REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEVEN STAR SHIPPING
CORPORATION, (Agent
of S/S "Sunning"),
Petitioner,

Sept. 30/64

versus CTA CASE NO. 1123

COMMISSIONER OF CUSTOMS,
Respondent.

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

DECISION

This is an appeal from the decision of respondent dated July 14, 1961, affirming that of the Collector of Customs of Manila in Seizure Identification No. 6031 which decreed the forfeiture of various unmanifested articles and upheld the imposition of a fine of ₱3,000.00 on the S/S "Sunning."

The undisputed facts of this case, as stipulated by the parties at the hearing in the Bureau of Customs, are as follows:

> 1. That SS Sunning was searched by customs authorities while in the Port of Manila on June 2, 1960;
>
> 2. That customs authorities found in different cabins and storeroom of the said vessel the following unmanifested articles:
>
> 3 Bottles "White Horse" Whiskey
> 1 Pc. Radio-Phono Transistor "Fugiya"
> 8 Pcs. Radio-Phono Transistor "Fugiya"
> 230 Ctns. Lucky Strike Cigarettes

10 Cases Playing Cards
110 Pcs. Phonograph Records
1 Pc. "Sony" Transistor

3. That upon verification, the customs authorities found that the above-described subject goods were owned by some of the crewmembers (referring to those taken from the cabins) and the storeroom keeper (referring to those found in the storeroom);

4. That at the time the search was made, the said subject vessel was about to leave the country, it having been issued a customs clearance (B.C. Form No. 99) prior to said search. (Pp. 47-48, Customs rec.).

On November 17, 1960, the Collector of Customs of Manila ordered the forfeiture of the above-mentioned articles for being unmanifested, pursuant to Section 2530(g), in relation to Section 1105, of the Tariff and Customs Code and imposed an administrative fine of ₱3,000.00 upon the S/S "Sunning" under Section 2521 of the same Code (pp. 9-13, Customs rec.). From this decision, petitioner appealed to respondent who affirmed the decision of Acting Collector of Customs (pp. 3-5, Customs rec.). Hence, the appeal.

Respondent in his answer and by way of special affirmative defense raised the jurisdictional issue that the appeal was not perfected within 30 days from the date of receipt of respondent's decision, pursuant to Section 11 of Republic Act No. 1125.

During the hearing of this case on December 19, 1962, neither petitioner nor his counsel appeared and upon motion of counsel for respondent, the case was dismissed for failure to prosecute (Minutes of hearing, December 19, 1962, p. 13, CTA rec.). The dismissal was affirmed in the Court's resolution dated January 5, 1963 (p. 14, CTA rec.). Upon subsequent motions for reconsideration filed by petitioner, the order of dismissal was vacated and the case was set for hearing on the merits (pp. 25-26, CTA rec.).

On February 28, 1964, petitioner filed a motion for postponement, manifesting that petitioner was preparing a stipulation of facts to be agreed upon by the parties. Counsel for respondent agreed, and a stipulation of facts was filed with this Court on April 28, 1965 (pp. 36-37, CTA rec.). Thereafter, petitioner submitted the case on the basis of the records and stipulation of facts, to which respondent interposed no objection.

The issues raised in this case are as follows:

(1) Whether or not this Court has jurisdiction over this case; and

(2) In the affirmative, whether the forfeiture of the articles in question and the imposition of the fine on said vessel are in order.

On the first issue, it appears that the decision of respondent was received by petitioner on July 21, 1961 and the petition for review was filed on August 21, 1961 (see Stipulation of Facts, par. 6, p. 37, CTA rec.). Under Section 11 of Republic Act No. 1125, petitioner has thirty (30) days from receipt of the decision of the Commissioner of Customs within which to appeal to this Court. From the date petitioner received the decision of respondent to the date of the filing of the herein petition for review, thirty one (31) days elapsed. However, the last day of the statutory period allowed petitioner for purposes of appeal (August 21, 1961) was a Sunday (see 1961 Calendar). Consequently, said period is extended to the next working day which in this case was August 21, 1961. Accordingly, the appeal was filed on time.

We now come to the second issue. The pertinent portion of Section 2530(g) in relation to Section 1105 of the Tariff and Customs Code, and Section 2521 of the same Code provide as follows:

SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.—Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

x x x

g. Unmanifested article found on any vessel or aircraft, if manifest therefor is required. (Underscoring supplied)

SEC. 1105. Documents Required to be Presented in Making Entry.—

x x x

7. Cargo manifest together with information as to names of consignees, their nationalities and their addresses, numbers and marks of packages, nature of goods, destination, gross weight and value; (Underscoring supplied)

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. (Underscoring supplied)

Petitioner assails the validity of the decree of forfeiture on the ground that the articles in question were mere "personal effects" of crew members and storeroom keeper and, therefore, need not be included in the manifest, the same not being part of the "cargo" of said vessel.

The issue is not new. In a decision in the case of Kurt Nilsen, et al. v. Commissioner of Customs, CTA Case No. 1565, promulgated on December 18, 1966, where the decision was disputed on the same ground, it was held:

> In fine, the cigarettes in question did not appear in the manifest, did not appear in the sea stores list, and no claim has been made that they were in the passenger baggage manifest or crews' declaration. The only reasonable inference is that they were unmanifested cargoes. Cargo has been construed by our Supreme Court to include all goods, wares, and merchandise aboard ship which do not form part of the ship's stores (U. S. vs. Islas Filipinas, supra). It has also been said that "the word 'cargo' refers to the 'entire lading of the ship which carries it' and includes all goods, wares and merchandise, effects, and indeed everything of every kind or description, found on board, except such things as are used or intended for use in connection with the management or direction of the vessel, and are not intended for delivery at any port of call, and except also, perhaps, 'passengers or immigrants and their baggage.'" (U.S. vs. S.S. Rubi, 32 Phil. 228.) This broad definition of cargo obviously embraces the cigarettes in question. (See also C.F. Sharp & Co. v. Actg. Commissioner of Customs, CTA Nos. 1469 & 1483, Dec. 29, 1964.)

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, September 30, 1967.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge