REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus - C.T.A. CASE NO. 2073

COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

Petitioner seeks to reverse the decision of the Commissioner of Customs which affirmed that of the Collector of Customs of Manila imposing an administrative fine of ₱1,000.00 on SS "Tai Ping" for carrying unmanifested cargo in violation of Section 1005, in relation to Section 2521, of the Tariff & Customs Code.

The records show that petitioner, a domestic corporation, is the ship agent in the Philippines of the vessel SS "Tai Ping". On or about October 20, 1966, the said vessel arrived in Manila conveying, among others, ten (10) packages of Insulated Copper Wire and Copper Buss, Raintight Gutter and Fence Fabric. It appears, however, that at the time of the filing of the corresponding import entry, only eight (8) packages were listed in the Inward Foreign Cargo Manifest. On November 2, 1966, petitioner filed with the Bureau of Customs an amendment to the Inward Foreign Cargo Manifest so as to

40

show the correct number. This was duly approved by the Bureau of Customs without prejudice to an administrative action against the vessel. After due hearing, the Collector of Customs rendered a decision wherein the SS "Tai Ping" was fined in the amount of One Thousand Pesos (₱1,000.00) for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code. Petitioner appealed the said decision to the Commissioner of Customs, who affirmed the same. Hence, this appeal.

The sole issue raised in this appeal is whether or not the said fine was legally imposed under Section 2521 of the Tariff and Customs Code, in relation to Section 1005 of the same Code.

Petitioner claims that there can be no violation of Section 1005 of the Tariff & Customs Code because said section is not a penal or prohibitive statute since it imposes no penalty, for which reason respondent should have charged petitioner for violation of Section 2521, in relation to Section 1005, of the Tariff and Customs Code and not vice versa; that assuming arguendo that the charge for violation of Section 1005 is proper, respondent failed to present proof of fraud on the part of petitioner in order to warrant violation of the aforesaid section; that the evidence shows there was no such fraud committed by the petitioner inasmuch as an amendment to the cargo manifest of the vessel was allowed; that the said amendment cured any defect in the manifest and constitutes a bar to the imposition of an administrative fine on the vessel; that petitioner is merely an agent of the owner of the vessel SS "Tai Ping" so that the proper party who should be held liable is the owner of the said vessel; and, that the deficiency in the vessel's original manifest was adequately supplied by the bill of lading, consular invoice, supliers' invoice and entry.

Respondent, on the other hand, contends that Section 1005 of the Tariff and Customs Code imposes a mandatory obligation on the part of the master of every vessel engaged in foreign trade to have on board a complete manifest of all her cargo and that said section admits of no exception.

We find respondent's decision in accordance with law. Section 1005 of the Tariff and Customs Code imposes on every vessel the imperative obligation to have on board a complete manifest of all her cargo. The said section admits of no exception. Failure to comply with it is penalized by a fine of not more than ₱10,000.00 under Section 2521 of the same Code. It is thus clear that the law violated is Section 1005 while the penalty provided for such violation is Section 2521. 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.

4V

Petitioner's contention that Section 1005 requires the element of fraud before it can be made applicable is devoid of merit. The fraud mentioned therein refers to the non-allowance of amendment to a cargo manifest where there is fraud in the preparation of the manifest. In other words, whether or not an incomplete or erroneous manifest is amended, Section 1005 is violated upon failure to submit a correct or complete cargo manifest.

With regard to petitioner's claim that the amendment of the cargo manifest cured all its defect, we quote hereunder our opinion in the case of Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1930, Dec. 27, 1969:

> Petitioner contends that a clerical error was committed in good faith in the preparation of the manifest, and when respondent allowed the amendment to the manifest pursuant to Section 1005 of the Tariff and Customs Code, the same had the effect of curing or removing all the defects of the original manifests. In short, the kernel of petitioner's contention is that the liability of the vessel for carrying unmanifested cargo was wiped out by the amendment to the manifest.
>
> We are not at all impressed with this interpretation of the law by petitioner.
>
> 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 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. (Underscoring supplied; see also Smith Bell & Co., Inc. v. Comm. of Customs, C.T.A. Nos. 1722 & 1921, July 22, 1969; Macondray & Co. v. Comm. of Customs, C.T.A. No. 2067, October 6, 1972.)

Petitioner's argument that the entries in the bill of lading, consular invoice, suppliers' invoice submitted with the manifest reflected the correct cargo is of no moment.

> "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. v. Commissioner of Customs, C.T.A. No. 1641, Nov. 15, 1965; see also Macondray & Co., Inc. v. Comm. of Customs, C.T.A. No. 2067, *supra*.)

With respect to petitioner's claim that, being an agent, it cannot be held liable for violation of any law committed by its principal, the same is untenable. The decision subject of this appeal shows that the fine was imposed under Section 2521 of the Tariff and Customs Code against the offending vessel. The inclusion of petitioner as alternately liable for the fine is due to the fact that it submitted itself to the jurisdiction of the Bureau of Customs as agent of the vessel. (See Macondray & Co. v. Comm. of Customs, C.T.A. No. 2067, supra.)

On the amount of fine imposed, we find no reason to modify the same. Considering that many cases of similar nature have been appealed to us by petitioner, the fine imposed by the Collector of Customs of Manila and affirmed by the Commissioner of Customs appears reasonable.

WHEREFORE, the decision appealed from is hereby affirmed *in toto*. With costs against petitioner.

SO ORDERED.

Quezon City, November 25, 1972.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

45