REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-286
For: Violation of Sec. 3602 (Various Fraudulent Practices) in rel. to Sec. 2002 par. (b) of the TCCP and Sec. 44 of CAO No. 2-91

- versus-

ANGELITO T. PEREZ,
FRANCISCO B. ANIAG, JR.,
LOURDES DE LEON,
SUFRONIO DE LUNA,
ROWENA VIRAY,
JERRY L. ACCAD, and
JUVY ESTRADA,
Accused.

Members:
Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 05 2016 1:55 p.m.

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RESOLUTION

For resolution are the following:

1. Accused Angelito T. Perez's *Demurrer to Evidence* filed on February 5, 2016;

2. Accused Lourdes de Leon's *Demurrer to Evidence* filed on February 15, 2016; and

3. Accused Francisco B. Aniag, Jr.'s *Demurrer to Evidence* filed on March 23, 2016.

Prosecution filed its *Consolidated Opposition/Comments (Re: To Demurrer to Evidence filed by accused Perez, De Leon & Aniag, Jr.)* on March 2, 2016.

The accused are charged for violation of Section 3602 (Various Fraudulent Practices), in relation to Section 2002, paragraph (b) of the Tariff and Customs Code of the Philippines (TCCP) and in relation to Section 44 of Customs Administrative Order (CAO) No. 2-91, under an information dated May 22, 2012, which reads:

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **ANGELITO T, PEREZ, FRANCISCO B. ANIAG, JR., LOURDES DE LEON, SUFRONIO DE LUNA, ROWENA VIRAY, JUVY ESTRADA, JERRY L. ACCAD and several JOHN DOES and JANE DOES**, whose true names and whereabouts are unknown, of the criminal offense of violation of Section 3602 *(Various Fraudulent Practices)*, in relation to Section 2002, paragraph (b) of the Tariff and Customs Code of the Philippines and in relation to Section 44 of Customs Administrative Order (CAO) No. 2-91, committed as follows:

'That for the periods comprising May, 2006 until January, 2008, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, and with evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into the country, did then and there willfully, unlawfully and knowingly fraudulently import or bring into the Philippines, several conditionally tax and duty free merchandise consisting of yarn, fabrics/textiles and other garments accessories declared in **ONE HUNDRED FIFTY EIGHT (158)** import entries for warehousing purposes and consigned to Filipino Hand Common Bonded Corporation, a duly licensed customs common bonded manufacturing warehouse operator with business address at Barangay Sto. Tomas, By-Pass Road, Sta. Maria Bulacan for the account of its members Sports and Swimwear Manufacturing Inc., Southern Atlantic Philippines and JDAR Garments Corporation, to wit:

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but once transferred or conveyed thereto, the accused failed to use the same in the manufacture of articles for exportation within the allowable period of nine (9) months extendible to another three (3) months from the date of such transfer or conveyance into the said bonded manufacturing warehouse Filhand thereby causing damage and prejudice to the government by their failure to pay the corresponding duties and taxes in the amount of **FIFTY SEVEN MILLION EIGHT HUNDRED EIGHTY FOUR THOUSAND EIGHT HUNDRED TWO AND NINETY FOUR CENTAVOS** (Php57,884,802.94), liquidate its accounts and surrender the remaining raw materials to the Bureau of Customs (BOC), in violation of Section 44 of Customs Administrative Order (CAO) No. 2-91 and other pertinent customs law, rules and regulations.'

CONTRARY TO LAW."

During trial, the prosecution presented Ramon S. Manahan, former Chief of the Bonds Division of the Bureau of Customs (BOC), Mr. Rando R. Ochava, former Acting Account Officer of Customs Bonded Warehouses operating in the port of Manila, handling the account of Filipino Hand Common Bonded Warehouse Corporation (Filhand), Atty. Jemina Sy-

Flores, formerly assigned as Run After the Smugglers (RATS) lawyer and investigator at the BOC, Atty. Florante Macarilay, former Acting Chief of the Warehousing Documentation and Records Division and Atty. Lyndon F. De Los Santos, formerly assigned in the Office of Deputy Commissioner Peter Manzano of the Revenue Collection and Monitoring Group and Head, RATS Group tasked, among others, to act as Records Custodian for some RATS cases, as witnesses to establish its case against the accused.

In the Resolutions dated August 26, 2015 and December 10, 2015, the Court admitted the prosecution's documentary evidence except Exhibits "G to G-1" to "FFFFFFF to FFFFFFF-1" (Warehousing Entries) for failure to present the originals for comparison and some of these exhibits also failed to correspond with the description in the formal offer of documentary evidence.

With leave of court[1], accused Perez, de Leon and Aniag, Jr. filed their respective demurrers to evidence.

Accused Perez argues that considering the inadmissibility of the mere photocopies of the import entries purportedly Exhibits "G" to "FFFFFFF" with sub-markings, which comprise the evidence in chief of the prosecution to prove the alleged crime in this case, it is submitted that prosecution has utterly failed to establish and prove the material allegations in the information. By failing to present the originals of the 158 import entries subject matter of the charges herein, the prosecution failed to hurdle the onus of proving that it is the accused who is guilty beyond reasonable doubt of criminally violating Section 3602 of the TCCP in relation to the other laws and regulations cited in the information. Likewise, the prosecution failed to establish that the accused, as a responsible employee of an operator of a bonded warehouse, is the one liable to payment of taxes and duties due on the subject importations under Section 1902 of the TCCP.

Moreover, the excluded documents were offered as part of the testimonies of Rando Ochava and Atty. Jemina Sy-Flores. Accused maintains that said witnesses are incompetent to testify on the 158 import entries as none of them ever saw the originals thereof. Therefore, their testimonies apart from being hearsay evidence neither establish nor corroborate any material allegation in the Information.

On her part, accused de Leon asserts that several documentary exhibits formally offered by the prosecution were denied admission by the Court particularly with respect to the alleged photocopies of 158 import entries conditionally marked as Exhibits "G" to "G-1" to "FFFFFFF" to "FFFFFFF-1" by the prosecution. It appears therefore from the record of the instant case that the prosecution has no single evidence to prove the guilt of any one of the accused beyond reasonable doubt of the crime alleged against

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[1] Resolution dated January 21, 2016, docket, pp. 3039-3040.

them in the information. Accused de Leon contends that surmises and conjectures have no place in this jurisdiction and can never be a basis to convict an accused for a crime imputed against him or her. There must be a clear and convincing evidence or that degree of proof which produces conviction in an unprejudiced mind for accused de Leon to be convicted of the crime charged against her in the instant case. However, the prosecution miserably failed to present any evidence against accused de Leon in support of its accusation against her.

In addition, accused de Leon points out that during the presentation of the prosecution's evidence not a single witness of the prosecution pointed to and positively identified accused de Leon as one of the accused in the instant case.

Accused Aniag, Jr. stresses that considering the nature of the offense charged against all the accused, it becomes absolutely necessary and imperative that the warehousing receipts be clearly proven in Court as they are the most vital pieces of evidence needed if the present case against the accused is to be successfully prosecuted. This is because there can be no more competent and reliable evidence to establish as a fact the importation of raw materials, the time when the liquidation period began and ended, and the true and correct value of the imported materials upon which the amount of taxes sought by the BOC can be computed, other than the said warehousing receipts.

However, the photocopies of the Warehousing Entries marked and offered in evidence by the prosecution were not admitted as evidence by the Court for failure by the prosecution to present the original copies thereof for comparison. Among those denied admission were the Warehouse Entries (Exhibits "UUUUUU", "UUUUUU-1", "VVVVVV", "VVVVVV-1", "WWWWWW", "WWWWWW-1", "XXXXXX", "XXXXXX-1", "YYYYYY", "YYYYYY-1", "ZZZZZZ" to "ZZZZZZ-1" and "AAAAAAA" pertaining to Sports & Swimwear Manufacturing, Inc. of which accused Aniag, Jr. was an officer during the time material to the present case.

In addition, the prosecution failed to present any evidence, testimonial or documentary, which proves or tends to even remotely prove that accused Aniag, Jr. conspired with any of the other accused in violating Section 3602 of the TCCP.

In its opposition/comment, the prosecution contends that it was able establish by clear and convincing evidence all the elements of the offense as defined and penalized under Section 3602 of the TCCP in relation to Section 2002, paragraph (b) of the TCCP and in further relation to Section 44 of CAO No. 2-91.

First, the accused as duly licensed bonded warehouse operators resorted to conditionally tax free importations of raw materials and duty free merchandise consisting of yarn, fabrics/textiles and other garments accessories with a view to manufacture finished products for export. Secondly, the accused in grand conspiracy with one another made entries of the alleged imported articles for warehousing purposes through the filing of 158 Warehouse Entries all consigned to Filhand or its member bonded warehouses. Thirdly, the accused failed to export finished products or return the unused raw materials to the BOC within the allowable period of nine (9) months extendible to another three (3) months from the date of such transfer or conveyance into the said bonded manufacturing warehouses. Fourthly, the damage and prejudice was caused to the government by the accused who are officers and operators of manufacturing bonded warehouses when they failed to pay the corresponding duties and taxes in the amount of Php57,884,802.94, liquidate its accounts and surrender the remaining raw materials to the BOC. Such acts clearly establish the deliberate and premeditated fraudulent design employed by Filhand and its member warehouses in intentionally evading payment of duties and taxes to the government.

The Court shall now resolve the demurrers to evidence.

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[2]

In this case, accused are charged for violation of Section 3602, in relation to Section 2002, paragraph (b) of the TCCP, as amended, in relation to Section 44 of CAO No. 2-91, which are quoted below:

> "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 measures 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 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

[2] *Gutib vs. Court of Appeals*, G.R. No. 131209, August 13, 1999.

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 offense, be punished in accordance with the penalties prescribed in the preceding section.

Sec. 2002. *Exemption from Duty.-*

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b. Any imported material used in the manufacture of such articles, and any package, covering, brand and label used in putting up the same may, under the regulation prescribed by the Commissioner, with the approval of the Secretary of Finance, be conveyed without the payment of duty into any bonded manufacturing warehouse, and imported articles may, under the aforesaid regulations, be transferred without the payment of duty from any bonded warehouse into any bonded manufacturing warehouse, or to duly accredited sub-contractors of manufacturers who shall process the same into finished products for exports and deliver such finished products back to the bonded manufacturing warehouse, therefrom to be exported; but this privilege shall not be held to apply to implements, machinery or apparatus to be used in the construction or repair of any bonded manufacturing warehouse: Provided, however, That the materials transferred or conveyed into any bonded manufacturing warehouse shall be used in the manufacture of articles for exportation within a period of nine (9) months from date of such transfer or conveyance into the bonded manufacturing warehouse, which period may for sufficient reasons be further extended for not more then three (3) months by the Commissioner. Materials not used in the manufacture of articles for exportation within the prescribed period shall pay the corresponding duties: Provided, further, That the operation of embroidery and apparel firms shall continue to be governed by Republic Act Numbered Thirty-one hundred and thirty–seven.

Section 44. Export products which are manufactured in customs bonded manufacturing warehouses or are repacked in a multinational regional warehouse shall be exported within the prescribed period; otherwise the operation shall pay duties, taxes and other charges for articles not exported, or the remaining materials shall be surrendered to the Bureau of Customs."

From the foregoing and based on the information, the prosecution must establish, among others, that from May 2006 to January 2008, accused conspired and confederated with each other in fraudulently importing into the Philippines several conditionally tax and duty free merchandise consisting of yarn, fabrics/textiles and other garments accessories declared in 158 import entries for warehousing purposes. Hence, it is crucial that the originals of these warehouse entries be presented in evidence and its contents be examined such that the Court may verify the material allegations (such as the fact of importation, the consignee/importer, the period for liquidation and the amount of unpaid duties and taxes) in the information.

However, as pointed out by the accused, the Warehousing Entries were denied admission because the originals were not presented. Section 3, Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of the document, no evidence shall be admissible other than the original documents itself except to certain cases specifically enumerated therein. Although the presentation of secondary evidence is admissible provided the requirements under Section 5, Rule 130 of the Rules of Court are complied with, the prosecution failed to do so. It bears stressing that not one of the prosecution's witnesses testified that they have even seen the originals of the Warehousing Entries. Moreover, even assuming that the Warehousing Entries are public documents, the prosecution failed to present the certified true copy of the same issue by the public officer in custody pursuant to Section 7, Rule 130 of the Rules of Court. The Court shall not elaborate on the excluded evidence as the same has already been thoroughly discussed in the Court's Resolution[3] dated December 10, 2015.

Considering that all the Warehousing Entries were denied admission as evidence and the prosecution having failed to competently present secondary evidence, the Court finds that the remaining admitted evidence of the prosecution is insufficient to warrant the conviction of the accused.

In view of the foregoing, the Court deems it no longer necessary to discuss the other issues raised, such as the nature and extent of the participation of the accused in the commission of the crime.

WHEREFORE, premises considered, the Demurrers to Evidence are **GRANTED**. Accordingly, accused Angelito T. Perez, Lourdes de Leon and Francisco B. Aniag, Jr. are **ACQUITTED** of the crime charged.

It appearing that the Court has not acquired jurisdiction over the remaining accused, namely: Sufronio de Luna, Rowena Viray, Jerry L. Accad and Juvy Estrada; and in order that this case may not remain pending in the Court's docket for an indefinite period of time, the abovementioned case is hereby **ARCHIVED,** without prejudice to its revival immediately upon the apprehension of any of the above-named remaining accused.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[3] Docket, pp. 3015-3026.