REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MELANIE YASON SERRANO AND ERWIN ROY VITO ROJAS,
Accused.

CTA CRIM. CASE NO. O-855
NPS Docket No. XVI-INV-19G-00263

For: Violation of Section 1401, in relation to Sections 1400, 107, 405 and 412 of the Customs Modernization and Tariff Act.

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO,
ANGELES, *JJ.*

Promulgated:

JUL 03 2024
8:35 a.m.

x - x

DECISION

ANGELES, *J.*:

This Decision is limited to accused Erwin Roy Vito Rojas (Rojas) considering that the Court has no jurisdiction over accused Melanie Yason Serrano (Serrano) who remains at large.

PROCEEDINGS BEFORE THIS COURT

The Department of Justice initially filed an Information[1] on January 12, 2021, before this Court, accusing Serrano and Rojas of unlawful importation, as defined and penalized in Section 1401, in relation to Sections 1400, 107, 405, and 412 of the Customs Modernization and Tariff Act (CMTA).

Upon perusal thereof, the Court found defects in the allegations on the jurisdictional amount and typographical errors. The Court gave plaintiff ten (10) days from notice within which to address the same.[2]

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[1] Docket, Vol. I, pp. 5-7.
[2] Resolution dated February 2, 2021, Docket, Vol. I, pp. 50-54.

On March 8, 2021, plaintiff filed its *Compliance with Motion to Admit Amended Information (Re: Resolution, dated 2 February 2021)*.[3]

However, the Court still found a discrepancy in the allegation of the dutiable value in words and in figures and once again directed the plaintiff to address the same.[4]

On October 26, 2021, plaintiff filed its *Compliance with Motion to Admit Second Amended Information (Re: Resolution, dated 23 June 2021)*.[5]

The *Second Amended Information*[6] states:

> The undersigned Associate Prosecution Attorney hereby accuses **Melanie Yason Serrano** and **Erwin Roy Vito Rojas** for Unlawful Importation, as defined and penalized in Section 1401, in relation to Sections 1400, 107, 405, and 412, of the (*sic*) Republic Act No. 10863, otherwise known as the "*Customs Modernization and Tariff Act*", committed as follows:
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> > "That on or about 19 December 2018, within the province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused Melanie Yason Serrano, being the owner/proprietress of Kylemelan General Merchandise [hereinafter "KG Merchandise], and accused Erwin Roy Vito Rojas, acting as customs broker, did then and there, in conspiracy with each other, willfully, unlawfully and feloniously cause the importation of four (4) undeclared brand new vehicles with a total dutiable value of Twenty-Nine Million Five Hundred Forty-Two Thousand One Hundred Ninety-Eight Pesos and Forty-Eight Centavos (P29,542,198.48), fraudulently declared in the Bureau of Customs – Single Administrative Document and other pertinent documents as five hundred (500) pieces of car decorations and one (1) piece car body for decoration with only a total dutiable value of only Three Hundred Forty-Three Thousand Six Hundred Forty-Six Pesos (P343,646.00), consigned to KG Merchandise, which arrived at the port of Cebu on board vessel YM Image, from Japan, thereby resulting in unpaid customs duties and fees amounting [to] Thirty-Four Million Nine Hundred Nineteen Thousand Four Hundred Eighty-Three Pesos (P34,919,483.00), exclusive of

[3] Docket, Vol. I, pp. 56-58, Amended Information at 59-61.
[4] Resolution dated June 23, 2021, Docket, Vol. I, pp. 63-64.
[5] Docket, Vol. I, pp. 65-66.
[6] Docket, Vol. I, pp. 67-69.

charges and penalties, to the damage and prejudice of the government.

CONTRARY TO LAW.

On November 24, 2021, the Court admitted the *Second Amended Information* and issued warrants of arrest for Serrano and Rojas, with bail set at Php120,000.00 each.[7]

On March 10, 2022, the Court directed that an Alias Warrant of Arrest be issued against Serrano.[8] The Court also directed that an Alias Warrant of Arrest be issued against Rojas on April 21, 2022.[9]

On May 25, 2022, the Court noted the undated handwritten letter filed by Rojas stating that he was able to post bail in the amount of Php120,000.00; that he was currently securing the services of a lawyer; and, that an Order of Release[10] has been issued by Executive Judge Marlon Jay G. Moneva, Regional Trial Court of Cebu City.[11] In the same resolution, the Court set Rojas' arraignment and pre-trial conference on June 15, 2022 at 1:30 p.m.[12] However, the said arraignment was cancelled due to the unavailability of accused's counsel, and was reset to August 1, 2022 at 1:30 p.m.[13]

On August 1, 2022, arraignment was held wherein Rojas pleaded NOT GUILTY.[14] On August 2, 2022, the court held a preliminary conference.[15]

On August 31, 2022, the parties filed their *Joint Stipulation of Facts* (JFSI),[16] with the following admitted facts:

1. The Honorable Court has jurisdiction to try, hear and decide the instant case, docketed as Crim. Case No. O-855.

2. The Honorable Court has jurisdiction over the person of the accused.

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[7] Docket, Vol. I, pp. 71-72.
[8] Docket, Vol. I, pp. 82-83.
[9] Docket, Vol. I, pp. 99-100.
[10] Original copy transmitted by the RTC of Cebu City on June 7, 2022, as noted in the Resolution dated June 17, 2022, Docket, Vol. I, pp. 132-133.
[11] Docket, Vol. I, pp. 105-106.
[12] Docket, Vol. I, pp. 105-106.
[13] Minutes of Hearing on June 15, 2022, Docket, Vol. I, p. 128.
[14] Minutes of Hearing and Order dated August 1, 2022, Docket, Vol. I, pp. 138-141.
[15] Docket Vol. I, pp. 146-149.
[16] Docket, Vol. I, pp. 155-161.

3. The identity of accused Erwin Roy Vito Rojas (Rojas) who is named in the Information in Criminal Case No. O-855 is the same person arraigned on August 1, 2022.

4. The Bureau of Customs (BOC) officers and employees listed as witnesses in the Information are bona fide members of the BOC assigned at the Port of Cebu.

5. On 19 December 2019, a shipment of five hundred (500) pieces of car decorations, on board the vessel, YM Image, arrived at the Port of Cebu from Japan.

6. Accused Rojas is a licensed customs broker who prepared executed and lodged the import entry No. C-45110-18 and other relevant documents pertaining the shipment subject of this case, particularly container no. SEGU5629546 declared to contain five hundred (500) pieces of car decorations, while Accused Melanie Yason Serrano is the owner-consignee thereof.

On September 5, 2022, the parties' JSFI was admitted and approved,[17] and the Pre-Trial Order[18] was issued on September 19, 2022.

Trial proceeded; Plaintiff presented the following witnesses:

Special Agent 2 Amiel Abayon,[19] whose testimony was offered to prove the following:

1. The witness is an officer of the Bureau of Customs (BOC) duly designated as an X-ray inspector at the BOC-X-Ray Inspection Project at the Port of Cebu Field Office.

2. The witness conducted the non-intrusive physical examination of the shipment subject of this case on 21 December 2018, particularly the shipment of five hundred (500) pieces of car decorations inside container no. SEGU5629546 when it passed through the mobile x-ray machine at the Port of Cebu.

3. The witness was the X-ray inspector who analyzed the X-ray image of the shipment subject of this case and discovered that it actually contained four units of cars, particularly one (1)

[17] Docket, Vol. I, p. 164.
[18] Docket, Vol. I, pp. 243-249.
[19] Minutes of Hearing and Order dated October 19, 2022, Docket, Vol. I, pp. 268-270.

unit Range Rover; one (1) unit Mercedes Benz; one (1) unit Porsche 911; and one (1) unit Alpha (*sic*) Romeo.

4. To identify and testify on the X-ray image generated during the non-intrusive physical examination of the shipment subject of this case which was conducted at the BOC-Port of Cebu Field Office, and all other documents pertinent to these cases; and

5. To testify on all other facts and circumstances material and relevant to the information filed in this case and in support of the present charges against all of the herein accused, and on all matters pertinent to this case.[20]

Special Agent 1 Rielito A. Hernandez[21] whose testimony was offered to prove the following:

1. The witness was an officer of the BOC duly designated as Field Officer at the BOC-X-Ray Inspection Project at the Port of Cebu Field Office from 2018 to 2019.

2. The witness, on 21 December 2018, following the recommendation from the X-ray Inspector Amiel B. Abayon, verified his findings that the shipment subject of this case, particularly the shipment declared to contain five hundred (500) pieces of car decorations inside container no. SEGU5629546, actually contained four (4) units of cars.

3. The witness, upon his verification on 21 December 2018, recommended the issuance of an Alert Order resulting in the conduct of actual physical examination which confirmed that the shipment subject of this case actually contained four (4) units of cars, particularly one (1) unit Range Rover; one (1) unit Mercedes Benz; one (1) unit Porsche 911; and one (1) unit Alpha (sic) Romeo.

4. To identify and testify on the X-ray image generated during the non-intrusive physical examination of the shipment subject of this case and the request for the issuance of an alert order, and all other documents pertinent to these cases; and

5. To testify on all other facts and circumstances material and relevant to the information filed in this case and in support of

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[20] Judicial Affidavit of Amiel B. Abayon, Docket, Vol. I, pp. 229-230.
[21] Minutes of Hearing and Order dated October 19, 2022, Docket, Vol. I, pp. 268-270.

the present charges against all of the herein accused, and on all matters pertinent to this case.[22]

Maria Rabel T. Abella[23] whose testimony was offered to prove the following:

1. The witness is a Customs Operations Officer IV of the BOC at the BOC-The Port of Cebu Field Office since 24 April 2018 to present.

2. The witness, after Import Entry NO. C-45110-18 was lodged and declared by accused Rojas to contain "500 Pieces STC 1 Piece (Body) Car Decoration (1 Piece Body for Decoration)", conducted the documents examination for the shipment on 20 December 2018;

3. The witness, after having received an Alert Order issued by the Port of Cebu District Collector, conducted one hundred [percent] (100%) physical examination of the shipment which pertained to Import Entry No. C-45110-18 which revealed that the shipment actually contained four (4) units of cars, particularly one (1) unit Range Rover; one (1) unit Mercedes Benz; one (1) unit Porsche 911; and one (1) unit Alpha (sic) Romeo;

4. To identify and testify on the Memorandum for the Port of Cebu District Collector dated 4 January 201 (sic), and the photographs taken during the actual examination, including the following E2M Documents: BOC Single Administrative Document; Client Profile Information of Accused Melanie Yason Serrano; List of Principal Officers; and Client Profile Information of Accused Rojas, as well as all other documents pertinent to this case; and

5. To testify on all other facts and circumstances material and relevant to the information filed in this case and in support of the present charges against all of the herein accused, and on all matters pertinent to this case.[24]

Jeffrey D. Welan[25] whose testimony was offered to prove the following:

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[22] Judicial Affidavit of Rielito A. Hernandez, Docket, Vol. I, pp. 199-200.
[23] Minutes of Hearing and Order dated November 10, 2022, Docket, Vol. I, pp. 291-292.
[24] Judicial Affidavit of Maria Rabel T. Abella, Docket, Vol. I, pp. 166-167.
[25] Minutes of Hearing and Order dated November 10, 2022, Docket, Vol. I, pp. 291-292.

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1. The witness has been occupying the position of Customs Operations Officer IV (COO IV) from 20 June 2016 to 30 June 2022 and Customs Operations Officer V (COO V) from 01 July 2022 to present for the BOC.

2. The witness, on 28 June 2019, issued the computation of duties and taxes for four (4) units of cars, particularly one (1) unit Range Rover; one (1) unit Mercedes Benz; one (1) unit Porsche 911; and one (1) unit Alpha (sic) Romeo, which were found contained in container no. SEGU5629546 pertaining to the shipment subject of this case, falsely declared to contain "500 Pieces STC 1 Piece (Body) Car Decoration (1 Piece Body Decoration)."

3. To identify and testify on the Memorandum dated 28 June 2019 with the subject "Request for Computation of Duties and Taxes", and all other documents pertinent to these cases; and

4. To testify on all other facts and circumstances material and relevant to the information filed in this case and in support of the present charges against all of the herein accused, and on all matters pertinent to this case.[26]

On December 13, 2022, plaintiff filed its *Formal Offer of Evidence with Motion for Re-Marking of Prosecution's Exhibits,*[27] which the Court resolved in the Resolution dated May 12, 2023, admitting the prosecution's evidence, except for Exhibits "P-14", "P-23", "P-25", and "P-26".[28]

Due to the reorganization of the Court, the instant case was transferred from the Second Division to the Third Division on May 29, 2023.[29]

On May 31, 2023, Rojas filed a *Motion with Leave of Court to file Demurrer,*[30] which the Court granted.[31]

On July 25, 2023, Rojas filed a *Demurrer to Evidence,*[32] which the Court denied in the Resolution dated September 22, 2023.[33] The Court reasoned that the prosecution was able to present sufficient evidence that a crime of unlawful importation has been committed pursuant to Section 1400 and 1401 of the CMTA. On the other hand,

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[26] Judicial Affidavit of Jeffrey D. Welan, Docket, Vol. I, pp. 255-256.
[27] Docket, Vol. I, pp. 296-311.
[28] Docket, Vol. II, pp. 481-482.
[29] Docket, Vol. II, p. 483.
[30] Docket, Vol. II, pp. 484-488
[31] Resolution dated July 18, 2023, Docket, Vol. II, pp. 518-520.
[32] Docket, Vol. II, pp. 521-535.
[33] Docket, Vol. II, pp. 556-568.

the accused's arguments would require the presentation of evidence as to his role as customs broker for the subject importations. Thus, the Court deemed it prudent to proceed with the trial of the case for the presentation of accused's evidence.

On November 15, 2023,[34] accused **Erwin Roy Vito Rojas** was presented and whose testimony was offered for the following:

1. To prove and establish that he is a licensed customs broker at the time he was hired by co-accused Serrano, the importer and sole proprietor of Kylemelan General Merchandise (KGM) with office address at No. 163 1A, MH Del Pilar, Camigin Street, Tinajeros, District II, Malabon City;

2. To prove and establish that herein accused was acting as customs broker under the authority of the aforenamed importer, concerning a shipment of car decoration from the port of Kobe, Japan, consigned to KGM and bound for the port of Cebu;

3. To prove and establish that herein accused acted merely to facilitate and process for imports as may be required by the Bureau of Customs, make declarations of duties and taxes, as well as, file and lodge import and export entries for the importer or exporter;

4. To prove and establish that the herein accused received several documents relative to the importation of KGM such as: packing list, commercial invoice and bill of lading;

5. To prove and establish that after the accused received those documents from KGM, he examined the documents based on the shipment contained an (sic) items described as 500 pieces of (body) car decoration 1 piece car body for decoration;

6. To prove and establish that the herein accused verified with KGM through Melanie Yason Serrano the correctness of the documents she gave to Rojas and the contents thereof; and

7. To prove other material claims against the accused as alleged in the complaint and that the accused will identify several documents relevant to this case.[35]

[34] Minutes of Hearing and Order dated November 15, 2023, Docket, Vol. II, pp. 569 and 574-575.
[35] Judicial Affidavit (For Erwin Roy Rojas), Docket, Vol. II, pp. 496.

On November 24, 2023, Rojas filed his *Formal Offer of Evidence (For the Defense)*,[36] which was resolved in the Resolution[37] dated February 2, 2024, admitting all of the evidence for the accused.

On February 26, 2024, Rojas filed his *Memorandum*,[38] while plaintiff's *Memorandum*[39] was filed on March 18, 2024.

On April 15, 2024, the instant case was submitted for decision.[40]

ISSUES[41]

For the criminal aspect:

> Whether or not accused Erwin Roy Vito Rojas is liable for Violation of Section 1401 in relation to Sections 1400, 107, 405 and 412 of the CMTA.

For the civil aspect:

> Whether or not accused is liable to pay customs duty and fees on four (4) brand new vehicles amounting to Php34,919,483.00, exclusive of charges and penalties.

RULING OF THE COURT

Rojas is charged before this Court for an alleged violation of Section 1401 of the CMTA, in relation to Sections 1400, 107, 405 and 412 of the same law.

Section 1401 states as follows:

> SECTION 1401. *Unlawful Importation or Exportation.* – Any person who shall fraudulently import or export or bring into or outside of the Philippines any goods, or assist in so doing, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such goods after importation, or shall commit technical smuggling as defined in this Act shall be penalized by:

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[36] Docket, Vol. II, pp. 576-580.
[37] Docket, Vol. II, pp. 592-593.
[38] Docket, Vol. II, pp. 594-615.
[39] Docket, Vol. II, pp. 616-625.
[40] Docket, Vol. II, p. 627.
[41] PTO, Docket, Vol. I, p. 245.

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Based on the above, unlawful importation is committed by any person who: (a) fraudulently imports or brings into the Philippines any good; (b) assists in so doing, contrary to law; or (c) receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of such goods after importation; or (d) commits technical smuggling.

Smuggling refers to the fraudulent act of importing any goods into the Philippines, or the act of assisting in receiving, concealing, buying, selling, disposing or transporting such goods, with full knowledge that the same has been fraudulently imported, or the fraudulent exportation of goods.[42] Smuggling may be outright or technical.

Outright smuggling refers to an act of importing goods into the country without complete customs prescribed importation documents, or without being cleared by customs or other regulatory government agencies, for the purpose of evading payment of prescribed taxes, duties and other government charges.[43]

Technical smuggling refers to the act of importing goods into the country by means of fraudulent, falsified or erroneous declaration of the goods as to its nature, kind, quality, quantity or weight, for the purpose of reducing or avoiding payment of prescribed taxes, duties and other charges.[44]

In technical smuggling, the goods pass through the BOC, but the processing and clearing procedures are attended by fraudulent acts in order to evade the payment of correct taxes, duties, and other charges.[45]

The *Second Amended Information* also alleges that the charge for violation of Section 1401, is in relation to Sections 1400, 107, 405 and 412 of the CMTA. These Sections provide, as follows:

> SECTION 1400. *Misdeclaration, Misclassification, Undervaluation in Goods Declaration.* – Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon

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[42] CMTA, Section 102 (nn).
[43] CMTA, Section 102 (ff).
[44] CMTA, Section 102 (pp).
[45] *Bureau of Customs v. The Honorable Agnes VST Devanadera, et al.*, G.R. No. 193253, September 8, 2015.

assessment and what is declared, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.

There is undervaluation when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value. When the undervaluation is established without the need to go through the formal dispute settlement process provided for in this Act, a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or the declared value is rejected as a result of an official ruling or decision under the customs dispute settlement process involving difficult or highly technical question relating to the application of customs valuation rules.

A discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute prima facie evidence of fraud.

When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, such as when a false or altered document is submitted or when false statements or information are knowingly made, a surcharge shall be imposed equivalent to five hundred percent (500%) of the duty and tax due and that the goods shall be subject to seizure regardless of the amount of the discrepancy without prejudice to the application of fines or penalties provided under Section 1401 of this Act against the importer and other person or persons who willfully participated in the fraudulent act.

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SECTION 107. *Rights and Responsibilities of the Declarant.* – The declarant shall be responsible for the accuracy of the goods declaration and for the payment of all duties, taxes and other charges due on the imported goods. The licensed customs broker shall likewise be responsible for the accuracy of the goods declaration but shall not be responsible for the payment of duties, taxes and other charges due on the imported goods.

The declarant shall sign the goods declaration, even when assisted by a licensed customs broker, who shall likewise sign the goods declaration.

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SECTION 405. *Liability of Importer for Duties and Taxes.* – Unless relieved by laws or regulations, the liability for duties, taxes, fees, and

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other charges attached to importation constitutes a personal debt due and demandable against the importer in favor of the government and shall be discharged only upon payment of duties, taxes, fees and other charges. It also constitutes a lien on the imported goods which may be enforced while such goods are under customs' custody.

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SECTION 412. *Statements to be Provided in the Goods Declaration.* – No entry of imported goods shall be allowed unless the goods declaration has been lodged with the Bureau. The goods declaration shall, under penalties of falsification or perjury, contain the following statements:

(a) The invoice and goods declaration contain an accurate and faithful account of the prices paid or payable for the goods, and other adjustments to the price actually paid or payable, and that nothing has been omitted therefrom or concealed whereby the government of the Republic of the Philippines might by defrauded of any part of the duties and taxes lawfully due on the goods; and

(b) To the best of the declarant's information and belief, all the invoices and bills of lading or airway bills relating to the goods are the only ones in existence relating to the importation in question, and that these documents are in the same state as when they were received by the declarant, and the declaration thereon are in all respects genuine and true.

The acts imputed against the accused – alleged unlawful importation of undeclared four (4) brand new vehicles, which were allegedly fraudulently declared in the BOC-Single Administrative Document (SAD) as five hundred (500) pieces of car decorations and one (1) piece car body for decoration – falls under technical smuggling punished under Section 1401, and defined under Section 102(pp), both of the CMTA.

Thus, the elements to be established to convict the accused of the crime of Unlawful Importation under Section 1401 are:

(1) There was an entry of imported goods;

(2) The entry was made by means of fraudulent, falsified or erroneous declaration of the goods; and

(3) There must be intent to reduce or avoid payment of taxes and duties.[46]

[46] *People v. Vernadeth Lucero Gabriel*, CTA Crim. Case No. O-887, April 16, 2024.

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In addition to the foregoing, the prosecution must also prove the allegations in the *Second Amended Information*, to wit:

(1) That accused Serrano and accused Rojas acted in conspiracy with each other to unlawfully import the subject goods;

(2) That the actual shipment that arrived contained four (4) brand new vehicles; and

(3) That the resulting unpaid customs duties amounted to Php34,919,483.00.

There was an entry of imported goods.

It is undisputed that on December 19, 2018, the subject shipment contained in Container No. SEGU562954[47] arrived at the Port of Cebu from Japan aboard the vessel YM Image. A BOC Single Administrative Document (SAD)[48] was lodged for the subject shipment.

Thus, the entry of imported goods has been established.

There is no proof that the entry was made by means of fraudulent, falsified or erroneous declaration of the goods; there is no showing that Rojas intended to reduce or avoid payment of taxes and duties.

The Court will discuss these two elements together.

<u>The goods which arrived at the Port of Cebu differed from the description in the goods declaration</u>

To prove that the entry was made by means of fraudulent, falsified or erroneous declaration of goods, plaintiff presented evidence showing the description of the goods in the goods declaration *and* evidence regarding the actual goods that arrived at the Port of Cebu.

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[47] Bill of Lading, Exhibit "P-10", Docket, Vol. I, p. 332.
[48] Exhibit "P-5", Docket, Vol. I, p. 327.

Plaintiff presented the Bill of Lading,[49] Commercial Invoice,[50] Packing List,[51] and SAD[52] to prove that the subject shipment was declared as "*500 pieces STC 1 piece (body) car decoration (1 piece car body for decoration)*".

Plaintiff also presented the Container Inspection System Image,[53] Alert Order Form,[54] Memorandum[55] and photographs[56] of physical inspection conducted by the BOC personnel, to prove that the shipment actually contained four (4) units of cars: one (1) Range Rover; one (1) Mercedes Benz; one (1) Porsche; and, one (1) Alfa Romeo.

Based on the foregoing, the Court finds that plaintiff has proven that the actual shipment which arrived at the Port of Cebu differs from the goods declared in the SAD and supporting documents.

However, the Court notes that plaintiff failed to establish that the four (4) vehicle units are brand new as alleged in the *Second Amended Information*. An examination of plaintiff's evidence, specifically the Alert Order Form,[57] Memorandum,[58] and Warrant of Seizure and Detention,[59] shows that there was no specific finding that the four (4) units of vehicles found in the shipment were "brand new". It was only in the Complaint-Affidavit, that the said cars were described as "brand new".[60] In relation to this, there is doubt cast upon the computation of the alleged customs duties, taxes and charges to be imposed on the four (4) vehicles considering that it is unclear whether the dutiable value is based on the cost of brand-new cars or not.

<u>The fraudulent, false, or erroneous declaration was not proven</u>

The *Second Amended Information* alleges that the declaration in the SAD as "*500 pieces STC 1 piece (body) car decoration (1 piece car body for decoration)*" was fraudulent, however, it is unclear from the testimonies and the documentary evidence what means were employed which constituted the fraudulent, falsified or erroneous declaration.

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[49] Exhibit "P-10", Docket, Vol. I, p. 332.
[50] Exhibit "P-11", Docket, Vol. I, p. 333.
[51] Exhibit "P-12", Docket, Vol. I, p. 334.
[52] Exhibit "P-5", Docket, Vol. I, p. 327.
[53] Exhibit "P-13", Docket, Vol. I, p. 335.
[54] Exhibit "P-15", Docket, Vol. I, p. 337.
[55] Exhibit "P-16", Docket, Vol. I, p. 338.
[56] Exhibit "P-17" to "P-17-C", Docket, Vol. I, pp. 339-342.
[57] Exhibit "P-15", Docket, Vol. I, p. 337.
[58] Exhibit "P-16", Docket, Vol. I, p. 338.
[59] Exhibit "P-18", Docket, Vol. I, pp. 343-344.
[60] Docket, Vol. I, p. 21.

To recall, Section 1400 of the CMTA gives examples of *"intentional or fraudulent"* declaration, as follows:

> When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, **such as when a false or altered document is submitted or when false statements or information are knowingly made** xxx (*Emphasis and underscoring supplied)*

In the instant case, there is no allegation or evidence of a false or altered document, or that the false statements in the declaration were knowingly made. In fact, the SAD, Bill of Lading, Commercial Invoice, and Packing List were initially found to be in order, as testified by plaintiff's witness, Maria Rabel T. Abella, as follows:

> Q6: What are your duties and responsibilities as COO IV at the BOC-Port of Cebu?
> A6: Conduct examination of shipments and documents pertaining thereto, verifying declarations contained in documents submitted to the BOC, making the corresponding returns.
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> Q7: Where were you on 20 December 2018?
> A7: I was in my office at the BOC-Port of Cebu.
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> Q8: What significant event happened on that date, if any?
> A8: On that day, Import Entry No. C-45110-18 was filed at the Port of Cebu-Entry Processing Unit. This was lodged and declared by Accused Erwin Roy Vito Rojas (Rojas).
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> Q9: How did you know that Import Entry No. C-45110-18 was filed and that the same was lodged and declared by Accused Rojas?
> A9: **The Import Entry and the documents relative to the shipment pertaining to it were routed to me for the conduct of document examination.**
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> Q10: I am showing to you a document denominated as "BOC Single Administrative Document", kindly state the relation of this document with the Import Entry that you mentioned?
> A10: This is the same document.
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> Q11: What other documents pertaining to the shipment were you referring to?
> A11: **The Bill of Lading, the Packing List and the Commercial Invoice.**
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> Q12: I am showing to you a document denominated as Bill of Lading No. 18120750071, kindly state what is the relation of this document to the Bill of Lading that you mentioned?
> A12: It is the same document.

Q13: I am likewise showing to you a Packing List dated 03 December 2018, kindly state what is the relation of this document to the Packing List that you mentioned?
A13: It is the same document.

Q14: I am likewise showing to you a Commercial Invoice dated 03 December 2018, kindly state what is the relation of this document to the Commercial Invoice that you mentioned?
A14: It is the same document.

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Q15: What did you find from the conduct of documentary examination?
A15: I found that the Import Entry had yellow selectivity code and that the shipment pertaining thereto was consigned to Kylemelan General Merchandise (Kylemelan) which was owned by accused Melanie Yason Serrano.

Q16: What were the declarations in these documents pertaining to when you mentioned irregularities in the shipment?
A16: In these documents, it was declared that the shipment contained five hundred (500) pieces of car decorations, particularly it was indicated as "500 pieces STC 1 piece (body) car decoration (1 piece car body for decoration)".

Q17: What was the result of the documentary examination that you conducted?
A17: **I found the documents to be in order. Hence, I approved the same.**[61] (*emphasis supplied*)

During questioning, witness Abella testified on cross-examination:

JUSTICE UY:
Alright, cross?

ATTY. AGUILAR:
Yes, thank you very much, your Honors.

Q: Ms. Witness, in your Judicial Affidavit, you actually mentioned about three (3) documents. One is the packing list?

A: Yes Sir.

Q: And I think, Packing List is Exhibit "P-12" and Commercial Invoice as Exhibit "P-11", as well as, Bill of Bidding (*sic*) as Exhibit "P-10", am I correct.

A: Yes, Sir.

ATTY. YUSI:

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[61] Judicial Affidavit of Maria Rabel T. Abella, Docket, Vol. I, pp. 168-169.

For clarity, your Honors, may we request that the witness be shown the document referred to.

(Witness is being shown the documents)

ATTY. AGUILAR:
In these three (3) documents, Mr. Witness, would you agree with me that these are actually addressed all to consignee importer Kylemelan General Merchandise?

A: Yes, it is.

Q: So in your years of examining the documents like these where this document came from?

A: The origin of the shipment is from Japan.

Q: **So, in these documents, there is no participation insofar as the Customs Broker is concerned when it comes to these documents only because this is only addressed to Kylemelan not yet the broker?**

A: **This addressed to Kylemelan.**

Q: Also in your Judicial Affidavit, you also mentioned about the Import Entry Declaration, am I correct, Ms. Witness?

A: Yes.

Q: Exhibit "P-5", Import Entry.

A: Yes.

Q: Will you please explain to this Honorable Court what is those Import Entry Declaration all about?

A: The Import Entry is all about it is where the importation is being declared here, its corresponding duties and taxes and the tariff heading that is used for the item and it [is] where the name of the consignee and the addressed and also the broker signing in.

Q: So this document, the Import Entry Declaration is actually prepared by the broker, is that correct?

A: Yes Sir.

Q: **And the contents are all those items stated in the Packing List, Commercial Invoice and the Bill of Bidding (*sic*), am I correct?**

A: **Yes Sir.**

Q: So would you agree with me, Ms. Witness, that in this (*sic*) particular transactions the license[d] broker has actually no participation or personal knowledge as to what items inside the container van except those in the Packing List and

Commercial Invoice and Bills of Bidding (*sic*), am I correct, Ms. Witness.

A: I cannot say that but it's only up to the declaration there.

Q: **So the participation of the licensed broker is limited only as to the lodging of the Import Entry Declaration?**

A: **Yes.**[62] (*Emphasis supplied*)

Accused Rojas does not dispute that the subject shipment was declared as "*500 pieces STC 1 piece (body) car decoration (1 piece car body for decoration)*". He testified that he merely lodged the import entry declaration, stating such description of goods, based on the documents provided by accused Serrano, as follows:

12. Q. By the way Mr. Witness, can you tell us your knowledge or information about this case?

A: Yes sir. The case is being initiated by the Bureau of Customs, Port of Cebu against me and Melanie Yason Serrano ("Melanie") for alleged violation of R.A. No. (*sic*) of the Tariff and Custom's Law.

13. Q: Who is this Melanie you earlier mentioned?

A: Melanie is the importer and sole proprietor of Kylemelan General Merchadise (sic) ("KGM") with office address at #163 1A, MD Del Pilar, Camigin St., Tinajeros, District II, Malabon City.

14.Q: What is your relation with Melanie?

A: Importer and Custom's Broker relationship. Sometime in December 2018, my services as Custom's Broker was engaged by Melanie acting under the authority of Kylemelan General Merchandise as the importer concerning a shipment of car decorations from the port of Kobe, Japan, consigned to KGM and bound for the port of Cebu.

15. Q: As a Custom's Broker, what are your duties and responsibilities in so far as the shipment of KGM?

A: As Custom's Broker, I facilitate and process documents for imports and exports as may be required by the Bureau of Customs, make declaration of duties and taxes, as well as, file and lodge import and export entries for the importer in this case the KGM.

[62] Transcript of Stenographic Notes (TSN), Hearing on November 10, 2022, pp. 7-9.

16. Q: So, after your services was hired by Melanie (KGM) as Custom's Broker of the shipment consigned to KGM sometime in December 2018, what happened next?

A. Melanie gave to me copies of the shipping documents.

17. Q. What are these documents given to you by Melanie?

A. These documents are the packing list, commercial invoice, and bill of lading.

xxx

21. Q. Upon receiving these documents from Melanie, what happened next?

A. I actually examined these documents and based on the said documents the shipment contained several items described as 500 pieces stc, 1 piece (body) car decoration (1 piece car body for decoration).

22. Q. What happened next, if any?

A. I immediately verified with Melanie the correctness and truthfulness of the said documents she gave to me and the contents of the shipment as car decorations.

23. Q. After confirming with Melanie the correctness and truthfulness of these documents and the contents thereof, what happened next?

A. On 19 December 2018, I was informed by Melanie of the arrival of the subject shipment.

24. Q. When the shipment arrived, what happened next?

A. I immediately prepared and facilitate the application of the shipment and lodged the import entry declaration through inter-commerce network services based on the bill of lading, commercial invoice and packing list. Upon approval, the Single Administrative Document ("SAD") with Import Entry No. C-45110-18 was assigned a Yellow Selectivity Code. The SAD was then printed and signed.

xxx

26. Q. What happened next?

A. On the same day, my processor, Shazie L. Magsalay ("Magsalay"), filed the Import Entry with No. C-45110-8 (*sic*) at the Entry Processing Unit for the evaluation of the documents.

27. Q. Then what happened next?

n

A. I was informed by Ms. Magsalay that the Import Entry aforementioned were found to be in order and approved by Ms. Maria Rabel T. Abella, the one in-charge of the subject document.

28.Q. After knowing the approval of the said document, what happened next?

A. I waited for the release of the shipment. However, on December 21, 2018, I was informed by Ms. Magsalay that the shipment underwent x-ray scanning and was found to have discrepancy. Thus, the shipment is on hold by the Bureau of Customs.

21.[63] Q. After knowing that the shipment was on hold, what did you do, if any?

A. I tried to contact Melanie to ask about the alleged discrepancy in the contents of the shipment. However, I could not reach Melanie at that time.

22.Q: After trying to contact Melanie, what action did you do if any?

A. After several attempts of contacting Melanie, I decided to go to KGM's office on 22 December 2023 (*sic*). However, KGM office was closed and no one in the vicinity.

xxx

25.Q: By the way Mr. witness, what is your primary obligation or duty relative to the importation being a licensed custom's broker?

A. Under the circumstances and according to the law (Tariff and Customs Code), as a customs broker, I only facilitate, file and prepare the entry covering the shipment based on the bill of lading, the commercial invoice, the packing list, and the import entry declaration given to me by the importer, in this case the KGM through Melanie with the Bureau of Custom's (*sic*).

26.Q. Did you make any attempt to make an entry of imported articles by means of any false or fraudulent invoice, declaration, affidavit, or by means of any false statement, verbal or oral, or by means of any false or fraudulent practice whatsoever or what was your tasked (*sic*) in relation to this transaction.

A. As Licensed customs broker, my job is only to prepare the entry covering the shipment based on the bill of lading, the commercial invoice, the packing list, and the import entry declaration given to me by Melanie the consignee-importer and I had no knowledge as to the goods/items loaded in the

[63] As numbered in the Judicial Affidavit, after Question 28, the numbering returned to 21 onwards.

> **container as it is the responsibility of KGM.**[64] (*emphasis supplied*)

During the Court's questioning, accused Rojas further testified that:

> Justice Fajardo: As part of your duties, you say that you only need to fill up the import entry declaration base[d] on documents?
>
> Witness: Facilitate as well Your Honor.
>
> Justice Fajardo: What do you mean facilitate?
>
> Witness: Facilitate, to process po expedite.
>
> **Justice Fajardo: What is the actual act of processing just filing it?**
>
> **Witness: Lodge the documents that was needed.**
>
> **Justice Fajardo: What do you mean by lodge?**
>
> **Witness: We are going to input it in the P2N.**
>
> Justice Fajardo: So you're just physically input it. So, when the Bill of Lading comes to you and the Commercial Invoice and the Packing List, how do you determine the authenticity or genuineness of these documents?
>
> Witness: Examine the actual content.
>
> Justice Fajardo: So, what are you looking for?
>
> Witness: The documents.
>
> Justice Fajardo: So, what are you looking for in the document when you're examining it?
>
> Witness: Just documents.
>
> xxx
>
> **Justice Fajardo: And your processing means that you will just input into the system and look at the documents?**
>
> **Witness: Yeah, after looking at the documents Your Honor pagkatapos po naming ma-verify kung ano po yung laman.**

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[64] Judicial Affidavit (For Erwin Roy Rojas), Docket, Vol. II, pp. 498-502.

Justice Fajardo: So the verification process mo is just to ask them?

Witness: Yes Your Honor.

Justice Fajardo: Not look at the goods?

Witness: Yes Your Honor.

Justice Fajardo: And then you input?

Witness: Yes Your Honor.[65] (*emphasis supplied*)

Based on all the foregoing, the Court finds no proof that any of the supporting documents were false or spurious, or that the declarations were intentionally and fraudulently made by Rojas. Even if the commercial invoice, bill of lading, and packing list are assumed to be fraudulent, there is no showing that such fraud was perpetrated by accused Rojas.

Conspiracy was not proven

The Court also finds no proof as to the alleged conspiracy between accused Serrano and Rojas.

It is settled that conspiracy is never presumed and requires the same degree of proof to establish the crime beyond reasonable doubt. Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. While conspiracy need not be established by direct evidence, it is, nonetheless, required to be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of a common unlawful purpose.[66]

> Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be 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. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is

[65] TSN, Hearing on November 15, 2023, pp. 7-8, 13

[66] *Francisco v. People*, G.R. No. 177430, July 14, 2009, citing *People v. Mapalo*, G.R. No. 172608, February 6, 2007, and *People v. Barcenal*, G.R. No. 175925, August 17, 2007.

> sufficient that the malefactors acted in concert pursuant to the same objective.[67]

Accused Rojas' act of lodging the import entry with the BOC system contributed to and made possible the resulting entry of the undeclared four (4) cars into the Philippines, under the misdeclaration of the subject goods as "*500 pieces STC 1 piece (body) car decoration (1 piece car body for decoration)*". However, the Court will not presume that such act was done pursuant to a common unlawful purpose – to fraudulently import the four (4) cars into the Philippines – in conspiracy with Serrano, absent any other circumstance or evidence.

Absent the existence of a conspiracy, accused Rojas cannot be made liable for any alleged acts of his alleged co-conspirator.

Based on the foregoing, plaintiff failed to prove the offense charged beyond reasonable doubt. Accused Rojas must be acquitted.

No civil liability shall be imposed on accused Rojas.

It is undisputed that accused Rojas is a licensed customs broker.[68]

Section 107 of the CMTA states the rights and responsibilities of the declarant and the licensed customs broker, as follows:

> SECTION 107. *Rights and Responsibilities of the Declarant.* – the declarant shall be responsible for the accuracy of the goods declaration and for the payment of all duties, taxes and other charges due on the imported goods. **The licensed customs broker shall likewise be responsible for the accuracy of the goods declaration but shall not be responsible for the payment of duties, taxes and other charges due on the imported goods.** (*Emphasis supplied*)

Under said provision, the licensed customs broker is not liable for the payment of the duties, taxes, and other charges due on the imported goods.

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[67] *People v. Talaue, et al.*, CTA Crim. Case No. O-273, June 14, 2017, citing *Mark Renald Marasigan y De Guzman v. Reginald Fuentes Alias "Regie"*, et al., G.R. No. 201310, January 11, 2016.
[68] Par. 6, JSFI, Docket, Vol. I, p. 156.

However, the plaintiff argues in its Memorandum[69] that accused Rojas, as the customs broker, is liable as a declarant pursuant to Section 106 of the CMTA, which states:

> SECTION 106. *Declarant.* – A declarant may be a consignee or a person who has the right to dispose of the goods. The declarant shall lodge a goods declaration with the Bureau and may be:
>
> (a) The importer, being the holder of the bill of lading; or
> (b) The exporter, being the owner of the goods to be shipped out; or
> (c) **A customs broker acting under the authority of the importer or from a holder of the bill**; or
> (d) A person duly empowered to act as agent or attorney-in-fact for each holder.
>
> In case the consignee or the person who has the right to dispose of the goods is a juridical person, it may authorize a responsible officer of the company to sign the goods declaration as declarant on its behalf.
>
> The goods declaration submitted to the Bureau shall be processed by the declarant **or** by a licensed customs broker: xxx (*Emphasis supplied*)

A close look at Section 106 shows that a customs broker may be a declarant if acting under the authority of the importer or from a holder of the bill. However, this Court opines that such authority granted to the customs broker should include the right to dispose of the goods, in accordance with the first sentence of Section 106. Thus, merely being a customs broker who lodged the goods declaration does not automatically make such customs broker a declarant. This delineation between a declarant and a customs broker is further supported by the third paragraph of Section 106, which states "*[t]he goods declaration submitted to the Bureau shall be processed by the declarant* ***or*** *by a licensed customs broker*", and Section 107 which specifically makes the declarant, not the customs broker, liable for the payment of the duties, taxes and other charges on imported goods.

All told, no civil liability is imposed on accused Rojas.

WHEREFORE, accused **ERWIN ROY VITO ROJAS** is **ACQUITTED** of the offense charged in CTA Criminal Case No. O-855, for failure of the plaintiff to prove his guilt beyond reasonable doubt.

[69] Docket Vol. II, pp. 621-622.

The cash bail bond[70] of the accused is hereby **CANCELLED** upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

[70] Original Official Receipt attached to Docket, Vol. I, p. 117.

CERTIFICATION

Pursuant to Article VIII, Section 13 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 case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice