REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ZENAIDA N. VALENCIA, **JENNIFER VALENCIA,** **GENEVIEVE OCHAVE,** **EDWARD OCHAVE,** **EDMOND DESCUTIDO,** Petitioners,	**CTA EB CRIM NO. 042** **CTA CRIM CASE NOS.** **O-625 & O-626**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr.,** **Uy,** **Fabon-Victorino,** **Mindaro-Grulla,** **Ringpis-Liban,** *and* **Manahan,** *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: APR 04 2019 12:31 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a "Petition" filed by petitioners Zenaida N. Valencia, Jennifer Valencia, Genevieve Ochave, Edward Ochave, and Edmond Descutido (Edmon Banjawan Discutido)[1], seeking nullification of the Resolution (assailed Resolution)[2] dated June 13, 2017, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, consolidation of CTA Crim. Case No. O-626 with CTA Crim. Case No. O-625 is **APPROVED**; While the **Motion for Judicial Determination of Probable Cause** filed in CTA Crim. Case No. O-626, **Motion for Leave to Reply to Comment dated March 28, 2017 for**

[1] Accused's Personal Informal Sheet, Docket, CTA Crim. Case No. O-625, p. 202.
[2] Rollo, CTA EB Crim. No. 042, pp.19-29.

Prosecution, Omnibus Motion; and **Motion to Dismiss for Lack of Jurisdiction**, are **DENIED** for lack of merit.

Furthermore, let a Warrant of Arrest be issued against the accused **ZENAIDA N. VALENCIA, JENNIFER N. VALENCIA, EDWARD OCHAVE, GENEVIEVE V. OCAHVE, CLARISSE D. KARINGAL, and EDMUND DISCUTIDO.** The bail bond for their provisional liberty is hereby fixed at **ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00)** each.

SO ORDERED."

and the Order (assailed Order) dated July 19, 2017, denying for lack of merit the "(1) Motion for Reconsideration, (2) Motion to Release Cash Bond, (3) Motion to Defer Further Proceedings."

THE FACTS

Filed before the Courts in Division[3] are the Informations for violation of Section 3601 in relation to Section 1302 of the Tariff and Customs Code of the Philippines and Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines, allegedly committed as follows:

CTA CRIM CASE NO. O-625:

"INFORMATION

The undersigned Asst. State Prosecutor of the Department of Justice, hereby accuses **ZENAIDA N. VALENCIA, JENNIFER N. VALENCIA, EDMUND OCHAVE, GENEVIEVE V. OCHAVE, CLARISSE D. KARINGAL, & EDMUND DISCUTIDO**, of violation of Section 3601 in relation to 1302 of the Tariff and Customs Code of the Philippines, committed as follows:

'That on or about the 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

[3] Second and Third Division.

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 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).

Contrary to Law."

CTA CRIM CASE NO. O-626:

"INFORMATION

The undersigned Asst. State Prosecutor of the Department of Justice, hereby accuses **ZENAIDA N. VALENCIA, JENNIFER N. VALENCIA, EDMUND OCHAVE, GENEVIEVE V. OCHAVE, CLARISSE D. KARINGAL, & EDMUND DISCUTIDO**, of violation of Section 3602 in relation to 2503 of the Tariff and Customs Code of the Philippines, committed as follows:

'That on or about the 11th of August 2014, in the port of Manila, within the jurisdiction of this Honorable Court of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding with one another, did then and there willfully, unlawfully ad fraudulently cause the importation of boxes containing a total of 413 pieces of G-shock wristwatches all consigned to the accused, by falsely declaring 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 vale 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."

On December 20, 2016, accused Genevieve Ochave, Clarisse D. Karingal, Edmond Descutido, Zenaida Valencia, Jennifer Valencia and Edward Ochave filed Motions for Judicial Determination of Probable Cause before the Second Division of this Court for CTA Crim. Case No. O-625 and before the Third Division of this Court for CTA Crim Case No. O-626.

On February 13, 2017, the Second Division of this Court issued a Resolution[4] declaring the existence of probable cause in CTA Crim. Case No. O-625, and ordering the issuance of Warrant of Arrest for all the accused.

On March 1, 2017, all the accused filed, through their counsel, an "Urgent Motion to Consolidate with Prior Related Case Pending with Second Division and Manifestation."[5] On even date, all the accused filed the same motion for consolidation[6] with the Third Division of this Court.

On March 28, 2017, all the accused, through their counsel, filed an "Omnibus Motion"[7] praying that the Complaint against all the accused be dismissed for being utterly devoid of merit; or in the alternative, a reinvestigation by the prosecutor be ordered to rectify the variance between the Complaint and Resolution on one hand and the Information to the other, and to ascertain probable cause; and the proceedings be held in abeyance in case of reinvestigation.

On April 4, 2017, the prosecution filed a "Comment/Opposition."[8]

Meanwhile, on April 3, 2017, the Third Division of this Court issued a Resolution[9] ordering the consolidation of CTA Crim. Case No. O-625 with CTA Crim. Case No. O-626.

On May 11, 2017, all the accused, through their counsel, filed a "Motion to Dismiss for Lack of Jurisdiction."[10]

On May 24, 2017, the prosecution filed a "Comment/Opposition."[11]

On June 13, 2017, the Second Division of this Court issued the assailed Resolution.[12]

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[4] Docket, pp. 73-75.
[5] CTA Crim. Case No. O-626, Docket, pp. 141-144.
[6] CTA Crim. Case No. O-625, pp. 87-90.
[7] CTA Crim. Case No. O-626, pp. 169-172.
[8] CTA Crim. Case No. O-625, pp. 235-237.
[9], CTA Crim. Case No. O-626, pp. 122-123.
[10] CTA Crim. Case No. O-625, pp. 254-256.
[11] Ibid. pp. 257-258.
[12] Ibid. pp. 260-270.

On July 11, 2017, all the accused, through their counsel, filed a "(1) Motion for Reconsideration, (2) Motion to Release Cash Bond, (3) Motion to Defer Further Proceedings."[13]

During the hearing set on July 19, 2017, the Court denied for lack of merit the accused's "(1) Motion for Reconsideration, (2) Motion to Release Cash Bond, (3) Motion to Defer Further Proceedings." Consequently, the arraignment proceeded over the objection of the counsel of the accused. Accused Zenaida N. Valencia, Jennifer Valencia, Edward Ochave, Genevieve V. Ochave, Clarisse D. Karingal and Edmond Descutido, whose identities were confirmed to be the same persons charged in the Information of the cases, and duly assisted by their counsel, after having been read the Informations in a language known and understood by them, did not enter any plea for both cases. Hence, the Court entered a plea of "not guilty" into the record for all the accused.

During the Pre-Trial of the cases on August 3, 2017, all the accused and their counsel appeared. Atty. Josefel P. Grageda, counsel *de parte* of all the accused manifested that they will not participate in the preliminary conference and pre-trial, as well as in the subsequent proceedings of the cases. The Court noted the manifestation of Atty. Josefel P. Grageda.[14]

The Second Division of the Court issued the Pre-Trial Order of the cases on August 18, 2017.[15]

On August 30, 2017, the Court *En Banc* received the instant "Petition."[16] It was stated therein that the accused obtained the July 19, 2017 Order on July 26, 2017.

On September 26, 2017, the Court *En Banc* issued a Resolution[17] ordering the accused to take appropriate actions relative to the observations of the Court that the caption must indicate all the names of accused and they should be referred to as "Petitioners" while the People of the Philippines should be referred to as "Respondents."

Meanwhile, on even date, during the hearing for the initial presentation of evidence for the prosecution at the Second Division of the Court, accused Clarisse D. Karingal appeared with her new counsel *de parte*, Atty. Freddie B. Fier, and manifested that she will participate in the proceedings of the cases. The Second Division of the Court noted her manifestation and ordered the amendment of the Pre-Trial Order as regards her change of mind that she will

[13] Ibid. pp. 457-460.
[14] Minutes of the Hearing, CTA Crim. Case No. 625, p. 524.
[15] CTA Crim. Case No. 625, pp. 528, 535.
[16] Rollo, CTA EB Crim. No. 042, pp. 1-18, with annexes.
[17] Ibid. pp. 66-68.

now participate in the proceedings of the cases. The Second Division of the Court likewise noted the "Manifestation" filed by Atty. Josefel P. Grageda that a "Petition" was filed before the Court *En Banc*. Accordingly, the presentation of evidence for the prosecution was cancelled until further notice of the Court.[18]

On November 3, 2017, the petitioners filed their "Compliance/Motion and Manifestation."[19]

On December 15, 2017, the Court *En Banc* noted the petitioners' Manifestation. Hence, their motion to replace/substitute the first page of the Petition is granted. Also, the Court *En Banc* gave due course to the "Petition." Accordingly, respondent People of the Philippines is ordered to file its Comment within ten (10) days from notice.[20]

On February 23, 2018, respondent filed its "Comment"[21] on the Petition.

On March 14, 2018, the Court *En Banc* deemed the case submitted for Decision.[22]

ISSUE

Whether or not the Second Division of the Court erred in holding that it has jurisdiction over the cases.

PETITIONERS' ARGUMENTS

Petitioners argue that the Court has no jurisdiction to try the cases because the attendant facts established by the prosecution show that the senders are all different persons (except for Jeffrey Valencia who sent two boxes to two different persons) and that the would-be consignees are different persons; that the export declaration and packing list are distinct from one another; that separate cases should be filed before the Regional Trial Court considering that the amount of taxes and fees, exclusive of charges and penalties is less than One Million Pesos; that the Resolution of the prosecutor does not mention of conspiracy among the accused; and that the issue of conspiracy is determinative of jurisdiction of the Court.

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[18] Minutes of the Hearing, CTA Crim. Case No. 625, p. 602.
[19] Rollo, CTA EB Crim. No. 042, p. 69.
[20] Resolution, Rollo, CTA EB Crim. No. 042, pp. 73-74.
[21] Ibid. pp. 75-76.
[22] Rollo, CTA EB Crim. No. 042, pp. 78-79.

RESPONDENT'S ARGUMENTS

On the other hand, respondent counter-argues that the jurisdiction of courts in criminal cases is determinative by the allegations of the complaint or information; and that to determine whether or not the Court has jurisdiction over the crime charged, the only pleading that needs to be examined is the complaint of information, and nothing more.

RULING OF THE COURT *EN BANC*

TIMELINESS OF THE PETITION

A perusal of the records shows that after the issuance of the assailed Resolution on June 13, 2017, accused through their counsel filed a Motion for Reconsideration[23] on July 11, 2017. During the hearing for the arraignment of all accused on July 19, 2017, accused Zenaida N. Valencia, Jennifer Valencia, Genevieve Ochave, Edward Ochave, Clarisse D. Karingal, Edmond Descutido, and their counsel were present. During the said hearing, the Court orally ruled that accused's "(1) Motion for Reconsideration, (2) Motion to Release Cash Bond, (3) Motion to Defer Further Proceedings" are denied for lack of merit. Consequently, the Court issued a Confirming Order (assailed Order)[24] denying for lack of merit the said motions. Thereafter, the petitioners through their counsel, filed by personal service the instant Petition for Review dated July 31, 2017 on August 30, 2017. In the "Petition," petitioners alleged that they obtained a copy of the assailed Order on July 26, 2017.[25]

Section 4, Rule 65 of the Rules of Court provides that the petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

Inasmuch as the "Petition" was filed on August 30, 2017, hence, the "Petition" was timely filed.

WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION TO TRY THE CASES

Accused Zenaida N. Valencia, Jennifer Valencia, Genevieve Ochave, Edward Ochave, and Edmond Descutido argue that it is the Regional Trial Court that has jurisdiction over the cases. The amount of taxes should not be

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[23] Docket, CTA Crim. Case No. O-625, pp. 457-460, with annexes.
[24] Ibid. pp. 482-483.
[25] Ibid., Petition, p. 1.

taken as a whole for all the accused. There was no conspiracy. The accused should be separately charged since there are different export declaration and consignees.

After consideration, the Court *En Banc* finds petitioners arguments without merit.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[26]

The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.[27]

The allegations in the Informations of Criminal Case Nos. O-625 and O-626 state that the "duties and taxes in the amount of One Million One Hundred Ten Thousand Seven Hundred Eighty One Pesos (P1,110,781.00) *xxx*." The allegations do not state that the charges and penalties are included in the said amount.

The Imports and Assessment Service dated December 10, 2014[28] reads as follows:

> "Respectfully returned to **Atty. ALEXIS F. MEDINA**, Director, Legal Service, and Executive Director, RATS Group, the herein 1st Indorsement dated 5 December 2014 in re: shipment of undeclared G-SHOCK WATCHES found in 6 boxes of various consignees which was referred to this office for valuation and computation of the appropriate duties and taxes.
>
> Hereunder quoted are the data requested;
>
> 1. Value Reference = US $284.74/pc
> 2. Summary of Duties and Taxes

Customs Duty	:	PHP 315,245
VAT	:	794,537
IPF	:	1,000

[26] Glynna Foronda-Crystal vs. Aniana Lawas Son, G.R. No. 221815, November 29, 2017
[27] *Hector Treñas vs. People of the Philippines, G.R. No. 195002, January 25, 2012.*
[28] Exhibit "P-2", Docket, CTA Crim. Case No. O-626, p. 26.

Total Duties & Taxes	:	**PHP 1,110,781**

Attached is the detailed computation for your ready reference.

(Sgd.) ATTY. DANILO G. BALLENA

ARNULFO B. GAMBAYAN
Acting Director"

The detailed computation[29] reads as follows:

"COMMODITY	G-SHOCK WATCHES
QUANTITY	413 PCS
VALUE REFERENCE	US $284.74/PC

FOB Value	$	117,597.62
Freight, Insurance and other charges		1.22
Dutiable Value in USD	$	143,469.10
Exchange Rate		43.946
Dutiable Value in PHP	PHP	6,304,892.91
Rate of Duty		5%
Customs Duty	PHP	315,244.65

Dutiable Value	PHP	6,304,892.91
Customs Duty	PHP	315,244.65
Import Processing Fee	PHP	1,000.00
Landed Cost	PHP	6,621,137.56
VAT Rate		12%
VAT	PHP	794,536.51

Summary:

Customs Duty	PHP	315,245
VAT	PHP	794,537
Import Processing Fee	PHP	1,000
Total Amount Due	**PHP**	**1,110,781**

REMARKS: Since item description is not in accordance with CAO 28-2007 and CMO 28-2007, this office opted to indorse an average value sourced from our valuation database."

[29] Ibid. p. 27.

A perusal of the above computation shows that no charges or penalties were included in the total duties and taxes amounting to Php1,110,781.00.

Section 7 (b) (1) of Republic Act (RA) No. 1125,[30] as amended by R.A. No. 9282,[31] states that:

> Section 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 or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed if 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.** Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

As aptly ruled by the Second Division in the assailed Resolution:[32]

> "From the foregoing provisions, the CTA has jurisdiction over criminal offenses arising from violations of the Tariff and Customs Code where the principal amount of the taxes and fees,

[30] An Act Creating the Court of Tax Appeals.
[31] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, amending for its Purpose certain Sections of R.A. No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.
[32] Assailed Resolution, pp. 10-11.

exclusive of charges and penalties, claimed is one million pesos or more.

In these cases, the allegations in the Information shows that the accused was charged for violation of Articles 3601 in relation to Article 1302 and 3602 in relation to Article 2503 of the Tariff and Customs Code of the Philippines. Moreover, the alleged amount involved in both cases exceeds one million pesos. Thus, the Court of Tax Appeals have jurisdiction in both cases.

Moreover, the allegation that there was no conspiracy is evidentiary in nature. It is premature for the Court to make a determinative finding on the matter prior to the parties; presentation of their respective evidence."

Hence, there being no reversible error committed by the Court in Division, this Court finds no cogent reason to disturb the assailed Resolution and assailed Order.

WHEREFORE, premises considered, the "Petition" is **DENIED** for lack of merit.

Accordingly, let this case be remanded to the Court *a quo* for the continuation of the proceedings of the case.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join D.O. of J. Grulla)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ZENAIDA N. VALENCIA, JENNIFER VALENCIA, GENEVIEVE OCHAVE, EDWARD OCHAVE, EDMOND DESCUTIDO, Petitioners,	**CTA EB CRIM. NO. 042** (CTA Crim. Case Nos. O-625 and O-626)
- versus -	*Present*: DEL ROSARIO, *PJ.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: APR 04 2019 12:31 p.m.

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DISSENTING OPINION

DEL ROSARIO, *PJ.*:

With utmost respect to my esteemed colleague, the Honorable Associate Justice Ma. Belen M. Ringpis-Liban, I cannot give my assent to the *ponencia* denying for lack of merit the Petition filed on August 30, 2017 thereby affirming the assailed Resolution dated June 13, 2017 and Order dated July 19, 2017 of the Court in Division.

Contrary to the *ponencia*, I submit that the Court in Division has no jurisdiction over the criminal cases against petitioners.

The Court of Tax Appeals (CTA), being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[1] Its jurisdiction over criminal cases is set forth in Section 7(b)(1) of Republic Act No. 1125, as amended, *viz.*:

[1] Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010.

"Sec. 7. Jurisdiction. - The CTA shall exercise:

xxx xxx xxx

"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 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.** Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized. (Boldfacing supplied)

Otherwise stated, the CTA exercises exclusive original jurisdiction over all criminal offenses arising from violations of the Tariff and Customs Code of the Philippines (TCCP)[2] unless the amount claimed is less than one million pesos (exclusive of charges and penalties) or where there is no specified amount claimed, in which case, jurisdiction shall be vested in the regular courts. Relatedly, Section 3, Rule 4 of the RRCTA clarifies that the Court in Division exercises exclusive original jurisdiction over criminal cases arising from violations of the TCCP and other laws administered by the Bureau of Customs where the principal amount of taxes and fees, **exclusive of charges and penalties**, claimed is one million pesos or more, *viz.*:

Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* –The Court in Divisions shall exercise:

xxx xxx xxx

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[2] As amended by Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act.

> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> > (1) **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 or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; and xxx (Boldfacing supplied).

What is relevant in the present Petition is the delineation provided for by law which distinguishes the jurisdictions of the CTA and the regular courts, *i.e.,* the Regional Trial Court, among others.

The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. And once, it is so shown, the Court may validly take cognizance of the case.[3]

To determine the principal amount claimed, which would in turn determine the court with appropriate jurisdiction, an examination of the allegations in the Informations is necessary.

In the case at bar, petitioners are charged in two (2) Informations for alleged violations of Section 3601 in relation to Section 1302 of the TCCP <u>and</u> Section 3602 in relation to Section 2503 of the TCCP. The accusatory portions of the Informations, respectively read:

CTA 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 of 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, 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**

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[3] Allen A. Macasaet et al. vs. The People of the Philippines and Joselito Trinidad, G. R. No. 156747, February 23, 2005.

> **government, in the amount of One Million One Hundred Ten Thousand Seven Hundred Eighty One Pesos (P1,110,781.00).**
>
> CONTRARY TO LAW." (Boldfacing supplied)
>
> **CTA 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 the imported goods inside the 6 boxes were shoes, groceries, chocolates, gifts, toys, comforter, 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 (P6,348,892.91) 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." (Boldfacing supplied)

While the two (2) Informations indicate that the government was prejudiced to the extent of duties and taxes in the amount of **P1,110,781.00**, there is, however, no allegation therein whether the amounts are **exclusive of charges and penalties.** Yet, such omitted allegation is indispensable for the CTA to acquire jurisdiction over the cases.

In *Allen A. Macasaet et al. vs. The People of the Philippines and Joselito Trinidad*[4] (Macasaet), the Supreme Court *in esse* declared that the failure of an Information to allege matters that specifically vest jurisdiction upon the court with which it is filed effectively deprives the court of jurisdiction to take cognizance of the case. Said the Supreme Court:

> "Xxx, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.
>
> xxx
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> In the case at bar, private respondent was a private citizen at the time of the publication of the alleged libelous article, hence, he could

[4] Allen A. Macasaet, et al. vs. The People of the Philippines and Joselito Trinidad, G.R. No. 156747, February 23, 2005.

> only file his libel suit in the City of Manila where *Abante* was first published or in the province or city where he actually resided at the time the purported libelous article was printed.
>
> **A perusal, however, of the information involved in this case easily reveals that the allegations contained therein are utterly insufficient to vest jurisdiction on the RTC of Quezon City**. Other than perfunctorily stating Quezon City at the beginning of the information, the assistant city prosecutor who prepared the information did not bother to indicate whether the jurisdiction of RTC Quezon City was invoked either because *Abante* was printed in that place or private respondent was a resident of said city at the time the claimed libelous article came out. **As these matters deal with the fundamental issue of the court's jurisdiction, Article 360 of the Revised Penal Code, as amended, mandates that either one of these statements must be alleged in the information itself and the absence of both from the very face of the information renders the latter fatally defective.** Sadly for private respondent, the information filed before the trial court falls way short of this requirement. The assistant city prosecutor's failure to properly lay the basis for invoking the jurisdiction of the RTC, Quezon City, effectively denied said court of the power to take cognizance of this case." (Boldfacing supplied)

Applying *Macasaet*, matters dealing with the issue of the CTA's jurisdiction must be alleged in the Information itself. Since Section 7(b)(1) of Republic Act No. 1125, as amended, determines this Court's jurisdiction based on the **principal amount of taxes and fees, exclusive of charges and penalties claimed**, such fact must be alleged in the Information, lest the same would be fatally infirm. As afore-discussed, the Informations involved in the present controversy are wanting of the appropriate allegations anent the jurisdictional amount that could have vested upon this Court jurisdiction over the criminal cases.

While defects in an information may be cured by amendment pursuant to Section 14, Rule 110 of the ROC,[5] not all defects in an

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[5]Section 14. Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

information can be cured. Before the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court. After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused.[6] **The substantial matter in a complaint or information is the recital of facts constituting the offense charged and <u>determinative of the jurisdiction</u> of the court. All other matters are merely of form.**[7]

In the case at bar, petitioners were arraigned on July 19, 2017; since petitioners refused to plead, the Court in Division entered a "not guilty" plea for all of them.[8] With the arraignment of petitioners, the amendment of the Informations to specify the amounts claimed therein as "exclusive of penalties and charges", appears to be proscribed as such amendment relates to the Court's jurisdiction.

In *Victor C. Agustin vs. Hon. Fernando Vil Pamintuan*,[9] a case which had its roots in four (4) criminal cases for libel, the Supreme Court declared that amendments of the information to vest jurisdiction upon a court is not permissible, *viz.*:

> "We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. **Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed**."

In view of the foregoing disquisitions, I am of the view that the criminal cases against petitioners must be dismissed outright for lack

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If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

[6] Jose Antonio C. Leviste vs. Hon. Elmo M. Alameda, G.R. No. 182677, August 3, 2010.

[7] Leonarda Alameda vs. Hon. Onofre A. Villaluz, G.R. No. L-31665, August 6, 1975.

[8] Minutes of the Hearing on July 19, 2017, CTA Crim. Case No. O-625 Docket, p. 469.

[9] G.R. No. 164938, August 22, 2005.

of jurisdiction on the part of the Court in Division to take cognizance thereof.

All told, I VOTE to (1) GRANT the Petition; (2) SET ASIDE the assailed Resolution dated June 13, 2017 and Order dated July 19, 2017 of the Court in Division; and (3) DISMISS Criminal Case Nos. O-625 and O-626 for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ZENAIDA N. VALENCIA, JENNIFER VALENCIA, GENEVIEVE OCHAVE, EDWARD OCHAVE, and EDMOND DESCUTIDO, *Petitioners,*	CTA EB Crim. No. 042 (CTA Crim. Case No. O-625 and O-626)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: APR 04 2019 2:31 p.m.

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DISSENTING OPINION

MINDARO-GRULLA, J.:

With due respect, I dissent from the majority opinion. I vote to grant the Petition for Review on the ground that this Court lacks jurisdiction.

I maintain my position that the allegations in the Information filed on December 9, 2016 do not clearly show the jurisdiction of this Court insofar as the principal amount of taxes and fees is concerned.

In law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution[1]. We reiterate, the CTA is a court of special jurisdiction, and can only take cognizance of matters that are clearly within its jurisdiction. It is necessary to first determine whether this Court has jurisdiction over this case.

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[1] Glynna Foronda-Crystal vs. Aniana Lawas Son, G.R. No. 221815, November 29, 2017.

Section 7(b)(1) of Republic Act (R.A.) No. 1125,[2] as amended by R.A. No. 9282[3], states:

"SEC. 7. Jurisdiction.- The CTA shall exercise:

xxx xxx xxx

(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 or the Bureau of Customs: Provided, however, That offenses 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***. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized." (Emphasis supplied.)

Corollary thereto, the 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically enumerated the cases that fall within the jurisdiction of the CTA Division and En Banc. Section 3 of Rule 4 of the said revised rules enumerates the cases within the jurisdiction of the Court in Division, to wit:

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[2] An Act Creating the Court Of Tax Appeals.

[3] An Act Expanding the Jurisdiction of the Court Of Tax Appeals (CTA), Elevating its rank to the level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, amending for the purpose Certain Sections Or Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court Of Tax Appeals, and for other purposes.

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> "SEC. 3. Cases within the jurisdiction of the Court in Divisions.- The Court in Division shall exercise:
>
> xxx xxx xxx
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> 1) 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 or the Bureau of Customs, ***where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more***; and x x x"

Thus, bearing in mind that the jurisdiction of a court over a criminal case is determined by the allegations in the Complaint or Information, it must first be shown in the Information filed before this Court, that the principal amount of taxes and fees claimed is at least One Million Pesos (P1,000,000.00).

A review of the records reveal that the Information alleges that the above-named accused misrepresented the subject shipments of 6 boxes containing a total of 413 pieces of G-Shock watches valued approximately at 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)[4], by misdeclaring and undervaluing the same.

While there is no dispute that there is no requirement for the precise computation and assessment of tax before there can be a criminal prosecution, nonetheless, there is a necessity to allege in the Information, following the foregoing provisions, that the principal amount of taxes and fees, ***exclusive of charges and penalties***, claimed is at least one million pesos (P1,000,000.00) to vest jurisdiction to this Court.

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[4] Division Docket, Crim.Case No. O-625, pp. 26-27.

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The Court notes that the accusatory portion of the Information specifically alleges that the aggregate amount of One Million One Hundred Ten Thousand Seven Hundred Eighty-One Pesos (P1,110,781.00) was petitioner's unpaid taxes. However, it failed to specifically indicate whether the amount claimed was exclusive of the charges and penalties.

Consequently, the Information failed to meet the minimum jurisdictional amount prescribed by law and the rules in order to confer jurisdiction upon this Court.

Settled is the rule that the jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Also, Section 1, Rule 9 of the Rules of Court states that when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim. Notably, lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[5]

In view of the foregoing, this Court has no recourse but to dismiss the instant case on account of lack of jurisdiction. ***The instant criminal case should therefore be tried by the regular Courts and the jurisdiction of the CTA shall be appellate***.

Respectfully submitted.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[5] Miramar Fish Company, Inc., vs. Commissioner of Internal Revenue, G.R. No. 185432, June 4, 2014.