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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & COMPANY, INC.,
in its capacity as agent
of the MS "TARANTEL",
Petitioner,

CTA CASE No. 2140

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

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nov. 15/72

D E C I S I O N

Petitioner, in its capacity as agent of the M/S "Tarantel" has appealed from the decision of respondent Commissioner of Customs, dated April 21, 1970, affirming that of the Collector of Customs of Manila in Administrative Case No. V-44/65 (Customs Case No. 984), imposing on said vessel an administrative fine of ₱1,000.00 for carrying unmanifested cargo in violation of Section 1005 of the Tariff and Customs Code, which is penalized under Section 2521 of the same Code.

Petitioner, a domestic corporation, is the local ship agent of the vessel M/S "Tarantel". On January 4, 1966, M/S "Tarantel" arrived at the Port of Manila, under Customs Registry No. 16, conveying unmanifested cargo consisting of 31 bales of used clothing. It appears that this unmanifested cargo was previously manifested on another vessel, the M/S "Kingsville", which arrived earlier in

Manila on December 12, 1965, under Customs Registry No. 1804. The said shipment of 31 bales of used clothing was, however, shortshipped on the M/S "Kingsville" and came forward on M/S "Tarantel" unmanifested. To enable the consignee to take delivery of the said shipment, the Inward Foreign Cargo Manifest of the M/S "Tarantel" was amended but without prejudice to the administrative action that may be taken against the vessel. To give petitioner an opportunity to present its evidence, an administrative hearing was conducted before the Collector of Customs. On January 5, 1970, the Collector of Customs, after due hearing, found the M/S "Tarantel" liable for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code and imposed a fine of ₱1,000.00 upon the said vessel. Petitioner appealed the decision of the Collector to the Commissioner of Customs, who affirmed the same in his decision dated April 21, 1970. Hence, the present appeal.

The only issue presented for our consideration is the legality of the imposition of the administive fine of ₱1,000.00.

It is contended by petitioner that respondent should have charged petitioner for violation of Section 2521, in relation to Section 1005, of the Tariff and Customs Code, instead of vice versa, because Section 1005 is not a penal statute but merely a procedural law; assuming arguendo that the charge against the vessel is proper, respondent should have presented proof of fraud in order to warrant violation of the aforesaid section of the law; the proper party who should be held liable for the omission is the owner of the vessel and not petitioner who is merely the agent of said vessel; the failure to manifest the cargo in question was without any fraudulent intent but due to an honest mistake or inadvertence; the amendment to the original manifest, which was approved by the Bureau of Customs, cures all the defects found therein; and although the cargo is unmanifested, the bill of lading, consular invoices and supplier's invoices contain the correct number of cargoes.

// The arguments raised by petitioner to defeat the imposition of the fine on the vessel M/S "Tarantel" have already been rejected by this Court in a number of cases involving similar factual and legal issues.[1] It is sufficient for this purpose to quote the pertinent portions of our decision in the recent case of Macondray & Co., Inc. vs. Commissioner of Customs, CTA Case No. 2067, October 6, 1972, wherein we held as follows:

> 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,

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[1] Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2079, Sept. 29, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2138, Sept. 30, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2072, Oct. 9, 1972.
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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 & 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 subscribe 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.

The defense of good faith for failure to manifest a cargo was already passed upon in the case of Smith Bell & Co., (Philippines) Inc. vs. Commissioner of Customs, C.T.A. Cases Nos. 1728 & 1921, July 22, 1969, wherein it was held that-

"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 for the confiscation of unmanifested goods. 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 clear language of the aforesaid provisions."

On the matter of amendment of the cargo manifest, the Court, in the case of Compañia General de Tabacos de Filipinas vs. Comm. of Customs, C.T.A. Case No. 1939, February 26, 1971, held:

"Petitioner further asserts that '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 the master, agent or consignee of the vessels, 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."

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 Sec. 2312-2315, in relation to Sec. 2532 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 supplier's 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, C.T.A. Case No. 1641, Nov. 15, 1965.)

Finally, the fine of ₱1,000.00 is considered reasonable inasmuch as there appears to be no special circumstances which would justify a reduction or modification of the same. On the contrary, if we are to take into consideration the fact that many violations of similar nature involving herein petitioner have already been decided by this Court, the

DECISION-
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penalty imposed by respondent is deemed reasonable.

WHEREFORE, the decision of respondent Commissioner of Customs, dated April 21, 1970, is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, November 15, 1972.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I concur:

RAMON L. AVANCEÑA
Associate Judge

Presiding Judge Roman M. Umali
is on leave.