

UNITED STATES LINES, INC., PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. 73490. June 18, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the decision of the Court of Tax Appeals dated September 27, 1985, which affirmed the decision of respondent Commissioner of Customs dated April 5, 1984, imposing an administrative fine of P10,000.00 against petitioner's vessel, MV "American Venture", for violation of Sec. 1005 of the Tariff and Customs Code as amended, in relation to Sec. 2521 of the same Code.

On October 15, 1976, the vessel "American Venture" arrived in Manila from Hongkong. Among the shipments on board were cargoes consigned by the same shipper and from the same loading port consisting of two (2) containers which were described in the respective bills of lading (B/L No. 38 and B/L No. 39) as follows:

"Shipper's Load and Count"

1 Container (Part) Cont. # 2020984

Seal # 601-04725

38 cases 100% Cotton brushed denim broken twill"

1 Container Cont. # 2101730

Seal # 601-04707

40 Cases 100% Cotton Sulphur Dyed denim

Total: One Container Only

"Shipper's Load and Count"

The aforesaid information as furnished by the Shipper, was copied or entered into the vessel's Inward Foreign Manifest. Upon opening of the containers by the Bureau of Customs, it was discovered that a) Container No. USLU-202984 contained 34 cases of cotton denim instead of 38 cases and b) Container No. USLU - 2101730 contained 44 cases of cotton denim instead of 40 cases. The total number of cases in the two containers was the same, however, to wit, 78 cases. Having been informed of the differences herein petitioner had the Manifest amended with the consent of the customs authorities on November 3, 1976 to reflect the actual quantity of the cases in each of the containers. Subsequently, the Collector of Customs instituted proceedings against herein petitioner for alleged violation of Sec. 1005 in relation to Sec. 2521 of the Tariff and Customs Code. Not finding the explanation of the herein petitioner satisfactory, the Collector of Customs found petitioner guilty of violating said provisions of the Tariff and Customs Code and ordered it to pay a fine of P10,000.00. Appeal was made by the petitioner to the Commissioner of Customs, who affirmed the said decision in toto. Upon a petition to review

the decision of the Commissioner of Customs, the Court of Tax Appeals (CTA) affirmed the assailed decision.

In its petition for review before the Court of Tax Appeals, petitioner assails the Commissioner of Customs, in disregarding Customs Administrative Order (CAO) No. 8-75 particularly in not applying Sec. II-24 thereof and in not treating each container as the unit of cargo. Acting on these issues, the Court of Tax Appeals ruled that Customs Administrative Order No. 8-75 is irrelevant and contrary to Sec. 1005 of the Tariff and Customs Code, We quote the tax tribunal:

"Customs Administrative Order (CAO) No. 8-75 simply defines the term "Shipper's Load and Count" without any further provisions or explicit explanation as to the scope of its applicability. While the concept may be relevant in determining responsibility in case of injury or damage to the cargo arising from loading, handling or movement of the cargo, the same cannot positively, or even impliedly, be viewed as an exception to the provisions of Sections 1005 and 2521 of the Tariff and Customs Code imposing a mandatory duty on vessels from foreign ports to have on board true and accurate manifests of their cargoes. Besides, Customs Administrative Order No. 8-75 is merely an administrative order and the same cannot certainly modify or amend a law or statute like the Tariff and Customs Code, and defeat the purpose of its enactment." (p. 39, Rollo)

Petitioner now seeks before Us the determination of the following issues:

1. Whether or not CAO No. 8-75 is irrelevant and contrary to Sec. 1005 of the Tariff and Customs Code.
2. Whether or not a carrier of containerized cargo should be held liable for a fine under Sec. 2521 in relation to Sec. 1005 of the Tariff and Customs Code upon a clerical error imputable to the Shipper alone, and not discoverable by the carrier until after examination by Customs of the importation.
3. Whether or not appellant had violated Sec. 1005 of the Tariff and Customs Code notwithstanding that the total content of the two-container shipment in question (78 bales) is exactly the same quantity (78 bales) of the merchandise described in the bills of lading and the Inward Foreign Manifest.

Sec. II-24 of Customs Administrative Order No. 8-75 reads as follows:

"Shipper's 'Load and Count' - a container packed with cargo by one shipper where the quantity, description and conditions of the cargo is the sole responsibility of the shipper." (underscoring for emphasis);

and quoted hereunder are the relevant provisions of the Tariff and Customs Code:

"SEC. 1005. - Every vessel from a foreign port must have on board a complete manifest of all her cargo.

x x x x x x x x

"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 consignee thereof.

x x x x x x x x

"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." (Under-scoring supplied)

"SEC. 2521. - Failure to Supply Requisite Manifests. If any vessel or aircraft enters or departs from a port of

entry without submit-ting the proper manifests to the customs author-ities, or shall enter or depart conveying unman-ifested cargo other than as stated in the next preceding section hereof, such vessel or air-craft shall be fined in a sum not less than ten thousand pesos (P10,000.00) but not exceed-ing 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."

It is petitioner's contention that Sec. 24 of Customs Administrative Order No. 8-75 was promulgated in line with the government policy of encouraging containerization which results in the laudable decongestion of ports of entry. Such arrangement has been sanctioned worldwide by international ports to cope up with the ever-increasing volume of cargoes of the shipping industry. Hence, the containerization system was devised to facilitate the expeditious and economical loading, carriage and unloading of cargoes. Under this system, the shipper loads his cargoes in a specially designed container, seals the container and delivers it to the carrier for transporta-tion. The carrier does not participate in the counting of the merchandise for loading into the container, the actual loading thereof nor the sealing of the container. Having no actual knowledge of the kind, quantity or condi-tion of the contents of the container, the carrier issues the corresponding bill of lading based on the declaration of the shipper. The bill of lading describes the cargo as a container simply and it states the contents of the container either as advised by the shipper or prefaced by the phrase "said to contain". Clearly then, the matter quantity, description and conditions of the cargo is the sole responsibility of the shipper.

The case at bar involves a situation intended pre-cisely to be covered by Sec. 24 of CAO No. 8-75. An examination of said Customs Administrative Order in rela-tion to Sec. 1005 and Sec. 2521 shows that containerized cargoes on "shipper's Load and Count" shipping arrangement are not required to be checked and inventoried by the carrier at the port of loading or before said carrier enters the port of unloading in the Philippines since it is the shipper who has the sole responsibility for the quantity, description and condition of the cargoes shipped in container vans, each container van considered as a unit of transport.

Petitioner's vessel, the "American Venture" faith-fully complied with the requirements of Sec. 1005 of the Tariff and Customs Code. Said vessel submitted a complete manifest of all her cargoes. However there was a slight error thru no fraudulent intent or negligence of the vessel. Said vessel relied on the information in the bill of lading submitted by the shipper in making the Manifest. There was no way for the vessel to discover until after the opening of the containers and the inven-tory of their contents, that the first container contained 34 cases and the second container contained 44 cases. Furthermore, noteworthy is the fact that Container No. 2020984 is described expressly in both the bill of lading and the vessel's manifest as a "Part" of the goods con-tained in the second Container No. 2101730, an important indication that the contents of Container No. 2020984 and Container No. 2101730 are parts of the same importation coming from one and the same shipper and destined to the same consignee and that in the examination of contents for Customs purposes, the number of cases should be the total in the 2 containers, to wit 78 cases.

Considering therefore, that the total number of cases of cotton denims as declared by the shipper in the manifest is 78 as borne on two containers, and consi-dering the undisputed fact that the same total number of 78 cases of cotton denims were found by the Bureau of Customs on board petitioner's vessel, it is clear that the vessel's Manifest reflects a complete and substantially accurate statement of the cargoes contained therein in accordance with the requirement of Sec. 1005 in relation to Sec. 2521 of the Tariff and Customs Code. Accordingly, therefore, the imposition by respondent-appellee of a fine of P10,000.00 upon petitioner-appel-lant's vessel allegedly for the failure of the latter to have on board a complete manifest of all her cargoes is patently baseless,

unfair, inconsiderate, and illegal. Besides the clerical error cannot be attributed to the shipper. Finally, there was no financial loss for the government.

WHEREFORE, finding the instant petition meritorious, the assailed decision of the Court of Tax Appeals imposing a fine of P10,000.00 on petitioner's vessel, M/V "American Venture" for alleged violation of Sec. 1005 in relation to Sec. 2521 of the Tariff and Customs Code, as amended, is hereby REVERSED and SET ASIDE.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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