

COMMISSIONER OF CUSTOMS, PETITIONER, VS. COMPANIA GENERAL DE TABACOS DE FILIPINAS, RESPONDENT.

G.R. No. L-9901. August 30, 1957

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of Tax Appeals. In July, 1950 agents of Customs Patrol Service boarded and searched the M/V "Crete Maersk", of which respondent Cia. Gral. de Tabacos is a special agent. The ship had a "Manifest" (Exh. "A") and among the provisions listed therein were "Cigarettes Cartons—3260 pcs." But upon a recount of the amount of cigarettes contained in the slob chests it was found out by the customs agents that there was an excess of 420 cartons over and above the quantity listed in the "Manifest". This excess was ordered confiscated by the Commissioner of Customs on June 5, 1951. The Cia. Gral. de Tabacos appealed from the above decision to the Court of Tax Appeals and this court reversed the confiscation, ordering the return of the 420 cartons of cigarettes, or the refund of the proceeds from the sale thereof. The Court of Tax Appeals held that the 420 cartons of cigarettes form part of the ship's store, which was not required to be entered in a detailed manifest, and that the same are not subject to confiscation under the provisions of Section 1363 (g) of the Revised Administrative Code.

It is the contention of the Solicitor General on this appeal that the stock of cigarettes carried on board was required to be listed in a manifest, as provided in Section 1228 of the Revised Administrative Code, and what is not so listed is subject to confiscation under Section 1363 (g) of the Revised Administrative Code. The appeal involves the interpretation of the above-mentioned sections of the Revised Administrative Code, which are as follows:

"Sec. 1228. Manifest required of vessel from foreign port.— Every vessel from a foreign port or place must have on board complete written or typewritten manifests 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 or place must have on board complete manifests of passengers, immigrants, 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 ship's stores then on board. If the vessel does not carry cargo, passengers, or immigrants, there must still be manifest showing that no cargo 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, except after entry of the vessel, "by means of an amendment by the master, consignee, or agent thereof, under oath, and attached to the original manifest."

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"Sec. 1363. Property subject to forfeiture under customs laws.— Vessels, cargo, merchandise, and' other objects and things shall, under the conditions herein below specified, be subject to forfeiture:

"(g) Unmanifested merchandise found on any vessel, a manifest therefor being required,"

* * * * *

A cursory reading of the first section readily shows that what is required is a "manifest of all her (ship's) cargo." "Cargo" is what is intended to be unloaded and landed at a port, . The "Manifest" contains 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." As ship's provisions are not to be unloaded and delivered to consignees, they are not supposed to be included in the "manifests" as above required. Under the law, they are to be contained in "a complete list of all ship's stores." Such has been our interpretation in the cases of *United States vs. SS. "Islas Filipinas,"* 28 Phil. 291 and *United States vs. Steamship "Rubi,"* 32 Phil. 228, where we said:

"Another contention of the appellant is that the opium in question is not 'cargo' within the meaning of the customs laws. The term 'cargo' is not specifically defined in the Customs Administrative Act, but from the language used in several of its provisions it is clear that the word 'cargo' as used in the section, under consideration includes all goods, wares, and merchandise aboard ship which do not form, of the ship's stores.

"Black's Law Dictionary defines the term 'cargo' as follows: 'The load or lading of a vessel; goods and merchandise put on board a ship to be carried to a certain port.' (U.S. vs. S.S. "Islas Filipinas, supra, p. 297.)

"* * * Having in mind the context, and the purposes and objects sought to be obtained by the enactment of this statute; we are satisfied that the word 'cargo' as used in the first paragraph of section 77 refers to the 'entire lading of the ship which carries it' and includes all goods, wares, 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. Steamship "Rubi" supra, p. 235.)

We, therefore, find no error in the conclusion of the Court of Tax Appeals that the cigarettes carried as provisions do not need to be listed in the manifest of a ship's cargo. True it is, failure to detail them in the list of provisions may facilitate illegal importation, which zealous customs officials should prevent. However, neither the probability of illegal importation, nor the seal of customs officers justify a liberal construction of the penal provisions and permit Us to impose a penalty for an act which the law does not expressly and clearly punish.

The decision appealed from is affirmed, with costs de oficio.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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