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REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

COMPANIA GENERAL DE TABACOS  
DE FILIPINAS,  
Petitioner,

- versus -

C.T.A. CASE No. 2131

COMMISSIONER OF CUSTOMS,  
Respondent.  
x - - - - - x

*Aug 22/72*

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs, dated April 16, 1970, imposing an administrative fine of \$1,000.00 against the vessel M/S "RITA MAERSK" and/or its agent, petitioner Compañia General de Tabacos de Filipinas, for alleged violation of Section 1005 of the Tariff and Customs Code, in relation to Section 2521 thereof.

It appears that petitioner, a duly organized domestic corporation, is the local ship agent of the Maersk Line - a foreign shipping company which owns and operates several ocean-going vessels, among which, are the M/S "LUNA MAERSK" and the M/S "RITA MAERSK".

On November 21, 1964, the M/S "LUNA MAERSK" arrived in Manila carrying, among others, several packages of articles donated by the Rockefeller Foundation to the Institute of Hygiene of the University of the Philippines. When the donated articles were unloaded, one (1) package containing an electric freezer could not be located and the same was subsequently overcarried to Bangkok. Fortunately, said

article was shipped back to Manila from Bangkok aboard the M/S "RITA MAERSEK" which arrived in December, 1964. However, said article was not included in the inward cargo manifest of the said vessel.

In February, 1965, petitioner submitted an amendment to the inward manifest of the M/S "RITA MAERSEK" which was approved by the Bureau of Customs with the following reservation: "without prejudice to an administrative action against the vessel."

On August 20, 1969, after the termination of administrative proceedings against the M/S "RITA MAERSEK" which was represented by herein petitioner, the Collector of Customs of Manila rendered his decision holding said vessel and/or petitioner liable for violation of Section 1005 of the Tariff and Customs Code, and imposed the fine of P1,000.00 pursuant to Section 2521 of the same Code.

On April 16, 1970, after an appeal to the Commissioner of Customs, the latter affirmed said decision of the Collector. Hence, this appeal.

The only issue for determination is whether or not the imposition of the fine against the vessel M/S "RITA MAERSEK" and/or its agent, petitioner Compania General de Tabacos de Filipinas, is in accordance with law.

Petitioner assails the legality of the imposition of the fine on the ground that the failure to manifest said article was due to clerical error which was committed without any fraudulent intent. To for-

tify its contention, petitioner explains that there was no reason or motive to commit fraud against the Government because the article in question is exempt from taxes and duties, it being a donation to the University of the Philippines which is a Government entity. Furthermore, petitioner argues that "there was no intent whatsoever to conceal the fact that a freezer was aboard as shown by the admitted fact that this freezer appeared in the original manifest when the carrying vessel first came to Manila."

On the basis of the facts here obtaining and the arguments raised by petitioner, we are thoroughly convinced that the omission to manifest the article in question was due to a mistake committed in good faith. Nevertheless, we are impelled to sustain the legality of imposing the fine, although at a reduced amount, after a review of all the previous cases<sup>1</sup> already passed upon by us which involve identical or similar issues. In the most recent case of Everett Steamship Corporation vs. Commissioner of Customs, C.T.A. Case No. 1968, August 25, 1971,<sup>2</sup> this Court held:

That there was good faith in the omission to manifest cargo may be admitted. But

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<sup>1</sup> Compania General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 1939, Feb. 26, 1971; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1911, April 20, 1970; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 1930, Dec. 27, 1969; Smith Ball & Co., Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969.

<sup>2</sup> Certiorari denied in G.R. L-34146, Oct. 7, 1971.

good faith in the failure to include cargo in a ship's manifest does not relieve the vessel from liability under Section 2521 of the Tariff and Customs Code. Thus, in *Macondray & Co., Inc. v. Commissioner of Customs*, CTA Case No. 1930, Dec. 27, 1969 (cert. denied in G.R. No. L-31599, Feb. 10, 1970), it was held:

"Petitioner presented before this Court Dominador Bergaño, manager of its claims department, who testified that the failure to have the four (4) cartons of electrical parts included in the cargo manifest of the vessel was due to a clerical error or inadvertence in the typing of the manifest (pp. 19-20, t.s.n.). Apparently, this testimony was presented to show lack of knowledge or consent on the part of the owner or master of the vessel to the omission of the subject cargo from the manifest. Suffice it to say that the lack of knowledge or consent of the owner or master of the vessel in respect to such an omission is no defense against liability for the statutory penalty." (See also *Macondray & Co. v. Comm. of Customs*, C.T.A. No. 2072, June 30, 1972.)

Notwithstanding that the imposition of the fine is legal, as explained above, yet we feel that the amount of P1,000.00 is quite excessive under the circumstances. After all, the article in question (electric freezer) is a donation to a Government institution engaged purely in educational and academic functions and, therefore, exempt from taxes and duties. Accordingly, a fine of P200.00 would be more reasonable and just.

WHEREFORE, the decision of respondent Commissioner of Customs, dated April 16, 1970, is hereby modified by reducing the amount of the fine to only P200.00. With costs against the petitioner.

SO ORDERED.

Quezon City, August 22, 1972.

We concur:

*Esterislas R. Alvarez*  
ESTERISLAS R. ALVAREZ

Associate Judge

*Ramon L. Avancera*  
RAMON L. AVANCERA

Associate Judge

*Roman M. Umali*  
ROMAN M. UMALI  
Presiding Judge