

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-865
(For Violation of Section 1401 (e) of
Republic Act No. 10863, otherwise
known as the Customs Modernization
and Tariff Act)

-versus-

Hilario Sanoy (Ship Master)
San Jose Del Monte City, Bulacan
Rogelio G. Dadova (Chief Officer)
Sampaguita, Gulod Taal, Blk. 10 Lot
2B, Batangas City
John Condio, Sr. (2nd Officer)
Brgy. Plaridel, Bato, Leyte,
Accused.

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PEOPLE OF THE PHILIPPINES
Plaintiff,

CTA Crim. Case No. O-888
(For Violation of Section 1401 (e) of
Republic Act No. 10863, otherwise
known as the Customs Modernization
and Tariff Act)

-versus-

**CESARIO BALDICANAS (Truck
Driver with Plate no. CBJ 2017),** of
Brgy. Alangan, Limay, Bataan and
GABRIEL PERPETUA (Truck Helper),
of Brgy. Carbon, Limay, Bataan,
Accused.

Members:

DEL ROSARIO, P.J., Chairperson,
MANAHAN, and
REYES-FAJARDO, JJ.

Promulgated:

MAR 17 2022 10:15am


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RESOLUTION

On November 17, 2021, the Second Division of this Court granted the Motion for Consolidation of CTA Criminal Case No. O-888¹ with CTA Criminal Case No. O-865 pending with the First Division of this Court, subject to the conformity of the members of the latter.

On December 3, 2021, the First Division of this Court deferred the consolidation of CTA Criminal Case No. O-865 with CTA Criminal Case No. O-864 pending the resolution of the Motion for Reconsideration on the dismissal of said case by the Third Division of this Court.

On February 15, 2022, the Third Division of this Court issued a Resolution denying plaintiff's Motion for Reconsideration and upholding the dismissal of the case in CTA Criminal Case No. O-864.²

RULING OF THE COURT

In view of the foregoing developments, the Court **RESOLVES** to **APPROVE** the consolidation of CTA Criminal Case No. O-888 with CTA Criminal Case No. O-865, the latter case bearing the lower docket number.

As regards the consolidation of CTA Criminal Case No. O-865 with CTA Criminal Case No. O-864, the same is rendered **MOOT** in view of the dismissal of the latter case in the Court Resolution dated February 15, 2022 rendered by the Third Division.

With the consolidation of CTA Criminal Case No. O-888 with CTA Criminal Case No. O-865, the Court shall now proceed to determine the existence of probable cause against accused Cesario Baldicanas and Gabriel Perpetua in CTA Criminal Case No. O-888.

On June 1, 2021, an Information was filed by the prosecution against accused Cesar Baldicanas and Gabriel Perpetua for violation of Section 1401 (e) of Republic Act (R.A.)

¹ Motion for Consolidation filed by the prosecution in CTA Criminal Case No. O-888 on June 1, 2021.

² Court Resolution by the Third Division dated June 28, 2021.

No. 10863 otherwise known as the Customs Modernization and Tariff Act, quoted as follows:

“That on or about February 24, 2021, in Orion, Bataan, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another and with the evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into this country, did then and there willfully, knowingly and fraudulently received, facilitate the transportation, concealment or sale of imported goods or assist in doing so contrary to law, 460 master cases of imported counterfeit cigarettes worth Php2,087,325.69, introduced into the country by means of and with the use of fake, fictitious or fraudulent Statement of Settlement of Duties and Taxes (SSDT) and Coasting Manifest from the Bureau of Customs in violation of Section 1401 (e) of Republic Act No. 10863 also known as the Customs Modernization and Tariff Act (CMTA), resulting in unpaid principal taxes and fees due the government in the total amount of Php10,145,229.26, exclusive of charges and penalties, to the damage and prejudice of the government.

Contrary to Law
Balanga City, Bataan, April 5, 2021.”

Attached to the Information are the original and certified true copies of the following supporting documents:

- 1) Inquest Resolution dated February 25, 2021 signed by Assistant State Prosecutor Dindo D. Beber;
- 2) Original Affidavit of Carissa L. Villanueva, Edvir M. Dela Cruz and Rey Catalino U. De Mesa, members of the Water Patrol District – Enforcement and Security Services of the Bureau of Customs signed on February 25, 2021, narrating the circumstances relative to the conduct of the search and inspection of the subject vessel LCT “Yellow River” which yielded the alleged smuggled goods and indicating the names of the persons found inside the vessel during the said search and inspection. This affidavit was supported by annexes;
- 3) Original Affidavit of Seizing/Apprehending Officers, Samuel M. Delos Santos, Rodney June L. Cruz, Jeffrey Asis and Aldo Neil B. Rafols, all of the Port of Limay-Bureau of Customs signed on February 25, 2021;

- 4) Original Resolution dated March 10, 2021 issued by Assistant State Prosecutor Dindo D. Beber with approval by 2nd Assistant Provincial Prosecutor Errol A. Primero, recommending the filing of Informations against Julius Macalinao, Jomar Pacunia, Cesario Baldicanas and Gabriel Perpetua for violation of Section 1401 (e) of the R.A. No. 10863, as amended;
- 5) Referral Letter dated March 24, 2021 signed by Mr. Rey Leonardo B. Guerrero, Commissioner of Customs, authorizing the Chief Prosecutor, Atty. Sonny Ocampo of the Office of the Provincial Prosecutor of San Jose, Balanga, City of Bataan, to file the necessary Informations against the respondents named therein and to prosecute the case on behalf of the Bureau of Customs;
- 6) Investigation Data Form;
- 7) Original Computation of Valuation and Duties and Taxes Due to the Government computed by Mr. Kristoffer Jan C. Rosales of the Bureau of Customs;
- 8) Undated Affidavit of Mr. Kristoffer Jan C. Rosales, Customs Operations Officer III assigned at the Collection District of Port of Limay, Bataan; and
- 9) Undated Supplemental Affidavit of Mr. Kristoffer Jan C. Rosales.

Based on the allegations in the Information, the accused are charged with the violation of Section 1401 (e) of R.A. No. 10863, allegedly due to their alleged facilitation, transportation and concealment or sale of imported counterfeit cigarettes worth Php2,087,325.69.

Section 6 (a) Rule 112 of the Revised Rules of Court is quoted as follows:

Section 6. *When warrant of arrest may issue.* - a) By the Regional Trial Court. - xxx, the Judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed

pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause the judge may order the prosecutor to present additional evidence within five (5) days from notice xxx”.

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides, thus:

“Section 4. *Warrant of arrest.*- Within ten days from the filing of the Information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.”

Based on the foregoing, probable cause to issue a warrant of arrest is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that there are lawful grounds to arrest the accused. As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him.³

Upon a careful evaluation of the Information and the supporting documents submitted by the prosecution, the Court finds that there is no probable cause to issue warrants of arrest against the accused, Cesario Baldicanas and Gabriel Perpetua.

The offense charged against accused Cesario Baldicanas and Gabriel Perpetua is for violation of Section 1401 (e) of R.A. 10863, quoted 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:

(e) Imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years or a fine of not less than one million five hundred thousand pesos

³Chester de Joya vs. Judge Placido C. Marquez, et al., G.R. No. 162416, January 31, 2006.

(P1,500,000.00), but not more than fifteen million pesos (P15,000,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds five million pesos (P5,000,000.00) but not more than (P50,000,000.00);

Based on the afore-quoted provision of law, it is vital that the Information as well as its supporting documents show that there is a *prima facie* case that the accused committed unlawful importation or exportation.

The Information alleges that the accused willfully, knowingly and fraudulently received and facilitated the transportation, concealment or sale of the subject smuggled goods. To support its allegations, the prosecution submitted, among others, an Affidavit of the Seizing and Apprehending Officers stating in paragraph (19) that the truck drivers and helpers when asked about their destination, allegedly “refused to give any information and that they had not received any information yet as to where the goods will be delivered.” Further, the prosecution submitted an Affidavit executed by members of the Water Patrol District-Enforcement and Security Services of the Bureau of Customs who narrated that they made a headcount of the personnel operating the trucks and cranes loading the goods and that one of the truck drivers and helpers seen facilitating the transfer of the goods from the vessel to the trucks, include accused, Cesario Baldicanas, the truck driver, and Gabriel Perpetua, the truck helper.

This Court finds that these documents and statements are bereft of any evidence that would prove that the accused, Cesario Baldicanas and Gabriel Perpetua, truck driver and helper, respectively, willfully, and fraudulently facilitated the transportation of the alleged smuggled goods. In fact, the goods were not yet in transit when the apprehension was made as they were “seen” merely unloading the goods from the vessel to the trucks. The accusation of concealment and sale of imported goods imputed against the accused Cesario Baldicanas and Gabriel Perpetua, is weak and cannot hold water as they were only seen unloading the alleged smuggled goods from the vessel. The two accused were not even part of the crew of the vessel LCT “Yellow River” allegedly carrying the smuggled goods. The Information then made a sweeping and general conclusion that the accused *conspired* to

unlawfully and fraudulently facilitate the transportation and concealment or sale of the imported goods.

Probable cause, although, it requires less than evidence justifying a conviction, demands more than bare suspicion.⁴ Before issuing a warrant of arrest, the judge must be satisfied that based on the evidence submitted, there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof.⁵ The documents submitted by the prosecution are insufficient to enable this Court to form a conclusion that the accused Cesario Baldicanas and Gabriel Perpetua committed a violation of Section 1401 (e) of R.A. No.10863.

In view of the foregoing findings, and based on the documents submitted by the prosecution, the Court finds no probable cause to issue a warrant of arrest against accused Cesario Baldicanas and Gabriel Perpetua.

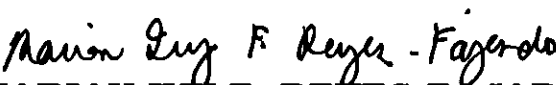
WHEREFORE, premises considered, the criminal case filed against accused Cesario Baldicanas and Gabriel Perpetua in CTA Criminal Case No. O-888, is **DISMISSED**.

Accordingly, the arraignment of herein accused Hilario Sanoy, John Condio, Sr. and Rogelio G. Dadova, the accused in CTA Crim. Case No. O-865, originally scheduled on February 2, 2022 is reset to **March 30, 2022 at 8:30 a.m.**

SO ORDERED


ROMAN G. DEL ROSARIO
Presiding Justice


CATHERINE T. MANAHAN
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

⁴ *Maria Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.

⁵ *Joey M. Pestilos, et al., vs. Moreno Generoso and People of the Philippines*, G.R. No. 182601, November 10, 2014.