REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
Petitioner,

- versus - C.T.A. CASE NO. 2742

COMMISSIONER OF CUSTOMS,
Respondent.

9/16/77

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DECISION

Appeal by petitioner from the decision of respondent Commissioner of Customs dated September 13, 1975, affirming the decision of the Collector of Customs of Manila dated March 5, 1975, imposing an administrative fine of ₱1,000.00 upon each of the following vessels, in their respective administrative cases, to wit:

1. Adm. Case No. V-760/73 (M/S "Chastine Maersk") ONE THOUSAND PESOS (₱1,000.00)

2. Adm. Case No. V-761/73 (M/S "Luna Maersk") ONE THOUSAND PESOS (₱1,000.00)

3. Adm. Case No. V-816/74 (M/S "Lexa Maersk") ONE THOUSAND PESOS (₱1,000.00)

for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

There is no dispute as to the material facts.

On different dates in 1973, the vessels in question, which are all represented in the Philippines by their local ship agent, Compañia General de Tabacos de Filipinas, arrived separately at the port of Manila and discharged cargoes without being listed in their respective manifests, thus:

> M/S "Chastine Maersk"
> Date of Arrival: January 14, 1973
>
> Unmanifested cargo - 61 boxes
> Miscellaneous materials
> and parts
>
> M/S "Luna Maersk"
> Date of Arrival - February 5, 1973
> Unmanifested cargo - 1 fiber drum
> and 4 cartons various chemicals
>
> M/S "Lexa Maersk"
> Date of Arrival - December 24, 1973
> Cargo - 8 boxes of fountain concentrates but listed only as 3 boxes of fountain concentrates in the manifest

After each incident, an amendment to the manifest of the vessel concerned and a corresponding explanation were filed by the ship agent, but the Bureau of Customs approved each amendment with a notation: "Without prejudice to an administrative action against the vessel."

The explanation of petitioner for each vessel with respect to its unmanifested cargo, among others, states:

> M/S "Chastine Maersk"
> 61 boxes miscellaneous materials and parts
>
> "This shipment originally booked per the above vessel under San Francisco/Manila Bill of Lading No. XO-5?, was discharged unmanifested as we failed to surrender on time the covering manifest" (See p. 3, Customs rec.)

M/S "Luna Maersk"
1 fiber drum and 4 cartons various
materials

"This cargo forming part of the shipment on M/S "CECILIE MAERSK", Voy. 17-Out, Reg. 222 under New York/Manila B/L No. 26 was shortshipped, but came forward per the subject vessel, unmanifested.

"The stevedores at the port of loading loaded this cargo on the subject vessel, but they failed to notify our agents in New York for proper entry of said cargo in the manifest; hence, discharged unmanifested." (See p. 7, Customs rec.)

M/S "Lexa Maersk"
8 boxes fountain concentrates

"We wish to explain that this shipment, as per bill of lading and supplier's invoice, actually consists of 8 boxes Fountain Concentrate, which was erroneously typed at the port of loading as 3 boxes only on the manifest. To correct this typographical error, our agents at San Francisco forwarded to us the addendum to the manifest, but, which copy came into our possession after the vessel had arrived; hence, too late for us to submit the said addendum to the manifest, as this was delayed in the mails". (See p. 11, Customs rec.)

Sometime in February, 1975, the Bureau of Customs instituted administrative proceedings against the vessels, respectively, to wit: Administrative Case No. V-760-73 M/S "Chastine Maersk", Administrative Case No. V-761-73-M/S "Luna Maersk"; Administrative Case No. V-816-74-M/S "Lexa Maersk", for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code. During the hearing, the aforesaid administrative cases were consolidated, and petitioner, representing the vessels as respondent, and the Bureau of Customs, entered into a stipulation of facts, among others, as follows:

> Stipulation No. 5.- "In so far as Case No. V-761-73 is concerned, involving the vessel S/S "Luna Maersk", x x x x that one (1) Fiber Drum and 4 cartons various chemicals which were not manifested on the "Luna Maersk" were actually manifested on the vessel S/S "Cecilie Maersk" Voyage No. 17, Registry No. 222 New York Bill of Lading No. 26 but the said drum and four cartons various chemicals were shortshipped so they were loaded aboard the Luna Maersk unmanifested, the manifest being the Cecilie Maersk". (pp. 21-22, Customs rec.)
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> Stipulation No. 6 - "In all these three cases, corresponding corrections to the manifest were shipped by the airmail to Manila but due to a delay in the mails, the same did not arrive on time but only after the departure of the vessel." (P. 21, Customs rec.)
>
> x x x x x x x x x x x x
>
> No. 1 - That for all the three cases an amendment to the manifest was submitted by the respondent company and the same were all approved by the Bureau of Customs with the condition x x x quote: "Without prejudice to an administrative action against the vessel." (See p. 20, Customs rec.)

On March 5, 1975, the Collector of Customs rendered a consolidated decision in these administrative cases imposing a fine of ₱1,000.00 upon each vessel for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code. On appeal by petitioner, the said decision of the Collector was affirmed by the Commissioner of Customs on September 13, 1975. Hence, the present appeal.

The issue to be resolved is whether or not the vessels in question are each liable for the penalty of fine for violation of Section 1005, in relation to Section 2521 of the Tariff and Customs Code, the pertinent provisions of which state as follows:

> 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. x x x. 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, The 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 Manifest.- 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 preceeding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

Petitioner maintains that the vessels in question are not liable for violation of the aforementioned laws because it is admitted by respondent that the failure to include the cargoes in question in the manifest is without fraudulent intent. Petitioner cited the admission of respondent to the effect that in all these three cases, the corresponding corrections to each of those vessels' manifest were airmailed to Manila but, because of the delay in the mails, the same did not arrive on time; and that as regards the M/S "Luna Maersk," its unmanifested cargo of 61 boxes of miscellaneous materials and parts was caused by a shortshipment.

Citing a minute resolution of the Supreme Court in G.R. No. 44243 which reads:

> "L-44243 (Compañia General de Tabacos de Filipinas vs. Court of Tax Appeals, et al.).- Considering the allegations, issues and arguments adduced in the petition for review on certiorari of the decision of the Court of Tax Appeals, the Court resolved to DENY the petition for lack of merit, it appearing that the justification of cross-

> loading of allegedly manifested cargo was not raised in the original petition for review in the respondent court nor in the proceedings before the Customs Commissioner but is being raised for the first time in this Court."

petitioner then argues that crossloading of the allegedly manifested cargo is a legal justification.

> Please note that the petition was denied because the "justification of crossloading of allegedly manifested cargo was not raised in the original petition for review in the respondent court nor in the proceedings before the Customs Commissioner but is being raised for the first time in this Court". The Supreme Court, in its own words, denied the justification of crossloading merely because it was raised for the first time before it, but otherwise the Supreme Court, as may be noted from its very statement, found that crossloading was a justification. Since crossloading is a justification in the words of the Supreme Court and since crossloading has been admitted, it follows that the present controversy being based on an admitted case of crossloading should be resolved in favor of the vessel. x x x. (See petitioner's memorandum, pp. 16-22, CTA rec.)

Respondent, however, argues that the requirement of a complete cargo manifest is an imperative obligation of the vessel, and since the aforesaid laws do not provide for an exception, the defenses of clerical error, shortshipment, good faith, and amendment to the manifest will not free the vessel from the penalty of fine. In support of his contention, respondent cites the case of Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 2067, October 6, 1972.

We agree with the stand of respondent. In previous cases involving similar issues, this Court has consistently ruled that the requirement for every vessel coming from a foreign port to have a complete manifest of all her cargo is an imperative obligation of the vessel, and the law does not provide for any exception.

> 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 if 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 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. (Smith Bell, & Co. (Phil.) Inc. vs. Comm. of Customs, CTA Cases Nos. 1728 & 1921, July 22, 1969; 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. 2067, Oct. 6, 1972; Macondray & Co., Inc. vs. Comm. of Customs, CTA Case No. 2082, Sept. 17, 1974; Macondray & Co., Inc. v. Commissioner of Customs, CTA Case No. 2484, Jan. 1, 1976; Compañia General de Tabacos de Filipinas vs. Comm. of Customs, CTA Case No. 2144, Jan. 5, 1976.)(Underlining supplied.)

Consequently, the fact that the omission to manifest a cargo was due to clerical error or shortshipment committed in good faith or without fraudulent intent or that the vessel's manifest was amended or corrected with the approval of the Bureau of Customs will not constitute a valid defense and relieve the vessel from liability. (See 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; Everett Steamship Corp. vs. Comm. of Customs, CTA Case No. 1968, Aug. 25, 1971, Certiorari denied in G.R. No. L-34146, Oct. 7, 1971; 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, Certiorari denied in G.R. No. L-31599, Feb. 10, 1970.)

Petitioner's bid to raise for the first time in its memorandum the argument that the minute resolution of the Supreme Court in G.R. No. 44243 (Compañia General de Tabacos de Filipinas vs. Court of Tax Appeals, et al.) makes crossloading as a justification for the vessels' failure to manifest its cargo is untenable. In the first place, the facts of this case, as borne out by the pleadings and records, do not show that the omission to manifest the vessels' respective cargoes was due to crossloading. The explanations given by the petitioner before the Bureau of Customs clearly state that the failure to manifest was due to: (1) <u>failure to</u>

surrender the manifest (corrected manifest) on time, in the case of the M/S "Chastine Maersk" (2) short-shipment, in the case of the M/S "Luna Maersk"; and (3) clerical error, in the case of the M/S "Lexa Maersk". In the second place, the Supreme Court in its aforesaid resolution did not categorically rule that crossloading is a valid justification for the omission or failure to manifest a vessel's cargo. The resolution simply means that since the ground of crossloading was raised by petitioner only for the first time before the Supreme Court, its appeal cannot be given due course. Indeed, the said resolution does not imply that had the defense or ground of crossloading been properly and timely raised in said case (Compañia General de Tabacos de Filipinas vs. Court of Tax Appeals, G.R. L-44243, supra) it would be a valid ground or justification for the non-compliance of the legal requirement of accomplishing a proper and complete manifest and thus exculpate the vessel from administrative penalty. The resolution could not be so understood because the defense of crossloading was never passed upon by the Supreme Court.

WHEREFORE, the decision appealed from is affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, September 16, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge