

MACONDRAY AND COMPANY INC., IN ITS CAPACITY AS SHIP AGENT OF THE S/S "TAI PING", PETITIONER VS. ACTING COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-25783. February 25, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of a decision of the Court of Tax Appeals dated November 15, 1965, affirming a decision of the Collector of Customs which imposed a fine of P1,000.00 upon petitioner for violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code on unmanifested cargoes.

On November 2, 1962, the vessel S/S "TAI PING", of which petitioner is the local agent, arrived at the port of Manila from San Francisco, California, U.S.A., conveying various shipments of merchandise, among which was a shipment a one (1) coil carbon steel, one (1) bundle carbon steel flat and one (1) carton containing carbon tool holders carbide cutters, ground, all of which appeared in the Bill of Lading No. 22, consigned to Bogo Medellin Millings Co., Inc. The shipment; except the one (1) coil carbon steel was not reflected in the Inward Cargo Manifest as required by Sections 1005 in relation to Section 2521 of the Tariff and Customs Code of the Philippines. Allied Brokerage Corporation, acting for and in behalf of Bogo Medellin Milling Co. requested petitioner Macondray & Co.. agent of the vessel S/S "TAI PING". to correct the manifest of the steamer so that it may take-delivery of the goods at Customs House. Meanwhile, the Collector of Customs required herein petitioner to explain and show cause why no administrative fine should be imposed upon said vessel. On August 15, 1963, counsel for petitioner wrote a letter to the Collector of Customs pertinent portion of which reads as follows:

"It appears from our client's records that the disputed shipment was described in the ship's manifest as "1 coil carbon steel" only. However, the bill of lading issued and surrendered to our client, duly endorsed by the consignee, called for the delivery of 1 coil carbon steel, 1 bundle carbon steel flat and 1 carton containing tool holders carbide cutters ground. Upon investigation by our client, it was verified that the vessel actually carried on board and discharged at Manila 3 packages as called for in the bill of lading. By a letter dated November 15, 1962, our client immediately applied with your Bureau for the appropriate amendment on an approved customs form to reflect the true and correct description of the shipment and to effect its release from the customs house."

To said letter, the Collector of Customs replied on September 26, 1963, as follows:

"On August 13, 1963 you wrote this Office informing that this case would be referred to your lawyers who would in turn take the matter with us. However, this Office would like to inform you that under Section 2308, in relation to Section 2312, of the Tariff and Customs Code, you are free to contest by appropriate protest the action of this Office in imposing the fine, but you have to pay the fine first.

"The records of this Office show that the vessels under your agency have oftentimes failed to declare correctly the cargoes they convey as covered by the pertinent bills of lading. Intentionally, or otherwise, such incorrect

preparation of cargo manifests cannot be tolerated for it does not only enhance the commission of fraud but also makes smuggling suspicious since it renders difficult tracing of the source of contraband goods. In passing, it may be stated that your vessels have been found committing the same violations despite the warnings heretofore given and which your company has not given any concern. As a matter of fact, your vessels have oftentimes been reported committing the same violations, which conduct is tantamount to willful and deliberate defiance of constituted authority." (p. 5 Customs Record)

The fine, of P1,000 was paid by herein petitioner under protest on December 4, 1963.

Hearing on the protest, docketed as Manila Protest No. 812, proceeded thereafter. On August 24, 1964, the Collector of Customs of the Port of Manila ordered the dismissal of said protest for lack of merit. (Customs Record pp. 92-95) On appeal to the Commissioner of Customs (Customs Case No. 725) the latter sustained the Collector of Customs. Herein petitioner filed a petition for review with the Court of Tax Appeals where the parties submitted the case on the pleadings and the customs record. The Court of Tax Appeals affirmed the decision of the Collector of Customs as affirmed by the Commissioner of Customs. (p. 39 Customs Record) Hence this petition for review, with the petitioner assigning as errors the following:

- The Court of Tax Appeals erred in holding that the bill of lading whereon the shipment was correctly manifested was not a substantial compliance with the provision of Section 1005 of the Tariff and Customs Code;
- The Court of Tax Appeals erred in holding that the original manifest was not amended to reflect the true and accurate description of the shipment;
- The Court of Tax Appeals erred in affirming the decision of respondent with costs against petitioner.

The sole question to be resolved is whether or not the Collector of Customs erred in imposing a fine on the vessel, S/S TAI PING, for alleged violation of section 1005 in relation to section 2521 of the Tariff and Customs Code for landing unmanifested cargo at the port of Manila.

I

On the first assigned error, petitioner herein contends that from "the fact that the whole shipment was indicated in the bill of lading, it is clear that the deficiency of the original vessel's manifest was adequately supplied by the entries of said bill of lading and, therefore, no violation of the provision of the Tariff and Customs Code was committed." (Brief for Petitioner pp. 6-7). We do not subscribe to such conclusion. Sections 1004 and 1005, in relation to section 2521 of the Tariff and Customs Code, explicitly provide:

"Section 1004. Documents to be produced by master upon entry of vessel. — For the purpose of making entry of a vessel engaged in foreign trade, the master thereof shall present the following documents, duly certified by him, to the customs boarding official:

- a. The original manifest of all cargo destined for the port, to "be returned with the indorsement of the boarding official;
- b. Three copies of the same manifest, one of which upon certification by the boarding official as to the correctness of the copy, shall be returned to the master;
- c.

"Section 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; . . .

"Section 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 custom 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.

The same fine shall be imposed upon any arming of departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law."

The inclusion of the unmanifested cargoes in the Bill of Lading does not satisfy the requirement of the aforequoted sections of the Tariff and Customs Code. It is to be noted that nowhere in the said sections is the presentation of a Bill of Lading required, but only the presentation of a Manifest containing a true and accurate description of the cargoes. This is for the simple reason that while a manifest is a declaration of the entire cargo, a bill of lading is but a declaration of a specific part of the cargo and is a matter of business convenience based exclusively on a contract.[1] The object of a manifest is to furnish the customs officers with a list to check against, to inform our revenue officers what goods are being brought into the country, and to provide a safeguard against goods being brought into this country on a vessel and then smuggled ashore.[2] In short, while a bill of lading is ordinarily merely a convenient commercial instrument designed to protect the importer or consignee, a manifest of the cargo is absolutely essential to the exportation or importation of property in all vessels, the evident intent and object of which is to impose upon the owners and officers of such vessel an imperative obligation to submit lists of the entire loading of the ship in the prescribed form to facilitate the labors of the customs and immigration officers and to defeat any attempt to make use of such vessels to secure the unlawful entry of persons or things into the country.[3] Since therefore, the purpose served by the manifest is far different from that of the bill of lading, 'We cannot accept or place an imprimatur on the contention of petitioner that the entries in the bill of lading adequately supplied the deficiency of the manifest and cured it of its infirmity. The mandate of the law is clear and We cannot settle for less. The law imposes the absolute obligation, under penalty for failure, upon every vessel from a foreign port to have "on board complete written or typewritten manifests of all her cargo, signed by the master". Where the law requires a manifest to be kept or delivered, it is not complied with unless the manifest is true and accurate. (U.S. vs. The S.S. *Islas Filipinas*, No. 8746, 28 Phil. 291, 297).

II

On the second assigned error, petitioner would want Us to believe that an amendment was made on the manifest to reflect the true and accurate description of the shipment. We have, however, gone over the record very carefully but found no evidence to substantiate the allegation of herein petitioner. The testimony of Irineo Lumabi, (t.s.n. March 2, 1964, p. 78 Customs Record), manifest clerk of the Marine Division, that he prepared the amending entries himself is of no moment. In the first place, Lumabi alleged in his testimony that he "made" the entries reflecting the unmanifested cargoes without prior approval from either the Collector of Customs, his Deputy, or the chief of the Marine Division and, therefore, in contravention of the usual and accepted office procedure. Secondly, no amended manifest was ever presented during the hearing inspite of ample time requested by and granted to petitioners to enable them to produce this document. Also, the supposed amendments were never attached to the manifest itself as required by Section 1005[4] but as mentioned earlier, said "amendments were allegedly annotated" by Irineo Lumabi on the manifest itself after he 'noted' the discrepancy between the entries in the original manifest and the entry papers.

Likewise, petitioner Macondray & Co. presented Dominador Bergaño, its chief of claims but whose testimony did not in any way bolster up petitioner's stand. All he testified to was the fact that they (Macondray & Co.) approved the amendments to the manifest and filed the same with the Bureau of Customs (t.s.n. p. 68 Customs Record) without even knowing whether or not the same was approved by the Collector of Customs. What is evident on record is the fact that no valid amendment to the ship's manifest was made conformably with Section 1005 of the Tariff and Customs Code supra. Since there was no valid amendment, liability attached as to the unmanifested cargoes and this is clearly provided for in Section 2521, supra, of the Tariff and Customs Code. And as ably argued by then Solicitor General, now Justice Antonio Barredo, in respondent's well prepared brief; "that even granting arguendo, that the amendment was approved and therefore valid it does not in any way relieve the vessel from the liability which she had already incurred prior to the amendment. The philosophy and purpose behind the law authorizing amendment, under paragraph 3 of Section 1005 of the Tariff and Customs Code, is to protect innocent importers or consignees from the mistake or unlawful acts of the master. In the case of Dobbins Distillery vs. US 96 US 295-400, it was held that by the General Maritime Law, vessels are made responsible for the unlawful acts of their masters and crews: Likewise, in the case of Gillam Vs. US (C.C.A. S.C. 1928) 27 F (2d), 296, USCA-Title 19, 1994, it was ruled that '... statutory penalties are incurred where vessel bound for US failed to produce manifest, or has on board unmanifested merchandise.' "

WHEREFORE, We affirm the decision appealed from. Without pronouncement as to costs.

SO ORDERED.

Makalintal, C.J., Castro, Teehankee, and Makasiar, JJ., concur.

[1] New York and Cuba Mail SS Co. vs. U.S. 1251. 320. Words and Phrases Vol. 26.

[2] The Sylvia II U.S. vs. Cargo of Liquors and Sea Stores 28 F (2d) 215. 216.

[3] U.S. vs. Steamship "Rubi" 32. Phil. 228. 233.

[4] Section 1005 —

xxx xxx xxx

"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 however, That after the invoice and/or entry covering a been received and recorded in the office of the appraise 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 manifest, without any fraudulent intent, discovery of which could not have been made until after examination of the imposition has been completed.

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