REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MOISES BAGAN RODRIGUEZ,
Petitioner,

CTA EB CRIM. No. 043
(CTA CRIM. CASE No. O-282)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

-versus-

PEOPLE OF THE PHILIPPINES, AND THE BUREAU OF CUSTOMS, As represented by the Commissioner Of Customs,
Respondents.

Promulgated:

JUN 18 2019
1:35 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the CTA *En Banc* is the "Amended Petition for Review under Rule 43" filed by petitioner Moises Bagan Rodriguez ("petitioner") on February 12, 2018 assailing the June 28, 2017 Decision[1] and the September 8, 2017 Resolution[2] promulgated by the then CTA Third Division ("CTA Division") in the case entitled *"People of the Philippines v. Moises Bagan Rodriguez,"* docketed as CTA Crim. Case No. O-282. The CTA Division

[1] *Rollo*, pp. 25-52; Penned by Associate Justice (now retired) Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban. Justice Victorino wrote a Separate Concurring Opinion [*Rollo*, pp. 53-56].

[2] *Rollo*, pp. 72-77; Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.

found that the petitioner was guilty beyond reasonable doubt for violating Sections 3601[3] and 3602[4] in relation to Sections 2503[5] and 2530[6] of the

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[3] SEC. 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:

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4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos;

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In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceeding for deportation; if the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

[4] Sec. 3602. *Various Fraudulent Practices against Customs Revenue.* — Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measurers thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.

[5] SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* — When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided,* That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, quantity, or measurement shall constitute a *prima facie evidence* of fraud penalized under Section 2530 of this Code: *Provided, further,* That any misdeclared or undeclared imported articles/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.

[6] Sec. 2530. *Property Subject to Forfeiture under Tariff and Customs Laws.* — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

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f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

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i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law;

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l. Any article sought to be imported or exported

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(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

Tariff and Customs Code of the Philippines, as amended ("TCCP") for unlawful importation and fraudulent practices against customs revenue covering the alleged importation of pastry ingredients and dough, which are, in actuality, importation of onions.

The dispositive portion of the June 28, 2017 Decision ("Assailed Decision") states:

> **WHEREFORE,** premises considered, the Court finds accused Moises Bagan Rodriguez **GUILTY BEYOND REASONABLE DOUBT** for violating *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP.* For violating *Section 3601 of the TCCP*, accused is hereby **SENTENCED** to suffer an indeterminate penalty of eight (8) years and one (1) day, as a minimum, to twelve (12) years, as a maximum, and to pay a fine in the amount of Php10,000.00. Similarly, for violating *Section 3602 of the TCCP*, accused is hereby **SENTENCED** to suffer an indeterminate penalty of eight (8) years and one (1) day, as a minimum, to twelve (12) years, as a maximum, and to pay a fine in the amount of Php10,000.00.
>
> **SO ORDERED.**

The dispositive portion of the September 8, 2017 Resolution ("Assailed Resolution") reads:

> **WHEREFORE,** premises considered, the Motion for Reconsideration filed by accused is hereby **DENIED** for lack of merit. On the other hand, the Supplemental Motion for Reconsideration filed by accused is considered **MOOT.**
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> **SO ORDERED.**

THE FACTS

The facts of the case as found by the CTA Division, as stated in the Assailed Decision:[7] *gr*

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(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government.

[7] Assailed Decision, pp. 1-18; *Rollo*, pp. 25-42; Citations were omitted.

Plaintiff is the People of the Philippines, represented by the Office of the Prosecutor General. The present case arose from a complaint instituted by the Bureau of Customs ("BOC") through the Run After the Smugglers ("RATS") Program.

Accused is the sole proprietor of Yanzhen Enterprises, a sole proprietorship duly registered with the Department of Trade and Industry ("DTI") with principal address at 1282 Purok Durian, Lapu-Lapu Extension, San Miguel (ODACA), Digos City, Davao Del Sur, and engaged in the business of dealing and importing surplus auto parts and merchandise.

On September 23, 2011, eight (8) shipments declared as "pastries ingredients" and "dough' consigned to Yanzhen Enterprises arrived at the Port of Davao aboard the vessels Jan V.922 and Jan. V.1126 with the following details:

ENTRY NO.	BILL OF LADING NO.	SHIPPER; ADDRESS	DECLARATION	CONTAINER VAN NOS.
C 8995	GOSUQIN6250093	Shandong Sunshine Foodstuff Co., Ltd.; China	6 x 40 pastries ingredients	CAIU5470360 CAIU5470375 CAIU5470631 CAIU5470647
C 9000	HKGRF9021	Xin He Trading Co., Ltd.; Hong Kong	4 x 40 pastries ingredients	MWMU6412675 MSWU0090588 MWCU5315048 MWCU5263643
C 8999	GOSUHKG1240114	Bong Ming Trading Co., Ltd.; Hong Kong	3 x 40 pastries ingredients	ZCSU5118676 ZCSU5809153 ZCSU5922299
C 8998	GOSUQIN3450648	Laiwu Changyuan Fruit & Vegetable Co., Ltd.; China	1 x 40 pastries ingredients	ZCSU5855879
C 8996	HKGRF9017	Rin Hop Trading Co., Ltd.; Hong Kong	2 x 40 pastries ingredients	DAYU6711154 MWCU6211520
C 8994	GOSUQIN3450647	Shandong Sunshine Foodstuff Co., Ltd.; China	2 x 40 pastries ingredients	CAIU5470436 CAIU5471751
C 8993	555182865	Rizhao Wufeng Foods Co. Ltd.; China	1 x 40 dough	MWMU6423495
C 8997	555182818	Rizhao Wufeng Foods Co. Ltd.; China	1 x 40 dough	MWCU6514677

On the same date, eight (8) alert orders were issued by the BOC Deputy Commissioner of the Intelligence Group covering the shipments in question, directing the Customs Officers concerned to witness the one hundred percent (100%) examination to be conducted by the assigned Customs Examiner, xxx xxx xxx .

On September 29, 2011, the examination of the shipment in question was conducted.

The following day, September 30, 2011, the After Examination Reports ("AER") on the shipment in question was issued, summarized as follows:

ENTRY NO.	ALERT ORDER NO.	DESCRIPTION		CONTAINER VAN NOS.
		SAD	AER	
C 8995	A/1G/20110923-111	6x40' contrs. Stc Pastries Ingredients	Onions	CAIU5470360 CAIU5470375 CAIU5470631 CAIU5470647 ZCSU5835506 ZCSU5116009
C 9000	A/1G/20110923-113	Pastries Ingredients	Onions	MWMU6412675 MSWU0090588 MWCU5315048 MWCU5263643
C 8999	A/1G/20110923-114	Pastries Ingredients	Onions	ZCSU5118676 ZCSU5809153 ZCSU5922299
C 8998	A/1G/20110925-115	Pastries Ingredients	Onions	ZCSU5855879
C 8996	A/1G/20110923-116	Pastries Ingredients	Onions	DAYU6711154 MWCU6211520
C 8994	A/1G/20110923-117	Pastries Ingredients	Onions	CAIU5470436 CAIU5471751
C 8993	A/1G/20110923-118	- Other, not containing cocoa DOUGH	Onions	MWMU6423495
C 8997	A/1G/20110923-120	- Other, not containing cocoa DOUGH	Onions	MWCU6514677

Based on the aforementioned documents, the shipments in question were found to contain onions; thus, the relevant Customs Officer requested for the issuance of a Warrant of Seizure and Detention ("WSD") covering the said shipments. As a result, a WSD was issued on September 30, 2011 covering Container Van Nos. CAIU5470360, CAIU5470375, CAIU5470631, CAIU5470647, ZCSU5835596, ZCSU5116009, MWMU6412675, MSWU0090588, MWCU5315048, MWCU5263643, ZCSU5118676, ZCSU5809153, ZCSU5922299, ZCSU5855879, DAYU6711154, MWCU6211520, CAIU5470436, CAIU5471751, MWMU6423495 and MWCU6514677, which are the subjects of the case; along with two (2) other container vans covered by other alert orders, which do not relate to the case.

Consequently, the RATS Group issued the 1st Indorsement on November 23, 2011 requesting for the valuation and computation of the appropriate duties and taxes supposedly due on the shipment in question. In reply, the Import Assessment Service ("IAS") issued the 2nd Indorsement on November 29, 2011 stating that the total duties and taxes due on the shipment in question is Php1,484,332.00.

On December 21, 2011, a Complaint-Affidavit was filed against the following:

1. Moises Bagan Rodriguez as the owner-proprietor of Yanzhen Enterprises;

2. Abolkhayr L. Cali as the customs broker of Yanzhen Enterprises for the shipments covering Import Entry Nos. C-8995, C-8994, and C-8993; and

3. Zahraida M. Abdul as the customs broker of Yanzhen Enterprises for the shipments covering Import Entry Nos. C-9000, C-8999, C-8998, C-8996, and C-8997.

On April 18, 2012, the Department of Justice approved the filing of an information against accused Moises Bagan Rodriguez.

On May 18, 2012, the present Information was filed against accused for violation of *Sections 3601 and 3602* in relation to *Sections 2503 and 2530* of the TCCP. The Information reads:

> The undersigned prosecutor of the Department of Justice hereby accuses **MOISES BAGAN RODRIGUEZ**, of violation of Sections 3601 & 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines, as amended, committed as follows:
>
> > []That on or about September 2011, in Davao City, and within the jurisdiction of this Honorable Court, the above-named accused, being the owner/proprietor of Yanzhen Enterprises, willfully, unlawfully and feloniously did then and there imported [*sic*] onions from China through false declaration in the Import Entries and Internal Revenue Declarations and other pertinent documents filed with the Bureau of Customs covering the

> shipment of 20x40' container vans declared as "Pastries Ingredients" and "Dough" classified under Tariff Heading H.S. Code No. 1905.09.09 with tariff rate of only 15% and Tariff Heading H.S. Code No. 1901.20.23 with tariff rate of only 10%, respectively, instead of declaring it as onion[s] with Tariff Heading H.S. Code No. 0711.90.40 with tariff rate of 40%, evading higher duties and taxes estimated to [*sic*] **One Million Four Hundred Eighty Three Thousand Three Hundred Thirty Two Pesos (Php1,483,332.00)** consigned to YANZHEN which arrived at the port of Davao on board vessel M/V Jan V-1126, from China, to the damage and prejudice of the government.[]
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> CONTRARY TO LAW.

In a Resolution promulgated on October 3, 2012, the Court found the existence of probable cause to hold accused for trial. Thus, on October 5, 2012, the Court issued a Warrant of Arrest against accused.

On October 16, 2012, the National Bureau of Investigation issued a Return of Warrant of Arrest stating that accused was arrested on August 16, 2012.

On October 17, 2012, accused appeared before the Office of the Executive Judge of the Regional Trial Court, 11th Judicial Region, Davao City, posted the required cash bond, and was released. Accused likewise executed an Undertaking on even date, which was approved by Judge George E. Omelio.

The defense filed a Motion for Preliminary Investigation on November 12, 2012 to which the prosecution filed its Comment (to "Motion for Preliminary Investigation") on December 3, 2012 *via* registered mail. The Court, in a Resolution dated December 18, 2012, denied the Motion for Preliminary Investigation filed by the defense.

On March 20, 2013, accused was arraigned. Accused, assisted by his counsel, admitted that he was the same person charged in the Information, and entered a plea of "Not Guilty" to the crime charged.

The defense filed its Preliminary Conference Brief on April 12, 2012; and a preliminary conference was held on April 16, 2013. The prosecution filed its Pre-Trial Brief on May 7, 2013. Thereafter, a pre-trial conference was held on May 29, 2013.

The parties filed their **Joint Stipulation of Facts and Issues** on June 17, 2013 by registered mail. Thus, the Court issued the Pre-Trial Order on July 12, 2013, wherein the parties admitted the following facts: (1) accused is the owner and proprietor of Yanzhen Enterprises with office address at 1282 Purok Durian, Lapu-Lapu Extension, San Miguel, (ODACA) Digos City; (2) the prosecution has sent one (1) subpoena with two (2) settings to the accused of the notice of hearing for the preliminary investigation of the above-mentioned case; and (3) the charges for violation of *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP* against the customs brokers, namely, Abolkhayr L. Cali and Zahraida M. Abdul, were dropped by the investigating state prosecutor in a resolution of the preliminary investigation.

Trial ensued.

The prosecution presented both testimonial and documentary evidence through the following witnesses: (1) Diamongun Datu-Dacula, a BOC Examiner at the Port of Davao; (2) Faisal Basman, a BOC Examiner at the Port of Davao; (3) Al Tomas B. Albano, Officer-in-Charge of the Customs Investigation and Intelligence Service ("CIIS") Group of the BOC; (4) Nomie V. Gonzales, Chief of the System Management Division ("SMD") of the BOC; (5) Atty. Julito L. Doria, Attorney IV of the Legal Service, Revenue Collection Monitoring Group of the BOC; (6) Remedios Salazar Espinosa, Acting Director III of the IAS of the BOC; and (7) Atty. Martiniano B. Bangcoy, a retired Acting District Collector of the Port of Davao.

The **prosecution** presented its **first witness**. Datu-Dacula testified that his office received alert orders issued by the office of the Deputy Commissioner of Customs directing the former to conduct a physical examination of the container vans in question. Thus, on September 29, 2011, Datu-Dacula, together with his colleagues and armed with Inward Foreign Manifests and Bills of Lading, conducted a physical examination of the shipments from China with Yanzhen Enterprises as consignee.

Further, the Inward Foreign Manifest indicated that the shipments were declared as pastry ingredients. Upon examination of the same, Datu-Dacula discovered that the contents of the shipments were onion instead of the declared pastry ingredients. Accordingly, Datu-Dacula prepared an AER.

Upon cross examination, Datu-Dacula testified that the Inward Foreign Manifests merely indicated pastry ingredients, and that onions have a different classification under the TCCP. He also testified that he and his colleagues who conducted the physical examination of the shipment in question were authorized to do so; that while the alert orders were addressed to the District Collector, the Chief of the Assessment Division to which he belongs verbally assigned the physical examination of the shipments in question to him and his colleagues. Datu-Dacula then stated that aside from him and his colleagues, other people were present at the time of the physical examination of the shipments in question, *i.e.,* members of the CIIS Group, Customs police, and local media; and that the members of the local media were the ones who took pictures when the shipments in question was opened. According to Datu-Dacula, twenty (20) container vans were opened almost at the same time, and all contained onions; that he personally inspected around seven (7) of the twenty (20) container vans; and that it took the team around three (3) hours to finish inspecting all the container vans. He went on to explain that even if he normally inspects around four (4) to ten (10) container vans *per* day, in this particular case, he inspected twenty (20) container vans. Datu-Dacula likewise testified that while he did not know the consignee or its owner, he was familiar with the brokers.

The **prosecution** presented its **second witness.** Similar to Datu-Dacula's testimony, Basman testified that he was a principal Customs Examiner, and was instructed by the District Collector to conduct a one hundred percent (100%) examination of the shipments in question consigned to Yanzhen Enterprises in compliance with the alert orders issued by the Deputy Commissioner of Customs; that the alert orders were issued by the random selectivity system of the BOC, which tagged the shipments as "red." Basman narrated that on September 29, 2011, he, together with other Customs Examiners, the Customs police, members of the CIIS Group, and media, went to the container yard to open the shipments in question, pursuant to the alert orders; that he brought the Inward Foreign Manifests, Bills of Lading, and alert orders when he examined the twenty (20) container vans; that upon opening the container vans, Basman discovered that the same contained red onions packed in big net bags, contrary to the importation documents which indicated the shipments as pastry ingredients and dough; and that thereafter, he prepared the AER.

On cross examination, Basman testified that he identified the shipments in question through the container van numbers indicated on the alert orders; and that he did not notify the shipper, brokers, or owner of the shipments in question when the container vans were examined as he assumed that the CIIS Group personnel had already done so. Basman likewise testified that he and his team immediately went to the container yard to conduct the inspection as soon as they received the alert orders; that the inspection, which consisted of opening the container vans and taking a look inside but not stripping, took approximately thirty (30) minutes. Basman, however, claims that he has no footage of the inspection he conducted. Finally, Basman testified that while he was familiar with Yanzhen Enterprises, he did not know the owner of the same; but he is familiar with the brokers of Yanzhen Enterprises.

The **prosecution** presented its **third witness**. Albano testified that he received alert orders from the Deputy Commissioner of Customs to conduct a one hundred percent (100%) examination of the shipments in question; that upon receipt of the alert orders, he proceeded to the District Collector to give a copy of the same. Albano went on to narrate that on September 29, 2011, the ocular inspection of the shipments in question was conducted; that he discovered that there was a misdeclaration, because while the relevant documents stated the shipments contained pastry ingredients, as also provided in the alert orders, the actual contents of the shipments in question were onions; and that upon confirming the misdeclaration, Albano testified that he requested the issuance of WSD from the District Collector and prepared the AER.

On cross examination, Albano testified that he brought copies of the alert orders with him when he witnessed the ocular inspection conducted by the Customs Examiners; that he had no knowledge as to the actual contents of the shipments in question, and that he only acted based on the facts indicated in the alert orders. Albano then re-counted that, in a way, the CIIS Group tried to locate the shipper and to notify them of the inspection to be conducted; that, however, they did not come; and that the Group likewise tried to notify the consignee, but Albano could not confirm the same as the event happened years before. Considering the shipments in question arrived on September 23, 2011 and the alert orders were issued on the same day, Albano stated that he was sure the CIIS Group and the office of the District Collector tried to notify the concerned persons, *i.e.,* the shipper, the consignee, and the brokers. Thereafter, Albano testified that he did not know the brokers of Yanzhen Enterprises or its owners.

The **prosecution** presented its **fourth witness.** Gonzales testified that the SMD is in charge of the whole Philippines and can access each entry *per* lodgment from all the ports. She explained that the Electronic to Mobile Customs System ("E2M System"), which started sometime in 2009, requires importers, brokers, shipping lines, and consolidators to register under the system in order to process or release shipments; that the broker normally encodes entries, which consists of information indicated in the Bill of Lading, in the system through the BOC-accredited Value-Added Service Provider ("VASP"); and that thereafter, Customs Examiners verify the encoded information with their online database. She further testified that the Single Administrative Document ("SAD"), which is the equivalent of the manual Import Entry and Internal Revenue Declaration ("IEIRD'), is the declaration of the broker while the Bill of Lading is the declaration of the contents of the vessel or of a particular cargo by the shipping line.

On cross examination, Gonzales testified that while she is not an Information Technology degree holder, she is an Electronic Data Processing specialist which is the equivalent of the former. Gonzales also explained that the SMD is able to determine who encoded certain information because each broker and each importer has its own access codes to the E2M System. In addition, Gonzales stated that the SAD, which is within the jurisdiction of the SMD, only contains the necessary information while the IEIRD, which is within the jurisdiction of the Assessment Division, contains the other information. Gonzales testified that in the present case, that the waybill indicated Yanzhen Enterprises as the owner of the shipment in question and Shandong Sunshine Foodstuff from Shandong, China as the supplier; that the documents do not show the name of accused; and that, accordingly, she is not able to determine who the owner of Yanzhen Enterprises is based on the documents presented. Finally, Gonzales stated that under the E2M System, a consignee cannot make a declaration unless he nominates and indicates his primary broker and secondary broker; and that, in this way, the consignee authorizes the brokers in case the latter lodge a declaration.

The **prosecution** presented its **fifth witness.** Atty. Doria testified that he was part of the RATS Group; that in September 2011, the Deputy Commissioner issued alert orders for the shipments in question; that the RATS Group took three (3) months to conduct its investigation, beginning from the date the alert orders were issued and received by the Group; and that, accordingly, the complaint-affidavit was filed on December 1, 2011. He further narrated that pursuant to the Group's investigation, they requested the CIIS in the Port of Davao, as well as the other responsible officials who conducted the physical examination, to submit the relevant documents (*e.g.*, alert orders, electronic manifest, SAD, report, and WSD) to the Group; that based on the one hundred percent (100%) physical examination conducted, it appeared that the import entries declared as pastries and dough were actually onions, which are subject to regulatory requirements; and that it appeared that even the tariff heading on the importation was changed to suit the declaration in the import entry. Atty. Doria also testified that he did not personally examine the shipment, but relied on the results of the examination conducted by the officials in the Port of Davao; and that what he conducted was a document investigation. He explained that the WSD issued stated that, upon 100% examination, the declaration of pastries was actually onions; and that the Enforcement Unit was directed to forfeit and seize the container vans and subject the items to a seizure and detention hearing by the Law Division of the Port of Davao. Personally, however, he had no knowledge if the seized goods were actually forfeited in favor of the government. Finally, Atty. Doria identified the Client Profile Registration System ("CPRS") Profiles of Yanzhen Enterprises, Cali, and Abdul.

On cross examination, Atty. Doria testified that in conducting its investigation, the RATS Group does not normally notify the accused; notification is only made when the case for seizure and forfeiture will be done by the port; that the Group relies on the presumption of regularity in the performance of the functions by the officials in the Port of Davao, hence, he only relied on the documents gathered from the latter; and that seizure is no longer part of the Group's investigation process. Thereafter, Atty. Doria explained that the Group assumed that it was accused who lodged the entry based on the documents the Group gathered and considering Yanzhen

Enterprises was owned by accused. Based on Atty. Doria's understanding, a unique code is assigned to the importer and the broker; that the broker can only open the particular shipment pertaining to the importer if the broker is also given the code coming from the importer; and that in this case, considering the importation was coming from Yanzhen Enterprises, the RATS Group was pretty confident all the security measures attendant in the particular entry was provided by the importer itself. Further, Atty. Doria testified that as far as the Group knows, Yanzhen Enterprises and the brokers are accredited importers because their records were still in the Group's file; and that the lodging of a profile with the Interim Customs Accreditation Registration Unit ("iCARE") is part of the accreditation process as an importer. Atty. Doria said that considering he has a copy of Yanzhen Enterprise's CPRS, he assumed the latter renewed its accreditation on October 22, 2011. Further, Atty. Doria testified that once an importer does not comply with the requirements for the application for accreditation, such importer cannot lodge an entry; that while the BOC can change the electronic entry lodged by another person, the entry in the present case was not cancelled because cancellation can only start from the importer itself; and that once an entry is filed, it cannot be deleted from the system unless the importer does so. As regards the apparent discrepancy in the number of container vans in the shipment in question, Atty. Doria clarified that even though the WSD indicated twenty-two (22) container vans, only twenty (20) container vans were included in the complaint as the investigation focused only on the shipments said to contain onions but were supposed to be pastry ingredients; and that the remaining two (2) container vans contained motor vehicles. Accordingly, the Group intentionally excluded the container vans containing motor vehicles from the complaint notwithstanding the 2nd Indorsement because there are different requirements in the importation of motor vehicles. Atty. Doria then narrated that he attended the preliminary investigation as one of the two (2) complaining witness for the prosecution; however, he has no knowledge whether the accused was notified of the proceedings. Moreover, Atty. Doria stated that in the ordinary course of proceedings, there should be a justification why an alert order is issued against a particular shipment; that in this case, however, he did not receive a copy of the attachments to the alert orders, just the alert orders; and that as regards the forfeiture of the shipments in question, it is a logical conclusion that the same were already forfeited considering a WSD was issued for the same.

On re-direct, Atty. Doria clarified that a person cannot import goods or lodge entries in the system without being accredited by the BOC; and that the BOC cannot change the entries in the system, only the importer can do so. He also testified that there is a historical log for the subsequent processing of specified entries in the system.

The prosecution presented its sixth witness. Espinosa testified that she was the one who computed the total duties and taxes due from Yanzhen Enterprises in the amount of Php1,484,332.00.

On cross examination, Espinosa stated that she did not compute the taxes and duties due on the two (2) remaining container vans which consisted of items other than onions because she was only requested to compute the taxes and duties due on the onions. According to Espinosa, she arrived at her computation of the twenty (20) container vans based on the documents presented to her together with the 1st Indorsement, which documents were returned upon the issuance of the 2nd Indorsement. Espinosa also testified that the documents were only forwarded to her for computation, and at that point there was already a finding of misdeclaration.

Finally, the **prosecution** presented its **seventh and last witness.** Atty. Bangcoy testified that he was the acting District Collector when the shipments in question arrived; that the alert orders were issued on the same day the shipments arrived; and that upon receipt of the same, he directed the assessment people to assign Customs Examiners to conduct the one hundred percent (100%) physical examination. Atty. Bangcoy then narrated that considering the alert orders directly came from the Deputy Commissioner, he made it a point to attend the examination and witness the same personally; that based on the records, the shipment was declared as ingredients for pastries and dough; that, however, after the examination, it was discovered that the actual contents was onions; and that, as a result, the Chief of the CIIS submitted to him a report of the examination, which recommended the issuance of a WSD in view of the blatant misdeclaration of the shipments. Acting on the request for issuance of WSD, Atty. Bangcoy stated that he directed the Law Division to prepare the WSD which he eventually signed; and that the WSD was then issued against the shipment consisting of twenty-two (22) container vans consigned to Yanzhen Enterprises, which same vans were opened and subjected to the one hundred percent (100%)

physical examination. Atty. Bangcoy also testified that out of the twenty-two (22) container vans, only twenty (20) contained onions; that the remaining two (2) contained motor vehicles; and that, meanwhile, the WSD was issued to cover all the twenty-two (22) container vans because they were all consigned to the same consignee.

On cross examination, Atty. Bangcoy testified that before being assigned to the Port of Davao, he was a Deputy Collector Administrator in Cebu; that his first alert orders happened to be the alert orders issued in the present case; and that all full alert orders or original copies were submitted to him through the office of the Chief of the CIIS of the Port of Davao. According to Atty. Bangcoy, the physical examination of the shipments in question was done in one day (*i.e.,* September 29, 2011), the report of the CIIS was received by his office the following day, and the WSD was issued on that same day. Finally, Atty. Bangcoy testified that after the issuance of the WSD, the Law Division was responsible for notifying the consignee; that when he signed the WSD, the same had yet to be received by Yanzhen Enterprises; and that, in issuing the WSD, he relied on the documents on record which stated that Yanzhen Enterprises, an entity which he had no personal knowledge of, was the consignee of the shipment in question.

Thereafter, the prosecution formally offered its evidence on August 1, 2014; to which the defense filed its opposition on September 9, 2014. **The Court admitted all of the prosecution's evidence** in a Resolution dated September 16, 2014.

The defense filed a Motion for Leave of Court to File Demurrer to Evidence on September 30, 2014, which the Court granted in a Resolution dated November 12, 2014. Thus, the defense filed its Demurrer to Evidence on November 25, 2014. The prosecution filed its Comment/Opposition (To the Demurrer to Evidence Filed by Accused Moises Bagan Rodriguez) on December 9, 2014. In a Resolution promulgated on February 11, 2015, the Court denied the demurrer to evidence filed by the defense.

For its part, the defense presented both testimonial and documentary evidence through the following witnesses: *(1)* Adnan D. Dilangalen, a former employee of accused; *(2)*

Moises Bagan Rodriguez, accused in the present case; and *(3)* Marlowe Noble Ejercito, the Sales Import Manager of accused.

The **defense** presented its **first witness**. Dilangalen testified that he was hired by Yanzhen Enterprises, a sole proprietorship owned by accused, in June 2010 as a sales representative of the supposed importation of second-hand truck parts; and that, however, he was also responsible for securing the necessary business permits and other government requirements. Dilangalen stated that was connected with Yanzhen Enterprises until December 2010; that during his employment, he secured the DTI permit, Bureau of Internal Revenue ("BIR") certificates, receipts, and other documents necessary for Yanzhen Enterprises to pursue business; that he facilitated the processing of Yanzhen Enterprises' BOC accreditation; that, accordingly, Yanzhen Enterprises has a CPRS because it was one of the requirements of the BOC to be accredited as an importer; and that after securing the necessary government licenses in December 2010, Dilangalen decided to leave Yanzhen Enterprises because it was obvious that the latter would eventually cease its operations as it was incapable of operating (*e.g.,* he and the other employee's salaries could not be paid by accused, Yanzhen Enterprises could not comply with the office space requirements of the DTI, Yanzhen Enterprises had insufficient capital). Dilangalen also testified that while Yanzhen Enterprises was supposed to be engaged in importing surplus materials for auto parts and car trucks, no importation was made during the time he was connected with Yanzhen Enterprises; and that neither did Yanzhen Enterprises have any transactions with the brokers indicated for the shipments in question. In addition, Dilangalen clarified that as far as he knew, Yanzhen Enterprises' business permit was no longer renewed after 2010. Finally, Dilangalen stated that sometime in October 2012, he learned about the arrest and detention of accused in relation to Yanzhen Enterprises, the entity Dilangalen helped set up; and that he then assisted accused with his arrest and retrieved all the relevant documents (*e.g.,* Inward Manifest, bank records of Yanzhen Enterprises, import entries from the BOC for the period June to July 2011).

On cross examination, Dilangalen narrated that he had no employment contract with accused; and that he had previously worked with the accused as an intern. Dilangalen also testified that considering he was a close family friend of accused, he knew for a fact that Yanzhen Enterprises made no importations.

Thereafter, the **defense** presented its **second witness, accused himself**. Accused testified that in May 2010, he befriended a certain Mr. Min who encouraged him to enter into the business of selling second-hand spare car parts from Korea for sale to North Cotabato and Cotabato City; that Min provided the necessary capital while Dilangalen helped secure the necessary papers (*i.e.,* DTI Certificate of Business Name Registration, BIR Certificate of Registration, Mayor's Permit, CPRS – Importer Profile Importation, Certificate of Accreditation and Registration) to establish Yanzhen Enterprises, a sole proprietorship; and that Yanzhen Enterprises secured all the necessary documents in October 2010. Accused stated, however, that Yanzhen Enterprises never had the opportunity to conduct business due to the lack of capital; and that in fact, accused executed an Affidavit of No Operation in February 2011 in order to retire the business. As regards the shipment in question, accused testified that he did not have the capacity to import the same; neither did he know how to use the internet. Further, accused stated that he had no knowledge whatsoever of the importation of the container vans in question, including the investigation conducted thereon, notwithstanding that Yanzhen Enterprises was indicated as the consignee of the shipments. Accused explained that aside from himself, he did not authorize any other person to use the name Yanzhen Enterprises; that he never appointed or even knew the brokers of the shipment in question, Cali and Abdul; that he never saw or signed any document in relation to the shipment in question; that in fact, from the time the permits of Yanzhen Enterprises was secured up to the present, he never imported goods which arrived at the Port of Davao; and that the first time he learned about the shipments in question was when he was arrested in October 16, 2012.

On cross examination, accused testified that he, together with his wife and Min, came up with the name Yanzhen Enterprises; that accused met Min when the former was delivering chicharon, and knew the latter for around one (1) year; that Min, who was based in Davao, was in the business of selling second-hand cars; that Min encouraged accused to enter into the business of importing second-hand spare car parts; that Min provided all the capital to process the necessary licenses using the name of the accused; and that under their agreement, Min would give accused money upon arrival of the importation. Accused went on to narrate that, however, the business did not progress and accused did not receive any compensation whatsoever from Min; that, apparently, Min's business did not prosper in 2010; and that thus, Min did not have the sufficient capital to pursue the business of Yanzhen Enterprises.

Finally, the **defense** presented its **third and last witness.** Ejercito testified that he was hired by Yanzhen Enterprises as a sales import manager, who was supposed to be in charge of processing any importations made by Yanzhen Enterprises; and that accordingly, he has a CPRS Profile. Ejercito explained that while employed by Yanzhen Enterprises, no importation was made either by accused or by Yanzhen Enterprises; and thus, he has no knowledge who the owner of the shipment in question is, considering Yanzhen Enterprises is only authorized to import second-hand truck parts.

On cross examination, Ejercito stated that he paid for his own plane ticket coming to Manila; that Dilangalen informed him of the pending case against accused; that he was the employee of Yanzhen Enterprises for the period July to December 2010; that he did not receive any salary while connected with the latter; and that he did not process any importation for the accused during his employment. Finally, Ejercito testified that at the time of the importation of the shipment in question, he was no longer connected with accused, but he learned of the same subsequently.

On re-direct, Ejercito stated that he was informed that Yanzhen Enterprises applied for a certificate of no operation in February 2011.

Having finished presenting its evidence, the defense formally offered its evidence on February 1, 2016. The prosecution filed its comment/opposition to the formal offer of evidence on March 9, 2016, which was deemed by the Court as having been filed out of time. Accordingly, **the Court admitted all of the evidence formally offered by the defense** in a Resolution dated March 22, 2016.

In compliance with the Court's March 22, 2016 Resolution, which ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof, the prosecution filed its Memorandum on May 30, 2016, while the defense filed its Memorandum on June 24, 2016. Thus, the Court issued a Resolution on June 28, 2016 submitting the case for decision; hence, this Decision. *(Emphases Supplied).*

On June 28, 2017, the CTA Division promulgated the Assailed Decision.

On September 8, 2017, the CTA promulgated the Assailed Resolution.

Within the period of extension granted, petitioner filed his "Petition for Review Under Rule 43" on October 20, 2017.

On December 20, 2017, this Court, in the interest of justice, ordered petitioner to take appropriate action to implead the People of the Philippines as an indispensable party in the Petition for Review and to submit the requisite Verification and Certificate of Non-Forum Shopping.

On February 22, 2018, this Court noted petitioner's Compliance and Manifestation filed on February 12, 2018. This Court also admitted the "Amended Petition for Review Under Rule 43." In this resolution, respondents were ordered to file Comments to the Amended Petition for Review.

On July 9, 2018, "Comment (Re: Amended Petition dated 10 February 2018)" was admitted, and this case was submitted for decision.

ISSUES

1. **WHETHER OR NOT THE PROSECUTION HAS PROVED THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT THROUGH CIRCUMSTANTIAL EVIDENCE WHICH ARE UNBROKEN CHAIN OF FACTS LEADING TO THE PETITIONER TO HAVE KNOWINGLY IMPORTED ONIONS.**

2. **WHETHER OR NOT THE PETITIONER, WHO IS NOT SIGNATORY TO THE BILL OF LADING AND WHOSE BUSINESS NAME, YANZHEN ENTERPRISES, APPEARED IN THE SINGLE ADMINISTRATIVE DOCUMENTS UNDER THE E2M SYSTEM OF THE BOC WHICH ARE CONSIDERED TO BE THE DECLARATION OF THE BROKERS, IS BOUND BY THE STIPULATIONS IN THE BILL OF LADING AND IS CRIMINALLY LIABLE FOR**

> **ILLEGAL SMUGGLING OF ONIONS. COROLLARY, WHETHER THE PETITIONER WHO WAS NOT AN AGENT OF THE SHIPPER AND CARRIER AND WHO DID NOT MAKE ANY DEMAND OR CLAIM OVER THE QUESTIONED SHIPMENT AS HIS AND WHO DID NOT COMMISSION THE BROKERS, CALI AND ABDUL, TO LODGE AN ENTRY IN THE E2M SYSTEM OF THE BOC ALLEGEDLY BASED ON THE CONTENTS OF THE BILL OF LADING, IS CRIMINALLY LIABLE FOR ILLEGAL IMPORTATION OF ONIONS.**

THIS COURT'S RULING

The petition is denied.

Petitioner alleges that he should be acquitted for the crime because the pieces of circumstantial evidence cited by the trial court (CTA Division) do not form as an unbroken chain that point to petitioner as the author of the illegal smuggling; hence its conclusion merely is conjectural.

Petitioner also alleges that if there is no illegal importation, there is also no misrepresentation of goods to speak of.

On the other hand, the People of the Philippines, through the Office of the Solicitor General, argues that based on the testimony of the witnesses and the pieces of documents submitted, the prosecution was able to convincingly establish that there was importation, which was illegal, and that the prosecution was able to establish the identity of the importer. People states that petitioner clearly violated Sections 3601and 3602 of the TCCP, by fraudulently misdeclaring and misrepresenting the nature of the articles imported.

Petitioner's allegations are bereft of merit.

Pertinent to this is Section 1203 of the Tariff and Customs Code of the Philippines ("TCCP"), which defines the owner of the imported articles, as follows:

> Sec. 1203. *Owner of Imported Articles.* — All articles imported into the Philippines **shall** be held to be the **property of the person to whom the same are consigned:** and the holder of a bill of lading duly endorsed by the consignee therein

> named, or, if consigned to order, by the consignor; shall be deemed the consignee thereof. The underwriters of abandoned articles and the salvors of articles saved from wreck at sea, along a coast or in any area of the Philippines may be regarded as the consignees. *(Emphasis Supplied).*

Based on the foregoing, the owner of the property shall be the property of the consignee. "It is clear that the law created a presumption of ownership. That ownership is vested with the consignee. Whether or not accused participated in the preparation of the Bill of Lading is immaterial in the instant case to disprove ownership. For the law created a presumption of ownership in the named consignee even if the consignee did not participate in the preparation of the Bill of Lading. Therefore, it was imperative for accused to disprove ownership of the said articles by showing proof to the contrary."[8] Petitioner, however, failed to show proof to the contrary, thus, the shipments in this case are considered the property of the consignee.

Based on the documents and testimonies of witnesses presented by the prosecution, the prosecution has proven beyond reasonable doubt that Yanzhen Enterprises is the consignee of the shipments which were declared as "Pastries" and "Dough," but found to be "onions" upon 100% examination of the shipments in question.

Yanzhen Enterprises is a sole proprietorship duly registered with the Department of Trade and Industry ("DTI") with principal address at 1282 Purok Durian, Lapu-Lapu Extension, San Miguel (ODACA), Digos City, Davao Del Sur.[9] It is an undisputed fact that petitioner is the owner and proprietor of Yanzhen Enterprises with office address at 1282 Purok Durian, Lapu-Lapu Extension, San Miguel, (ODACA) Digos City.[10]

"A sole proprietorship is a form of business organization conducted for profit by a single individual, and requires the proprietor or owner thereof, like the petitioner-accused, to secure licenses and permits, register the business name, and pay taxes to the national government *without acquiring juridical or legal personality of its own*."[11] In the case of *Mangila v. Court of Appeals,*[12] the Supreme Court categorically stated that, "A sole proprietorship does not possess a juridical personality separate and distinct from the owner of the enterprise." It is emphasized that, "[i]n an individual proprietorship, the owner has unlimited personal liability for all the debts

[8] *People v. Sayson*, CTA Crim. Case No. O-94, Dec. 12, 2012, affirmed in *Sayson v. People*, CTA E.B. Crim. Case No. 025, April 1, 2014; Entry of Judgment, Oct. 28, 2014.
[9] Division Docket, Vol. 3, Exhibit "3," Department of Trade and Industry Certificate of Business Name Registration, p. 1012.
[10] Division Docket, Vol. 1, Joint Stipulation of Facts and Issues, Statement of Stipulated Facts, p.389; Division Docket, Vol. 1, Pre-Trial Order, p. 391.
[11] *Mendez v. People*, G.R. No. 179962, June 11, 2014, citing *Juasing Hardware v. Hon. Mendoza*, etc., et al., 201 Phil. 369 (1982); and *Mangila v. Court of Appeals*, 435 Phil. 870 (2002).
[12] G.R. No. 125027, August 12, 2002.

and obligations of the business."[13] Considering that Yanzhen Enterprises is a sole proprietorship, the owner/proprietor, *i.e.*, petitioner, is liable.

In this case, the CTA Division convicted the accused (now petitioner) based on circumstantial evidence. Pertinent portions of the said Decision[14] provides:

> "In the present case, it is worthy to note the following evidence presented by the prosecution:
>
> 1. The waybill of the shipment indicates Yanzhen Enterprises as the owner of the shipments in question and different entities from China and Hong Kong as the supplier;
>
> 2. The E2M System of the BOC shows Yanzhen Enterprises as the importer of the shipments;
>
> 3. The BOC Certificate of Accreditation and Registration[15] of Yanzhen Enterprises was still valid and subsisting at the time the shipments in question were made; and
>
> 4. The parties have jointly admitted that accused is the owner and sole proprietor of Yanzhen Enterprises, the consignee of the shipments in question.
>
> The aforementioned evidence, **while circumstantial, clearly show beyond reasonable doubt that accused was guilty of the crime charged.** Further, under the E2M System, there is a fair and reasonable conclusion that accused, acting through Yanzhen Enterprises, was the one who committed the violations of the TCCP. The claim of accused that he does not know how to use the internet and that he does not know the brokers of the shipments in question deserves scant consideration considering the feature of the E2M System which only allows the consignee and/or its broker to lodge entries therein through the unique access code granted to each of them. There is none other than the consignee and/or its broker who can lodge import entries under the E2M System." *(Emphasis Supplied).*

"In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error,

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[13] *Fernandez v. Aniñon*, G. R. No. 138967, April 24, 2007.
[14] Assailed Decision, pp. 25-26; *Rollo*, pp. 49-50.
[15] Records, Vol. 3, Exhibit "11," Bureau of Customs Certificate of Registration, p. 1019.

produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."[16] In this case, analyzing the foregoing pieces of evidence relied upon by the CTA Division, we agree that the prosecution has proven beyond reasonable doubt that petitioner is guilty as charged. This Court is convinced that all these circumstantial evidence presented by petitioner complied with the strict requirements in using circumstantial evidence under Section 4, Rule 133 of the Rules of Court, which states:

> SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[17] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties." Moreover, "[i]t is established that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination."[18]

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the then CTA Third Division. This Court agrees that, "accused Moises Bagan Rodriguez liable for the charged acts under Sections 3601 and 3602 in relation to Sections 2503 and 2530 of the TCCP. In addition, the Court notes that the appraised value of the unlawfully imported onions, including duties and taxes, clearly exceeds Php150,000.00."[19]

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[16] Section 2, Rule 133 of the Rules of Court.

[17] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

[18] *Heirs of Villanueva v. Heirs of Mendoza*, G.R. No. 209132, June 5, 2017.

[19] Assailed Decision, p. 26, Under Section 3601 (4) of the TCCP, a fine of not less than Php8,000.00 nor more than Php10,000.00 and imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years shall be imposed if the appraised value of the unlawfully imported article, including duties and taxes, exceeds Php150,000.00. Meanwhile, Section 3602 of the TCCP imposes the same penalty under Section 3601 (4) for violations thereof.

WHEREFORE, premises considered, the petition for review is **DENIED**. Accordingly, the June 28, 2017 Decision and September 8, 2017 Resolution of the then CTA Third Division are **AFFIRMED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Official Business)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice