REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-625
For: Violation of Section 3601, in relation to 1302 of the Tariff and Customs Code of the Philippines

- versus -

ZENAIDA N. VALENCIA,
JENNIFER N. VALENCIA,
EDWARD OCHAVE,
GENEVIEVE V. OCHAVE,
CLARISSE D. KARINGAL
and EDMUND DISCUTIDO,
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-626
For: Violation of Section 3602, in relation to 2503 of the Tariff and Customs Code of the Philippines

- versus -

ZENAIDA N. VALENCIA,
JENNIFER N. VALENCIA,
EDWARD OCHAVE,
GENEVIEVE V. OCHAVE,
CLARISSE D. KARINGAL
and EDMUND DISCUTIDO,
Accused.

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

Promulgated:

SEP 30 2020
9:35 A.M.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar are two (2) consolidated criminal cases filed against accused Zenaida N. Valencia (**Zenaida**), Jennifer N. Valencia (**Jennifer**), Edward Ochave (**Edward**), Genevieve V. Ochave (**Genevieve**), Clarisse D. Karingal (**Karingal**) and Edmund Discutido[1] (**Discutido**) [collectively known as **accused**] for violation of Sections 3601[2] and 3602[3], in relation to Sections 1302[4] and 2503[5], of the Tariff and Customs Code of the Philippines (**TCCP**).

The Department of Justice (**DOJ**) filed the corresponding Informations below:

__**Crim. Case No. O-625**__

...

That on or about 11th of August 2014, in the port of Manila, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding with one another, did then and there willfully, unlawfully and fraudulently import, bring into and receive 6 boxes containing a total of 413 pieces G-Shock wristwatches with an estimated dutiable value of Six Million Three Hundred Four Thousand Eight Hundred Ninety Two Pesos 91/100 (P6,304,892.91) and duties and taxes in the amount of One Million One Hundred Ten Thousand Seven Hundred Eighty One Pesos (P1,110,781.00) through the informal entry mode, by declaring in the Sender's Export Declaration and Packing List that the imported goods inside the 6 boxes were of shoes, groceries, chocolates, gifts, toys, comforters[,] candies, shirts and bags without commercial value or quantity, to the damage and prejudice of the government, in the amount of One Million One Hundred Ten Thousand Seven Hundred Eighty One Pesos (P1,110,781.00).

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1 Said accused's name in the Personal Information Sheet is "Edmon Banjawan Discutido", Division Docket (CTA Crim. Case No. O-625), Volume I, p. 204.

2 *Unlawful Importation.*

3 *Various Fraudulent Practices Against Customs Revenue.*

4 *Import Entries.*

5 *Undervaluation, Misclassification and Misdeclaration in Entry.*

CONTRARY TO LAW.

...

Crim. Case No. O-626

...

That on or about 11th of August 2014, in the port of Manila, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding with one another, did then and there willfully, unlawfully and fraudulently cause the importation of 6 boxes containing a total of 413 pieces of G-Shock wristwatches all consigned to the accused, by falsely declaring that the imported goods inside the 6 boxes were shoes, groceries, chocolates, gifts, toys, comforters, candies, shirts and bags of no commercial value, when in truth and in fact, the 6 boxes actually contained wrist watches with the brand of G-shock with an estimated dutiable value of Six Million Three Hundred Four Thousand Eight Hundred Ninety Two Pesos (91/100) (P6,304,892.91) and duties and taxes in the amount of One Million One Hundred Ten Thousand Seven Hundred Eighty One Pesos (P1,110,781.00) to the damage and prejudice of the government.

CONTRARY TO LAW.

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FACTS OF THE CASES

The six accused are consignees of six (6) out of the total of seventy-three (73) boxes that were subjected to inspection when they arrived at the Ninoy Aquino International Airport (**NAIA**) on 11 August 2014. The boxes were flown in from the Kingdom of Bahrain *via* Gulf Air Flight GF 154 and were brought to the Paircargo Warehouse[6] at NAIA.

As the 73 boxes were declared to be personal effects, they were brought into the country through the informal entry mode as shown in an "Informal Import Declaration and Entry"[7] (**IIDE**) document. Attached thereto were copies of the Sender's Export Declaration and

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[6] Also referred to in the records to be "PAIR Cargo in the Judicial Affidavit of Customs Examiner Magarang and Customs Intelligence Geli, and Memorandum of Plaintiff".

[7] Exhibit "P-13", Division Docket (CTA Crim. Case No. O-625), Volume I, p. 34.

Packing Lists[8], and Airway Bill[9], issued by Forex U-Mac Bahrain and addressed to its counterpart U-Mac Forex Cargo Philippines. The subject importations are detailed below[10]:

Senders Export Declaration & Packing List No.	Consignee	Sender	Declared Contents	As found
MBH 38475	Zenaida N. Valencia	Jeffrey N. Valencia	Shoes, groceries, chocolates	80 pieces of G-Shock watches
MBH 38476	Jennifer N. Valencia	Jeffrey N. Valencia	Groceries, gifts, shoes	89 pieces of G-Shock watches
MBH 38477	Edward Ochave	Peter Paul Bayani	Shoes, groceries, clothes	75 pieces of G-Shock watches
MBH 38479	Clarisse D. Karingal	Winly Dael Duran	Chocolates, bags, toys	46 pieces of G-Shock watches
MBH 38480	Genevieve V. Ochave	Blessie Y. Jao	T-shirts, shoes, jackets, comforter	56 pieces of G-Shock watches
MBH 38511	Edmund Discutido	Leland Marquez	Chocolates, candies, bags, shoes gifts	67 pieces of G-Shock watches
TOTAL				**413 pieces**

Later, pursuant to his superior's directive, Customs Intelligence Officer Justin Roman Geli (**Geli**) coordinated with the Paircargo Warehouse Sub-Collector and verified an intelligence information (from their counterpart in Bahrain) that certain *Balikbayan* boxes contained wristwatches. Thus, when the boxes arrived, Customs Examiner Federico Magarang (**Magarang**) conducted a physical examination of the boxes in the presence of Customs Intelligence Officers Geli, Felix Tallod Jr. (**Tallod**) and Artemio Jusgado (**Jusgado**). The cargo warehouse locator and Rady Abad (**Abad**) of Sulito Brokerage, the alleged authorized representative of the accused, were also present.

As a result of the inspection, sixty-seven (67) of the 73 boxes were indeed personal effects as declared, while the remaining were the

8 Exhibits "P-3" to "P-8", including sub-markings, id., pp. 28-33.
9 Exhibits "P-14" to "P-14-3", id., p. 35.
10 Exhibits "P-1-2" and "P-1-3", id., pp. 19-20.

six (6) boxes (**subject boxes**) that contained a total of 413 brand new G-shock wristwatches mixed with personal effects.

Thereafter, Geli, Tallod and Jusgado submitted a report about the alleged fraudulent importations, recommending the seizure and detention of the subject boxes. Officer-in-Charge of Intelligence Joel Pinawin (**OIC Pinawin**) approved the said recommendation and endorsed the same to NAIA Customs District Collector Edgar Z. Macabeo (**District Collector Macabeo**) who, in turn, ordered the seizure of the subject importations.

In an Endorsement Letter[11] signed by Atty. Danilo Ballena, Jr. (**Atty. Ballena**) of the Imports and Assessment Service (in behalf of Acting Director Arnulfo B. Gambayan [**Acting Director Gambayan**]), the estimated dutiable value of the subject cargoes was ₱6,304,892.91; while the corresponding duties and taxes due to the government was ₱1,110,781.00.

Customs Commissioner, John P. Sevilla, subsequently referred the matter to the DOJ for investigation.

After the conclusion of the preliminary investigation, the DOJ found probable cause to indict all the accused. On 09 December 2016, the two (2) Informations against them were filed before this Court.[12]

PROCEEDINGS BEFORE THE COURT

Before this Court, the accused, through their counsel, filed a Motion for Judicial Determination of Probable Cause which the Court denied.[13] The warrants of arrest (**WOA**) were then issued against the accused and they posted their respective bail bonds accordingly.

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11 Dated 10 December 2014, Exhibit "P-2", id., pp. 26-27.

12 Id., pp. 6-7; Division Docket (CTA Crim. Case No. O-626), pp. 6-7.

13 See Resolution dated 13 February 2017, Division Docket (CTA Crim. Case No. O-625), Volume I, pp. 71-75.

Later, upon motion of the accused, the Court consolidated CTA Crim. Case No. O-626 with CTA Crim. Case No. O-625, the latter bearing the lower docket number.

Still later, all the accused assailed the Court's jurisdiction in a Motion to Dismiss[14] insisting that no proof of conspiracy amongst them was established. According to them, the individual liabilities of each of the accused would be less than ₱ 1 Million hence, the lower courts have jurisdiction over their cases. Unconvinced, the Court retained jurisdiction over the cases and sustained the prosecution's (**plaintiff's**) contention that jurisdiction is determined by the allegations in the complaint and that the total duties and taxes due breached the ₱ 1 Million threshold (of the Court's jurisdiction).

Prior to the arraignment, the accused moved for reconsideration of the Court's denial of their Motion to Dismiss. The Court denied the same and proceeded to arraign them. Following their refusal to enter their respective pleas, the Court then entered a plea of not guilty for all the six accused.

Undaunted, the accused filed a Petition for *Certiorari*[15] with the Court *En Banc*, docketed as CTA EB Crim. Case No. O-042 entitled *Zenaida N. Valencia, Jennifer Valencia, Genevieve Ochave, Edward Ochave, Edmond Descutido v. People of the Philippines*. They insisted that the Court has no jurisdiction over their cases.

The Court *En Banc* upheld the CTA's jurisdiction, stating that the Court's jurisdiction is determined by the allegations in the complaint or information.[16] As the duties and taxes due (exclusive of penalties and charges) alleged in the two Informations exceeded ₱1 Million, the CTA has exclusive original jurisdiction pursuant to Section 7(b)(1)[17] of Republic Act (**RA**) No. 1125[18], as amended.

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14 Filed on 11 May 2017, id., pp. 254-255.

15 Pursuant to Section 1, Rule 65 of the Rules of Court.

16 See Decision dated on 04 April 2019.

17 **Sec. 7.** *Jurisdiction.* – The CTA shall exercise:

...

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: Provided, however, That offenses

In the meantime, the proceedings before the Division continued. During the preliminary conference[19], plaintiff presented evidence for marking before the Clerk of Court. All the accused, through their counsel, manifested that they will not participate in the proceedings.

At the pre-trial[20], all the accused and their counsel appeared but they again refused to participate in the proceedings. The Court then terminated the pre-trial and issued the Pre-Trial Order.[21]

Later, accused Karingal changed tact and manifested her willingness to participate in the proceedings. As a result, the Pre-Trial Order was accordingly amended.[22]

Trial ensued thereafter where Magarang[23] and Atty. Ballena[24] assumed the witness stand for plaintiff, both executed their judicial affidavits, in lieu of their direct testimony.[25]

TESTIMONY OF FEDERICO MAGARANG

Magarang is a Customs Examiner at Paircargo Warehouse at NAIA. Among others, his responsibility included the physical examination of the cargoes and documents relative to said cargoes. For

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or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One Million Pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate...

18 AN ACT CREATING THE COURT OF TAX APPEALS, as amended by RA 9282 and RA 9503.

19 Dated 31 July 2017, Minutes of the Preliminary Conference, Division Docket (CTA Crim. Case No. O-625), Volume I, pp. 503-507.

20 Dated 03 August 2017, Minutes of the Hearing, id., Volume II, p. 524.

21 Dated 18 August 2017, id., pp. 528-535.

22 Order dated 06 September 2017, id., pp. 603-604.

23 Judicial Affidavit, id., pp. 672-682.

24 Judicial Affidavit, id., pp. 701-705.

25 Geli was named as one of the witnesses for plaintiff. However, he was not presented in court to identify his Judicial Affidavit (Division Docket, Volume II, pp. 683-691).
In his Judicial Affidavit, he appears to be the District Intelligence Supervisor at the Port of Manila. At the time of the alleged commission of the crime, he was an Intelligence Officer assigned at NAIA. He claimed to have prepared a report addressed to their OIC Pinawin, recommending the seizure of the cargoes. Pinawin heeded the recommendation and submitted the same to District Collector Macabeo. The latter, in turn, issued the Warrant of Seizure and Detention.
His Judicial Affidavit also stated that he was one of the signatories to the Joint-Complaint Affidavit filed for violation of Sections 3601 and 3602 of the TCCP against the six consignees of the cargoes. The said Joint-Complaint Affidavit was endorsed by then Customs Commissioner John Sevilla to the DOJ.

these cases, he examined the 73 boxes under Airway Bill No. 072-6804-3441 flown in the country *via* Gulf Air GF 154 flight from the Kingdom of Bahrain.

On the witness stand, Magarang testified on the surrounding circumstances that led to the discovery of the subject boxes. According to him, he first summoned the customs broker Abad (Michelle Amandy of Sulito Customs Brokerage's representative) and advised that he would conduct a physical examination of the boxes. Abad obliged and accompanied him at the examination area.

Magarang also identified the documents relating to the boxes, namely: Airway Bill[26], IIDE[27], and the Sender's Export Declaration and Packing Lists.[28] He then detailed the contents of each document, especially the implication of an IIDE. He explained that the IIDE refers to those importations not requiring import permit, letters of credit and the like, such as *Balikbayan* boxes, unaccompanied baggage, and those with no commercial value or those valued at not more than US$500.

Magarang also declared that, at the examination area, Custom Agents Geli, Tallod and Jusgado informed him that they received an information from the Deputy Commissioner of Customs for Intelligence that the cargoes to be examined contained wristwatches of commercial quantity. In their presence, the cargoes were then inspected. As a result, they discovered that, out of the 73 boxes, 67 contained personal effects as declared; six other packages yielded a mix of personal effects and brand new G-shock wristwatches. The last boxes bore the names of the consignees and package numbers corresponding to the six accused and the Sender's Export Declaration and Packing Lists numbers. District Collector Macabeo then seized the six boxes.

Considering the earlier manifestation of the accused that they will not participate in the proceedings, the right to cross-examine Magarang was deemed waived.

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[26] Supra at note 9.
[27] Supra at note 7.
[28] Supra at note 8.

TESTIMONY OF ATTY. DANILO BALLENA, JR.

Atty. Ballena is the Acting Chief of the Audit Division 1, Post Clearance Audit Group of the Bureau of Customs (**BOC**). At the time of the alleged commission of the charged crimes, he was the Authorized Officer of Acting Director Gambayan.

When he assumed the witness stand, Atty. Ballena testified that the BOC Office of Legal Service referred the subject boxes to their office for valuation and computation of duties and taxes. After due examination, he estimated the dutiable value of the 413 G-shock wristwatches to be ₱6,304,892.91, with the corresponding duties and taxes amounting to ₱1,110,781.00. Thereafter, he prepared a letter (dated 10 December 2014) with the details of valuation and the computation of duties and taxes addressed to Atty. Alexis Medina.

During the cross-examination[29], it was established that Atty. Ballena's participation was limited to the evaluation of the goods and that he was not part of the investigation team. Neither did he personally know accused Karingal.[30]

After the witnesses were presented, plaintiff filed its Formal Offer of Evidence (**FOE**).[31] While initially, the Court denied admission of all of its exhibits (for lack of attestation as required by the Judicial Affidavit Rule)[32], it ultimately reconsidered upon plaintiff's motion and considering the absence of objection from all the accused.[33]

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29 Only for accused Clarisse D. Karingal, TSN dated 16 October 2019.

30 Id.

31 Dated 21 October 2019.

32 See Resolution dated 10 January 2020, Division Docket (CTA Crim. Case No. O-625), Volume II, pp. 761-761.

33

Exhibit	Description
"P-1" to "P-1-3"	Complaint-Affidavit dated 19 December 2014.
"P-2" to "P-2-1"	2nd Indorsement letter dated 10 December 2014 of Arnulfo B. Gambayan.
"P-3" to "P-3-3"	Sender's Export Declaration and Packing List of the cargo of Zenaida N. Valencia which is covered under MBH No. 38475.
"P-4" to "P-4-2"	Sender's Export Declaration and Packing List of [the cargo] Jennifer N. Valencia which is covered under MBH No. 38476.
"P-5" to "P-5-3"	Sender's Export Declaration and Packing List of the cargo of Edward Ochave which is covered under MBH No. 38477.
"P-6" to "P-6-3"	Sender's Export Declaration and Packing List of the cargo of Clarisse D. Karingal which is covered under MBH No. 38479.

After the plaintiff rested its case, accused Karingal testified for her own defense by way of Judicial Affidavit[34], executed in lieu of direct testimony.

On the witness stand, accused Karingal denied any connection with her co-accused, stating that she only met them during the court proceedings. She had no prior transaction or any business dealing with any of them. Likewise, she testified that Winly Dael Duran (**Duran**), who appeared to be the sender or shipper, is her sister working in Manama, Bahrain.

Except for a single piece of G–shock wristwatch valued at $284.74 (or ₱14,237.00 at the time), accused Karingal claimed to be unaware of the supposed several pieces of G-Shock that her sister had sent to her. She contended that she was a mere consignee and not an exporter of the wristwatches. Lastly, she belied plaintiff's allegation that she attempted to settle the case by paying the taxes and duties of the wristwatches.

On cross-examination[35], accused Karingal clarified that she met her co-accused after the cases against them were filed before the DOJ. She also did not deny that she was communicating with Duran about the shipment.

"P-7" to "P-7-3"	Sender's Export Declaration and Packing List of the cargo of Genevieve Ochave which is covered under MBH No. 38480.
"P-8" to "P-8-3"	Sender's Export Declaration and Packing List of the cargo of Edward *(sic)* Discutido which is covered under MBH No. 38511.
"P-9" to "P-9-2"	Letter of Joel Pinawin, Customs Intelligence Officer-in-Charge at NAIA to Customs District Collector Edgar Z. Macabeo, dated August 12, 2014.
"P-10" to "P-10-3"	Warrant of Seizure and Detention dated August 19, 2014.
"P-11" to "P-11-2"	Letter of Messrs. Artemio Jusgado, Felix Tallod, Jr. and Justin Roman Geli dated August 11, 2014.
"P-12" to "P-12-1"	Referral Letter of Customs Commissioner John P. Sevilla dated 19 September 2014.
"P-13" to "P-13-3"	Informal Import Declaration and Entry dated 11 August 2014.
"P-14" to "P-14-3"	Gulf Airway Bill No. 072-6804-3441.
"P-15"	Judicial Affidavit of Atty. Danilo Ballena, Jr. dated 12 September 2019.
"P-16"	Judicial Affidavit of Federico Magarang dated 6 August 2019.
"P-17"	Judicial Affidavit of Justin Roman Geli dated 19 August 2019.

[34] Exhibits "A-1" to "A-1-A", Division Docket (CTA Crim. Case No. O-625), Volume III, pp. 794-797.

[35] TSN dated 11 March 2020.

After Karingal's testimony, the Court ordered the parties to submit their respective memoranda.[36] Accordingly, plaintiff filed its Memorandum on 06 July 2020, whereas accused Karingal filed her Memorandum on 09 July 2020. The rest of the accused did not file their memoranda.[37] Thereafter, the Court submitted the cases for decision.[38]

RULING OF THE COURT

Before tackling the criminal cases filed against the accused, the Court echoes at the outset the Court *En Banc's* ruling on the issue of jurisdiction. The allegations in the Informations being determinative of the court's jurisdiction, We rely on the *allegation* that conspiracy among the accused attended the commission of the crimes charged and that the aggregate amount of duties and taxes due for the subject importation exceeded this Court's jurisdiction amount threshold of ₱ 1 Million.

With the issue of jurisdiction settled, we proceed to the determination of the issue here, that is – WHETHER ALL THE ACCUSED ARE LIABLE AS CHARGED.

To pin down criminal liability, plaintiff's pieces of evidence must establish the guilt of the accused with proof beyond reasonable doubt. Proof beyond reasonable doubt imposes upon plaintiff the immense responsibility of establishing moral certainty. The plaintiff's case must rise on its own merits, not merely on relative strength as against that of the defense. Should plaintiff fail to discharge its burden, acquittal must follow as a matter of course.[39]

In the cases at bar, the six accused were indicted for violations of Section 3601[40] in relation to Section 1302 *and* Section 3602[41], in relation to Section 2503 of the TCCP.

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36 See Order dated 11 March 2020, Division Docket (CTA Crim. Case No. O-625), Volume III, pp. 800-801.
37 Records Verification Report dated 10 July 2020, id., p. 818.
38 See Resolution dated 20 July 2020, id., p. 819.
39 *Capistrano Daayata, et al. v. People of the Philippines*, G.R. No. 205745, 08 March 2017.
40 CTA Crim. Case No. O-625.
41 CTA Crim. Case No. O-626.

CTA CRIM. CASE NO. O-625
Unlawful Importation

For violation of Section 3601 (*Unlawful Importation or Smuggling*), in relation to Section 1302 of the TCCP, these provisions in the TCCP read:

> ...
>
> **Sec. 3601.** *Unlawful Importation.* – Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
>
> 1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days; if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;
>
> 2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;
>
> 3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported is more than fifty thousand pesos but does not exceed one hundred fifty thousand pesos;
>
> 4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value to be determined in the manner prescribed under this Code, including duties and taxes, of

the article unlawfully imported exceeds one hundred fifty thousand pesos;

5. The penalty of prison may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of reclusion perpetua to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribe and the offender shall suffer and additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

...

Sec. 1302. *Import Entries.* – All imported articles, except importations admitted free of duty under Subsection "k", Section one hundred and five of this Code, shall be subject to a formal or informal entry, Articles of a commercial nature intended for sale, barter or hire, the dutiable value of which is two thousand pesos (P2,000.00) or less, and personal and household effects or articles, not in commercial quantity, imported in passenger's baggage, mail or otherwise, for personal use, shall be cleared on an informal entry, whenever duty, tax or other charges are collectible. The Commissioner may, upon instruction of the Secretary of Finance, for the protection of domestic industry or of the revenue, require a formal entry, regardless of value, whatever be the purpose and nature of the importation. A formal entry may be for immediate consumption, or under irrevocable domestic letter of credit, bank guarantee or bond for:

(a) Placing the article in customs bonded warehouse;

(b) Constructive warehousing and immediate transportation to other ports of the Philippines upon proper examination and appraisal; or

(c) Constructive warehousing and immediate exportation. Import entries under irrevocable domestic letter of credit, bank guarantee or bond shall be subject to the provisions of Title V, Book II of this Code.

All importations entered under formal entry shall be covered by a letter of credit or any other verifiable document evidencing payment.

...

Section 3601 of the TCCP provides the acts which constitute smuggling. Smuggling is committed by any person who: (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or, (3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[42]

From the above, there are different types of smuggling.

The first type of smuggling pertains to fraudulent importation. It consists of "*intentional fraud, consisting of deception, willfully and deliberately dared* or *resorted to* in order to give up some right [and] the offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another ... even *false representations or statements* or omissions of material facts come within fraudulent intent...".[43]

The second type of smuggling refers to *any degree of participation* in the commission of unlawful importation. In one case[44], the Supreme Court found the accused therein guilty of the crime of smuggling or violation of Article 3601 of the TCCP on the ground of

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42 *Maribel B. Jardeleza v. People of the Philippines,* G.R. No. 165265, 06 February 2006; *Angel O. Rodriguez, et al. v. The Hon. Court of Appeals, et al.*, G.R. No. 115218, 18 September 1995, 248 SCRA 288.

43 Id.

44 *Rene M. Francisco v. People of the Philippines,* G.R. No. 177430, G.R. No. 178935, 14 July 2009, 592 SCRA 675.

assisting in the unlawful importation of dutiable articles, by facilitating their release from the BOC without payment of proper duties and taxes due to the government by omitting certain acts in light of glaring discrepancies and suspicious entries present in the documents involved in the subject importation (Formal Entry and Internal Revenue Declaration, bill of lading and packing list).

Finally, for the third type of smuggling, the Supreme Court handed down a verdict of conviction where several accused were found *in possession* of dutiable articles while inside the premises of the airport. They were unable to satisfactorily explain why the questioned articles were in their possession. Neither did they present any document to prove lawful importation.[45]

Importation consists of bringing an article into the country from the outside. The crime of unlawful importation is complete, in the absence of a *bona fide* intent to make entry and pay duties when the prohibited article enters Philippine territory. Importation is complete when the taxable, dutiable commodity is brought within the limits of the port of entry.[46]

In herein case, the alleged unlawful importation was committed "*by declaring* in the Sender's Export Declaration and Packing List that the imported goods inside the six (6) boxes were of shoes, groceries, chocolates, gifts, toys, comforters, candies, shirts and bags without commercial value or quantity" when, in truth and in fact, they contained 413 pieces of G-shock wristwatches; the number being of commercial value and quantity.

From the foregoing, it would appear that the accused's complained act does not fall under any of those acts punished by law. A supposed false declaration on their end, as to the content of the subject boxes, could not have been accomplished in the absence of proof that they participated in the execution of the Export Declaration and Packing Lists.

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[45] *Tomas Salvador v. The People of the Philippines*, G.R. No. 146706, 15 July 2005, 463 SCRA 489.
[46] Id.

A perusal of the Sender's Export Declaration and Packing Lists show that it was actually the shipper or sender who made the declaration and certification on the subject boxes' content. The bottom portion of each Sender's Export Declaration and Packing Lists contains the following:

> ...
>
> I HEREBY CERTIFY AND DECLARE That the contents of the above sealed package(s) are goods without commercial value or purpose whatsoever.
>
> I FURTHER CERTIFY That there are no contraband goods as defined by the laws of Kingdom of Bahrain and the Republic of the Philippines: I take full legal responsibility for any erroneous declaration or omission in the packing list attached to this document.
>
> I FINALLY CERTIFY That I am endorsing this Invoice to Forex Cargo (Phil) for door - delivery of my package(s) to my consignee at the address specified herein; That I have read, understood and agree to the terms and conditions printed on the reverse.
>
> ...

As the records also show, the subject boxes were from Bahrain and the documents for their importation were filled up not by accused but by the sender who had them flown in. Other than being named as consignees, there is no clear evidence that they ordered or controlled, or had in any way participated, in the inaccurate or untruthful declarations in the Sender's Export Declaration and Packing Lists.

Even the testimonies of plaintiff's witnesses are devoid of the acts that could have constituted smuggling on the part of the accused. While Magarang and Atty. Ballena both testified as to the surrounding circumstances that led to the discovery and seizure of the subject goods, neither gave details on how the accused participated or conspired with the sender for the importation.

It is noted that plaintiff proffered no proof showing community of criminal design among the six accused. Likewise, there was no iota of evidence tending to establish the existence of an agreement between the sender and the accused to unlawfully import the G-shock wristwatches.

It is settled that conspiracy is never presumed and requires the same degree of proof to establish the crime beyond reasonable doubt. In one case[47], the Supreme Court held:

> ...
>
> Article 8 of the Revised Penal Code provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three requisites: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a crime, and (3) the execution of the felony was decided upon. Once conspiracy is established, the act of one becomes the act of all.
>
> In *Bahilidad v. People,* the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:
>
>> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. **Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.** While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the **evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.**
>>
>> It is necessary that a conspirator should have performed some over act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the

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47 *People of the Philippines v. Benito Lababo alias "Ben", et al.,* G.R. No. 234651, 06 June 2018; Citations omitted and emphasis supplied.

> mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.
>
> ...

Succinctly, plaintiff failed to establish beyond reasonable doubt how the six accused confederated in unlawfully importing the wristwatches.

Incidentally, while the fact that only one forwarding company consolidated and handled the subject cargoes may be perceived as suspicious, it is still not enough to sustain the allegation of conspiracy amongst the six accused. It is dangerous to make a sweeping conclusion on this basis alone especially so that the Airway Bill and the IIDE were for all the 73 boxes with "various consignees" not just herein accused.[48] Stated otherwise, conspiracy could not be presumed on the mere basis that the subject six boxes form part of a singular shipment by one forwarding company (from the same country of origin contained in one Airway Bill and import declaration).

CRIM. CASE NO. O-626
Fraudulent Practices

For violation of Section 3602, in relation to Section 2503 of the TCCP, the provisions read:

> ...
>
> **Sec. 3602.** – *Various Fraudulent Practices Against Customs Revenue.* – Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares, or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of

48 3rd paragraph, Warrant of Seizure and Detention, Exhibit "P-10", Division Docket (CTA Crim. Case No. O-625), Volume I, p. 39.

> merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.
>
> ...
>
> **Sec. 2503.** *Undervaluation, Misclassification and Misdeclaration in Entry.* – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon the examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.
>
> When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.
>
> ...

The Information for Crim. Case No. O-626 carries the accusation that the accused committed the offense charge "*by falsely declaring* that the imported goods inside the [six (6)] boxes were shoes, groceries chocolates, gifts, toys, comforters, candies, shirts and bags of no commercial value, when in truth and in fact, the six boxes actually contained wrist watches with the brand of G-shock."

The following specific acts are punishable under Section 3602:

...

1. <u>Making or attempting to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter or paper</u>;
2. Making or attempting to make any entry of imported or exported article by means of any false statement, written or verbal;
3. Making or attempting to make any entry of imported or exported article by means of any false or fraudulent practice whatsoever;
4. Knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof;
5. Knowingly effects any entry of goods, wares or merchandise upon a false classification as to the quality or value;
6. Knowingly effects any entry of goods, wares or merchandise by the payment of less than the amount legally due;
7. Knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise;
8. Knowingly and willfully makes or files any affidavit abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon.[49]

...

From the above enumeration and based on the allegations in the Information, the complained act of the six accused falls under the first form of fraudulent practice penalized under Section 3602 – "making or attempting to make any entry of imported or exported goods by means of any false or fraudulent declaration".

The elements to be established in order to convict the accused of the crime charged are, specifically: (1) there must be an entry of imported or exported articles; (2) the entry was made by means of any false or fraudulent invoice, declaration, affidavit, letter or paper; and, (3) there must be intent to avoid payment of taxes.[50]

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49 *Alvin Mercado v. People of the Philippines*, G.R. No. 167510, 08 July 2015; Underscoring supplied.

50 Id.

As earlier discussed, there was no evidence pointing to the six accused as having had control over the preparation of the Sender's Export Declaration and Packing Lists. In the same vein, the IIDE was accomplished by the licensed customs broker naming a certain Michelle Amandy as the consignee.

The Supreme Court in *Alvin Mercado v. People of the Philippines*[51] explained:

> ...
>
> The act thereby imputed against the petitioner – *making an entry by means of false and fraudulent invoice and declaration* – fell under the first form of fraudulent practice punished under Section 3602 of the TCCP...
>
> It is relevant to clarify that the term *entry* as used in the TCCP is susceptible of any of the following three meanings, to wit: (1) the documents filed at the Customs house; or (2) the submission and acceptance of the documents; or (3) the procedure of passing goods through the Customs house...
>
> ...
>
> In finding the petitioner guilty as charged, the RTC observed as follows:
>
>> As evidence stands, there was really a misdeclaration of the shipment consigned to Almer Cargo Management covered by Bill of Lading No. NYKS-48150191 and Informal Entry No. 45929. Upon examination of the shipment, the BOC officers discovered that the declaration "as personal effects and of no commercial value" is not accurate. Contrary to the declaration of personal effects, the shipment consisted of general merchandise on commercial quantity such as fabrics, assorted bags of Ferragamo, Prada and Polo, children's wear, shoes, slippers etc. which were brand new and not "used". As the misdeclaration would benefit accused, he is therefore, liable as charged.
>>
>> Supreme Court ruling is to the effect that under the Tariff and Customs Code, declarations and statements contained in the Import Entry and Permit

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51 G.R. 167510, 08 July 2015, supra; Citations omitted, emphasis supplied and italics in the original text.

> to Deliver Imported Goods are presumed to be true and correct under the penalties of falsification and perjury. Moreover, descriptions on entries and other documents are admission against interest and presumptively correct. (Caltex (Phil) v. CA et al. G.R. No. 104781, July 10, 1998).

...

It is undisputed that the customs documents (like the IIDE and Permit to Deliver) were filed with and the imported goods passed through the customs authorities, thereby satisfying the first element of entry of imported articles. However, the second and third elements were not established beyond reasonable doubt. Although there was a discrepancy between the declaration made and the actual contents of the shipment, the petitioner firmly disavowed his participation in securing the clearance for the shipment as well as in preparing and filing the import documents. He insisted that being only the consignee of the shipment, he did not file the informal entry in the Bureau of Customs; that based on the documents, the filer was Consular Cargo; that he had no knowledge about the entry; that it was the broker who prepared the import entry declaration; that the papers were submitted by Viray; and that only Saganay signed the IIDE.

In this regard, the Office of the Solicitor General (OSG) contends that the declaration made in the IIDE by Saganay as the petitioner's agent-broker bound the latter as the consignee considering that he did not repudiate the declaration.

We disagree with the contention of the OSG. The only basis to hold the petitioner criminally liable under the declaration made by Saganay would be if the two of them had acted *pursuant to a conspiracy*. But even if they had acted pursuant to a conspiracy, there must be an allegation to that effect in the information. We note, however, that the information did not charge Saganay as the co-conspirator of the petitioner, thereby removing any basis for any inference in that regard. Neither did the information aver that Saganay was at all an accomplice of the petitioner. Under Article 18 of the *Revised Penal Code*, an accomplice is one who, without being a principal either by direct participation, or by inducement, or by indispensable cooperation, cooperates in the execution of the offense by previous or simultaneous acts. It would violate the constitutional right of the petitioner to be informed of the charge brought against him if he were held criminally responsible for Saganay's act or omission on the basis that Saganay had been his agent in the transaction. In other words, the importer or **consignee should not be held criminally liable for any underdeclaration or misdeclaration made by the broker unless either a conspiracy**

> **between them had been alleged and proved, or the Prosecution sufficiently established that the importer had knowledge of and actively participated in the underdeclaration or misdeclaration.** Indeed, to allow the act or omission of Saganay to bind the petitioner would be unacceptable under the principle of *res inter alias acta* embodied in Section 28, Rule 130 of the *Rules of Court.*
>
> The OSG further posits that the petitioner, as the importer, warranted that the declarations by Saganay, which were under oath and subject to the penalties of falsification and perjury, were true and correct. Hence, the petitioner should be held liable upon such declarations.
>
> The records of the case do not support the OSG' s position. Although the import documents, particularly in the IIDE, Permit to Deliver Import Goods and Bill of Lading, showed Al-mer Cargo Management as the consignee or importer, it was only Saganay who made the sworn declaration in the IIDE inasmuch as only his name and signature appeared therein. The petitioner's name was nowhere to be found in said documents, which further showed no trace of his signature, or his participation in their preparation, or his conformity with their contents. Verily, the concrete proof showing that he had affirmed the declarations under oath, as to thereby subject himself to criminal responsibility for either falsification or perjury, was entirely lacking.
>
> Even assuming that the petitioner was involved in the preparation of the import documents, a clear showing of his intent to falsify the same in order to avoid the payment of duties and taxes would still be wanting. The Customs officials themselves testified that the declarations made in the import documents largely depended on the description of the goods made by the exporter or shipper from a foreign country.
>
> ...
>
> ...As we said in *Farolan*, if at all, the wrongful making or falsity of the documents can only be attributed to the foreign suppliers and shippers. Moreover, it is not shown in the forfeiture decision that petitioner had knowledge of any falsity in the shipping documents. District Collector Rosqueta's comment on petitioner's second motion for reconsideration is enlightening: "While the shipment was misdeclared in the rider and the manifest, the consignee is innocent of the facts stated therein as it had no hand in their preparation or issuance."
>
> ...

Since the criminal charge constitutes a supposed false declarations in the importation documents, plaintiff should have again presented proof of the accused's handiwork in the execution or preparation of the Sender's Export Declaration and Packing Lists and/or the IIDE. While admittedly, there was indeed a misdeclaration of the items contained in the packages, still, nothing has been shown or proven of accused's intent to misdeclare the goods or to evade deliberately the payment of duties and taxes due.

Additionally, in the Complaint Affidavit filed with the DOJ, it was averred that the accused conspired and confederated with each other and mutually aided one another in the commission of smuggling as demonstrated in the following circumstances:[52]

> ...
>
> a) By misdeclaring the subject importations in the import documents, respondents could have evaded paying One Million One Hundred Ten Thousand Seven Hundred Eighty One Pesos (Php1,110,781.00) in duties and taxes on the subject importations;
>
> b) The commercial quantities of undeclared G-Shock wrist watches in each of the six (6) boxes or packages (from 46 to 89 pieces in each box or package) clearly show that the inclusion of these articles were not accidental or due to oversight;
>
> c) That all the six (6) boxes or packages of the subject shipments have the same origin (Bahrain), were deposited to the forwarder on the same day, were flown on the same flight (GF 154), were coursed through the same cargo forwarding entity (U-Max Forex Cargo), and commonly declared as "groceries", "shoes", "chocolates", or "bags"- indicate that the entire operation was a concerted, deliberate and systematic attempt towards the same design, i.e. to conceal and hide the importation into the Philippines of commercial quantities of high value wrist watches, with the intent to evade the payment of proper duties and taxes; and,
>
> d) As if the abovementioned acts were not enough, in the seizure proceedings, all the respondents were represented by the same counsel who moved for the settlement of the case.
>
> ...

52 Exhibit "P-1", Division Docket (CTA Crim. Case No. O-625), Volume I, p. 23.

In court, in its attempt to substantiate the above claim, plaintiff proffered copies of the Sender's Export Declaration and Packing Lists, Airway Bill and IIDE (for the 73 boxes).[53] But then again, all these do not directly and clearly pin down any of the accused's actual participation in the supposed illegal act. With the stringent bar of evidence to prove conspiracy, the same pieces of evidence have failed even more to hurdle the quantum of proof required for conviction.

In criminal cases, it is always the plaintiff that has the *onus probandi* of establishing the guilt of the accused. *Ei incumbit probatio non qui negat.* He who asserts - not he who denies - must prove.

In the prosecution of crimes, the plaintiff's duty is to prove *each* and *every element of the crime charged* in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[54] Plaintiff must discharge the burden of proof on the strength of its own evidence, not on the weakness of that for the defense. Suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. Indeed, the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.[55]

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. *Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable.*[56] Thus, *regardless of whether this Court finds incredible the accused Karingal's claim of ignorance to her own sister's shipment content (despite her constant communication with her regarding the same), it could not switch the burden of proof on accused's shoulders.* The plaintiff remains duty-bound to show the guilt of the accused and not for the latter to prove his or her innocence.

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53 Supra at notes 7-9.

54 *Anna Lerima Patula v. People of the Philippines,* G.R. No. 164457, 11 April 2012, 669 SCRA 135.

55 *Nilo Macayan, Jr. y Malana v. People of the Philippines*, G.R. No. 175842, 18 March 2015.

56 *People of the Philippines v. Danilo Asis y Fonperada, et al.*, 439 Phil. 707 (2002); Italics supplied.

On the civil aspect *ex delicto*, the Court finds the facts on which the liability may be based, wanting. Thus, a pronouncement of civil liability *ex delicto* will not be in order.

WHEREFORE, premises considered, accused Zenaida N. Valencia, Jennifer N. Valencia, Edward Ochave, Genevieve V. Ochave, Clarisse D. Karingal and Edmund Discutido are **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-625 and O-626, for failure of the plaintiff to prove their guilt beyond reasonable doubt. Accordingly, the cash bail bonds of the accused are hereby **DISCHARGED** and are to be **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

No pronouncement of civil liability *ex delicto*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice