REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

EMELITA RAMIREZ y TAYLO & SHIELA LARRACOCHEA y TACBAS aka SHIELA NERI y LARRACOCHEA aka SHIELA LARRACOCHEA NERI,
Accused-Appellants.

CTA CRIM. CASE NO. A-9
(Criminal Case No. 14-307648)

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JUL 27 2023
3:24 p.m.

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DECISION

CUI-DAVID, J.:

This is an appeal by accused-appellants from the Decision[1] dated February 19, 2021, and Order[2] dated June 1, 2021, rendered by the Regional Trial Court (RTC) of Manila, Branch 21 in Criminal Case No. 14-307648, convicting them of the crime of Unlawful Importation as defined and penalized under Section 3601 in relation to Section 101(k) of the Tariff and Customs Code of the Philippines (TCCP), as amended, Section 3 of Presidential Decree (PD) No. 1433, Section 2, Rule II of the Bureau of Plant Industry (BPI) Quarantine Administrative Order No. 1, Series of 1981, and Department of Agriculture (DA) Administrative Order No. 9, Series of 2010.

The dispositive portions of the assailed Decision and Order read as follows:

[1] CTA Docket, pp. 16-39.
[2] CTA Docket, pp. 40-41.

Decision dated February 19, 2021

> **WHEREFORE**, accused **EMELITA RAMIREZ y TAYLO** and **SHIELA LARRACOCHEA y TACBAS a.k.a SHEILA NERI y LARRACOCHEA a.k.a SHIELA LARRACOCHEA NERI** are hereby declared **GUILTY** beyond reasonable doubt of the crime of Unlawful Importation as defined and penalized under Sec. 3601 in relation to Sec. 101(k) of the Tariff and Customs Code of the Philippines, as amended, and in relation further to Section 3 of Presidential Decree (PD) No. 1433 otherwise known as the "Plant Quarantine Decree of 1978"; to Section 2, Rule II of the Bureau of Plant Industry Quarantine Administrative Order No. 1, Series of 1981 as well as to Department of Agriculture Administrative Order No. 9, Series of 2010 punishable under paragraph 4 of Section 3601 of the TCCP, as amended, in Criminal Case No. 14-307468 and they are hereby sentenced to suffer an indeterminate imprisonment of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum and to pay a fine of eight thousand pesos (Php8,000.00) each.
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> **SO ORDERED**.

Order dated June 1, 2021

> **WHEREFORE**, the Court finds no cogent reason to reverse or modify the assailed Decision dated February 19, 2021 and the Motion for Reconsideration of the said Decision filed by accused Shiela Larracochea y Tacbas aka Shiela Neri y Larracochea aka Shiela Larracochea y Neri thru counsel is hereby **DENIED**.
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> **SO ORDERED**.

THE PARTIES

Accused-appellant Emelita Ramirez y Taylo is the registered owner/proprietress of ETR Trading with address at 235 National Road, Bayanan, Muntinlupa City.

Co-accused appellant Shiela Larracochea y Tacbas is a licensed customs broker with address at No. 27 Naranghita St., Project 2, Quezon City, and No. 8 Zamboanga St., Nayon Kanluran, Quezon City.

Plaintiff-appellee, on the other hand, is the People of the Philippines, represented herein by the Office of the Solicitor General (OSG).

THE FACTS

The records of the case disclose that accused-appellants were indicted in an *Information*[3] dated May 2, 2014, filed before the RTC Branch 21, Manila (court *a quo*) of an offense for violation of Section 3601 in relation to Section 101(k) of the TCCP, as amended, the accusatory portion of which reads:

> "That on or about January 9, 2013 in the City of Manila and within the jurisdiction of the Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully, feloniously and fraudulently import/bring into the Philippines a shipment consisting of 12,000 bags of red onion contained in four forty-footer (4x40') container vans, covered by Bill of Lading No. GOSUQIN3500826 and declared under Import Entry No. C-7173, consigned to ETR Trading of which the accused Emelita T. Ramirez is the owner-proprietor, with a market value of approximately Sixteen Million Pesos (Php16,000,000.00) without any import permit/quarantine clearance from the Bureau of Plant Industry, Department of Agriculture, and which importation was made possible through the use of falsified/spurious Plant Quarantine Clearance evidently intended to defraud the government of legitimate taxes accruing to it from imported articles, to its damage and prejudice.
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> CONTRARY TO LAW."

Upon arraignment on June 11, 2015, accused-appellant Sheila Larracochea, duly assisted by her counsel, pleaded not guilty to the offense charged in the *Information.*[4]

On August 20, 2015, the pre-trial was conducted and terminated with the following stipulations and admissions:

1. Identity of accused insofar as she is the same person named in the *Information* as Shiela Larracochea.

2. Jurisdiction of the court to try and decide the case.[5]

On the other hand, when arraigned on October 26, 2016, accused-appellant Emelita T. Ramirez, duly assisted by her counsel, entered a plea of not guilty to the offense charged. On even date, the prosecution and the defense adopted the

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[3] RTC Records, Vol. 1, pp. 1-4.
[4] Order dated June 11, 2015, RTC Records, Vol. 1, pp. 166-167.
[5] Pre-Trial Order dated August 20, 2015, RTC Records, Vol. 1, pp. 185-187.

proceedings that were already conducted against accused-appellant Larracochea with the additional stipulation as to the identity of accused-appellant Ramirez as the accused mentioned in the *Information* as well as the inclusion of the issue, that is, whether accused Ramirez is guilty of the crime charged in the *Information.*[6]

During the trial, the prosecution presented the following witnesses, namely: (1) Clarito Barron; (2) Margarita Santiago; and (3) Reffy Gorre.

As narrated by the court *a quo,* the testimonies of the witnesses mentioned above are as follows:

> **CLARITO BARRON** testified that he was the Director of Bureau of Plant Industry (BPI) way back January 9, 2013 and at the time material to this case. He presented in court a CY 2010-2014 list of accredited importers with their respective quota of fresh agricultural products inclusive of onions allowed to apply for Import Permit with the BPI which was prepared and submitted to by the Office of Plant Quarantine Services of the BPI. He stated that ETR Trading is not included in the list, thus, it is not allowed and cannot import fresh agricultural products.
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> He expounded that an agricultural product imported by an importer without accreditation or import permit is considered smuggled and the act is a violation of P.D. No. 1433. An importer of agricultural product must be an accredited importer with phytosanitary certificate issued by the country of origin, that is, where the product came from and the import permit called SPS Plant Quarantine Clearance issued by the Plant Quarantine Service of the BPI.
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> He declared that the BPI Plant Quarantine Clearance Permit No. G 18090 dated 01-09-13 is falsified and not an official quarantine document on the following grounds:
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> 1. On January 9, 2013, there was no issuance of import permit for onions.
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> 2. He is familiar with the format since he had been signing the import permit for a span of three (3) years and the color of the paper actually used is cream and the size is a little bit longer, whereas, BPI Plant Quarantine Clearance Permit No. g 18090 paper is yellow and the size is shorter.

[6] Order dated October 26, 2016, RTC Records, Vol. 1, pp. 300-301.

3. The signature affixed in BPI Plant Quarantine Clearance Permit No, G 18090 above the name Clarito M. Barron, PhD, CESO IV, Director of Plant Industry is not his signature.

The defense counsel admitted that his client accused Shiela Larracochea is the broker who processed the subject importation and the BPI Plant Quarantine Clearance Permit No. G 18090 is one of the documents given to her by the owner of the ETR Trading. The defense counsel stated that accused Larracochea is in possession of the BPI Plant Quarantine Clearance Permit No. G 18090 but she did not submit it to the Bureau of Customs (BOC) since she found out upon verification with the BPI that the document was spurious, however, the subject shipment already arrived when the discovery transpired.

In the course of his testimony, he also identified a Certification stating that based on the record of the BPI, Plant Quarantine Service, ETR Trading being represented by accused Ramirez and Larracochea has never applied for an Import Permit (SPS plant quarantine clearance) to import onion during the period of Calendar Year 2012-2013. It was also certified that ETR Trading is included among the BPI list of blacklisted importing company due to smuggled vegetable particularly onion as of December, 2013. Likewise, it is not included among the BPI accredited-importer as of May 2013 and is not authorized and allowed to apply for issuance of import permit to warrant importation of any fresh agricultural crop and its product during the aforesaid period.

He stated that he is aware of R.A. No. 8178 or the Agricultural Tariffication Act of the Philippines particularly the Section 4 thereof which repealed the laws prescribing quantitative restrictions or granting government agencies the power to impose such restrictions on agricultural products such as onions. Under Sec. 3(h) of the same law pertains to Tariffication which is the lifting of all existing quantitative restrictions such as import quotas or prohibition on agricultural products and these restrictions were replaced with tariff and as a result, the importation of onion is now liberalized. However, he clarified that R.A. No. 8178 did not relinquish the power of the BPI to issue Import Permit and even on the onset of the said law, the importer still needs to secure said permit and in fact it was even enhanced by R.A. No. 9496. He further stressed that the mandate of BPI based on PD No. 1433 is to prevent the entry of injurious pests and diseases in our country coming from other countries and for this reason, the accredited importer needs to seek first a Plant Quarantine Clearance or Import Permit. He maintained that PD No. 1433 has never been amended by R.A. No. 8178.

He reiterated that if the shipment of agricultural product does not bear the necessary documents such as Plant Quarantine Clearance and Phytosanitary Certificate, they will not issue an Import Permit, even though they have found out that the product is free from pests and diseases. He affirmed that he has no personal knowledge if their office has conducted an examination of the shipment of agricultural product subject of the instant case. Further, he does not have any personal knowledge whether accused Larracochea personally prepared or has caused to prepare the alleged falsified Plant Quarantine Clearance and that accused Larracochea is simply an assignee broker and not connected with ETR Trading as its employee.

When **MARGIE SANTIAGO** testified, she identified accused Larracochea and the Complaint Affidavit, which she executed relative to the above-captioned case. The Public Prosecutor and the Defense Counsel stipulated that she is connected with the BOC as Customs Operations Officer (COO) 3 on January 9, 2013 and she executed a Report of Seizure involving the shipment of ETR Trading. As COO3, her duty is to personally examine the shipment with color coded, that is, if the shipment is coded green it is not necessary to examine it, whereas, if the shipment is coded yellow or red or doubtful, it is mandatory to physically examine the shipment. The examination of the shipment is necessary to determine that the goods in the shipment are the same of what are declared.

Culled from her Complaint Affidavit which was executed under oath and filed with the Department of Justice, at the time material to this case, she was assigned at the Formal Entry Division, Section 1B, Port of Manila. As such, she was tasked to conduct an examination of the unlawful importation of four forty-footer (4x40') container vans said to contain "12,000 bags of red onions", with an approximate market value of Sixteen Million Pesos (Php16,000,000.00) consigned to ETR Trading from China. She stated that on January 17, 2013, Jesus V. Bacajan, Chief of Plant Quarantine Service of Bureau of Plant Industry wrote a letter to the District Collector of Port of Manila requesting that the subject shipment without the necessary SPS Import Clearance be put on hold and that the necessary Warrant of Seizure and Detention be issued against the same.

On January 18, 2013, she examined the subject shipment, which revealed the following:

Articles if known	Owner, if known	Marks or Address	Cases of Seizure
Fresh Red Onions	ETR Trading	300 Alabang St. Muntinlupa City	Without the necessary SPS Import Clearance

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Accordingly, she executed a Report of Seizure after examination of several documents of ETR Trading. As a result of said report and with the recommendation of SANTIAGO, Atty. Rogel Gatchalian, District Collector of Port of Manila issued a Warrant of Seizure and Detention of the subject shipment.

She identified the Bill of Lading from ETR Trading but cannot recall the Import Entry of the said shipment, however, she can remember that she used the said documents in making her Report of Seizure of the shipment.

In the course of her testimony, she identified accused Larracochea, the broker in the subject shipment, but she is not certain if she is connected with ETR Trading aside from being its broker. In her stint at the BOC, she had come to know ETR Trading several times and it is the importer in the subject shipment of four (4) containers of onion because of fake SPS or import permit. She does not know Emelita Ramirez personally and in fact they are all wondering if she was a real person. However, she identified her Reply-Affidavit that was executed before the Department of Justice and maintained that accused Ramirez is the importer and owner of the subject shipment while accused Larracochea is the broker, the one who facilitated the same in the BOC.

She stated that she is familiar with the Import Entry, the hard copy of which bears the signature of accused Larracochea as broker and in behalf of ETR Trading, there is another signature, the thereof she does not know, however, the signature above the entry ETR Trading is usually the importer or whoever is assigned or authorized by the company to sign on its behalf. She stated that the origin of the Import Entry is ETR Trading but she did not recognize the signature of accused Ramirez and the finding of the basis for the filing of the Complaint-Affidavit lies with their Legal Division after taking due diligence of finding out who is the owner of ETR Trading.

The soft or electronic copy of the shipping documents inclusive of the SPS permit are lodged in the BOC computer system by the consignee, in this case, the ETR Trading. A person who is not accredited with the BOC cannot lodge with the computer system. In this case, ETR Trading is a BOC accredited importer since it was able to lodge with the electronic system of the BOC. The importer will not be able to lodge with the BOC computer system if any of the information filed with the supporting documents do not tally, in this case, the subject SPS permit was already attached as supporting document. Further, the shipping documents lodged with the BOC computer system must be identical with the hard copy of the shipping documents. However, the computer will not be able to determine if any of the shipping documents was forged. The MSTG or Risk Management Office has the duty to determine if any of the shipping was forged and submission of forged document is a basis for seizure and detention.

Accused Larracochea is a licensed customs broker and to be able to lodge with the BOC electronic system, she must be accredited to file entries. As a customs broker, accused Larracochea who affixed her signature with the Import Entry and certify the same as correct to the best of her knowledge with due diligence should and could check whether the subject SPS permit is falsified or forged with the issuing agency, that is, the BPI. She has no personal knowledge whether accused Larracochea actually prepared or caused to prepare the alleged falsified SPS or Phytosanitary Certificate permit in question.

REFFY GORRE testified that he was assigned at the Account Management Office (AMO) under the Management Revenue Monitoring Coordinating Group (MRMCG) of the BOC at the time material to this case.

He stated that all the applicants or agencies to import must be registered with the Client Profile Registration System (CPRS) yearly. CPRS is the computer system of the BOC which contains all the data pertaining to an importer or broker. The applicant needs to secure an Import Clearance Certificate (ICC) from the Bureau of Internal Revenue (BIR) and submit all requirements inclusive of an Affidavit that the affiant is the one authorized to sign in the import entries with two (2) valid identification cards (ID) of the applicant, in this case, accused Emelita Ramirez, the owner of the shipment. The primary ID required are passport, driver's license, SSS, UMID, IBP, whereas, secondary ID includes TIN, Voter's ID, Philhealth, among others. The other requisite includes the CPR profile, company profile, photograph of the premises of the office inside and outside with proper signage, and payment of Php1,000.00 with the BOC.

Once an applicant submitted all the requisites with the CPRS, the applicant with (*sic*) go directly to any of the three (3) Value Added Service Provider (VASP) namely: Cargo Data Exchange Center (CDEC), E-connect, and Inter Commerce. In case a folder was transmitted to their office, they will input the TIN and all the details inputted by the consignee will appear in the computer and if they see that the documents are complete and accurate, they will make a TIN activation.

In the course of his testimony, he identified the following computer print-out from the BOC electronic system, the data therein emanated from all the information input by the consignee ETR through the VASP:

1. Exhibit "O" – Profile Information of Importer with business name ETR Trading, a sole proprietorship with TIN 213278573000 under the name Emelita Taylo Ramirez with address 235 National Road, Bayanan, Muntinlupa City, Primary Broker TIN 289591351000 and Primary Broker Code BR0000646679
2. Exhbit "O-1" – List of Plant Address: 235 National Road, Bayanan, Muntinlupa City, Philippines
3. Exhibit "O-2" – List of Principal Officers contained the photograph, signature, and name of Emelita Taylo Ramirez with TIN 213278573000
4. Exhibit "O-3" – List of Principal Officers contained the photograph, signature, and name of Emelita Taylo Ramirez with TIN 213278573000 and the area of responsibility: in all operations
5. Exhibit "O-4" – List of Major Suppliers: Xiamen Donngang Materials, Xiamen, China

He stressed that only the applicant can access and input data in the CPRS thru the unique password given to them by the VASP which the applicant subscribed to.

He presented a Certification which he issued on August 4, 2017 stating that "based on verification with the Bureau's E2M Client Profile Registration System (CPRS), importer ETR Trading owned by proprietor Emelita T. Ramirez with business address of 235 National Road, Bayanan, Muntinlupa City, was last accredited on October 10, 2012. Moreover, such accreditation was finally revoked on May 19, 2017 per Memorandum dated February 27, 2017 of M/Gen. Natalio C. Ecarma III, Deputy Commissioner, RCMG, BOC."

In addition, he identified a Single Administrative Document (SAD) with Entry No. C 7173 with attachments such as Valuation Note, Assessment Notice, and Terms of Payment with accused Larracochea as the declarant. He stated that said document is being used for the electronic entry of the Import Entry, the hard copy filled up, notarized, and submitted with the BOC. He added that the entries in the SAD are being inputted by the consignee before it goes to the customs assessment and it contains the description of the items to be shipped as indicated by said consignee. He affirmed that according to the relevant SAD, the name of the importer indicated therein is ETR Trading and it bears all the essential details pertaining to the subject shipment of the instant case, like their address, their TIN Number 213278573000, the name and TIN of the accused Larracochea as broker, the country of origin, the name of the vessel and

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finally the imported goods which in this case are red onions. The description of the shipment inputted in the SAD made by the consignee is the same as the packing list because it will be based on the commercial invoice. He concluded that it is the consignee who inputs the data on the SAD and depending on the former if he will give access to the broker.

He confirmed that the consignee of the subject shipment is ETR Trading and accused Ramirez is the proprietress. As consignee, it is considered for all intents and purposes also the owner of said shipment. He also confirmed that accused Larracochea is the broker of the subject shipment. Both accused have a separate CPRS and they are two different persons. He does not have evidence if accused Larracochea is an employee of ETR Trading and if accused Larracochea was the one who caused the falsification of the SPS import permit. He stressed that the entries in the import entry and in the SAD are the same and inputted by the consignee or broker using their separate unique password to which they have the sole access unless they will give such password to another person to use it. He declared that there is no way wherein an employee of BOC can edit the entries in the said document. He stated that he did not examine any of the documents submitted by the broker or consignee because it is not being required of them.

He confirmed that he is not familiar with the signature of accused Ramirez because he is not the evaluator of the shipment in question. However, once the TIN of an applicant for shipment had been inputted in the system, the name of the consignee and the licensed broker will appear therein and the data therein is based on the information encoded in the CPRS profile. They were able to verify that accused Ramirez is the applicant of the subject shipment by means of her BIR ICC wherein it was indicated that the she is the registered applicant but he asseverated that he did not personally knew if it was actually accused Ramirez who furnished copies of her valid identification cards with respect to the transaction.

The prosecution's *Formal Offer of Evidence*[7] consisting of Exhibits "A" to "G," "I" to "K," "M," "O" to "Q," inclusive of sub-markings, was admitted by the court *a quo* as part of the testimonies of the witnesses for the prosecution. Thereafter, the prosecution rested its case.[8]

[7] RTC Records, Vol. 1, pp. 346-352.
[8] Order dated March 15, 2018, RTC Records, Vol. 1, p. 369.

On March 20, 2018, accused-appellant Larracochea filed her *Motion for Leave to File Demurrer to Evidence*,[9] which the court *a quo* granted in open court on April 2, 2018.[10] In the same hearing, the court *a quo* denied accused-appellant Ramirez' Oral Motion to File Demurrer to Evidence for having filed out of time.

Thus, on April 12, 2018, accused Larracochea filed her *Demurrer to Evidence*, [11] while the prosecution filed its *Comment/Opposition*[12] thereto on May 16, 2018.

On August 15, 2018, the court *a quo* denied accused-appellant's *Demurrer to Evidence*, holding that the averments in her demurrer are matters of defense that must be thoroughly ventilated and threshed out during the presentation of her evidence.[13]

On its turn to present evidence, the defense presented herein accused-appellants and Dante Olaso as witnesses for the defense.

The testimonies of the aforesaid witnesses, as narrated by the Court *a quo*, are as follows:

> **SHIELA LARRACOCHEA** identified, affirmed, and confirmed her Judicial Affidavit which was adopted as her direct examination. She is a licensed customs broker with PRC No. 5150 with duties of preparing, filling up, lodging, and processing of Import Entry Internal Revenue Declaration Form (Import Entry) and filing the same Import Entry with the Bureau of Customs in order to process and release the shipment.
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> She confirmed that ETR Trading is owned by accused Ramirez who was registered with the BOC and she has her own Client Profile Information saved in the BOC CPRS. She asseverated that she is not an employee of ETR Trading and she only acted as their broker for the shipment subject of the instant case wherein she was supposed to fill-up, sign, lodge, and file with the BOC the necessary Import Entry, together with its supporting documents in order to process the release of 12,000 bags of red onions and ETR Trading will be the one to supply the shipping documents and other documentary

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[9] RTC Records, Vol. 1, pp. 372-375.
[10] Order dated April 2, 2018, RTC Record, Vol. 1, p. 379.
[11] RTC Records, Vol. 1, pp. 387-402.
[12] RTC Records, Vol. 1, pp. 427-431.
[13] RTC Records, Vol. 2, pp. 1-4.

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requirements in relation to the importation of said 12,000 bags of red onions.

She was not able to talk directly or speak with accused Ramirez, instead, she talked with her staff. The circumstance is not strange since most if not all of her previous clients, she rarely got to talk directly with the owner, proprietor, or proprietress of the company. It is usually one of their staff since she will be basing all her declarations on commercial shipping documents and other papers required to be submitted.

A certain Jocelyn Young went to her office, represented herself verbally as the authorized representative of ETR Trading as the consignee, brought and gave to her the ETR Trading shipment's original commercial invoice, bill of lading, and Plant Quarantine Clearance No. 18090 and 18091 with no outward sign of erasures or alterations, thus, on its face seemed authentic and genuine. She admitted that she filled up the contents and signed the Import Entry as broker and in her presence, Jocelyn Young, staff of ETR Trading, affixed her signature therein as the authorized representative of ETR Trading but no written authorization was shown to her. She asserted that when she signed the said Import Entry, she is certifying that the declarations she made therein were true to the best of her knowledge and that all the shipping documents she submitted were authentic, original, and genuine.

She filed the Import Entry together with the commercial invoice, bill of lading, and the two (2) plant quarantine clearances with the Entry Processing Unit of the BOC which initially handles the document processing of all entries and supporting documents filed in relation to the shipment and the EPU stamp was affixed on the Import Entry without noticing that the Plant Quarantine Clearances, to ensure that the shipment is free from pest, were forged. Whether Import Entry together with the other documents were with the Formal Entry Division, the examiner asked her to verify with the BPI whether the Plant Quarantine Clearances were authentic. Upon verification with the BPI by her staff named Dante Olaso, she found out that the Plant Quarantine Clearances, one of which is BPI Plant Quarantine Clearance Permit No. G 18090 dated 01-09-13, were fake, thus, she did not submit these documents and halted the processing of the documents. The Plant Quarantine Clearance is not needed to import onions because the importation of onions is now liberalized but the clearance is needed in order for the shipment to be released from the BOC to ascertain that it has zero pest in it.

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The usual practice is to verify first with the BPI the clearance that was issued to the consignee. She explicated that she did not make a verification with the BPI as to the authenticity of the Plant Quarantine Clearance prior to the filing of the Import Entry because first, time is of the essence since the subject shipment was already in the port and second, the documents were original and had no visible signs that they were forged or fake. She affirmed that as a broker, she had to rely on the documents given to her by her client. This is her first transaction as broker with ETR Trading wherein she was paid the amount of Php5,000.00 and there is no written contract between her and ETR Trading.

DANTE OLASO identified his Judicial Affidavit and stated that he is the customs representative for about ten (10) years in Lawrence Brokerage owned by Lawrence Tan wherein accused Larracochea was employed as customs broker.

On January 14, 2013, accused Larracochea gave him the duly filled up and signed Import Entry, Bill of Lading, Commercial Invoice, Packing List and Plant Quarantine Clearances (PQCs) for the shipment of red onions consigned to ETR Trading with the instructions to file them before the BOC. He proceeded as told and while he was at the BOC the personnel from the Assessment Section directed him to go to the BPI booth inside the BOC to have the PQCs be received and after going to said office, its personnel verified the authenticity of the said documents by checking it with the files in its main office in Manila. After that, he was informed that the PCQs were forged and ETR Trading did not apply for any PQCs.

He called the office to inform accused Larracochea of such fact and he discontinued the processing the shipment in question. He corroborated the testimony of accused Larracochea that there is no reason to doubt that said clearance was not authentic since all the documents appeared to be real and genuine and they just relied to the documents that were given to them by ETR Trading.

He declared that he did not know accused Ramirez and he never encountered or met her in his entire life. He added that he does not have any transaction before with ETR Trading. He asseverated that he is not familiar with the signature of accused Ramirez and he cannot identify whose signature was placed above the name ETR Trading in the Import Entry. He maintained that he has no personal knowledge as to the facts and circumstances surrounding the submission of these documents by ETR Trading to accused Larracochea. Based on the shipping documents given to her *(sic)* by accused Larracochea, the importer therein is ETR Trading.

EMELITA RAMIREZ identified her Judicial Affidavit and confirmed that she is one of the accused in the instant case but she asseverated that she did not know accused Larracochea. She asserted that she had never talked to or entered into any transaction with accused Larracochea and she stated that the only time that she saw the latter is when this case was already filed in court.

She belied the charge against her of unlawful importation of 12,000 bags of red onions which allegedly happened on January 9, 2013. She asseverated that she did not import or had any participation in the importation of any goods or merchandise from a foreign country into the Philippines, that is why she was surprised when she came to know of the instant case and another case before the Metropolitan Trial Court of Manila, Branch 15 involving the Use of Falsified Documents as evidenced by an Information dated May 2, 2014. Subsequently, the case of Use of Falsified Documents was provisionally dismissed per Order dated May 24, 2017 and permanently dismissed per Order dated December 11, 2019.

She declared that the signature affixed in the Import Entry and Internal Revenue Declaration does not belong to her. The said signature is very different from the one that she is using ever since she started to work and accused Larracochea even averred that it is not her signature and to prove her assertions, accused Ramirez identified the following documents containing her customary signature:

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She asserted that she only saw for the first time and only in this Court the Import Entry and Internal Revenue Declaration and she did not even know the supplier of 12,000 bags of red onions indicated therein.

She belied that she is the owner of ETR Trading and claimed that the real owner of the same are Jennie Millama Abas and her husband Reboy Abas. Jennie is her niece with her first cousin. She merely lent her name without any compensation to the spouses Abas who are the ones actually operating the ETR Trading. She consented in using her name in their business because she wanted to give back since they allowed her to stay in their boarding house and they have been her employers from 2010 until 2013, viz:

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> She presented a Business Permit Application filed with the City Government of Muntinlupa for the business trade name ETR Trading which she claimed to be signed by Reboy Abas. She admitted that her Aspen Hotel, Philhealth, and SSS identification cards were presented for the business permit application. She secured a Certification from the Business Permits and Licensing Office of Muntinlupa City stating that per office records and EDP files, the firm name ETR Trading (Account No. R-36643) owned by Emelita T. Ramirez with previous business address at 235 National Road, Bayanan, Muntinlupa City appears in their list of business and the same was established on February 18, 2011 and made its last payment on March 6, 2012.
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> She admitted that a Tax Identification Number (TIN) was issued to her as a taxpayer but she cannot recall her TIN. She stressed that she did not apply for a business name before the Department of Trade and Industry. She denied that she has something to do with the Client Profile Information which was presented by the prosecution because she never went to the BOC to apply for any accreditation or to enter in any transaction to process any document with respect to the importation nor did she. She did not instruct any person to apply for any accreditation for herself or on behalf of ETR Trading. She stressed that the photograph used in the Profile Information looks like just a scan copy of the same.
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> She asseverated that she is a mere high school graduate and ignorant of the laws and to the implications of letting her name to be used. She merely lent her name as she trusted the spouses Abas and she did not think that she will be facing charges because of lending her name. When she came to know of the charges against her, she immediately talked with the spouses Abas who promised to help her to settle her cases but they did not make good of their promise. Moreover, she asseverated that she was not able to file a case against the spouses Abas because she does not know the process for the same and she wanted first to face the charges that were filed against her.

The *Formal Offer of Evidence* for accused-appellant Larracochea consisting of Exhibits "1" to "5", inclusive of sub-markings, and for accused-appellant Ramirez consisting of Exhibits "1" to "7", inclusive of sub-markings, were admitted by the court *a quo* as part of the testimony of the witnesses for both accussed-appellants. Thereafter, the defense rested its case.[14]

[14] Order dated November 26, 2020, RTC Records, Vol 2, p. 139.

On December 11, 2020, and considering the Public Prosecutor's manifestation that the prosecution will no longer present evidence on rebuttal, the Court *a quo* ordered the case submitted for decision.

On February 19, 2021, the Court *a quo* rendered the assailed Decision, finding both accused-appellants guilty of the crime charged.

In convicting the accused-appellants, the Court *a quo* ruled that ETR Trading, as consignee and owned by accused-appellant Ramirez, and accused-appellant Larracochea knowingly, willfully, and feloniously bring and unlawfully import into the Philippines the subject onion shipment *sans* the requisite BPI import permit/SPS clearance since onion is a product covered under Section II A 4 and 13 of DA Administrative Order No. 09, Series of 2010. According to the court *a quo*, "other plant products" encompasses all plant products not mentioned explicitly, including onion. Further, there is no evidence adduced by the defense that ETR Trading is a registered importer of products under Sec—II A 4 and 13 of DA Administrative Order No. 09, Series of 2010.

On even date, accused-appellant Ramirez filed a *Notice of Appeal*,[15] which the Court *a quo* gave due course and ordered the records in Criminal Case No. 14-307648 be forwarded to the Court of Tax Appeals (CTA) for proper disposition.[16]

On the other hand, accused-appellant Larracochea filed her *Motion for Reconsideration*[17] of the aforesaid February 19, 2021 Decision, but the same was denied in the equally assailed *Order* dated June 1, 2021.[18]

Undeterred, accused-appellant filed a *Notice of Appeal*[19] on July 16, 2021. In an Order dated July 21, 2021, the Court *a quo* gave due course to the Notice of Appeal and directed that the entire records in Criminal Case No. 14-307648 be forwarded to the CTA for proper disposition.[20]

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[15] RTC Records, Vol. 2, pp. 179-180.
[16] Order dated February 19, 2021, RTC Records, Vol. 2, p. 181.
[17] RTC Records, Vol. 2, pp. 182-194.
[18] RTC Records, Vol. 2, pp. 301-302.
[19] RTC Records, Vol. 2, pp. 312-313.
[20] Order dated July 21, 2021, RTC Records, Vol. 2, p. 316.

On December 15, 2021, this Court received the transmitted records of the appealed case.

On February 22, 2022, the Court issued a Resolution[21] requiring accused-appellants to file their respective appellant's brief within 30 days from notice, with proof of service thereof upon plaintiff-appellee. In the same Resolution, the Court likewise ordered plaintiff-appellee to file within 30 days from receipt of the appellant's brief, its appellee's brief, accompanied by proof of service thereof upon the accused-appellants.

On April 1, 2022, accused-appellant Larracochea filed her *Motion for Extension of Time to File Brief for Appellant,*[22] which the Court granted per Resolution[23] dated April 19, 2022.

On April 4, 2022, accused-appellant Ramirez filed her *Appellant's Brief.*[24] Accused-appellant Larracochea, on the other hand, filed her own *via* registered mail on May 2, 2022, and received by the Court on May 13, 2022.[25]

In its *Manifestation and Motion with Entry of Appearance*[26] filed on May 17, 2022, plaintiff-appellee, through its counsel, the OSG, states that it received a copy of the appellant's brief on April 19, 2022, but claims that it was not furnished with a copy of the Resolution dated February 22, 2022. Hence it prays that it be given an extension of 30 days from May 18, 2022, or until June 17, 2022, to file its brief. He likewise prays that the forgoing entry of appearance be duly noted.

In the Resolution[27] promulgated on June 1, 2022, the Court noted and granted plaintiff-appellee's *Manifestation and Motion with Entry of Appearance.*

On June 13, 2022, plaintiff-appellee filed a *Manifestation and Motion for Extension,*[28] stating that on May 17, 2022, it filed a manifestation and motion with the entry of appearance praying for an extension of 30 days from May 18, 2022, or until June 17, 2022, to file its brief. However, on that same day – May 17, 2022 – it received another appellant's brief for Shiela

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[21] CTA Record, pp. 49-50.
[22] CTA Record, pp. 60-61.
[23] CTA Record, pp. 168-169.
[24] CTA Record, pp. 63-138.
[25] CTA Record, pp. 179-206.
[26] CTA Record, pp. 233-235.
[27] CTA Record, pp. 238-340.
[28] CTA Record, pp. 241-243.

Larracochea y Tacbas. Hence, it prays that it be given an extension of 30 days from June 16, 2022, or until July 16, 2022, to file its consolidated brief.

On June 21, 2022, plaintiff-appellee's *Manifestation and Motion for Extension* were noted and granted.[29]

On July 18, 2022, plaintiff-appellee filed its Appellee's Brief.[30]

On August 11, 2022, the instant case was submitted for decision considering the filing of accused-appellant Emelita Ramirez's Brief, accused-appellant Sheila Larracochea's Brief, and plaintiff-appellee's Brief.[31]

Hence, this decision.

ASSIGNMENT OF ERRORS

For accused-appellant Emelita Ramirez y Taylo, the court *a quo* allegedly erred, as follows:

> THE TRIAL COURT GRAVELY ERRED IN DECLARING THAT THE ACCUSED-APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF UNLAWFUL IMPORTATION AS DEFINED AND PENALIZED UNDER SEC. 3601 IN RELATION TO SEC. 101(k) OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND IN RELATION FURTHER TO SECTION 3 PRESIDENTIAL DECREE (P.D.) NO. 1433 OTHERWISE KNOWN AS THE "PLANT QUARANTINE DECREE OF 1978"; TO SECTION 2 RULE II OF THE BUREAU OF PLANT INDUSTRY QUARANTINE ADMINISTRATIVE ORDER NO. 1, SERIES OF 1981 AS WELL AS TO DEPARTMENT OF AGRICULTURE ADMINISTRATIVE ORDER NO. 9, SERIES OF 2010 PUNISHABLE UNDER PARAGRAPH 4 OF SECTION 3601 OF THE TCCP, AS AMENDED.

Accused-appellant Shiela Larracochea, on the other hand, ascribes the following errors allegedly committed by the court *a quo*:

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[29] Resolution dated June 21, 2022, CTA Record, pp. 253-254.
[30] CTA Record, pp. 260-281.
[31] Resolution dated August 21, 2022, CTA Record, p. 287.

I. THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED IS IN CONSPIRACY WITH THE CONSIGNEE TO COMMIT UNLAWFUL IMPORTATION WITHOUT PROVING THE ELEMENTS THEREOF BEYOND REASONABLE DOUBT.

II. THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF UNLAWFUL IMPORTATION BEYOND REASONABLE DOUBT.

THE ARGUMENTS OF THE PARTIES

***Accused-appellant Ramirez*:**

Invoking the Supreme Court's pronouncement in *Maribel B. Jardeleza vs. People of the Philippines*,[32] accused-appellant Ramirez (Ramirez) submits that there is a need to determine whether she: (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.

According to accused-appellant, the fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to induce another to give up some right.[33]

In the case at bar, accused-appellant asserts that the court a quo erroneously gave weight and credence to the inconsistent and improbable testimonies of the prosecution's witnesses on material matters regarding the surrounding circumstances of the alleged unlawful importation. Allegedly, based on the records, the prosecution failed to establish that she took part in processing the subject importation. In fact, according to accused-appellant, prosecution's witness, Margie Santiago, testified that she does not personally know accused-appellant nor is familiar with her signature. Further, as testified by accused-appellant Larracochea, it was not accused-appellant Ramirez who personally gave her the documents concerning the

[32] G.R. No. 165265, February 6, 2006.
[33] *Hon. Ramon J. Farolan, Jr. vs. Court of Tax Appeals*, G. R. No. 42204, January 21, 1993.

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subject importation but a certain Jocelyn Young who, as attested by the former, has no letter of authorization from her.

Accused-appellant Larracochea further confirmed that she was the one who filled up the contents of the Import Entry. As testified by accused-appellant Larracochea, the signature on top of the name ETR Trading is the signature of Jocelyn Young, as she was the one who secured her signature.

Accused-appellant Ramirez also argues that contrary to the ruling of the court *a quo*, it is not for her to prove that she is not the owner of the TIN 213278573000 but for the prosecution to prove that she is the owner of the said TIN which was inputted in the Profile Information of ETR Trading in the BOC computer system.

Moreover, Section 3505 of the TCCP, as amended, provides for the supervision over attorney-in-fact by the BOC. For accused-appellant Ramirez, it would have been more prudent for the BOC to require a power of attorney from Jocelyn Young, who allegedly signed on her behalf. In the absence thereof, it can only be surmised that Jocelyn Young is not her duly authorized representative.

Furthermore, a witness for the prosecution testified that to be registered under the CPRS of the BOC, one has to file an application form together with all the requirements, including the affidavit stating that he/she is the one authorized to sign the Import Entries, and the two valid IDs of the applicant. For accused-appellant Ramirez, granting that she was the one who registered in the CPRS, the prosecution should have offered in evidence the copy of the application form, including the copy of the affidavit and the copies of the two valid ID's she allegedly submitted to be registered considering that these documents are readily available to them.

The record of this case is also bereft of any proof that it was indeed her who lodged all the details of the subject shipment into the system of the BOC. Neither did the prosecution establish that the unique password was actually given or issued to her.

Accused-appellant Larracochea:

Accused-appellant Larracochea (Larracochea) claims that the court *a quo* merely assumed conspiracy by stating that it was uncontroverted but without having clearly and convincingly been proved by the prosecution on the existence of its elements.

According to her, it is the duty of the prosecution to prove the guilt of the accused-appellant beyond reasonable doubt the commission of the alleged conspiracy. In *People vs. Callao,*[34] the Supreme Court clearly explained that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Like the physical acts constituting the crime, the elements of conspiracy must be proved beyond reasonable doubt. And to determine if accused-appellant conspired with the consignee or importer, the focus of the inquiry should be the overt acts of the accused-appellant before, during, and after the unlawful importation. For her, the prosecution failed to substantiate the elements of conspiracy as a fact separate from the elements of the offense charged.

Before the importation - Allegedly, it was not established by the prosecution that she had any connection with ETR Trading other than being its broker for the shipment subject of this case; and that the prosecution failed to prove that she had a hand in the preparation or caused the preparation of the alleged falsified Import Permit as admitted by all its witnesses. She asserts that without her actual knowledge of the falsity of the Plant Quarantine Clearance before the importation of the subject shipment was further explained during the direct examination of the prosecution's witness – Clarito Barron.

Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the intention to unlade therein. According to accused-appellant Larracochea, before the consignee hired her services, the importation already began as the subject shipment already arrived in the Port of Manila. Thus, she asserts that there is no conspiracy to commit the alleged unlawful importation, as there was no prior agreement to speak of.

[34] G.R. No. 228945, March 14, 2018.

During and after the alleged unlawful importation - Accused-appellant Larracochea pointed out that the subject shipment had already arrived when ETR Trading hired her to prepare the import entry and to file the same, including the documents supplied by the consignee with the BOC to process the release of the subject shipment. Upon the instruction of the customs examiner, she instructed her staff to bring the Plant Quarantine Clearance to the BPI to verify its authenticity. Upon learning that the said Import Entry was falsified, she immediately halted the process and the alleged falsified Import Permit was no longer submitted. For accused-appellant Larracochea, this fact proved that she had no intention to assist such unlawful importation. Further, the prosecution failed to establish that she did any act besides being the customs broker of ETR Trading. As a customs broker, nothing was illegal in her act of correctly declaring the contents of the shipment in the import entry, to the best of her knowledge based on the documents submitted by the consignee, which she relied upon in good faith and the filing of the same with the BOC. She asserts that conspiracy cannot be inferred by merely exercising one's profession. Her duty as a customs broker of the subject shipment subject of this case was limited only to filling up, lodging, signing, and filing the import entry with the BOC to process the shipment's release. She likewise submits that her failure to verify with the BPI regarding the Import Permit before filing the import entry was inconsequential, considering that she was not duty-bound to go beyond the documents submitted by the consignee.

Accused-appellant Larracochea further claims that the prosecution failed to prove all the elements constituting the offense charged. According to her, the prosecution was unable to prove that she fraudulently assisted in the importation of the goods with the knowledge that it was imported contrary to law. For her, the intent to defraud must be with the knowledge of the person assisting the importation. Allegedly, when she filled out, signed, and filed the import entry without her knowledge that the said Import Permit supplied by the consignee was falsified, her assistance cannot be said to be fraudulent. Her "knowledge" of the falsity cannot be merely deduced from the functions she should perform according to her profession. The prosecution must prove that she had prior knowledge that the Plant Quarantine Clearance or Import Permit was falsified, making her act of assisting unlawful.

Accused-appellant Larracochea also argues that requiring her to exercise a higher degree of diligence violates her right to equal protection of the law. According to her, customs brokers are required to exercise due diligence in handling financial settlements, answering correspondence, and preparing and filing documents relating to the practice of his/her profession and other customs matters handled by him/her. Consistent with the required duties, all that she did was prepare the said import entry, make a materially correct declaration based on the documents given to her by the importer, and file the same with the BOC to release the subject shipment. Nothing in the law requires the customs broker to exercise extraordinary diligence and imposes a duty upon her to go beyond the documents presented to her by the importer.

Citing *Remigio vs. Sandiganbayan (Remigio),*[35] accused-appellant claims that the court *a quo* failed to appreciate her testimony as regards the practice of verifying the clearances with the issuing agency when it said, "*the appellant admitted that the usual practice is to verify first with the BPI the clearance that was issued to the consignee,*" without considering her qualification, to wit:

> Fiscal to Appellant:
>
> Q: So, if there are documents, like let's say issued by the Bureau of Plant Industry or by the Bureau of Animal Industry, you, as a Customs Broker, you normally or you usually verify them with those agency?
>
> A: We will normally verify, sir, if we found out that it is doubtful. (TSN, May 10, 2019, p. 9)

She did not find the said Plant Quarantine Clearance doubtful as it was in its original state with no erasures or remarks that would make it doubtful.

She stressed that the facts of the instant case and those of *Remigio* are substantially the same. For her, whatever the ruling of the Supreme Court in *Remigio* must be applied equally to her. To rule otherwise would be tantamount to violating her constitutional right to equal protection of the laws.

[35] G.R. Nos. 145422-23, January 18, 2002.

Finally, accused-appellant claims that the prosecution's evidence is insufficient to prove her guilt beyond reasonable doubt. According to accused-appellant, the prosecution failed to prove that she had actual knowledge of the falsity of the said Import Permit before importation and during the filing of the import entry with the BOC. Further, she was allegedly in good faith when she relied on the shipping documents supplied by the consignee, including the Import Permit, in making the declaration in the Import Entry and Internal Revenue Declaration Form (IEIRD or Import Entry). Hence, when she signed the said import entry, it did not mean she had actual knowledge of the falsity. She only certified that the information contained therein and the documents submitted were true and correct. And more, the prosecution failed to establish the specific overt act, which points to her deliberate participation in the commission of the offense, as shown by the testimony of the prosecution's witness.

Plaintiff-appellee People:

Plaintiff-appellee submits that accused-appellants were proven guilty with the moral certainty of violating Section 3601 in relation to Section 101(k) of the TCCP, as amended, and in relation further to Section 3 of PD No. 1433 otherwise known as the "Plant Quarantine Decree of 1978;" to Section 2, Rule II of the BPI Quarantine Administrative Order No. 1, Series of 1981 as well as to DA Administrative Order No. 9, s. 2010.

According to plaintiff-appellee, accused-appellants were charged with the unlawful importation of 12,000 bags of red onions, with a market value of approximately ₱16,000,000.00, without any import permit/quarantine clearance from the BPI by using a falsified/spurious Plant Quarantine Clearance.

In the crime of unlawful importation, also known as outright smuggling, goods and articles of commerce are brought into the country without the required importation documents or are disposed of in the local market without having been cleared by the BOC or other authorized government agencies, to evade the payment of correct taxes, duties, and other charges. Such goods and articles do not undergo the processing and clearing procedures at the BOC and are not declared through the submission of import documents, such as the import entry and internal revenue declaration. For plaintiff-appellee, the elements of smuggling or unlawful importation are:

1. Committed by any person who fraudulently imports or bring into the Philippines any article contrary to law;

2. Assists in so doing any article contrary to law; or

3. Receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such goods after importation, knowing the same to have been imported contrary to law.

According to plaintiff-appellee, it was uncontroverted that accused-appellant Larracochea, as a licensed customs broker, processed and facilitated the importation of 12,000 bags of red onions with an approximate value of ₱16,000,000.00 from China in conspiracy with ETR Trading under accused-appellant Ramirez, the registered proprietor thereof as the consignee. The subject importation was covered by Bill of Lading No. GOSUQIN350082669 and IEIRD No. C-717370 and bears the signature of accused-appellant Larracochea and the ETR Trading representative.

Further, it was established that the consignee ETR Trading has never applied for Import Permit (SPS plant quarantine clearance) to import onion during the period CY 2012-2013 as evidenced by a certification issued by Director Barron, who cited the reasons why BPI Plant Quarantine Clearance Permit No. G 18090 dated 01-09-13, is considered fake.

Likewise, accused-appellant Larracochea and her witness Olaso admitted that the BPI Plant Quarantine Clearance Permit No. G 18090, one of the ETR Trading shipping documents they submitted to BOC, was declared fake by the BPI. Thus, the claim of the defense that the BPI Plant Quarantine Clearance Permit No. G 18090 dated 01-09-13, was not submitted to the BOC for the processing of shipment is not true since, at the onset, it is one of the shipping documents submitted with the Entry Processing Unit of the BOC.

Thus, according to plaintiff-appellee, accused-appellant Ramirez, as the owner of ETR Trading, and accused-appellant Larracochea as broker, knowingly, willfully, and feloniously bring and unlawfully import into the Philippines the subject onion shipment *sans* the requisite BPI Import Permit/SPS clearance. Onion is a product covered under Section II A 4 and 13 of DA Administrative Order No. 09, s. 2010. The term "other plant products" encompasses all plant products not specifically mentioned, including onions.

For the plaintiff-appellee, the integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence was tampered with. The accused-appellants had the burden to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharge their duties. Unfortunately, they failed to discharge them.

Moreover, findings of the trial court that are factual in nature and involve the credibility of witnesses are accorded respect when no glaring errors, gross misappreciation of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. This is because the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.

Here, the court *a quo* gave credence to the testimonies of the prosecution's witnesses because they were unequivocal, definite, and straightforward. Their testimonies were consistent in a material respect with each other and the physical evidence. In the absence of proof of motive to falsely impute such a serious crime against the accused-appellants, such as in this case, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the accused-appellants uncorroborated denials.

Plaintiff-appellee contends that nothing is more settled in criminal law jurisprudence than that denial cannot prevail over positive and categorical testimony of the witness. A defense of denial that is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.

According to plaintiff-appellee, denial is an intrinsically weak defense that must be buttressed with strong evidence of non-culpability to merit credibility. It is an inherently weak defense, which is viewed with suspicion and received with

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caution because it can easily be fabricated. Thus, against the prosecution's evidence, accused appellants' denials are puerile. Their appeal cannot prosper.

THE COURT'S RULING

The Court has jurisdiction over the instant Petition.

Before delving into the merits, the Court shall first discuss whether it has jurisdiction over this case.

Well-settled is the rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law and not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is a court's primary concern, for thereon would depend the ability of its entire proceedings.[36]

Section 7(b) of Republic Act (RA) No. 1125,[37] as amended by RA No. 9282, provides for the jurisdiction of the Court in criminal cases.

Relatedly, Section 3(b)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA),[38] as amended, provides that

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[36] *Commissioner of Internal Revenue vs. Leonardo S. Villa et al.*, G.R. No. L-23988, January 2, 1968.
[37] SEC. 7. *Jurisdiction.* — The CTA shall exercise:

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

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: Provided, however, That offenses 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 filing of such civil action separately from the criminal action will be recognized.

(2) Exclusive appellate jurisdiction in criminal offenses:

a. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction...

[38] SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the ... Tariff and Customs Code and other laws administered by the ... or Bureau of Customs, where the principal amount of taxes and fees, exclusive of

it is the Court in Division that exercises exclusive appellate jurisdiction over criminal cases decided by the RTC in their original jurisdiction involving a violation of tax laws.

Exclusive jurisdiction precludes the idea of co-existence and refers to jurisdiction possessed to the exclusion of others,[39] while appellate jurisdiction means the power and authority to take cognizance of a cause and proceed to its determination, not its initial stages but only after it has been finally decided by an inferior court.[40]

Under Section 7 of RA No. 1125, as amended, jurisdiction over criminal offenses committed in violation of the TCC where no specified amount of taxes and fees are being claimed against the accused is vested with the regular courts, and the jurisdiction of this Court shall be appellate only. In this case, a plain reading of the *Information* filed against accused-appellants reveals that no specific amount of taxes and fees are being claimed.

Thus, based on the foregoing, the Court has exclusive power to review the assailed Decision and Order of the court *a quo*.

Now, on the merits.

In this case, the court *a quo* found both accused-appellants guilty of the crime of Unlawful Importation as defined and penalized under Section 3601 in relation to Section 101(k) of the TCCP, as amended and in relation further to Section 3 of PD No. 1433 otherwise known as the "Plant Quarantine Decree of 1978"; to Section 2, Rule II of the BPI Quarantine Administrative Order No. 1, Series of 1981, as well as, to DA Administrative Order No. 9, Series of 2010.

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charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed; . . . ." (*Emphasis supplied*)

[39] *Felixberto Cubero, et al. vs. Laguna West Multi-Purpose Cooperative, Inc., et al.*, G.R. No. 166833, November 30, 2006.
[40] Black's Law Dictionary (1968 Ed.), p. 126.

Sections 3601 and 101(k) of the TCCP, as amended, read:

> Section 3601. *Unlawful Importation.* — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing any article, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law shall be guilty of smuggling and shall be punished with: xxx
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> Section 101. *Prohibited Importations.* — The importation into the Philippines of the following articles is prohibited:
>
> xxx xxx xxx
>
> (k) All other articles and parts thereof, the importation of which prohibited by law or rules and regulations issued by competent authority. (As amended by Presidential Decree No. 34)

Under Section 3601 of the TCCP, as amended, the crime of smuggling is committed by any person who:

1. fraudulently imports or brings into the Philippines any article contrary to law, or

2. assists in so doing any article contrary to law; or,

3. receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law.[41]

From the above, there are three (3) different types of smuggling.

The first type of smuggling pertains to fraudulent importation. It consists of "*intentional fraud, consisting of deception, willfully and deliberately dared or resorted* to giving up some right [and] the offender must have acted knowingly and with the specific intent to deceive to cause financial loss to another . . . even *false representations or statements or omissions* of material facts come within fraudulent intent. . . ."[42]

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[41] *Maribel B. Jardeleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006; *Angel O. Rodriguez, et al. vs. The Hon. Court of Appeals, et al.*, G.R. No. 115218, September 18, 1995, 248 SCRA 288.
[42] *Id.*

The second type of smuggling refers to *any degree of participation* in the commission of unlawful importation. In one case,[43] the Supreme Court found the accused therein guilty of the crime of smuggling or violation of Article 3601 of the TCCP on the ground of *assisting* in the unlawful importation of dutiable articles by *facilitating* their release from the BOC without payment of proper duties and taxes due to the government by omitting certain acts in light of glaring discrepancies and suspicious entries present in the documents involved in the subject importation (Formal Entry and Internal Revenue Declaration, bill of lading and packing list).

Finally, for the third type of smuggling, the Supreme Court handed down a verdict of conviction where several accused were found *in possession* of dutiable articles while inside the premises of the airport. They were unable to explain why the questioned articles were in their possession satisfactorily. Neither did they present any document to prove lawful importation.[44]

In the present case, the commission of the first type of smuggling transpired when the shipment or importation into the Philippines of 12,000 bags of red onions contained in four forty-footer (4x40') container vans was made **without any import permit/quarantine clearance from the Bureau of Plant Industry, Department of Agriculture.**

First, it was established during the trial that the **importation was contrary to law**. The word "law" under Section 3601 of the TCCP, as amended, includes regulations having the force and effect of law, meaning substantive or legislative-type rules as opposed to general statements of policy or rules of agency, organization, procedures, or positions.[45]

Section 2, Rule II of BPI Quarantine Administrative Order No. 1-1981 states:

> SEC. 2. *Plants, Plant Products and Other Materials which a "Permit to Import" is required.* – The following materials, as a condition of their entry, must be covered by a "Permit to Import" issued by the Director of Plant Industry.
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> xxx xxx xxx

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[43] *Rene M. Francisco vs. People of the Philippines*, G.R. No. 177430, G.R. No. 178935, July 14, 2009, 592 SCRA 675.
[44] *Tomas Salvador vs. The People of the Philippines*, G.R. No. 146706, July 15, 2005, 463 SCRA 489.
[45] *Maribel B. Jardeleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006.

> - Fresh fruits, vegetables and **other plant products which have been declared as prohibited/restricted imports under Special Quarantine Orders** by virtue of their being known hosts of certain plant pests, or because they originate from restricted areas. (*Boldfacing supplied*)

"Permit" in legal parlance means *"[a] written license or warrant by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without such authority."*[46] Thus, the term "Permit to Import" should be read in its literal and ordinary meaning as **any written authorization** issued by the relevant government agency that allows one to import any product or article subject to such authorization.

The "Permit to Import" in the instant case pertains to the written authorization issued by the BPI, even though otherwise denominated in such other name, that allows one to import onion, without which the importation is illegal.

Section II(A) of DA Administrative Order No. 09, series of 2010, provides for the articles or products covered by the said Administrative Order:

> SECTION II.
> COVERAGE
>
> Scope – This Order covers the importation of:
>
> A. Plant, **plant products** and other related materials capable of harboring plant pests, to include:
>
> xxx xxx xxx

Section III of the same Administrative Order requires importers to secure an SPS Import Clearance **<u>prior</u>** to the intended importation, viz:

> SECTION III.
> APPLICATION AND ISSUANCE
> FOR SPS IMPORT CLEARANCE
>
> A. Any accredited importer who desires to import any of the products enumerated in Section II except Section II. A. 10 hereof must secure an SPS Import Clearance (Annex "A" hereof) from any of the following:

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[46] Black's Law Dictionary (1968 ed.), p. 1298.

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1. Issuing bureau or agency

xxx xxx xxx

c. BPI - for plants and plant products as enumerated in Section II. A (*Boldfacing supplied*)

xxx xxx xxx

The consequences of the failure to secure an SPS Import Clearance are provided for under Section VII(A) of DA Administrative Order No. 09, series of 2010, to wit:

SECTION VII.
CONFISCATION AND DISPOSAL
OF REFUSED ENTRY PRODUCTS/COMMODITIES

A. If it appears from the examination of subject product/commodity that (1) the product/commodity has been manufactured, processed or packed under unsanitary conditions or (2) product/commodity is forbidden or restricted from sale in the country in which it was produced or from which it was exported or (3) the product/commodity is adulterated, contaminated, dangerous, noxious, misbranded, misdeclared, unregistered or in violation of the terms and conditions embodied in the SPS Import Clearance; this Order and sanitary and/or phytosanitary measures; (4) arriving without the required SPS Import Clearance and International SPS Certificate; (5) **using a fake SPS Import Clearance** then the DA Border Inspector shall so inform the BOC examiner and such product/commodity **shall be seized, confiscated or refused admission,** unless such product/commodity is exported under regulations prescribed by the Bureau of Customs within ninety (90) days of the date of notice of such refusal or within such time as may be permitted pursuant to such regulations. If the product/commodity arrives at a port of entry other than Metro Manila, the collection of such samples shall be the responsibility of the regional office having jurisdiction over the port of entry. (*Boldfacing supplied*)

Evidently, under DA Administrative Order No. 09, series of 2010, an accredited importer of plant products **must first secure an SPS Import Clearance from the BPI**, and failure of such importer to secure an SPS Import Clearance will lead to the seizure, confiscation, and/or refusal from admission of the imported goods.

Here, the prosecution was able to establish that the alleged consignee ETR Trading has never applied for an Import Permit (SPS Plant Quarantine Clearance) to import onion during the period CY 2012-2013 as evidenced by a Certification[47] issued by the OIC, Director of BPI. Further, accused-appellant Larracochea and witness Olaso admitted that the BPI Plant Quarantine Clearance No. G 18090 dated 01-09-13, one of the ETR Trading shipping documents they submitted to BOC, was **declared fake by the BPI.**[48]

Second, the **importation was done fraudulently**.

The fraud envisaged in the crime of smuggling is elucidated by the Supreme Court in *Maribel B. Jardeleza vs. People of the Philippines*,[49] to wit:

> The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.
>
> Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.

Section 3601 of the TCCP, as amended, requires that the fraud attending the importation be "intentional," "willful," and "deliberate." These terms similarly mean "premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence."[50]

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[47] Exhibit "M", RTC Record, Vol. 1, p. 209.
[48] Page 19, Decision dated February 19, 2021, Crim Case No. 14-307648, RTC Br. 21, Manila.
[49] G.R. No. 165265, February 6, 2006.
[50] *Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G. R. No. 119322, June 4, 1996.

In the instant case, the use of a falsified/spurious SPS Plant Quarantine Clearance is a badge of fraud intended to deceive the BOC to release the subject shipment.

We now determine whether accused-appellants Ramirez and Larracochea are guilty beyond reasonable doubt of Unlawful Importation or smuggling.

Accused-appellants were indicted for violation of Section 3601 in relation to Section 101(k) of the TCCP, as amended, allegedly committed as follows:[51]

> "That on or about January 9, 2013 in the City of Manila and within the jurisdiction of the Court, the above-named accused, **conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully, feloniously and fraudulently import/bring into the Philippines** a shipment consisting of 12,000 bags of red onion contained in four forty-footer (4x40') container vans, covered by Bill of Lading No. GOSUQIN3500826 and declared under Import Entry No. C-7173, consigned to ETR Trading of which the accused Emelita T. Ramirez is the owner-proprietor, with a market value of approximately Sixteen Million Pesos (Php16,000,000.00) without any import permit/quarantine clearance from the Bureau of Plant Industry, Department of Agriculture, and which importation was made possible through the use of falsified/spurious Plant Quarantine Clearance evidently intended to defraud the government of legitimate taxes accruing to it from imported articles, to its damage and prejudice.
>
> CONTRARY TO LAW."

Based on the *Information*, accused-appellants conspired to bring the subject 12,000 bags of red onions into the Philippines without the required import permit/quarantine clearance from the BPI.

There is a conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during, and after the commission of the crime, all taken together, the evidence must be strong

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[51] Information , RTC Records, Vol. I, pp. 5-8.

enough to show the community of criminal design. For conspiracy to exist, there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.[52]

It is also essential for one to be a party to a conspiracy as to be liable for the acts of the others that there be intentional participation in the transaction with a view to the furtherance of the common design. Except when he is the mastermind in a conspiracy, it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime planned to be committed. The overt act may consist of active participation in the 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.[53]

In *People vs. Domingo,* [54] the Supreme Court, citing *Macapagal-Arroyo vs. People*, held that conspiracy must be established, not by conjecture, but by positive and conclusive evidence, *viz.*:

> We also stress that the community of design to commit an offense must be a conscious one. Conspiracy transcends mere companionship, and mere presence at the scene of the crime does not in itself amount to conspiracy. <u>Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.</u> **Hence, conspiracy must be established, not by conjecture, but by positive and conclusive evidence**.
>
> In terms of proving its existence, conspiracy takes two forms. The first is the **express form**, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the **implied conspiracy**. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved

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[52] *Violeta Bahilidad vs. People of the Philippines*, G.R. No. 185195, March 17, 2010.
[53] *Pecho vs. People of the Philippines, et al.*, G.R. No. 111399, September 27, 1996.
[54] G.R. No. 241248, June 23, 2021, citing *Macapagal-Arroyo vs. People*, 790 Phil. 367, 419 (2016).

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> through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest. [*Emphases supplied.*]

Thus, to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.[55]

The prosecution failed to establish by positive and conclusive evidence that accused-appellant Ramirez acted <u>in conspiracy</u> with accused-appellant Larracochea in the commission of the crime of Unlawful Importation.

In holding the accused-appellants Larracochea and Ramirez guilty of the crime charged, the court *a quo* explained, thus:

> It was uncontroverted that herein accused Shiela Larracochea y Tacbas a.k.a. Shiela Neri y Larracochea a.k.a. Shiela Larracochea Neri as licensed customs broker processed and facilitated the importation of twelve thousand (12,000) bags of onion with an approximate value of sixteen million pesos (Php16,000,000.00) from China ***in conspiracy*** with ETR Trading under Emelita Taylo Ramirez, the registered proprietor thereof as the consignee. The subject importation was covered by Bill of Lading No. GOSUQIN3500826 and Import Entry and Internal Revenue Declaration No. C-7173 which bears the signature of accused Larracochea and ETR Trading representative.
>
> xxx xxx xxx
>
> ETR Trading as consignee and accused Larracochea knowingly, willfully, and feloniously bring and unlawfully import into the Philippines the subject onion shipment *sans* the requisite BPI import permit/SPS clearance since onion is a product covered under Sec. II A 4 and 13 of DA Administrative Order No. 09, Series of 2010. The term "other plant products" is encompassing all plant products not specifically mentioned which included onion. There is no evidence adduced by the defense that ETR Trading is a

[55] *Edwina Rimando Y Fernando, vs. People of the Philippines*, G.R. No. 229701, November 29, 2017.

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registered importer of products under Sec. II A 4 and 13 of DA-Administrative Order No. 09, Series of 2010.

In concluding that Ramirez is guilty beyond reasonable doubt of the crime of Unlawful Importation, the court *a quo* ruled as follows:

> The prosecution presented testimonial and pieces of documentary evidence that herein accused Ramirez is the proprietress of ETR Trading, the consignee of the subject shipment. Accused Ramirez claimed that she has no knowledge of the operations of ETR Trading since she merely gave her consent to the spouses Abas to use her name to put up the said business. However, the court noted that:
>
> 1. Accused Ramirez did not secure the sworn statement of spouses Abas and present them to testify in court to support her claim.
>
> 2. The Certification from the Business Permits and Licensing Office of Muntinlupa City stating that per office records and EDP files, the firm name ETR Trading (Account No. R-36643) owned by Emelita T. Ramirez has business address at 235 National Road, Bayanan, Muntinlupa City is the same address inputted in the Profile Information of ETR Trading in the BOC computer system.
>
> 3. The claim of accused Ramirez that 235 National Road, Bayanan, Muntinlupa City is the business address of spouses Abas' water refilling station is a mere statement without any documentary evidence to substantiate it.
>
> 4. The claim that the business permit application of ETR Trading with Muntinlupa City which was signed by a certain Reyboy Abas does not bear the signature of the Chief, Business Permits and Licensing Office and the City Mayor. Likewise, the document was not notarized, certified as the one submitted and approved by local government unit, and the business address indicated therein was #300 Mendiola St., Brgy. Alabang, Muntinlupa City.
>
> 5. Accused Ramirez noted that her photograph appearing in the BOC Profile Information was merely scanned but she did not comment on the appearance of her signature therein which has similarity with her signature in the pieces of documentary evidence she presented in court which bears her signature as well as her signature affixed in the minutes of every court session she attended.

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> 6. She admitted that a Tax Identification Number (TIN) was issued to her as a taxpayer but she cannot recall her TIN and she did not present in court her TIN ID to controvert that TIN 213278573000 which was inputted in the Profile Information of ETR Trading in the BOC computer system is not her TIN.
>
> 7. The dismissal Order on the Use of Falsified Documents case is on the ground that the return of the notice to the complainant bears the notation: "no one to receive" during the initial hearing and not dismissed on the merits of the case.
>
> **The fact that the relevant import entry was signed by a person other than accused Ramirez will not absolve the latter from her liability since a representative may sign on behalf of the consignee on the hard copy of the import entry** and only the registered and accredited consignee in this case accused Ramirez of ETR Trading may lodge with the BOC computer system using her unique password to input all details of the subject shipment, unless said registered consignee divulged her password to another person and the same must be proven. (*Boldfacing supplied*)

Indeed, the court *a quo* found Ramirez guilty beyond reasonable of the crime of Unlawful Importation because she is the proprietress of ETR Trading, the consignee. According to the trial court, the fact that the import entry was signed by a person other than Ramirez would not absolve her from liability since a representative may sign the hard copy of the import entry on behalf of the consignee.

As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, as it is in a better position to evaluate the testimonial evidence.[56] However, this rule does not apply where some facts or circumstances of weight and substance which can affect the result of the case have been overlooked, misapprehended, or misapplied in a case under appeal.[57]

After a judicious review of the records of this case and taking a second hard look at the transcripts of stenographic notes (TSN), this Court found material facts and circumstances that the trial court had overlooked or misappreciated.[58] Hence, We are constrained to rule differently and acquit accused-appellant Ramirez based on reasonable doubt, given the following circumstances.

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[56] *People vs. Domingo*, G.R. No. 241248, June 23, 2021.
[57] *People vs. Villoria*, G.R. Nos. 247563 & 250517, February 8, 2023; *People of the Philippines, vs. PO1 Dennis Jess Esteban Lumikid*, G.R. No. 242695, June 23, 2020.
[58] *People vs. Villoria*, G.R. Nos. 247563 & 250517, February 8, 2023.

Accused-appellant Larracochea declared in her Judicial Affidavit dated February 18, 2019,[59] that she only transacted with a certain Jocelyn Young, who represented herself as the authorized representative of ETR Trading, as follows:

> 13. Q: **Who exactly from ETR TRADING did you transact with**?
>
> A: **A certain Jocelyn Young who represented herself as the authorized representative of ETR TRADING**.
>
> 14. Q: **What about Emelita T. Ramirez**?
>
> A: **No. I was not able to directly speak to her**.
>
> 15. Q: Why didn't you speak to her?
>
> A: Because she never directly contacted me. I was only able to talk to her staff.
>
> xxx xxx xxx
>
> 17. Q: **Did you verify if this Jocelyn Young was indeed an authorized representative of ETR TRADING**?
>
> A: **I just asked her if she was the authorized representative of ETR TRADING**.
>
> 18. Q: What did she say?
>
> A: She said yes.[60]

During Larracochea's cross-examination,[61] she admitted that there is no contract or agreement between her and ETR Trading or Ramirez engaging her services as Customs Broker with respect to the shipment of the 12,000 bags of red onions; that there is no document that would show that ETR Trading, or any of its associates, transacted with her as the Customs Broker; that a certain Jocelyn Young went to her office sometime in 2012 and told her about the shipment of onions; that Jocelyn Young did not present to her any document that would show her (Jocelyn Young) authority to represent ETR Trading or Ramirez and to transact with her (Larracochea) concerning the subject importation on behalf of ETR Trading or

[59] Exhibit "2", RTC Records, Vol. 2, pp. 13-20.
[60] Boldfacing supplied.
[61] Transcript of Stenographic Notes (TSN), Crim. Case No. 14-307648, May 10, 2019, pp. 9-13.

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Ramirez; that her only basis in transacting with Jocelyn Young were the documents she personally brought to her, *i.e.*, Bill of lading, Commercial Invoice, Plant Quarantine Clearance, and her verbal representation; and that there was no instance that she was able to personally talk to Ramirez regarding the shipment, even thru phone call or text messages, *viz.*:

> Q: And you mentioned in your Judicial Affidavit that ETR Trading engaged your services as a Customs Broker?
> A: Yes, sir.
>
> Q: And you would confirm, Madame witness that you never attached in your Judicial Affidavit any agreement or contract between your (sic) and ETR Trading with respect to the shipment of the 12,000 bags of red onion, is that correct, Madam witness?
> A: No contract, sir.
>
> **Q: Or any other document that will show that ETR Trading or any of its associates transacted with you as the Customs Broker?**
> **A: No document, sir.**
>
> Q: How much is your services started with ETR Trading?
> A. Just this shipment, your honor, this certain Jocelyn Young went to our office.
>
> Q. Jocelyn?
> A. Jocelyn Young.
>
> Q. Alright, and then?
> A. Went to our office and, "nagsabi po siya na meron siyang importation.
>
> xxx xxx xxx
>
> **Q: Do you recall when did Jocelyn Young went to your office and engaged your services?**
> **A: I'm not really sure the accurate date, but sometime in 2012.**
>
> Q: This Jocelyn Young personally appeared before your office, right?
> A: Yes, sir.
>
> Q: And you were the one who personally entertained this Jocelyn Young, is that correct?
> A: Yes, sir.

Q: When Jocelyn Young told you about the shipment involving these onions, did you ask for any document or any proof that will show that she is in any way connected to ETR Trading?
A: She have (*sic*) authorization.

Q: My question is, do you have any proof or document that will show that she is authorized by ETR Trading to transact on its behalf or in behalf of Emelita Ramirez regarding the shipment of onions?
A: The Bill of Lading na hawak po niya atsaka iyong commercial invoice.

Q: But my question, Madame witness, is a document evidencing her authorization to transact with you on behalf of Emelita Ramirez it's like a Special Power of Attorney?
A: She has an authorization.

Q: She has a document showing that she is authorized by Emelita Ramirez, Madame witness?
A: Iyon po.

Q: So, you don't have any document that will show that Emelita Ramirez authorized Jocelyn Young to transact with you, is that correct?
A: Yes, sir.

Q: Your only basis in saying that she is authorized, that Jocelyn Young is authorized to transact in behalf of Emelita Ramirez are the Commercial Invoice, Bill of Lading and Plant Quarantine Clearance that she submitted to your office, am I correct?
A: Yes, sir.

Q. And you mentioned in your Affidavit that these documents were sent to your office in Manila by Jocelyn Young?
A. Yes, sir.

COURT:
Q. Sent or brought.

ATTY. SERRANO:

Your honor, the term that she used in her Judicial Affidavit is sent.

COURT:
Sent, that's why the Court is asking, did she send it thru somebody else or did Jocelyn Young personally brought these documents to your office?
A. She personally brought, your honor.

ATTY. SERRANO:
Q. You will confirm, Madame witness, in your Judicial Affidavit that there was no instance that you were able to talk to Emelita Ramirez.
A. Yes, sir.

COURT:
Q. Even thru phone call?
A. Yes, your honor.

ATTY. SERRANO:
Q. Even thru phone call, Madame witness, am I correct?
A. Yes, sir.

Q. Even thru text messages, am I correct?
A. Yes, sir.

Q. And you were not able to personally talk to her also, am I correct, Madame witness, regarding the shipment of these onions?
A. Yes, sir.

Q. Your only basis in saying that Jocelyn Young is authorized were the documents submitted to you and the verbal representation of this Jocelyn Young, am I correct, Madame witness?
A. Yes, sir.

COURT:
Q: But you said earlier she has authorization?
A: Yes, your honor.

Q: Where is that authorization?
A: Due to pag transfer ng office wala na po kaming copy.

Q: What is that authorization, is that notarized document or just a letter, handwritten, typewritten?
A: It's a letter lang po.

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ATTY. SERRANO:
Q: You mentioned that Jocelyn Young presented you a letter evidencing that she is authorized by Emelita Ramirez, are you sure of that, Madame witness?
A: When (interrupted)

Q: Just answer the question yes or no, are you sure of that?
A: No sir.

COURT:
Q: What you mean that you're not certain, is there a letter of authorization given to you by Jocelyn Young from ETR Trading?
A: When Miss Jocelyn Young went to our office (interrupted)

Q: **Answer the question, is there a letter, a written letter of authorization?**
A: None, your honor.

Q: What are you telling the Court a while ago that there is an authorization?
A: I'm just confused, your honor.

Q: So, there's no authorization, no letter of authorization?
A: Yes, your honor.[62]

The above testimony of Larracochea substantiates Ramirez's assertion[63] that she does not know Larracochea, that she had never talked to or entered any transaction with her, and that the only time she saw her is when this case was filed in court.

More, accused-appellant Larracochea testified[64] that she filled out the contents of the Import Entry, signed it,[65] and asked Jocelyn Young to affix her signature on top of the name ETR Trading, even if there was no authorization from Ramirez. These crucial facts were revealed during the cross-examination of Larracochea, *viz.*:

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[62] Boldfacing supplied.
[63] Judicial Affidavit of Ramirez dated November 21, 2019, RTC Records, Vol. 2, pp. 66-73.
[64] TSN, Crim. Case No. 14-307648, May 10, 2019, pp. 13-14.
[65] Q&A 33, Judicial Affidavit of Shiela T. Larracochea dated February 18, 2019, Exhibit 2, RTC Records, Vol. 2, p. 18.

Q: Now, you were shown a while ago by the distinguished Prosecutor a copy of the Import Entry, will you confirm if you're the one who filled up the contents of this Import Entry, Madame witness?
A: Yes, sir.

Q: As in fact that is part or one of your duties and responsibilities as a custom broker, correct?
A: Yes, sir.

Q: Now, it would appear that on top of the name ETR Trading, there appears a signature, am I correct?
A: Yes, sir.

Q: And would you confirm, as you have testified earlier that your signature is the signature of Jocelyn Young, this is the signature of Jocelyn Young?
A: Yes, sir.

Q: And she affixed her signature in your presence, am I correct, Madame witness?
A: Yes, sir.

COURT:
Q: And you're the one who secured her signature?
A: Yes, your honor.

ATTY. SERRANO:
Q: ... how many instances did you and Jocelyn Young meet regarding this particular shipment?
A: Once.

Q: So, the first time that she went to your office to secure your services she has already with her the Commercial Invoice, the Plant Quarantine Clearances and the Bill of Lading?
A. Yes, sir.

COURT:
Q: And at the same time you prepared the Import Entry and you had her affixed her signature?
A: Yes, your honor.

ATTY. SERRANO:
Q: Meaning to say, it could notically follow that at that time this particular Import Entry was signed by Jocelyn Young you do not have with you any authorization coming from Emelita Ramirez, am I correct?
A: Yes, sir.[66]

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[66] Boldfacing supplied.

Indeed, Jocelyn Young, not Ramirez, signed the Import Entry on the day she went to Larracochea's office to engage her services. Larracochea's testimony supports Ramirez's claim[67] that she did not sign the Import Entry and had nothing to do with it, *viz.*:

> Tanong: Paano mo nasabi na hindi mo pirma ang pirma na matatagpuan sa ibabaw ng pangalan ng ETR TRADING na tinutukoy ng importer sa *Import Entry and Internal Revenue Declaration*?
>
> Sagot: Hindi ko po ito pirma dahil sa malayong malayo po ito sa aking pirma na ginagamit simula po noong nagkatrabaho ako. Bukod po dito ay inamin ni Shiela na hindi ko pirma ang pirma na makikita sa ETR TRADING dahil sinabi niya na hindi niya din ako nakita o nakatransakyon.
>
> Tanong: Bukod dito, ano ang patunay mo na hindi mo talaga pirma and pirma na nasa *Import Entry and Internal Revenue Declaration* ?
>
> Sagot: Mayroon po akong kopya ng mga dokumento at identification cards na magpapakita ng aking mga pirma.
>
> Tanong: Ipinapakita ko ulit sa iyo ang *Import Entry and Internal Revenue Declaration*, natatandaan o nakikilala mo ba ang dokumento na iyan ?
>
> Sagot: Hindi po. Sa totoo lang po ay nakita ko lang po ang dokumento na iyan dito sa korte.

Larracochea confirmed during her cross-examination that she would ask for proof of authority from the representatives of the business corporations she had transacted with. However, in this instance, she was not able to secure an authorization letter from Emelita Ramirez showing that Jocelyn Young is authorized to transact on behalf of ETR Trading or Ramirez, *viz.*:[68]

> Q: And whenever you engaged with these business corporations, I'll withdraw that question, your honor. These business corporations were being represented by the authorized representative of these corporations, am I correct?
>
> A: Yes, sir.

[67] Judicial Affidavit of Remirez, RTC Records, Vol. 2, pp. 68-69.
[68] TSN, Crim. Case No. 14-307648, May 10, 2019, pp. 23.

> Q: Whenever these business corporations will engage your services you will be asking for the authorization of the representative of these business corporation, am I correct?
> A: Yes, sir.
>
> Q: And you have done in the past for several times already, am I correct?
> A: Yes, sir.
>
> Q: But in this particular instance you were not able to secure an authorization letter of Emelita Ramirez showing that Jocelyn Young is authorized, right?
> A: Yes, sir.

Larracochea likewise confirmed[69] that the BPI Plant Quarantine Clearance Permit No. G18090, later found out to be fake, was one of the import documents **given to her by Jocelyn Young, not Ramirez**. However, she could not file a case against said Jocelyn Young since after they found out that said the permit was faked, they could no longer contact her, *viz.*:

> Q: You said that, you confirmed that this BPI Certification marked as, you identified that this BPI Plant Quarantine Clearance No., Permit No. G18090 that it was one of the documents gave to you by Miss Jocelyn Young, the alleged representative of ETR Trading?
> A: Yes, your honor.
>
> Q: And later, you found out that this document was fake?
> A: Yes, your honor.
>
> Q: And then subsequently Criminal case, this case was filed against you?
> A: Yes, your honor.
>
> Q: Did you file any case against Jocelyn Young who gave to you this fake document?
> A: Hindi na po kasi after po niyan nalaman naming na fake, wala na po siya.
>
> Q: What do you mean, "nawala"?
> A: Hindi na po namin siya nakontak, hindi na din po siya bumalik sa office.

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[69] TSN, Crim. Case No. 14-307648, May 10, 2019, pp. 25.

> Q: In what way did you contact her?
> A: Thru her, nag provide po ng contact number after po ng nalaman namin na it's fake hindi na po namin siya na contact.

Given the above testimonial evidence and admissions, it is clear that Jocelyn Young, not Ramirez, engaged Larracochea's services, provided her with the importation documents, including the fake BPI Plant Quarantine Clearance Permit No. G18090, and signed the Import Entry.

While the prosecution was able to establish that accused-appellant Ramirez is the registered owner and proprietress of ETR Trading despite her claim that its real owner is her niece, Jennie Millama Abas, and the latter's husband Reboy Abas, and Ramirez merely lent her name without any compensation, the prosecution failed to prove her involvement or participation in the unlawful importation of 12,000 bags of red onions, more so in the falsification and submission of BPI Plant Quarantine Clearance Permit No. G18090.

Moreover, the complainant, Margie Santiago, who was the prosecution's main witness, affirmed that she had no basis in filing a case against Emelita Ramirez, *viz.*:

> Q: Emelita Ramirez is according to you is the owner of ETR. Based on your Complaint that you filed, do you have any basis as to such thing?
>
> COURT: That she is the owner of ETR Trading?
>
> Witness: A: Do I have any basis? I supposed when the case was filed, it had already been with our Legal Division. Prior to the filing they would have for their due diligence find out who is the owner of ETR Trading.
>
> ATTY. SANDOVAL: Q: Because you signed this Complaint-Affidavit?
>
> A: Yes
>
> **Q: To your knowledge, you have any basis that Emelita Ramirez is the owner of ETR Trading?**
>
> **A: Well, I must say I should have check with SEC which I was not able to do.**[70]

[70] TSN, May 25, 2017, pages 14-15.

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> **Q: Yet you do not have a basis for filing a case against Emelita Ramirez, is that correct?**
>
> **A: I don't have a basis.**[71]

For the Court, when dealing with an agent or representative, proof of the latter's authority to represent his or her principal must be presented. More so when the principal denies the agent's authority, as in this case. Without proof thereof, the Court cannot say, with certainty, that the act of the agent or representative is the act of the principal.

It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. The basis for the agency is representation, and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such an inquiry, he is chargeable with knowledge of the agents' authority and his ignorance of that authority will not be any excuse. Indeed, agency is never presumed and he who alleges that it exists has the burden of proof.[72]

Considering the foregoing, the Court cannot conclude that accused-appellant Ramirez acted *in conspiracy* with accused-appellant Larracochea in committing the crime of Unlawful Importation. Considering the prosecution's failure to prove her guilt beyond reasonable doubt, Ramirez's conviction cannot be warranted.

In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a *moral certainty* of the accused's guilt. When there is even a *scintilla* of doubt, the Court must *acquit.*[73]

Such moral certainty is, however, lacking in this case. Hence, the acquittal of Ramirez is called for.

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[71] *Id.*, at page 23.
[72] *Kogyo Trading Corp. vs. Philippine Charter Insurance Corp.*, G.R. No. 242553 (Notice), August 22, 2022.
[73] *People vs. Lumikid*, G.R. No. 242695, June 23, 2020.

However, such is not the case with respect to accused-appellant Larracochea.

Accused-appellant Larracochea committed the crime of smuggling.

As stated earlier, the crime of smuggling is consummated even if the offender **merely assisted** in the fraudulent importation of any article contrary to law. In fact, in the consolidated cases of *Rene M. Francisco vs. People of the Philippines*[74] and *Oscar A. Ojeda vs. People of the Philippines*,[75] the Supreme Court affirmed the conviction of individuals who "*assisted in the unlawful importation of dutiable articles by facilitating their release from the BOC without payment of proper duties and taxes.*"

Thus, the elements of the second type of smuggling are as follows:

1. There is importation into the Philippines of any article;
2. The importation is contrary to law;
3. The importation was done fraudulently; and
4. The accused assisted in the importation.

After a careful review of the records of this case, the Court finds that all the elements described above are satisfied.

First element: There is importation into the Philippines of any article.

The fact of the importation of onion was established. The prosecution offered in evidence the Bill of Lading and the IEIRD or Import Entry that showed the importation 12,000 bags of red onion into the Philippines allegedly by ETR Trading.

[74] G.R. No. 177430, July 14, 2009.
[75] G.R. No. 178935, July 14, 2009.

Second element: The importation is contrary to law.

As discussed above, the importation of the 12,000 bags of red onion into the Philippines lacks the necessary SPS Plant Quarantine Clearance from the BPI.

Third element: The importation was done fraudulently.

Again, as pointed out earlier, the use of a falsified/spurious SPS Plant Quarantine Clearance is a badge of fraud intended to deceive the BOC to release the subject shipment.

Fourth element: Accused-appellant Larracochea assisted in the importation.

Section 6 of RA No. 9280[76] states:

> Sec. 6. *Scope of the Practice of Customs Broker.* - Customs Broker Profession involves services consisting of consultation, preparation of customs requisite document for imports and exports, declaration of customs duties and taxes, preparation signing, filing, lodging and processing of import and export entries; representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles and rendering of other professional services n matters relating to customs and tariff laws its procedures and practices.

In relation thereto, Section 27 of RA No. 9280 also provides, thus:

> Sec. 27. *Acts Constituting the Practice of Customs Broker Profession.* - Any single act or transaction embraced within the provision of Section 6 hereof shall constitute an act of engaging the practice of customs broker profession. Import and export entry declaration shall be signed only by customs broker under oath based on the covering documents submitted by the importers.

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[76] An Act Regulating the Practice of Customs Brokers Profession in the Philippines, Creating for the Purpose a Professional Regulatory Board for Customs Brokers, and Appropriating Funds Therefor.

It is undisputed that accused-appellant Larracochea, as a licensed customs broker, assisted Jocelyn Young, who claims to be a representative of ETR Trading, in the processing and facilitating the importation of the 12,000 bags of red onions with an approximate value of ₱16,000,000.00 from China. In fact, the Import Entry supporting the subject shipment of 12,000 bags of red onions bears her signature together with Jocelyn Young.

In her defense, she claims that there was nothing illegal in her act of correctly declaring the contents of the shipment in the Import Entry, to the best of her knowledge, based on the documents submitted by the consignee in which she relied upon in good faith and the filing of the same with the BOC. Further, she asserts that conspiracy cannot be inferred by merely exercising one's profession. Her duty as a customs broker of the shipment subject of this case was limited only to filling up, lodging, signing, and filing the Import Entry with the BOC to process the release of the said shipment. She likewise submits that her failure to verify with the BPI about the Import Permit before the filing of the Import Entry was inconsequential, considering that she was not duty-bound to go beyond the documents submitted by the consignee.

The Court is not convinced.

Admittedly, accused-appellant Larracochea affixed her signature under oath in the Import Entry below the notation "*We hereby certify that the information contained in all pages of this Declaration and the documents submitted are to the best of our knowledge true and correct.*" Larracochea likewise admitted that the usual practice is to verify first with the BPI the clearance issued to the consignee.

To the mind of the Court, the practice of verifying the authenticity of the SPS Plant Quarantine Clearance from the BPI is in support of her declaration under oath that the documents submitted are "true and correct." Another reason is that it is also for her protection, as she is signing under oath.

Accused-appellant Larracochea's justification that she did not verify with the BPI the authenticity of the Plant Quarantine Clearance before filing the Import Entry due to time constraints since the subject shipment was already in the port and the said Plant Quarantine Clearance appeared to be

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original is also hard to believe. For one, if someone's profession is on the line, he/she will not risk it for a short delay. For another, and as testified by Mr. Clarito Barron, the color of the paper used in printing Plant Quarantine Clearance is cream, and the size is a little bit longer. In contrast, the paper used in the Plant Quarantine Clearance they submitted is color yellow, and the size is shorter. Being a Customs Representative for ten (10) years,[77] she should have known that the color and size of the paper used to print the Plant Quarantine Clearance given to her already raised a red flag to conduct verification with the issuing agency.

Further, the "unlawful" importation would not have been possible without accused-appellant Larracochea's intervention or assistance, *viz.*:

Q: Madame witness, is this importation possible without the intervention or assistance of the broker?

A: If the importer will be the one to process.

Q: But in this case?

A: They seek for an assistance of a customs broker.

Q: And you are the Customs broker in this case?

A: Yes, sir.

Q: And without your assistance this importation would not have been possible?

A: Yes, sir.[78]

In *Heirs of Teresita Villanueva et al. vs. Heirs of Petronila Syquia Mendoza et al.*,[79] the Supreme Court ruled that the findings of fact by the trial court are accorded respect because it is in a much better position to determine which party was able to present evidence with greater weight, to wit:

> Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court,

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[77] TSN, November 7, 2019, p. 10.
[78] TSN, May 10, 2019, pages 4-5.
[79] G.R. No. 209132, June 05, 2017.

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its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.

Thus, We quote with approval the findings of the court *a quo* regarding accused-appellant Larracochea,[80] viz.:

> It is uncontroverted that accused Larracochea is the customs broker who filled up and signed the Import Entry and Internal Revenue Declaration No. C-7173 and caused the submission of the relevant shipping documents for the release of the subject shipment. She admitted that she affixed her signature under oath in the Import Entry below the notation "*We hereby certify that the information contained in all pages of this Declaration and the documents submitted are to the best of our knowledge true and correct.*" There is a need for the filing of a duly accomplished relevant IEIRD for subject shipment to be processed at the BOC in compliance with Section 1304 of the TCCP.
>
> Accused Larracochea herself admitted that the usual practice is to verify first with the BPI the clearance that was issued to the consignee. Her justification that she did not make a verification with the BPI as to the authenticity of the subject Plant Quarantine Clearance prior to the filing of the Import Entry due to time constraint since the subject shipment is already in the port and the PQCs appeared to be original will not absolve her of her liability.

In sum, and as correctly observed by the court *a quo*, the prosecution was able to establish that all the elements of the crime of smuggling under Section 3601 of the TCCP, as amended, were satisfied, in so far as accused-appellant Larracochea is concerned.

WHEREFORE, premises considered, the appealed Decision dated February 19, 2021, and Order dated June 1, 2021, both rendered by the Regional Trial Court of Manila, Branch 21, in Criminal Case No. 14-307648, finding the accused-appellants EMELITA RAMIREZ y TAYLO and SHIELA LARRACOCHEA y TACBAS a.k.a. SHIELA NERI y LARRACOCHEA a.k.a. SHIELA LARRACOCHEA NERI guilty beyond reasonable doubt of the crime of Unlawful Importation as defined and penalized under Section 3601 in relation to Section 101(k) of the Tariff and Customs Code of the

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[80] Decision, pp. 20-21, CTA Docket, pp. 16-39.

Philippines, as amended, and in relation further to Section 3 of Presidential Decree No. (PD) No. 1433, otherwise known as the "Plant Quarantine Decree of 1978"; to Section 2, Rule II of the Bureau of Plant Quarantine Administrative Order No. 1, series of 1981 as well as to Department of Agriculture Administrative Order No. 09, series of 2010, are hereby **AFFIRMED** insofar as it found accused-appellant **SHIELA LARRACOCHEA y TACBAS a.k.a. SHIELA NERI y LARRACOCHEA a.k.a. SHIELA LARRACOCHEA NERI** guilty beyond reasonable doubt of the crime of Unlawful Importation.

As regards accused-appellant **EMELITA T. RAMIREZ**, she is hereby **ACQUITTED** on reasonable doubt.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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