

COMMISSIONER OF CUSTOMS, PETITIONER, VS. HON. COURT OF TAX APPEALS, SMITH BELL & CO., INC., IN ITS CAPACITY AS AGENT OF SS "NORMAN", RESPONDENTS.

G.R. No. L-41861. March 23, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The Commissioner of Customs, the herein petitioner, elevated this case on certiorari to this Court for a review of the decision of the respondent Court of Tax Appeals reversing the decision of the petitioner, holding that petitioner misapplied certain sections of the Tariff and Customs Code.^[1] Earlier, petitioner affirmed the judgment rendered by his subordinate, the Collector of Customs of Manila.

The legal provisions involved in this case are Sections 1005, 2521, and 2523 of the Tariff and Customs Code. Section 1005 lays down the indispensable requirement that every vessel coming from a foreign port must have on board a complete manifest of all her cargo, further stating therein the required contents of each manifest intended to be submitted to the customs authorities. It reads:

"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. Every vessel from a foreign port must have on board complete manifests of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every such vessel shall have prepared for presentation to the proper customs official upon arrival in ports of the Philippines a complete list of all sea stores then on board. 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, That 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."

Both Secs. 2521 and 2523 provide for the corresponding penalties in case Sec. 1005 is violated.

The facts of the case are substantially related in the decision of the respondent Court of Tax Appeals as follows:

"It appears that on July 20, 1966, the vessel SS "NORMAN", with Customs Registry No. 10 85, arrived at the

port of Manila carrying, among others, a shipment of 1,400 Multiwall Paper Bags. The vessel's cargo manifest shows that the gross weight of said articles was 3,620 kilos, but based on the bill of lading and customs appraisal, the actual and correct weight thereof was 36,197 kilos. Consequently, to correct the weight declared in the manifest, petitioner, in its capacity as ship agent, filed an amendment on July 27, 1966, which amendment was ap-proved by the Bureau of Customs without prejudice to any administra-tive action which might be taken against the vessel.

In 1969, the SS "NORMAN", represented by herein petitioner, was charged for violation of Section 1005, in relation to Section 2523, of the Tariff and Customs Code. However, on March 16, 1971, counsel for the Bureau of Customs sought the amendment of the charge to one for violation of Section 1005, in relation to Section 2521 of the Code.

On June 11, 1971, after hearing, the Collector of Customs rendered a decision imposing upon the vessel and/or petitioner herein a fine of P7,000.00 for violation of Section 1005, in relation to Section 2521, of the Tariff and Customs Code.

On November 20, 1972, said decision of the Collector was affirmed by the Commissioner of Customs." x x x

The main issue posed for this Court's consideration is — in case the weight of a cargo is inaccurately or incorrectly stated in the manifest, which provision of the Tariff and Customs Code should be applied to the situation, Section 2521 or Section 2523?

Sections 2521 and 2523 provide —

"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 an amount not less than ten thousand pesos (P10,000.00) but not exceeding thirty thousand (P30,000.00) pesos.

The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Commission on Audit a true copy of the manifest of the incoming or outgoing cargo, as required by law. (As amended by P.D. No. 1258-A)"

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"SEC. 2523. Discrepancy Between Actual and Declared Weight of Manifested Article. — If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of opinion that such discre-pancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft."

Petitioner opines that Sec. 1005 imposes upon every vessel the absolute obligation to have on board a complete manifest of her cargo. A failure to comply with said requirement is penalized with a fine under Sec. 2521 since the latter provision requires that any vessel entering or departing from a port of entry must submit the proper manifest to the customs authorities. In other words, as in this case, when the weight of the cargo in question was incorrectly stated in the manifest, petitioner contends Sec. 2521 is applicable because a manifest wherein the weight is not accurately indicated is not a "proper" manifest.

We disagree.

If the weight of the cargo is in issue, the provision of the Tariff and Customs Code properly applicable is Sec. 2523, not Sec. 2521. A special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.[2] It is a principle in statutory construction that where two statutes are of equal theoretical application to a particular case, the one specially designed for said case must prevail over the other.[3]

Clearly, Sec. 2523 is directly applicable to the case at bar since said provision specifically applies to the situation where there is a discrepancy between the actual gross weight of any article or package described in the manifest and the gross weight as declared in the manifest or bill of lading.

Public respondent Court of Tax Appeals in interpreting the scope of the provision of Section 2521 of the Tariff and Customs Code in this particular case made the following disquisition:

"In this case, there is neither a failure or an omission to submit the requisite manifest nor an omission to include any cargo in the manifest. The article or cargo itself and its particulars, including the weight, are listed and described in the manifest, but the weight declared in the manifest is much less than the correct weight declared in the bill of lading. Clearly, contrary to the opinion of respondent, Section 2521 of the Tariff and Customs Code has no application to the case at bar." (Underscoring Supplied)

We agree.

The said section penalizes the failure to file a proper manifest or when the cargo is unmanifested. In this case a manifest has been filed declaring the weight of the cargo. Although it appears to be undeclared, this cannot constitute a violation of said Section 2521 of the Tariff and Customs Code since for all legal purposes a proper manifest had been filed covering the cargo. The proper manifest as provided in Section 2521 should be interpreted to mean a complete manifest as provided for in Section 1005 *aforecited* the pertinent portion of which provides:

"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 consignors thereof." (Underscoring supplied)

The law does not even require the weight of the cargo to be specified. Thus, the inclusion of the weight of the cargo in the manifest in a lesser amount than its actual gross weight does not thereby render the manifest incomplete. There is no breach of Section 2521 *aforsaid* under these circumstances.

The failure to declare the correct weight in the manifest may however be penalized under Section 2523 which precisely contemplates such a situation.

To suggest as petitioner contends, that liability can be incurred under both Sections 2521 and 2523 *aforestated* in the instant case would render nugatory the principle against double jeopardy.[4]

At this juncture, the question is — can the private respondent be held responsible under Section 2523?

This must be answered in the negative.

In order to be liable under Section 2523, two requisites must be satisfied, to wit:

- 1) the actual gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and

2) the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft.

While the first requirement is present, the second requirement is not. No evidence to that effect may be found in the records. The respondent court itself, in its decision, found that:

"It appears that the cargo in question was declared in the manifest as weighing 3,620 kilos although the actual weight was 36,197 kilos. There is, however, no evidence that the under declaration in the weight of said cargo was due to the carelessness or negligence of the master, pilot, owner or employee of the vessel. In fact, the bill of lading covering the cargo in question reflects the correct weight x x x."

Indeed as above related^[5], private respondent filed an amendment to the manifest to correct the weight declared on July 27, 1966 which amendment was approved the Bureau of Customs. It demonstrates the diligence and good faith of private respondent.

WHEREFORE, the decision of the Court of Tax Appeals is hereby **AFFIRMED**. No costs.

Yap (Chairman), Narvasa, Cruz, and Sarmiento, JJ., concur.

Melencio-Herrera and Feliciano, JJ., on leave.

[1] Presidential Decree No. 34, as amended.

[2] Manila Railroad Co. vs. Collector of Customs, No. 30264, March 12, 1929, 52 Phil. 950. Lichauco & Co. vs. Apostol and Corpus, No. 19628, Dec. 4, 1922, 44 Phil. 138.

[3] Wil Wilhemsens, Inc. vs. Baluyut, L-27350-51, May 11, 1978, 83 SCRA 38.

[4] Section 21, Article III, Constitution; Sections 3(h) and 7, Rule 117, Criminal Procedure.

[5] See Page 3, last paragraph.

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