COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, in its capacity as agent of the MS "Johannes Maersk,"
Petitioner,

- versus -

C.T.A. CASE No. 1936

COMMISSIONER OF CUSTOMS,
Respondent.

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

Grd. 29/71

D E C I S I O N

This is an appeal from the decision of respondent dated April 5, 1968, affirming that of the Collector of Customs of Manila, imposing an administrative fine of ₱1,000.00 on the vessel MS "Johannes Maersk" for carrying unmanifested cargo for alleged violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

The facts of the case are not disputed. It appears that on February 20, 1966, the vessel MS "Johannes Maersk" of which petitioner is the local agent, arrived at the port of Manila carrying truck replacement parts marked "Y.C.S.E." Manila, made in U.S.A.

Upon examination of said shipment it was discovered that although fifty-five (55) cases of truck replacement parts were discharged at the customs, only fifty cases were entered in the vessel's inward foreign manifest.

In a letter dated February 25, 1966, petitioner officially informed the Chief, Marine Division, that the aforesaid discrepancy was due to typographical error committed at the port of loading; that while the manifest showed only 50 cases of truck replacement parts, the vessel's discharge record, the consignee's import papers and bill of lading show that there were actually 55 cases; and that it had accordingly made an amendment to the manifest. The amendment was approved by the Law Division, Bureau of Customs, but without prejudice to any administrative action that may be taken against the vessel.

In a letter dated April 26, 1966, the Collector of Customs acknowledged petitioner's letter dated February 25, 1966 and required the latter to either submit its evidence in support of its explanation in connection with the alleged erroneous entry in the manifest, or be formally heard with respect to the alleged violation of the Tariff and Customs Code. Petitioner elected to be heard formally, and, hence, the adminstrative case against the vessel, with petitioner as respondent, was formally heard on June 23 and July 6, 1967. After due hearing, a decision was rendered on January 4, 1968 by the Collector of Customs decreeing and imposing upon the MS "Johannes Maersk," or petitioner as its agent, a fine of ₱1,000.00 for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. On appeal, the decision was affirmed by the Commissioner of Customs in his decision dated April 5, 1968. Hence, this appeal.

The sole issue is whether or not the administrative fine of ₱1,000.00 imposed against the vessel MS

"Johannes Maersk," or petitioner as its agent, is in accordance with law.

In assailing the legality of the imposition of the administrative fine, petitioner contends that the discrepancy between the number of cases actually unloaded and that appearing in the inward foreign manifest was due to clerical error and was committed without any intention of violating the customs laws. Accordingly, it is alleged that, by virtue of the amendment of the manifest, the defect was cured.

In the case of Compañia General de Tabacos de Filipinas vs. Commissioner of Customs, C.T.A. Case No. 1939, February 26, 1971, involving the same issue, which was decided adversely against petitioner, as agent of the MS "Lexa Maersk," a sister ship of the MS "Johannes Maersk," it was held:

> Sections 1005 and 2521 of the Tariff and Customs Code, upon which the imposition of the fine was based, provide:
>
> > 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.
> >
> > 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 that 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.

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 preceding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

Petitioner assails the legality of the imposition of the administrative fine. It is argued that a clerical error was committed in good faith in the preparation of the manifest and when respondent allowed and approved the amendment, the same had the effect of curing the defects or faults appearing in the original manifest. In other words, it is the contention of petitioner that the liability of the vessel for carrying unmanifested cargo was cured or obliterated by the amendment of the manifest which was allowed and approved by the proper Customs authorities.

The issue is not new. In the case of Macondray and Company, Inc. v. Commissioner of Customs, C.T.A. Case No. 1930, December 27, 1969, which involved a similar issue, this Court held:

> There is no dispute that the four (4) cartons of electrical parts were not covered by the inward foreign manifest of M/S "Fernview", as required by Section 1005 of the Tariff and Customs Code. To enable petitioner to take delivery of the entire shipment of six (6) cartons, Mr. De Asis, Manifest Clerk, Marine Entry Processing Division, Bureau of Customs, required the amendment to the inward foreign manifest upon discovering that the number of cartons of electrical parts declared in the entry covering the disputed shipment was four (4) cartons more than what were declared in the original inward foreign manifest of the subject vessel. Although this amendment was allowed and approved by the customs authorities, the same did not have the effect of obliterating the liability of the vessel incurred previous to the amendment. 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. The law makes no exception and any attempt to read one into the statute would be contrary to the spirit as well as the clear language of the aforesaid provisions. (See Smith Bell & Co., Inc. v. Comm. of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969.)
>
> > "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 of-

ficers, 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." (U.S. v. Steamship 'Rubi', 32 Phil. 228; underlining supplied.)"

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 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.

Petitioner further asserts that the "the provision of the law on amendment is designed to protect the master, agent or consignee from the error, mistake or discrepancy committed by him in the preparation of the original manifest and that it is unfair and uncalled for to conclude, as the respondent held in this case, that the right to amend the manifest is for the principal purpose of protecting innocent importers." Whether the purpose of the law in permitting amendment of a vessel's manifest is to protect, agent or consignee of

> the vessel, or the importer of the goods, is to our mind of slight significance. Under Section 2521 of the Tariff and Customs Code, no relief from liability for the fine is granted where an amendment of the manifest is allowed.

In line with the decision in the case cited above, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, November 29, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge