

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LT. COL. LEOPOLDO R. RELUNIA,
Petitioner

versus

C. T. A. CASE NO. 181

COMMISSIONER OF CUSTOMS,
Respondent.

11-14-56

x - - - - - x

11/14/56

DECISION

On December 10, 1953, the RPS "MISAMIS ORIENTAL", a unit of the Philippine Navy, left the Philippines for Japan carrying contingents of the 14th BCT to Pusan, Korea and Christmas gifts for our soldiers there. While in Japan, 180 cases containing various dutiable articles, were loaded in said vessel. The vessel arrived in Manila on September 2, 1954. The articles have been classified into three groups, to wit: "(1) those supposed to be for the Philippine Army Post Exchange, with an appraised value of \$26,197.53, (2) those pertaining to the Philippine Navy Officers Base Commissary, Cavite, with an appraised value of \$1,590.04, and (3) those belonging to individuals, consisting of nine Philippine Army and Navy officers and crew and two private persons, with an appraised value of \$1,772.00." All these articles were declared forfeited by the Collector of Customs of Manila for violations of the Customs Law in a decision rendered on March 18, 1955.

One of the cases containing an electric range "GE" with four burners, brought by the RPS "MISAMIS ORIENTAL" is consigned to petitioner herein. The

said article was forfeited pursuant to Section 1363 (g) of the Administrative Code as an unmanifested cargo. On appeal to the Commissioner of Customs, the dispositive portion of the decision of the Collector of Customs of Manila was affirmed in toto; hence this appeal.

Section 1363(g) of the Administrative Code, upon which the decree of forfeiture is based, reads as follows:

"SEC. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:

X X X X X X

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

The only question to be decided is whether or not a manifest is required of the RPS "MISAMIS ORIENTAL" and, if so, whether or not the aforesaid electric range is an unmanifested merchandise within the meaning of Section 1363(g) of the Administrative Code.

The law provides that an "unmanifested merchandise found on any vessel, a manifest therefor being required" is subject to forfeiture. This means that where a vessel is required by law, or by regulations promulgated pursuant to law, to make and submit a manifest of its cargo to the customs authorities and it fails to do so, merchandise not manifested shall be forfeited. Is the RPS "MISAMIS ORIENTAL" required under the Customs Law to make and

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submit to the customs authorities a manifest of its cargo? The Collector of Customs of Manila says it is, and he has been sustained by respondent Commissioner of Customs.

It is argued that Sections 1221, 1225 and 1228 of the Administrative Code require masters of Government vessels to submit cargo manifests. Section 1221 provides:

"SEC. 1221. Ports open to vessels engaged in foreign trade—Duty of vessel to make entry.—Vessels engaged in the foreign carrying trade shall touch at ports of entry only, except as otherwise specially allowed; and every such vessel arriving within a customs collection district of the Philippines from a foreign port shall make entry at the port of entry for such district and shall be subject to the authority of the collector of customs of the port while within his jurisdiction.

"The master of any war vessel or vessel employed by any foreign government shall not be required to report and enter on arrival in the Philippines, unless engaged in the transportation of merchandise in the way of trade."

The term "report and enter" appearing in the last paragraph of Section 1221 means, according to the Collector of Customs, "the entrance of a vessel from a foreign port into a Philippine port of entry as contemplated in Section 1225", which reads in part:

"SEC. 1225. 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 boarding

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officer of customs.

"(a) The original manifest of all cargo destined for the port, to be returned with boarding officer's indorsement.

x x x x x."

And Section 1228 provides:

"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 a 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."

Sections 1221, 1225 and 1228 of the Administrative Code relied upon by respondent are found under Article VI of the Customs Law the title of which

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reads: "Entrance of vessels in foreign trade". Obviously, the said Article lays down rules governing the entry of vessels engaged in foreign trade. In fact, the heading of Section 1221 states: "Ports open to vessels engaged in foreign trade - Duty of vessel to make entry", and the second paragraph thereof exempts from its operation the master of any war vessel or vessel employed by any foreign government, unless it is engaged in the transportation of merchandise in the way of trade. Section 1225 also provides that for the purpose of making entry of a vessel engaged in foreign trade, the master shall present the documents enumerated therein.

In support of the allegation that the RPS "MISAMIS ORIENTAL" is required to submit a manifest, it is claimed that the said vessel is a war vessel "engaged in the transportation of merchandise in the way of trade". Counsel for respondent alleges:

"Far from sustaining the view that war vessels are exempt from certain requirements like the presentation of a cargo manifest as prescribed in Section 1225, supra, paragraph 2 of Section 1221 expressly provides that war vessels 'engaged in the transportation of merchandise in the way of trade', like the ship in the case at bar, are not excluded from the requirements of entry upon arrival." (Pp. 8-9, Memorandum for Respondent.)

Was the RPS "MISAMIS ORIENTAL" engaged in the transportation of merchandise in the way of trade when it arrived from Korea and Japan on September 2, 1954? The word "engaged" has been defined in

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Words and Phrases as follows:

"Engaged" means occupied or employed. Household Finance Corp. v. Shaffner, 203 S. W. 2d 734, 739, 356 Mo. 808.

The word "engage" connotes more than a single act or a single transaction; it involves some continuity of action. Day v. Equitable Life Ass. Soc. of United States, C.C.A. Colo., 83 P. 2d 147, 148.

The phrase, "engaged in the transportation of freight or passengers," in constitutional provision exempting certain vessels so engaged from taxation, except for state purposes, means "engaged in the transportation of property or persons for hire." Dragich v. Los Angeles County, 86 P. 2d 669, 30 Cal. App. 2d 397.

That pleasure yacht was carrying for crew stolen lobsters taken out of season on single occasion without hire did not constitute "engaging in trade" within forfeiture statute. The Chiquita, C.C.A. Cal., 44 P. 2d 302, 303.

It does not appear that the RPS "MISAMIS ORIENTAL", when it arrived from Korea and Japan on September 2, 1954, or prior thereto, was occupied or employed in the transportation of merchandise in the way of trade; or that it was continuously or habitually transporting goods in foreign trade for hire. We take it that respondent's conclusion has been inferred solely from the fact that said vessel carried on that one occasion dutiable merchandise. We do not believe that, under the circumstances, the said vessel may be considered as having engaged in foreign trade within the meaning of Sections 1221

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and 1225 of the Administrative Code so as to require it to "report and enter" on arrival in the Philippines.

But, according to respondent -

"x x x Public policy makes imperative the interpretation of the phrases 'a vessel engaged in foreign trade' as used in Section 1225 of the Revised Administrative Code, and 'Every vessel from a foreign port' as used in Section 1228 of the same Code, in such a manner as to include vessels owned by the Government when they undertake the transportation of cargoes similar to the goods involved herein." (Page 8, Decision on Appeal of Respondent.)

Public policy is shaped by Congress alone and not by any administrative official. Public policy is what the law says; not what any executive officer thinks it should be. The policy in regard to the submission of manifests of imported merchandise has been laid down by law in Article VI of the Customs Law. There may be a gap or deficiency in that law. In such a situation, the remedy is an amendment of the law. The deficiency can not be supplied by mere executive or judicial pronouncement for that would be usurpation of the legislative power.

Attention has been drawn to Section 1234 of the Administrative Code which requires the master of a transport or supply ship of the United States Army or Navy to present a manifest and other documents to the boarding officer or collector of customs to show the necessity of a similar requirement in regard to transport or supply ships of the Armed Forces of

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the Philippines. Respondent states:

"x x x. Even before our country attained its independence, and while the United States sovereignty was supreme over the Philippines, the master or other officers in charge of a transport or supply ship of the United States Army or Navy was required by law (Sec. 1234 of the Revised Administrative Code) to present to the boarding officer or the Collector of Customs, a duly certified manifest in duplicate, containing, among others, a list of all properties of officers and enlisted men, or of civilians carried as passengers; and a list of all other goods, wares, merchandise, or effects on board. To sustain the proposition that vessels owned by the government are not within the pale of the customs laws and regulations is not only absurd but also fraught with serious implications, for the irony thereof is that such vessels may bring, unhampered, into this country dutiable and/or prohibited merchandise and goods, or, to state it bluntly, they may engage in the very activity which they are called upon to prevent and suppress." (Pp. 8-9, Decision on Appeal.)

There is nothing in Section 1234 of the Administrative Code from which an inference may be drawn that the requirements in regard to transport or supply ships of the U. S. Army or Navy are applicable to Philippine Navy vessels not engaged in foreign trade. If Congress intended to make Section 1234 applicable to Philippine Navy vessels, it should have so expressly provided. That Congress has not so far amended the law is an indication of an intention to place Philippine Navy vessels beyond the scope of said section.

The fear has been entertained that if Philippine Navy vessels are not made subject to the same require-

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ments as in the case of transport or supply ships of the U. S. Army or Navy, "such vessels may bring, unhampered, into this country dutiable and/or prohibited merchandise and goods, or, to state it bluntly, they may engage in the very activity which they are called upon to prevent and suppress."

The apprehension of respondent that Philippine Navy vessels might engage in bringing into the country prohibited merchandise is not altogether justified. There might be instances of abuse of the privilege, but we do not think that an unhampered activity in prohibited merchandise by those in command of our Navy vessels would be possible. The Chief Executive, who is the Commander-in-Chief of the Armed Forces, at the first sign of such an abuse or illegal activity, would, we are certain, take appropriate measures to curtail it. At any rate, if respondent feels that there is grave danger that Navy vessels would engage in unhampered importation of prohibited goods, he should recommend to Congress the enactment of remedial legislation. We have no doubt his proposal to this effect would find sympathetic response.

Assuming that Philippine Navy vessels are required to submit manifests, the existence of a manifest in this case has been sufficiently established. On September 17, 1934, the then Acting Commissioner of Customs wrote to the Chief of Staff of the Armed Forces of the Philippines stating that, according to his information " a copy of the ship's manifest

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covering said cargo has been secured by that Office from the Commanding Officer of the vessel", and requested that 2 copies of said manifest be furnished the Bureau of Customs. This letter was referred to the Philippine Navy. Commodore J. Francisco, Flag Officer in Command, wrote to the Commissioner of Customs transmitting two copies each of the manifests. The letter of Commodore Francisco, dated October 9, 1954, reads:

"In connection with your letter dated 17 September 1954 referred to me for appropriate action by the Chief of Staff, AFP, I am enclosing two (2) copies of each of the cargo manifest of RPS Misamis Oriental (T-40) dated 26 August 1954 and the supplementary manifest covering the same voyage dated 8 September 1954.

"Please be informed that according to the testimony of the Commanding Officer of RPS Misamis Oriental and that of the Assistant Port Director, Pier 5, PN, the cargo manifest of 26 August 1954 was submitted to your office and received by your Mr. Islas. Because of an erroneous information received by the Petty Officer who was directed to submit the supplementary manifest of 8 September 1954, the same was not actually submitted to your office although it was so intended.

"In this connection, this Command feels that the pertinent provisions of the Revised Administrative Code relative to vessels coming from foreign ports are not applicable to vessels of the Philippine Navy as the same are war vessels, exempted under Section 1221 of said code. If your office holds a contrary opinion, a clarification of this matter is requested."

Commodore Francisco certified to the fact that the cargo on board the RPS "MISAMIS ORIENTAL" when it arrived from Japan on September 2, 1954, were

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manifested, and he furnished the Commissioner of Customs with two copies of said manifests. The cargo officer of said vessel testified in Court that he prepared said manifests. No evidence has been presented to contradict his testimony. That Philippine Navy authorities expressed doubt in regard to the application of certain provisions of the Administrative Code to Navy vessels is no proof of the absence of such manifests. The manifests were obviously prepared in compliance with Standing Operating Procedure No. 12, dated February 18, 1953, of the Philippine Navy.

But it is contended that the manifests were not in the form prescribed by the Bureau of Customs as required by Section 1228 of the Administrative Code. That section does not require that cargo manifests should be in the "prescribed form". It merely requires that every vessel from a foreign port must have on board a complete written or typewritten manifests of all her cargo; that all the cargo intended to be landed at each port must be described in separate manifests for each port of call; and that 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. The cargo manifests presented in evidence in this case complied with all these requirements. The manifests which are required to be prepared in the prescribed form, under Section 1228, are the passenger manifests and

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net the cargo manifests, as shown by the following provision:

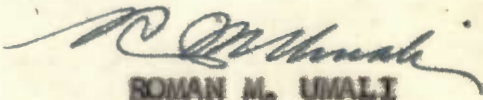
"Every vessel from a foreign port or place must have on board complete manifests of passengers, immigrants, and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws. x x x." (Under-scoring supplied.)

No similar provision is made with respect to cargo manifests. We are, therefore, of the opinion that the manifests of the RPS "MISAMIS ORIENTAL" satisfy the requirements of the law.

FOR THE FOREGOING CONSIDERATIONS, we are of the opinion that the forfeiture of the electric range in question under Section 1363(g) is illegal. Accordingly, it is hereby ordered that the said article be released to the herein petitioner upon payment of the corresponding customs duties, taxes or charges. Without pronouncement as to costs.

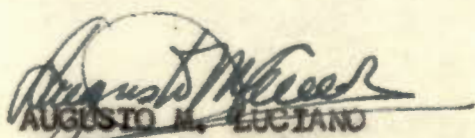
SO ORDERED.

Manila, November 14, 1956.


ROMAN M. UMALI
Associate Judge

WE CONCUR:


MARIANO NABLE
Presiding Judge


AUGUSTO M. LUCIANO
Associate Judge