Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case Nos. 0-277 & 0-278** For: Violation of Section 3602 in relation to Sections 2503 and 2530 paragraphs f, i, & 1 (3), (4), & (5) of the Tariff and Customs Code of the Philippines, as amended.
-versus-	**Members:** **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS**, *JJ.*
ROLANDO PERALTA OREZA and MANUEL LANCERO SARMIENTO, Accused.	**Promulgated:** FEB 16 2015 9:15 a.m.

x---x

DECISION

CASANOVA, *J.*:

Accused Rolando Peralta Oreza & Manuel Lancero Sarmiento are charged before this Court for two (2) counts of violation of Section 3602 in relation to Sections 2503 & 2530 paragraphs f, i & 1 (3), (4) & (5) defined and penalized under the Tariff and Customs Code of the Philippines (TCCP), as amended.

STATEMENT OF FACTS

Plaintiff is the People of the Philippines, represented by the Office of the State of Prosecutor, from a complaint instituted by the Bureau of Customs, the lead agency under the Department of Finance mandated to collect duties and taxes on imported goods and to enforce the Tariff and Customs Code of the Philippines (TCCP) and other related laws.[1]

Accused Rolando P. Oreza, of legal age, Filipino, with residence address at Block 3, Lot 20, Yen St., Carolina Subd., Tunasan, Muntinlupa City, is the registered owner of Orza Marketing during the periods January 2011 to August 25, 2011.[2]

Accused Manuel L. Sarmiento of legal age, Filipino, with residence at 569 Candy St., Malanday, Valenzuela City, is a License Customs Broker. He acts as an agent of various importers and exporters by helping them meet all the importation and exportation requirements.[3]

The cases at bench involved shipments which arrived at the Port of Manila from China on board Cape Charles on August 25, 2011, with Registry No. SIC-0065-11:

1. 1x40 container van number (no.) SITU4977946 said to contain fourteen (14) packages of "computer parts" and six (6) packages of "computer monitor" under Bill of Lading No. SHASE1108033A; and

2. 1x20 container van no. BMOU2626087 said to contain seven (7) packages of "computer parts" and three (3) packages of "computer monitors" under Bill of Lading No. SHASE1108034A.[4]

The subject shipments were allegedly consigned to Orza Marketing, which is owned by accused Rolando Peralta Oreza; and, accused Manuel Lacero Sarmiento is a customs broker and the alleged authorized representative of the latter. Said shipments were declared under Import Entry and Internal Revenue Declaration (IEIRD) Nos. C-94086-2011[5] (for container van no. SITU4977946) and C-94106-2011[6] (for container van no. BMOU2626087) with their corresponding Bills of Lading and Invoice/Packing Lists.[7]

---

[1] Par. 2, Complaint-Affidavit of Ronald Strait, Roldan Reyes, Daniel Nalus and Adrian Alipante, Docket (Vol, I), p. 24; Exhibit "DD".
[2] Pre-Trial Order, Docket (Vol. I), p. 241; Exhibit "8".
[3] Exhibit "7".
[4] Par. 4, Complaint Affidavit, Docket (Vol. I), pp. 24-25.
[5] Exhibit "B".
[6] Exhibit "I".
[7] Par. 2 of page 2, DOJ Resolution dated January 31, 2012, Docket (Vol. I), p. 10.

On August 26, 2011, Alert Order Nos. A/EG/20110826-109[8] and A/EG/20110826-108[9] were issued by Deputy Commissioner Horacio Suansing directing Officers-On-Case Ronald Strait, Roldan Reyes, Daniel Nalus and Adrian Alipante to witness the 100% examination of the foregoing container vans.[10]

On September 29, 2011, both shipments were subjected to 100% examination by Customs Examiner Jonathan Rosete at Warehouse 1 Port of Manila, in the presence of the consignee's purported representative Sonny Sabater of Manuel Sarmiento Customs Brokerage and the assigned Officers-On-Case. The examination revealed that: (i) the 1x40' container van no. SITU4977946 actually contained One Thousand Eight Hundred Fifty (1,850) pieces of Asus laptops in various models, instead of computer parts and computer monitors as declared in the IEIRD No. C-94086-2011; and (ii) the container van no. BMOU2628087 (not BMOU2626087 as declared) contained Two Thousand & Sixty Five (2,065) pieces of laptops with Asus brand in various models contrary to the declaration that it contained computer parts and monitors as declared in IEIRD No. C-94106-2011.[11]

Thus, a Complaint Affidavit[12] prepared and duly sworn to by Roldan Reyes, Ronald Strait, Daniel Nalus and Adrian Alipante, was submitted to the Department of Justice Task Force on Anti-Smuggling for preliminary investigation.

On January 31, 2012, the Department of Justice found probable cause to charge the accused for the foregoing violations. Thus, a separate Information for Criminal Case No. 0-277 and Criminal Case No. 0-278 were filed by State Prosecutor Samina S. Macabando-Usman before this Court on May 18, 2012, which respectively reads as follows:

<u>Criminal Case No. 0-277</u>

> "That on or about August 25, 2011, in the Port of Manila, City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another with evident intent to defraud the Government of the Republic of the Philippines of the legitimate taxes and duties accruing to it from merchandise imported into this country, did then and there willfully and unlawfully make

[8] Exhibit "T".
[9] Exhibit "O".
[10] Par. 3 of page 2, DOJ Resolution dated January 31, 2012, Docket (Vol. I), p. 10.
[11] Par. 4 of page 2, Ibid.
[12] Docket (Vol. I), p. 24-29.

or attempt to make an entry of imported goods, by means of fraudulent practice, that is, by presenting and using falsified/spurious bills of lading and invoice/packing list in support of container van no. SITU4977946 said to contain fourteen (14) packages 'computer parts' and six (6) packages 'computer monitor', but upon examination was found to actually contain **One Thousand Eight Hundred Fifty (1,850) pieces of laptops with Asus brand** in various models, they knowing fully well that the said goods have not been properly declared and the correct duties thereon have not been paid to the corresponding proper authorities, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipment amounting to **Five Million Four Hundred Sixty Thousand and One Hundred Fifteen Pesos (Php5,460,115.00).**

Contrary to LAW."

Criminal Case No. 0-278

"That on or about August 25, 2011, in the Port of Manila, City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another with evident intent to defraud the Government of the Republic of the Philippines of the legitimate taxes and duties accruing to it from merchandise imported into this country, did then and there willfully and unlawfully make or attempt to make an entry of imported goods, by means of fraudulent practice that is, by presenting and using falsified/spurious bills of lading and invoice/packing list in support of container van no. BMOU2628087 said to contain seven (7) packages 'computer parts and three (3) packages 'computer monitors' but upon examination was found to actually contain **Two Thousand & Sixty Five (2,065) pieces of laptops with Asus brand** in various models they knowing fully well that the said goods have not been properly declared and the correct duties thereon have not been paid to the corresponding proper authorities, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipments amounting to **Two Million Seven Hundred Forty Seven Thousand and Two Hundred Forty Seven Pesos (Php 2,747,247.00).**

Contrary to LAW."

On September 25, 2012, the prosecution filed its Ex-Parte Motion for Consolidation[13], which was granted by the First Division in a Resolution[14] dated October 10, 2012. On October 31, 2012, the Second Division confirmed[15] the consolidation of the said cases and the cases were ordered consolidated.

Thereafter, on November 27, 2012, both accused filed an Urgent Joint Motion to Suspend Proceedings with Prayer for Reinvestigation [With Entry of Appearance][16] before the First and Second Divisions of this Court. The same was granted in open court in the hearing[17] held on December 5, 2012.

In the arraignment[18] held on February 13, 2013, both accused pleaded "Not Guilty" to the aforementioned charges. After the Preliminary Conference[19] held on April 24, 2013, the Pre-Trial Brief (for the Accused)[20] and the Pre-Trial Brief for the Prosecution[21] were both filed on April 24, 2013. In the Pre-Trial Order[22] dated May 7, 2013, the Court terminated the pre-trial and set the initial presentation of evidence for the prosecution on May 27, 2013.

THE EVIDENCE PRESENTED BY THE PROSECUTION

Mr. Jonathan Rosete

Mr. Jonathan Rosete, the first witness for the prosecution, testified on direct examination, through his Judicial Affidavit,[23] that he is presently designated as Customs Operations Officer 3 of Section 8, Formal Entry Division of the Bureau of Customs (BOC), Port of Manila. Among his duties are "to examine, classify and appraise imported articles" and to "determine whether the packages and their contents are in accordance with their declaration in the entry and pertinent import documents." He is also tasked to make a return in accordance with the packages he examined "reflecting

---

[13] Docket (Vol. I), pp. 125-126.
[14] Ibid, p. 128.
[15] Resolution dated October 31, 2012, Id, pp. 129-130.
[16] Id, pp. 196-201 and pp. 202-207.
[17] Id, p. 208.
[18] Minutes of the Hearing dated February 13, 2013, Id, p. 214.
[19] Id, pp. 223-230.
[20] Id, pp. 231-233.
[21] Id, pp. 234-238.
[22] Id, pp. 240-246.
[23] Id, pp. 248-256

whether the articles therein were truthfully declared in their respective entries and that they were not imported contrary to law." He said that he was instructed to go to Warehouse 1, Port of Manila, to witness the 100% examination of shipments contained in container van nos. SITU4977946 and BMOU2628087. He claimed that during the examination of the subject shipments, they took out one (1) package from container van no. SITU4977946 which contained fifty (50) cartons more or less. And, when they took the topmost carton and opened it, they found a red laptop with "ASUS" markings. After everybody had seen the contents of the carton, he said that "the carton was then put back to the package and that the package was returned to the container. Then, the container was sealed." According to him, the same procedure was done when they opened container van no. BMOU2628087.

Thereafter, he went to two (2) reputable computer electronic shops, namely: PC Computer, Gilmore Greenhills and SM Appliance Center, Centerpoint, to get the price of one (1) unit of Asus laptop. After which, he computed the estimated taxes for both containers.

On cross-examination,[24] Mr. Rosete testified that he presumed Mr. Sonny Sabater as the representative of Manuel Sarmiento through the latter's Identification Card (ID) issued by the Enforcement and Security Service of the Bureau of Customs. He admitted that they only took one (1) package in container no. SITU4977946, using a forklift. He also revealed that his statement that a "package contained more or less fifty (50) cartons" was just a mere "estimate". He cannot also remember the exact number of packages in one container. He also testified that only one (1) carton was taken from that package and, when they opened the same, they found a "red laptop with marking Asus". After which, he merely assumed that all the cartons contained in that package are all Asus laptops. He affirmed that they did not open the other cartons contained in that package nor did they open the other packages in the said container. He testified that a similar procedure was undertaken with respect to container van no. BMOU2628087. He also admitted that no inventory was made on the contents of the subject containers.

On re-direct examination,[25] Mr. Rosete claimed that the identification card that they usually look at before conducting the 100% examination of container van is the ID issued by the Enforcement and Security Service. He admitted that, apart from looking at those cartons that

---

[24] Transcript of Stenographic Notes taken during the hearing held on May 27, 2013, pp. 13-23.
[25] Ibid, pp. 24-25

they examined, he did not further verify the contents thereof using other documents.

Mr. Roldan Reyes

Mr. Roldan Reyes, the second witness for the prosecution, testified[26] that he is a Special Agent of the Enforcement Group of the Bureau of Customs. He claimed that on September 29, 2011, Mr. Ronald Strait handed him a copy of Alert Order No. A/EG/20110826-109 directing him to witness the conduct of 100% examination of a 1x40'container van no. SITU4977946. When he was asked as to how they conducted the 100% examination, he narrated that he and agent Strait opened the said container and took out one (1) package therein using a forklift. According to him, said "package contained more or less fifty (50) cartons." When they took the topmost carton and opened it, he saw a laptop with marking "ASUS". He claimed that they did the same procedure with the other packages in the same container. He declared that all the other packages also contained ASUS laptops, made in China, and in various models. By such reason, he and Strait prepared a Memorandum Report recommending the issuance of Warrant of Seizure and detention against the subject misdeclared shipment since they contained laptops instead of computer parts and computer monitors as declared in the invoice/packing list, bill of lading and IEIRD. Thereafter, they executed a Complaint Affidavit.

On cross-examination, Mr. Reyes testified that he was tasked to conduct a 100% examination of container van no. SITU4977946. He presumed Sonny Sabater as the representative of the consignee based on the Broker Identification Card issued by the Bureau of Customs.[27]

Mr. Daniel Nalus

Mr. Daniel Nalus, the third witness of the prosecution, testified on direct examination, by way of Judicial Affidavit,[28], that he is a Special Agent I of the Enforcement Group of the BOC and was designated as one of the agents-on-case tasked to investigate the unlawful importation of "ASUS" laptops found inside a 1x20' container van (Container Van No. BMOU2628087. He testified that he, together with Examiner Rosete and Agent Alipante, examined the same. After opening the said container, they took out one (1) package using a fork lift. He said that "a package contained more or less fifty (50) cartons". They took the topmost carton and opened it. Said carton contained a laptop with "ASUS" markings. He testified that

---

[26] Docket (Vol. I), pp. 260-269.
[27] Transcript of Stenographic Notes taken during the hearing held on June 26, 2013, p. 30.
[28] Docket (Vol. I), pp. 298-308.

they did the same procedure with the other packages inside the 1x20' container van. He claimed that all the other packages contained ASUS laptops made in China and in various models contrary to what was declared in the entry declarations. After which, they prepared a Memorandum Report recommending the issuance of Warrant of seizure and detention against the subject misdeclared shipment.

Ms. Nomie V. Gonzales

In the hearing[29] held on September 18, 2013, the presentation of the prosecution's fourth witness, Ms. Nomie V. Gonzales, was dispensed with after the defense counsel stipulated, with some qualifications, on the direct testimony of said witness, as contained in her Judicial Affidavit filed on September 12, 2013, to wit:

> "ATTY. OPRIASA:
> Your Honors the defense is willing to stipulate on the following:
>
> 1. That the witness Your Honors is the Chief of Systems Management Division, Management Information Systems and Technology Group of the Bureau of Customs.
>
> 2. That she can explain the process of the electronic logging of entries under the electronic mobile system (E2M) of the Bureau of customs.
>
> 3. That she can identify the documents attached in the Judicial Affidavit subject to the following qualifications:
>
> > (1) That the witness has no personal knowledge as to who supply the information contained in the Single Administrative Document or SAD as attached in the Judicial Affidavit and;
> >
> > (2) She did not see the accused, both accused, actually and personally entered the corresponding User names and password as mentioned in the Judicial Affidavit."[30]

In the same hearing, Prosecutor Karla T. Cabel manifested that the "witness confirms that she has no personal knowledge as to the logging in

[29] Minutes of Hearing dated September 18, 2013, Docket (Vol. I), p. 355
[30] Transcript of Stenographic Notes taken during the hearing held on September 18, 2013, pp. 3-4.

the E2M as well as to who personally supply the information with the E2M"[31]

Ms. Junichelle C. Hababag

Similarly, the presentation of Ms. Junichelle C. Hababag, prosecution's fifth witness, was dispensed in the hearing[32] held on October 16, 2013, after the defense counsel manifested its willingness "to stipulate on the nature as to the fact that the witness" is the Customs Operation Officer assigned as Evaluator of the ICARE or Interim Customs Accreditation Registration Unit Office of the BOC; that she can testify on the process of accreditation of importers and licensed customs brokers with the Bureau of Customs; that Orza Marketing is owned by accused Oreza and that the said accused is "duly accredited as Importer with the Interim Customs Accreditation Registration Office of the Bureau of Customs for the year 2011, as per records of ICARE"; and that per ICARE records, accused Sarmiento is the "duly accredited as Broker with the Bureau of Customs for the year 2011."[33]

Ms. Rosila F. Egmilan

When the last witness for the prosecution, Ms. Rosila F. Egmilan, was presented, in the hearing[34] held on December 2, 2013, the defense manifested its willingness to stipulate that the witness is the Division Head of the Business Registration and Licensing of the Department of Trade and Industry, National Capital Region; that the witness can identify the documents attached in her Judicial Affidavit such as the Certificate of Business Name Registration for the business name ORZA Marketing and Business Name Application Form For Sole Proprietor submitted by Accused Oreza; that the witness certified the said documents subject to the following qualifications: (i) that the witness has no personal knowledge as to the filing of the Import Entry Documents in the Bureau of Customs; (ii) that she has no personal knowledge as to who supplied the information and the documents in the Import Entry; and, (iii) that she has no further information as to the alleged importation allegedly made by the accused. The prosecution agreed to stipulate on the foregoing qualifications.[35]

---

[31] Ibid, p. 5.
[32] Minutes of the Hearing dated October 16, 2013, Docket (Vol. I), p. 364
[33] Transcript of Stenographic Notes taken during the hearing held on October 16, 2013, pp. 4-6.
[34] Docket (Vol. I), p. 387.
[35] Transcript of Stenographic Notes taken during the hearing held on December 2, 2013, pp. 3-4.

On December 12, 2013, the prosecution filed its Formal Offer of Evidence,[36] and rested its case with the admission of its documentary evidence in a Resolution[37] promulgated on February 5, 2014.

THE EVIDENCE PRESENTED BY THE DEFENSE

Mr. Manuel L. Sarmiento

Mr. Manuel Sarmiento, the first witness of the defense, testified, by way of Judicial Affidavit,[38] that he put up the Manuel L. Sarmiento Brokerage which is engaged in customs brokerage. He explained that, whenever a client hires their services to process their importations, his office "will prepare a letter-request for the purchase of IEIRD documents addressed to the Stamps and Accountable Forms Unit of the Bureau of Customs" and pay the corresponding fees for the said forms and stamps. Then, the IEIRD will be released to the requesting party. He also testified that he learned about the charges filed against him through a report in a television station.

He claimed that his name and his customs brokerage are being used by unscrupulous individuals who are engaged in illegal importation of goods or articles. According to him, he did not purchase the said IERDs and that the signatures appearing above the printed name Manuel L. Sarmiento on the said IEIRDs are not his. To prove the same, he presented several Identification Cards bearing his alleged true and genuine signature, i.e., Nagkakaisang Samahan ng Nakakatanda ng Malanday; Senior Citizen Identification Cards issued by the City of Valenzuela; and BIR Tax Identification Card.

He further testified that his lawyer wrote a letter addressed to the Chief, Cash Division, Stamps and Accountable Forms of the BOC requesting for a certification whether the subject IEIRDs were issued in his name or to the Manuel L. Sarmiento Customs Brokerage. He said that Engr. Ricardo R. Belmonte, the District Collector of Customs at Manila International Container Port, sent a reply to his letter stating therein that the said IEIRDs were purchased by Customs Broker Winston B. Gagabo-an of the Winston Gagabo-an Customs Brokerage and not by him or by Manuel L. Sarmiento Customs Brokerage. He also testified that there was no notice given to him about the 100% examination on the shipments contained in the subject container vans. He also alleged that he did not know Mr. Sonny Sabater. The latter cannot also be his representative since he did not request for the issuance nor secure any Customs Access Pass from the Pass Control Unit of

[36] Docket (Vol. I), pp. 394-432.
[37] Ibid, p. 449.
[38] Id, pp. 454-469.

the Bureau of Customs for other person who would act as his representative or of his brokerage. He, likewise, claimed that he handles personally the processing of importation documents before the BOC. To prove that Mr. Sabater is not connected to him nor to his brokerage, he presented a letter issued by Pass Control Unit, through Deputy District Commander Lt. Elvis R. Caluya, stating that for the "years 2012 and 2013, Mr. Sonny Sabater acted as the duly authorized representative of Customs Broker Apolonio G. Soro and Chester E. Manaluz, respectively". However, he claimed that for the year 2011, said office "cannot issue a certification as to whether Mr. Sabater was a duly authorized representative of any Customs Broker or Brokerage Firm as the hard drive of their computer, where the records are stored, broke down beyond repair."

Mr. Sarmiento admitted that he is registered with the Electronic to Mobile (E2M) System of the BOC. He explained that, in order to access the same, they are provided with usernames and passwords. He said that he cannot remember anymore his username and password. He claimed, however, that there were instances that even without using his username and password, the E2M profile can be accessed or opened by just using his Tax Identification Numbers. He also claimed that he did not receive any Subpoena with respect to the preliminary investigation conducted in these cases.

On cross-examination[39], Mr. Sarmiento testified that he can access the E2M systems even without entering his username and password but by merely giving his TIN number to the logger. He insisted that he has no knowledge on the subject shipments. He admitted that he did not present other customs entries showing his signature. He also testified that he did not submit his signature to a handwriting expert nor ask the NBI to ascertain if the signatures appearing on the IEIRDs are forged. He admitted that he did not file a complaint with the DOJ as regards the alleged forged documents nor inform the BOC of the same.

Mr. Rolando Peralta Oreza

Mr. Rolando Peralta Oreza, the second witness for the defense, testified, by way of Judicial Affidavit[40], that he is an accredited importer with the BOC and that his business is registered with the Department of Trade and Industry. He testified that he lost his copy of Certificate of Accreditation issued by the BOC. He said that as an importer, he is only allowed to import household wares and furniture items. He claimed that he

[39] Transcript of Stenographic Notes taken during the hearing held on March 19, 2014, pp. 13-52.
[40] Docket (Vol. I), pp. 490- 501.

was shocked and surprised that there were charges filed against him considering that he did not import or authorize the importation of ASUS laptops covered by IEIRD nos. 116945884 and 116946146. He also testified that the signatures appearing above the printed name Orza Marketing are not his. He, likewise, stated that the written name "ORLADO OREZA" appearing in IEIRD No. 116946146 does not belong to him since he is Rolando P. Oreza. In order to prove the same, he presented the following documents bearing his true and real signature: Tax Identification Card issued by the Bureau of Internal Revenue on November 13, 2009; Barangay Certification issued on October 13, 2010; copy of the Business Name Application Form, which he filed with the Department of Trade and Industry; and, his Application for Registration with the Bureau of Customs to secure his accreditation as an importer. He stated that he is not aware of the 100% examination conducted on the subject shipments. He claimed that he did not know Mr. Sonny Sabater.

On cross-examination[41], accused Oreza cannot remember the exact date as to when he executed his Judicial Affidavit; all that he can remember is that he executed it in year 2014 at Contado Law Office, near Manila Doctors Clinic. He said that it was Atty. Eric Opriasa who assisted him in executing the same. He further testified, among others, that in June 2011, he lost his Certificate of Accreditation in Bayanan, Muntinlupa; that he did not apply for a re-issuance of his Certificate of Accreditation; that he did not file any formal complaint when he learned that his signature was forged by somebody else; and that, he did not present himself to a handwriting expert.

Mr. Cristopher L. Patricio and Mr. Elvis R. Caluya

In the hearing[42] held on July 7, 2014, the presentation of the defense's last two (2) witnesses: (i) Mr. Christopher L. Patricio, Acting Collecting Officer, Forms and Stamps Unit, Administrative Division, Manila International Container Port Collecting District II-B, Bureau of Customs, Port Area, Manila; and, (ii) Lt. Elvis R. Caluya, Deputy District Commander, Chief, Pass Control Unit, Enforcement and Security Service, Port of Manila District Office, Bureau of Customs, Port Area, Manila, was dispensed with after the prosecution and the defense had stipulated on the supposed testimony of the said witnesses. The prosecution stipulated on the following: that Mr. Christopher Patricio is the Acting Collecting Officer, Forms and Stamps Unit, Administrative Division, Manila International Container Port, Bureau of Customs; and, the existence of the Certification dated April 22, 2013. The defense, on the other hand, stipulated that the Certification was issued by

---

[41] Transcript of Stenographic Notes taken during the hearing held April 30, 2014, pp. 10-66.
[42] Minutes of the Hearing dated July 7, 2014, Docket (Vol. I), p. 546.

the Office of Mr. Christopher Patricio based on available records only and not with his personal knowledge; and, that Mr. Patricio has no personal knowledge that Mr. Winston Cagabuan actually used the entries which he said had been purchased in the Certification.

The prosecution also stipulated that Mr. Elvis R. Caluya issued a Certification dated March 4, 2014 while the defense stipulated that the issuing officer, Lt. Elvis Caluya of the BOC issued the same based on the available records only and not based on his personal knowledge; and, that there is no saying in the certification that Sonny Sabater represents someone in the year 2011.[43]

Thereafter, the Formal Offer of Evidence (For the Defense) was filed on July 22, 2014. The Court admitted all the exhibits presented by the defense in a Resolution[44] dated September 8, 2014.

Thereafter, the case was submitted for decision taking into consideration the Memorandum (for the Accused) and prosecution's Memorandum filed on October 20, 2014 and October 13, 2014, respectively.

It is a basic rule in evidence that the burden of proof lies on the party who makes the allegations – *et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit* (The proof lies upon him who affirms, not upon him who denies since, by nature of things, he who denies a fact cannot produce any proof).[45]

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense of which the accused is charged with; and, and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to an acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[46]

After analyzing all the evidence on record, both testimonial and documentary, the Court found out that no one from the prosecution witnesses positively identified both accused as the doer of the crimes

---

[43] Transcript of Stenographic Notes taken during the hearing held on July 7, 2014, pp. 4-10.
[44] Docket (Vol. II), pp. 630-631.
[45] Ching vs. Nicdao, G.R. No. 141181, April 27, 2007.
[46] Darvin vs. Hon. Court of Appeals, et al., G.R. No. 125044, July 13, 1998, 292 SCRA 534.

charged. None of them testified on the due execution of the said Import Entry and Internal Revenue Declarations (IEIRDs) and as well as to the genuineness of the signatures therein. In addition, no other documents were even presented for comparison of the signature to confront both accused.

Another thing, the Court has not failed to notice the material inconsistencies in the prosecution witnesses' testimonies. For one, prosecution witness Mr. Jonathan Rosete testified that he was instructed to witness the 100% examination of shipments contained in Container Van Nos. SITU4977946 and BMOU2628087. But during the actual examination, they took out only one (1) package from Container Van No. SITU4977946 which contained fifty (50) cartons more or less; when they took the topmost carton and opened it, they found a red laptop with ASUS markings; and, after everybody had seen the contents of the said carton, they put back the carton to the package and returned the package to the container. Thereafter, they sealed the container. According to him, the same procedure was done in Container Van No. BMOU2628087. But when the prosecution witnesses, namely, Mr. Roldan Reyes and Mr. Daniel Nalus testified in Court, they said that all the other packages were opened by them and not only one package was opened in each container as testified to by Mr. Jonathan Rosete.

Further, records reveal that the prosecution did not even bother to reconcile or explain the said conflicting statements of its witnesses. Jurisprudence provides that irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the guilt of the accused and to the crime charged.[47] Had the prosecution witnesses really been honest and accurate in their narration, there is no reason why they should differ in their testimony.

Furthermore, the Court observes that prosecution witness Mr. Rosete based his evidence to charge both accused on the basis of words like PRESUMPTION, ASSUME and ESTIMATE. To cite a few, he stated in Court that he PRESUMED Mr. Sonny Sabater as the representative of accused Manuel Sarmiento. He did not even verify nor talk personally to Mr. Sabater. He further admitted in Court that he merely ASSUMED that all the cartons contained in the packages are all ASUS laptop so they did not open the other cartons contained in the container and that one package contained more or less fifty (50) cartons as his ESTIMATE. It bears stressing

---

[47] People of the Philippines vs. Yolanda Gesmundo, G.R. No. 89373, March 9, 1993, citing the case of People of the Philippines vs. Romeo F. Remorosa, G.R. No. 81768, August 7, 1991.

that a conviction for a criminal offense must be based on clear and positive evidence and not on mere assumptions.[48]

Everything considered, the Court gives more weight and credibility to the defense's version of the incident than that of the prosecution.

The Court finds uncontroverted accused Sarmiento's claim that he did not request nor purchase the said IEIRDs as clearly shown in the April 22, 2013 Certification[49] issued by Christopher L. Patricio (attached in the reply letter[50] issued by Engr. Ricardo R. Belmonte, the District Collector of Customs at Manila International Container Port), which is hereby quoted for ready reference:

> "In reference to the letters both dated March 1, 2013 of Atty. Allan C. Contado, CPA, and Mr. Eric O. Oprasa of Contado & Associates x x x, requesting for a certification whether or not Import Entry revenue Declaration (IEIRD) with Serial Nos. 116946146 and 116945884 both of series 2011 were issued to their client, Mr. Manuel Lancero Sarmiento, a Licensed Customs Broker. Verification from our records shows that the said IEIRD forms with the same Serial Numbers were purchased by Mr. Winston B. Gagabo-an, License Customs Broker. x x x"

The foregoing Certification tends to support accused Sarmiento's claim that he did not cause nor authorize the importation of the alleged smuggled Asus laptops since there was no request coming from his or from his brokerage for the issuance of the said IEIRDs. Hence, there is really a possibility that someone else might be just using his name or the name of his brokerage to facilitate the importation of the said smuggled laptops.

Second, accused Sarmiento and Oreza would not have requested[51] the Pass Control Section of the Enforcement and Security Service of the Bureau of Customs, South Harbor, Manila, to issue a certification showing whether or not Mr. Sonny Sabater is the duly authorized or accredited representative of the accused before the Bureau of Customs; and, whether there was an Access Pass or Identification Card issued to the said person in the year 2011, if they are confident that Mr. Sabater is not connected to them.

---

[48] Fernando S. Dizon vs. People of the Philippines, G.R. No. 144026, June 15, 2006, citing the case of Gaerlan v. Court of Appeals, G.R. No. 57876, November 6, 1989.
[49] Exhibit "6".
[50] Exhibit "5".
[51] Exhibit "17".

In view thereof, the prosecution failed to prove the alleged offenses committed by both accused. The verdict is therefore clear.

It is an unbending principle in this jurisdiction that in every criminal prosecution, the accused shall be presumed innocent until the contrary is proved.[52] Having fallen short of the quantum of proof required to establish the accused's guilt with moral certainty, the prosecution's case must fail. Only if the Court could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account.[53]

WHEREFORE, judgment is hereby rendered finding that the prosecution has failed to establish the guilt of both accused beyond reasonable doubt. Accordingly, they are hereby acquitted with cost de officio.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[52] People of the Philippines vs. Anastacio Boneoy Bataller et al., G.R. No. L-74522, June 30, 1989.
[53] The People of the Philippines vs. Capt. Juvenal Zamora, et al., G.R. No. L-34090, November 26, 1973, citing People vs. Dramayo, L-21325, October 29, 1971

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice