COMPAÑIA GENERAL DE
TABACOS DE FILIPINAS,
Petitioner,

- versus -

C.T.A. CASE No. 2143

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - x

June 30/72

D E C I S I O N

Petitioner has appealed from the decision of respondent Commissioner of Customs which affirmed __in toto__ that of the Collector of Customs of Manila imposing upon the M/S Lexa Maersk an administrative fine of TWO THOUSAND PESOS (₱2,000.00) for conveying unmanifested cargo, and upon the M/S Luna Maersk, an administrative fine of FOUR THOUSAND PESOS (₱4,000.00), also for conveying unmanifested cargo, in violation of Section 1005 of the Tariff & Customs Code, which is penalized under Section 2521 of the same Code.

The facts of the case are as follows: Petitioner is the general agent in the Philippines for the Maersk Line, a company engaged in the business of inter-ocean shipping which operates, among others, the vessels Luna Maersk and Lexa Maersk. In November, 1968, a longshoremen's strike was declared in the port of New York which lasted several months. Notice of the said strike was given in advance to the shipping companies as well as to shippers. As a consequence, cargo shippers rushed shipments aboard available vessels. Among these vessels were the Luna Maersk and the Lexa Maersk. In the rush to beat the deadline set by the strikers, cargo consigned to Merrs. Lederle Laboratories Phil., Inc., while manifested on the Lexa Maersk, was actually shipped aboard the Luna Maersk; cargo manifested for delivery to Aircon Inc. was shipped on the Luna Maersk though manifested on the Lexa Maersk; and cargo shipped to Zentry International, while manifested on the Luna Maersk, was shipped on the Lexa Maersk. These three shipments became the subject of administrative cases before the Collector of Customs. Since the said cases involved the same facts and the same parties, the same were jointly heard and a joint decision was rendered thereon by the Collector of Customs who found petitioner liable for alleged violation of Section 1005 of the Tariff & Customs Code. As stated earlier, the Commissioner of Customs affirmed _in toto_ the said decision of the Collector of Customs. Hence, the present appeal.

The sole issue posed in the instant petition is the legality of the imposition of the administrative fine on the vessels M/S Luna Maersk and M/S Lexa Maersk under Section 2521, in relation to Section 1005 of the Tariff & Customs Code.

Petitioner maintains that the M/S Luna Maersk and M/S Lexa Maersk are not subject to the fine because the failure to manifest the cargo was not intentional but was due to an honest mistake in the shipment of the said cargo. The error, petitioner alleges, came about in the rush to beat the deadline and the resulting confusion arising from the strike in the port of New York..

Respondent, on the other hand, argues that good faith in the preparation of the manifest is not a defense, citing Macondray & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No, 1930, December 22, 1969.

The present case is not one of first impression. Similar cases have already been decided by this Court wherein it was held that a mistake committed in good faith does not relieve a vessel from liability for carrying unmanifested cargo.

> "Under Section 1005 of the Tariff & 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 mis-shipment of goods, would be contrary to the pervasive spirit as well as the clear language of the aforesaid provision. Thus, said the Supreme Court in the case of U.S. vs. Rubi (32 Phil. 235-242):
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> > 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 & officers of such vessels an imperative obligation to submit lists of the entire lading of the ship in the prescribed form, in order to facilitate the labors of the Customs & 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 an attempt to read an exception into the statute could hardly fail to defeat the purpose of its enactment.</u> (Smith Bell & Co., Inc. v. Comm., C.T.A. Nos. 1728 & 1921, July 22, 1969; underlining supplied; see also Macondray & Co., Inc. vs. Comm. of Customs, C.T.A. Case No. 1930, Dec. 27, 1969; Compañia General de Tabacos de Filipinas v. Comm., C.T.A. No. 1939, Feb. 26, 1971, cert. den. in G.R. No. L-33386, April 14, 1971.)

Be that as it may, we are of the opinion that the fine of ₱2,000.00 per violation committed, imposed on the vessels herein involved, is excessive and not warranted by the circumstances of the case. It appears that the violation came about when conditions were far from normal, i.e., during the rush to beat the deadline of the impending strike in the port of New York. We believe that a nominal fine of FIVE HUNDRED PESOS (₱500.00) per violation committed would be sufficient.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, except with respect to the fine, which is reduced from ₱2,000.00 to ₱500.00 in the case of M/S Leda Maersk and from ₱4,000.00 to ₱1,000.00 in the case of M/S Luna Maersk. Accordingly, petitioner is hereby ordered to pay the sum of ₱1,500.00 within thirty (30) days from the date this decision becomes final.

SO ORDERED.

Quezon City, June 30, 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