REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIMINAL CASE NO. O-437** For: Violation of Section 3601 in relation to Sections 101 and 2530 of the Tariff and Customs Code of the Philippines, as amended
- versus -	Members:
GEMMA AIDA BELARMA y TORREDA, (Room 201 G.K. Chua Bldg., M.J. Cuenco Ave., Brgy. San Roque, Cebu City/F. Pacana St., Tisa Labangon, Cebu City), - AT LARGE - Accused.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.* Promulgated: APR 06 2015 11:40 a.m.

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RESOLUTION

For resolution is the prosecution's **Consolidated Motion for Reconsideration with Motion for Formal Amendment of the Information** filed on March 10, 2015.

In the aforesaid motion, petitioner seeks reconsideration of the Court's Resolution dated February 20, 2015 on the following grounds:

> I. In determining the existence of probable cause for unlawful importation the Court must first take into account the Import Entry Internal Revenue Declaration (IEIRD) filed before the BOC by accused Gemma Aida Belarma;

> II. The failure of the Inventory and Memorandum dated May 22, 2013 and June 6, 2013 to mention the name of the accused or Melma Enterprise is not enough to merit the dismissal of the instant charges; and
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> III. In violation of a special law like Tariff and Customs Code of the Philippines, lack of criminal intent is not a valid defense.

The prosecution contends that the IEIRD submitted by the accused indicated that the consignee was Melma Enterprise and the goods were declared to be stone slabs. However, pursuant to the Alert Orders issued against Melma Enterprise, the Bureau of Customs allegedly conducted 100% examination on the said shipments and found out that the goods declared as stone slabs were actually smuggled rice. That misdeclaration in the Import Entries is allegedly sufficient proof to establish probable cause that the accused violated the crime charged.

The prosecution argues that the reason the name of the accused and Melma Enterprise were not mentioned in the Memorandum and in the Detailed Findings Inventory, was explained in the Memorandum dated June 6, 2013. Prosecution likewise clarifies that the subject of the said memorandum was "Volume Factor for Auction of Seized Containers of Smuggled Rice from Vietnam." The prosecution insists that in the aforementioned memorandum, it is indicated that there were 1,169 x 20 containers of smuggled rice and the officers conducted a physical count only on the first fifty (50) containers out of 1,126 containers. The 1,126 container vans allegedly belonged to different entities or importers and Melma Enterprise was allegedly among those who imported the same. Thus, the prosecution believes that despite the absence of the name of Melma Enterprise either in the Memoranda or Inventory Report, the same will not defeat the existence of Import Entries submitted by the accused.

In addition, the prosecution posits that Section 3601 of the Tariff and Customs Code of the Philippines is a *malum prohibitum*, which, if violated, the element of intent is not required in establishing probable cause. The prosecution likewise alleges that the mere fact of misdeclaration of the cargo in the IEIRD by Melma Enterprise constitutes violation of the aforesaid law. Thus, the prosecution claims that it properly established probable cause in this case.

On the other hand, the prosecution prays for the amendment of the date of the alleged commission of the offense from March 31, 2014 to March 31, 2013. The discrepancy on the date mentioned is allegedly due to the inadvertent mistake. The prosecution states that the said amendment is formal in nature and will not in anyway prejudice the substantial rights of the accused since she has not yet been arraigned.

Section 2 of Article III of the 1987 Philippine Constitution provides:

> "*Section 2.* The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

The Court reiterates that probable cause to issue a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. It bears remembering that "in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance." **Thus, the standard used for the issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him.**[1] *(Emphasis and underscoring supplied.)*

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[1] *Chester de Joya vs. Judge Placido Marquez,* G.R. No. 162416, January 31, 2006, 481 SCRA 376, 380.

In the case of *Baltazar, vs. People*[2], the Supreme Court held that:

> "The task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. **Probable cause demands more than suspicion; it requires less than evidence which would justify conviction.**
>
> The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused, such as in the case at bar, is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial. *(Emphasis supplied.)*

In the instant case, the Court has already considered the allegations in the Information and scrutinized all the supporting evidence submitted by the prosecution on February 4, 2015.

Notwithstanding, the Court found that the said documents failed to prove *prima facie* violation of Section 3601 of the Tariff and Customs Code of the Philippines as already pronounced in the Resolution dated February 20, 2015.

Thorough scrutiny of the Memorandum dated June 6, 2013 shows that the inventory conducted was for the purpose of

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[2] G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293-294.

determining the number of sacks of rice per container of smuggled rice to set the ceiling price of the same in public auction, to wit:

> "1. The Port of Cebu organized an inventory committee for the purpose of determining the number of sacks of rice per container of smuggled rice for reference in setting the floor price in public auction."

Nevertheless, there is no indication in the aforesaid memorandum that the accused or Melma Enterprises was one of the importers of those smuggled rice as alleged by the prosecution. The allegation that accused violated Section 3601 of the TCCP may only be found in the Complaint Affidavit of Atty. Danilo M. Campos Jr., but without any evidence to support it.

Probable cause demands more than suspicion, but requires less than evidence which would justify conviction. Thus, prosecution failed to establish a *prima facie* case against the accused.

Further, Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended provides:

> SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. **The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause**. xxx. *(Emphasis supplied.)*

It is worthy to note that in the Baltazar case[3], the Supreme Court adopted the pronouncement in the case of *Jimenez vs. Jimenez*[4], *viz*:

"Our pronouncement in Jimenez v. Jimenez is timely:

> **It is . . . imperative upon** the fiscal or **the judge** as the case may be, **to relieve the accused from the**

[3] *Supra* note 2.
[4] G.R. No. 158148, June 30, 2005, 462 SCRA 516, 528-529.

pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons. The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by visualizing and not denigrating constitutional rights. So it has been before. It should continue to be so."

Considering the foregoing, the Court finds no cogent reason to reverse and set aside the Resolution dated February 20, 2015. Likewise, the Court deems it unnecessary to proceed with the resolution of the other issues presented.

WHEREFORE, considering the foregoing, the **Consolidated Motion for Reconsideration with Motion for Formal Amendment of the Information** is **DENIED** for lack of merit.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice