exception provided in Section 907. Neither is there an exception provided in Section 2521, imposing a penalty of a fine, nor under Section 2530 which imposes the penalty of forfeiture of the unmanifested cargo. To recognize and accept, therefore, the defense of lack of knowledge on the part of the vessel's officers or its owner as a valid and exculpatory defense, would be reading into the law an exception, thereby rendering nugatory and ineffective the language of the statute and disregarding its purposes and objectives.

In this connection, we find applicable the following judicial interpretations and pronouncements:

**U.S. vs. The S.S. "Islas Filipinas"
28 Phil. 291**

The appellant claims that the court erred (1) in holding that there was no error in the decision of the Collector of Customs; (2) in not reversing the decision of the Collector; (3) in holding that steamer Islas Filipinas and the owners are liable to a fine under Section 303 of Act No. 355 for having on board unmanifested cargo; (4) in holding that the facts set forth in the compalint are violations of section 77 of Act No. 355. x x x.

x x x x x x x x x

The question of the propriety of subjecting the owners of a vessel to an administrative fine for the violation of customs-revenue laws is a matter for legislative determination. The Philippine Legislature has adopted this method of punishment for the infraction of certain provisions of Customs Administrative Act. Far more stringent laws and regulations have been adopted elsewhere. (See 36 Cyc., 20-20.) By the general miritime law, vessels are made responsible for the unlawful acts of their masters and crews; and this extends even to forfeiture by positive law. (Dobbin's Distillery vs. United States, 96 U.S., 395, 400.)

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Whether this responsibility of the owners of vessels is based on the law of agency or on the theory that the vessel (res) is the guilty thing, is of no special importance. Experience has demonstrated that the application of such penalties is necessary for the purpose of protecting the revenues, and the lives and property intrusted to such common carriers. x x x

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In that case the court held that under the law the vessel in question was liable to forfeiture in case the goods were unladen from her before due entry, whether the owners were privy to the transaction or otherwise. In his charge to the jury the president of the Court said: "This has been repeatedly called a hard law/ but the truth is, that revenue laws are of a harsher nature than any others, and necessarily so; for, the devices of ingenious men render it indispensable for the legislature to meet their illicit practices with severe penalties."

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The present case raises a question of great importance to the practical and successful working of the Customs Administrative Act, and its decision will determine whether section 77 of said Act is to be given force and effect and is to have any real value as a provision designed to prevent frauds upon the public revenues. <u>If the owners of vessels were allowed to escape the penalty provided for this fraud or attempt to defraud the revenues by setting up pleas of innocence and ignorance, it is clear that the legislative intention would be defeated</u>. x x x . (Underlining supplied.)

<u>U.S. vs. Steamship "Rubi", 32 Phil. 228</u>

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.

x x x x x x x x x

There is nothing in Section 77 of the Act which indicates any intention on the part of the legislature to limit the imposition of the prescribed penalty to cases where the captain or the ship's officers knowingly or willfully omitted any part of the cargo from the manifests. This section in unequivocal terms prescribes the imposition of the penalty in all cases of such omissions, and read together with section 303, which imposes penalties or forfeitures on the master of the vessels in such cases, it cannot be doubted that the intention of the legislature was to provide for the imposition of the prescribed penalties, whether such omissions occurred with or without the knowledge of the owner or the officers of the vessels. x x x.

x x x x x x x x x

x x x The power of the Legislature to prescribe such penalties is clearly sustained in the opinion of the Supreme Court of the United States in the case of United States vs. Brig. Malek Adhel (43 U.S. 210) from which we cite the following:

x x x x x x x x x x

And this is done from the necessity of the case, as the only adequate means of suppressing the offense or wrong, or insuring an indemnity to the injured party. The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and has been applied to other kindred cases, such as cases arising on embargo and non-intercourse acts. x x x.

x x x x x x x x x

. . . In many if not in most instances of violations of the provisions of section 77 of the statute it would be practically impossible to establish the connivance or willful participation of the master in the surreptitious lading of his ship with unmanifested goods, unless they were of such bulk as to render the inference of guilty knowledge irresistible. x x x. Under such circumstances the legislature has seen fit to prescribe penalties in all cases where unmanifested cargo is found on the vessel, whether it appears that such cargo was placed on board with or without the consent or knowledge of the owners or ship's officers and despite the possibility of individual hardships in some instances. x x x .

<u>Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2472, Nov. 28, 1977</u>

Indeed, the issue for resolution is not of first impression. In the recently decided case of Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2474, October 24, 1977, involving the same issue and identical parties, this Court, citing a long line of cases where the factual background is similar to that in the instant case, unequivocally held that it is an imperative duty of every vessel from a foreign port to have on board, without exception, a complete manifest of all her cargo. To quote:

> x x x x x For it has been repeatedly and consistently emphasized by this Court in previous similar cases, having factual setting identical to that in the case at bar, that the law makes it an imperative obligation of every vessel coming from a foreign port to have a complete and proper manifest of all her cargo, and from this mandatory requirement no exception is allowed by the statute.
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> > 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 manifest nor in Section 2530 thereof providing the confiscation of unmanifested goods. <u>The recognition by the Court of any attempt to read into the sta-</u>

> tute any exception, such as misshipment of goods, would be contrary to the pervasive spirit as well as the clear language of the aforesaid provision. (Smith, Bell & Co., (Phil.) Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, Dec. 27, 1969, Certiorari denied in G.R. No. L-31599, Feb. 10, 1970; Macondray & Co. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970; Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971; Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2143, June 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2079, Sept. 29, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2484, Jan. 19, 1976, Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2144 Jan. 5, 1976.) (Underlining supplied.)

It is hardly necessary to add that based upon the factual situation obtaining in this case, our impulse to refuse the defense of lack of knowledge is overwhelming, considering that the use of the mailbags or postal matters as a device for the violation of our customs and revenue laws would make it doubly, if not extremely, difficult for the authorities to detect the offense and establish responsibility of the offenders. The privacy of the mails is enjoined and protected by law and even the authorities must be very sure and cautious in inspecting the mails for spurious and illegal matters. Verily, the rejection of the defense of innocence or ignorance on the part of the common carrier will only serve as a deterrent to this ingenious and deceitful practice of using the mails for illegal purposes.

IN VIEW OF THE FOREGOING, the decision of the Commissioner of Customs is hereby AFFIRMED, and the vessel M/V "Guimaras" and/or its owner Compañia Maritima are ordered to pay to the Bureau of Customs the fine of ₱10,000.00 for violation of Section 907 of the Tariff and Customs Code, in relation to Section 2521 thereof. With costs.

SO ORDERED.

Quezon City, February 28, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge