REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DEVELOPMENT COMPANY,
Petitioner,

July 31, 1970

- versus -

C.T.A. CASE No. 1520

HON. JOSE B. LINGAD, Acting Commissioner of Customs,
Respondent.

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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 ordering the forfeiture of 276 bottles of assorted whiskey; the forfeiture and destruction by burning of 3,050 cartons of assorted cigarettes;[1] and the imposition of a fine of ₱10,000 upon the vessel M/V "Doña Aurora" owned by and registered in the name of petitioner.

The facts of the case may be briefly summarized as follows: Upon arrival of the M/V "Doña Aurora" at the Port of Manila on June 25, 1961, a party composed of agents of the Presidential Fact Finding Committee (PFFC)

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[1] Of the original 4,598 cartons of cigarettes 1,548 cartons were pilfered while stored in the Auction Room of the Bureau of Customs during the pendency of the seizure proceeding.

and the Law Enforcement Command (LEC) boarded said vessel. After searching the vessel, assorted cigarettes and whiskey were found unmanifested, as follows:

In the Slop Chest:

2,118 cartons of assorted cigarettes
904.5 bottles of assorted whiskey

In a Rope Hole (Aft):

3,700 cartons of assorted cigarettes
276 bottles of assorted whiskey

The Store List submitted by the Master of the vessel showed that the provisions of the vessel consisted of (1) 1,200 cartons of cigarettes; (2) 700 bottles of liquor; and (3) 69 bottles of wine. Accordingly, the cigarettes and whiskey which were in excess of the quantities shown in the Store List were declared unmanifested cargo and seizure proceeding was instituted for the forfeiture of said articles.

After hearing, the Collector of Customs of Manila found that the cigarettes and whiskey in excess of the provisions of the vessel were unmanifested cargo and ordered the same forfeited pursuant to Section 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code. At the same time, the maximum fine of ₱10,000 was imposed upon the vessel for conveying unmanifested cargo under Section 2521 of the same Code.

Petitioner disputes the finding and conclusion of the Collector of Customs and contends that said cigarettes and whiskey were necessary provisions of the vessel and an amendment of the Store List so as to include the same should have been allowed. We are fully in agreement with the finding and conclusion of the Collector of Customs. The evidence of record shows that while in the United States, the Master and Purser of the vessel purchased without authority 6,750 cartons of assorted cigarettes worth $7,090.00 and 1,464 bottles of assorted whiskey worth $2,910.00, while the normal consumption of cigarettes and whiskey of said vessel for one trip was 1,124 cartons of cigarettes and 464 bottles of whiskey.[1] Also, it was shown that the arrival of said vessel on June 25, 1961 in Manila was its last trip prior to its being turned over to the Liberation Steamship Company. It is obvious that a portion of the cigarettes and whiskey purchased in the United States by the Master and Purser of the vessel without authority of petitioner was intended to be imported into the Philippines illegally, and is, therefore, subject to forfeiture not only as

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[1] The quantity of cigarettes and whiskey supposedly necessary for the provisions of the vessel for one trip, although not questioned by the Collector of Customs, appears to us excessive.

unmanifested cargo under paragraph (g) but also as articles attempted to be imported into the Philippines in violation of Customs Laws, pursuant to paragraph (f) of Section 2530 of the Tariff and Customs Code. To quote from the decision of the Collector of Customs:

> ". . . This Office holds, on the evidence adduced, that subject articles are not part of the ship's provisions as claimed by claimant-intervenor NDC but rather comes within the above well-defined meaning of the word 'cargo'. The fact that a great quantity of cigarettes and whiskey were purchased under unusual conditions as earlier discussed and then stored in a rope hole without being declared whatsoever, strongly indicated that the cigarettes and whiskey in question are not part of the ship's provisions, and what is more, the rope hole was not sealed as one of the vessel's slop chest at the time of boarding and that subject cigarettes and whiskey were found no longer required on the vessel, are indications that the articles were intended to be smuggled." (See pp. 447-448, Customs rec.)

With respect to the fine of ₱10,000 imposed upon the vessel for conveying unmanifested cargo, we are of the opinion that the same is excessive and not warranted by the circumstances of the case. It appears that it was the manager of petitioner who, in a formal communication to the proper authorities, requested that the vessel be searched upon arrival to prevent illegal importation of goods by the members of the crew of said vessel. And considering that said vessel was owned and operated at the time by petitioner, a corporation owned by the Government, we believe that a nominal fine of ₱500.00 would be adequate.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, except with respect to the fine, which is hereby reduced from ₱10,000.00 to ₱500.00. Accordingly, petitioner is hereby ordered to pay the said sum of ₱500.00 within thirty days from the date this decision becomes final.

SO ORDERED.

Quezon City, July 31, 1970.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge