REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC., in its capacity as agent of the SS "FERNLAKE",
Petitioner,

- versus - C.T.A. CASE No. 2090

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent dated February 20, 1970, affirming that of the Collector of Customs of Manila which imposed an administrative fine of ₱2,000.00 on the vessel SS "Fernlake" for carrying unmanifested cargo in violation of Section 1005 of the Tariff and Customs Code, in relation to Section 2521 of the same Code.

The facts are not in dispute, the same having been stipulated by the parties, as follows:

> "1. That Macondray & Co. is the shipping agent of the vessel SS "Fernlake" which arrived at Manila on April 1, 1965 under Registry No. 434;
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> "2. That among the cargoes conveyed and discharged by said vessel at this port particularly under Bill of Lading No. 18 consisted of 200 cartons thiovanic acid;
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> "3. That the 200 cartons were not included in the Inward Foreign Manifest of said vessel for which reason an amendment was submitted by the respondent company on April 8, 1965 and was approved by the Bureau of Customs with the notation which reads as follows: 'without prejudice to an administrative action against the vessel';
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> "4. Said cargo of 200 cartons thiovanic acid were however properly manifested in the Inward Cargo Manifest of the MS "Fernland", Voy. No. 2-A which arrived

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at Manila on April, 1965 under Registry No. 434. Macondray & Co., Inc. was also the local agent of the MS "Fernland";

"5. That the respondent company in its letter dated April 8, 1965 to the Bureau of Customs stated among others that subject shipment would have been loaded on the vessel SS "Fernland" but due to confusion, i.e., overstowage and piling up of export cargoes in New York occasioned by longshoreman's strike, in good faith and without fraudulent intent said cargo was loaded on board the MS "Fernlake" instead of the MS "Fernland";

"6. That on April 23, 1965, the Bureau of Customs in answer to the above-stated letter of the respondent company requested for the submission of evidence in support of its explanation contained in said letter for which reason and in compliance therewith, the respondent shipping agent submitted on May 12, 1965, a copy of the manifest of the vessel S/S "Fernland" Reg. 481-65 showing that the 200 cartons of thiovanic acid were duly manifested therein;

"7. That on July 13, 1965, the Bureau of Customs informed respondent company that its explanation was found not satisfactory; hence, the hearing of the instant case." (Stipulation of Facts, pp. 21-22, CTA rec.)

The sole issue to be resolved in this case is whether or not the administrative fine of ₱2,000.00 imposed on the vessel SS "Fernlake" is in accordance with law.

The issue herein involved is not new. In the case of Compañia General de Tabacos de Filipinas v. Commissioner of Customs, CTA Case No. 1939, February 26, 1971, involving a similar question, it was held:

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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 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 un-

> manifested 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.
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> 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 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 adminis-

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trative 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 <u>imperative obligation to submit lists of the entire lading of the ship in the prescribed form,</u> 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. <u>No exception is made in the statute, and the recognition of any attempt to read and exception into the statute could hardly fail to defeat the purpose of its enactment.</u>" (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 if 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 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 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."

We find no compelling reason to deviate from the foregoing pronouncement.

However, considering the circumstances which brought about the failure to include the goods in question in the manifest of the SS "Fernlake", the fine imposed by the Collector of Customs of Manila and affirmed by respondent appears to us excessive. We are of the opinion that, upon the facts of record, a fine of ₱1,000 would be an adequate penalty for the said offense.

WHEREFORE, the decision appealed from is hereby modified by reducing the fine from ₱2,000 to ₱1,000, which respondent is hereby ordered to pay to the Bureau of Customs, Manila, within thirty (30) days from the date this decision becomes final.

SO ORDERED.

Quezon City, December 16, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge