REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

FRANCISCO BILLONES y BEDIONES, LEANDRO ANTONIO P. TALAUE and HANNAH AILEEN LIM FERNANDEZ,
Accused.

CTA CRIM. CASE NO. O-517

For: Violation of Section 3601, in relation to Section 2530, pars. f and l (3), (4) and (5), of the Tariff and Customs Code of the Phils., in further relation to Section (B) BPI Plant Quarantine Circular No. 02, Series of 1996; Section 2, Rule II, BPI Quarantine Administrative Order No. 1, Series of 1981; and Dept. of Agriculture Administrative Order No. 4, Series of 1998, as amended by Administrative Order No. 18, Series of 2000.

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
APR 05 2018, 2:45 pm

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RESOLUTION

For this Court's resolution are the **Demurrer to Evidence (with Leave of Court)**, filed by accused Francisco Billones (Billones) on December 18, 2017 and **Demurrer to Evidence**, filed by accused Leandro Antonio P. Talaue (Talaue) on January 8, 2018 through registered mail and received by the Court on January 16, 2018, with the prosecution's **Comment/Opposition (To**

Demurrers to Evidence of Accused Talaue and Billones), filed on January 18, 2018 and **Reply**, filed by accused Talaue on February 14, 2018.

In compliance with the Resolution dated July 8, 2015, the prosecution filed on July 23, 2015, an Amended Information dated July 16, 2015, against accused Francisco Billones y Bediones, Leandro Antonio P. Talaue and Hannah Aileen Lim Fernandez for unlawful importation, as defined and penalized under Section 3601, in relation to Section 2530 pars f and l (3), (4), and (5) of the Tariff and Customs Code of the Philippines (TCCP) [P.D. 1464], as amended, in further relation to Section (B) Bureau of Plant Industry (BPI) Quarantine Administrative Order No. 02, Series of 1996; Section 2, Rule II, BPI Quarantine Administrative Order No. 1, Series of 1981; and Department of Agriculture Administrative Order No. 4, Series of 1998, as amended by Administrative Order No. 18, Series of 2000, allegedly committed as follows:

> That on April 13, 2008 or thereabout, in the Port of Manila (POM), City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and fraudulently import or bring into the Philippines, or assist in so doing, 3x40' container vans containing 405 bags of garlic and 7,590 cartons of ginger from Qingdao, China, approximately valued at Ten Million One Hundred Eight Thousand Eight Hundred Pesos (P10,108,800.00) and with corresponding **principal** duties and taxes, **exclusive of charges and penalties**, amounting to ONE MILLION EIGHTY-NINE THOUSAND EIGHT HUNDRED FIFTY ONE PESOS and 09/100 (P1,089,851.09), contrary to law; the said shipment not being accompanied by sanitary/phytosanitary/health certificate from the country of origin, and the said accused without first securing a permit to import and/or plant quarantine clearance from the Bureau of Plant Industry and/or the Department of Agriculture, as required under Section (B) BPI Quarantine Circular No. 02, Series of 1996, Section 2, Rule II, BPI Quarantine Administrative Order No. 4, Series of 1998, as amended by Administrative Order No. 18, Series of 2000, the said agricultural products having been declared as highly restricted and their importation is highly regulated,

thereby causing damage and prejudice to the Government.

CONTRARY TO LAW.[1]

On September 21, 2015[2] and February 22, 2016[3], respectively, accused Billones and Talaue voluntarily appeared, and submitted themselves to the jurisdiction of this Court by posting the required bail bond for their provisional liberty.

During his arraignment on October 21, 2015, accused Billones, assisted by his counsel de parte, pleaded "not guilty" to the crime charged.[4] Whereas accused Talaue, assisted by his counsel de parte, manifested during his arraignment, that he is not entering any plea, hence, the Court entered a plea of "not guilty" on his behalf.[5]

During the Pre-Trial Conference held on November 16, 2016, the parties agreed that the lone issue to be resolved by the Court is "Whether or not accused, Francisco Billones and Leandro Antonio P. Talaue are guilty beyond reasonable doubt for violation of Section 3601, in relation to Section 2530, pars. f and l (3), (4) and (5) of the TCCP (P.D. 1464), as amended, in further relation to Section (B) BPI Quarantine Administrative Order No. 02, Series of 1996; Section 2, Rule II, BPI Quarantine Administrative Order No. 1, Series of 1981; and Department of Agriculture Administrative Order No. 4, Series of 1998, as amended by Administrative Order No. 18, Series of 2000, as stated in the Amended Information dated July 16, 2015."[6]

The prosecution presented the following witnesses: (1) Atty. Reynaldo N. Yacat[7]; (2) Bienvenido Y. Rubio[8]; and (3) Stanley N. Villavicencio[9], and formally offered its documentary exhibits[10], *viz:*

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1 Amended Information, docket, vol. I, pp. 102-103.
2 Resolution dated September 22, 2015, docket, vol. I, pp. 352-353.
3 Resolution dated February 23, 2016, docket, vol. II, pp. 618-619.
4 Certificate of Arraignment, docket, vol. I, pp. 371-372; Resolution dated October 21, 2015, docket, vol. I, pp. 386-387.
5 Order dated August 10, 2016, docket, vol. II, pp. 734-735.
6 Minutes of the Hearing dated November 16, 2016, docket, vol. II, pp. 793-797.
7 Minutes of the Hearing dated June 14, 2017 and July 12, 2017; Exhibit "P-62".
8 Minutes of the Hearing dated June 14, 2017 and July 12, 2017; Exhibit "P-63".
9 Minutes of the Hearing dated July 12, 2017.
10 Formal Offer of Evidence filed on September 5, 2017 through registered mail and received by the Court on September 11, 2017.

Exhibit	Documents/Particulars
"P" to "P-4"	Bureau of Customs (BOC) Letter Referral for Preliminary Investigation, dated 18 July 2008
"P-5" to "P-16"	Complaint-Affidavit of Atty. Reynaldo Yacat of the Run After the Smugglers (RATS), Bureau of Customs (BOC)
"P-29"	Affidavit of Computation of Taxes and Duties of Stanley N. Villavicencio
"P-30"	Detailed Copy of the Computation of Taxes and Duties of Stanley N. Villavicencio
"P-31" to "P-31-3"	General Information Sheet (GIS) of Rubills International, Inc. for the year 2002, dated 10 January 2002
"P-46"	Electronic Bill of Lading No. SYQDPSHS8146014
"P-47"	Alert Order No. A/CI/20080416-102, dated 16 April 2008, issued by Director Jairus Paguntalan of Customs Intelligence Investigation Service (CIIS)
"P-48"	Justification Sheet Attached to the Alert Order
"P-49"	Joint Affidavit of IO1 Bienvenido Rubio, SAII Aramis Pernia, IA1 Vincent Mariñas, SA1 Carmelita Ocaya, SA1 JJ Apollo Montemayor
"P-50"	Officers on Case Report CMO No. 92-91 dated 06 May 2008, consisting of two (2) pages
"P-51"	Details of Apprehension
"P-52"	Two photographs of the apprehended shipment of Rubills International, Inc.
"P-53"	Warrant of Seizure and Detention, Seizure Identification No. 2008-081, issued by District Collector Horacio Suansing, Jr. to Rubills International, Inc., claimant
"P-54"	Order of Forfeiture in Seizure Identification No. 2008-081, dated 09 May 2008, consisting of two (2) pages
"P-55"	Letter of Joel S. Rudinas, Bureau of Plant Industry (BPI) Director, dated 15 May 2008
"P-59"	Inward Foreign Manifest of Rubills International, Inc.
"P-60"	Department of Trade and Industry (DTI) Certificate of Business Name Registration issued in favor of Hannah Aileen Lim y Fernandez as Sole Proprietor of FilHaus Enterprises
"P-62"	Judicial Affidavit of Witness Atty. Reynaldo N. Yacat
"P-63"	Judicial Affidavit of Witness Bienvenido Y. Rubio

Except for Exhibits "P-46", "P-48", "P-51", "P-55" and "P-59", the Court admitted the prosecution's evidence[11].

On December 11, 2017, accused Talaue filed his Motion for Leave of Court to File Demurrer to Evidence, which the Court granted in the Resolution dated December 20, 2017. The Demurrer to Evidence was filed on January 8, 2018 by registered mail.

Accused Billones filed his Motion for Leave of Court to Admit Demurrer to Evidence on December 18, 2018, which the Court granted in the Resolution dated January 4, 2018. Accordingly, the attached Demurrer to Evidence (With Leave of Court) was admitted.

The prosecution, on the other hand, filed a Comment/Opposition (To Demurrers to Evidence of Accused Talaue and Billones) on January 18, 2018. On February 14, 2018, accused Talaue filed a Reply.

According to accused Billones, the proseuction failed to present proof beyond reasonable doubt sufficient to overcome his presumption of innocence. Similarly, accused Talaue, prays for the dismissal of the case for insufficiency of evidence.

Both accused raised similar grounds in each of their demurrers to evidence.

First, both questioned the jurisdiction of this Court on the ground that the basis used by the prosecution's witness, Mr. Stanley Villavicencio, for his computation of the total value of the imported goods and the import duties due thereon were alleged market values of similar goods sourced from an unofficial website. Both accused argue that the prosecution failed to establish that such was the official standard of computation being used by the BOC in the assessment of tariff and customs duties. Essentially, the jurisdiction of this Court over this case was allegedly placed in uncertainty considering that the computed duties as stated in the information is just a little over the jurisdictional amount for criminal cases as set in A.M. No. 05-11-07-CTA. Thus, accused Talaue argues that slight inconsistencies from the official values adopted by the BOC and the unofficial source used by Mr. Villavicencio may affect the jurisdiction of this Court over the subject matter of this case.

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[11] Resolution dated December 1, 2017.

Second, accused Talaue cites the case of *Bureau of Customs vs. Devanadera*[12], saying that the BOC failed to prove with credible, competent and concrete evidence the crime of smuggling by failing to prove the fact of importation. Accused Talaue emphasizes that the fact of importation must first be proven with certainty, for without importation, the crime of smuggling under Section 3601 cannot be committed.

Both accused aver that with the non-admission of Exhibits "P-46" and "P-59", referring to the Bill of Lading and Inward Forward Manifest, respectively, the fact of importation was not established.

Thirdly, accused Talaue asserts that the prosecution failed to prove with credible and competent evidence the shipment's supposed lack of the required clearances, permits or certificates from concerned government agencies as alleged in the amended information. This is due to the fact that Exhibit "P-55", which pertains to the letter from Directory Joel S. Rudinas of the BPI, was likewise denied admission by this Court.

Lastly, both accused argue that the prosecution failed to prove their participation in the crime of smuggling.

Accused Talaue maintains that the prosecution failed to introduce evidence which points to him being a participant in the supposed importation, whether as the importer, shipper, consignee, representative, signatory or even as a mere agent. The only proof that the prosecution has is the General Information Sheet (GIS) of Rubills International Inc. (Rubills), filed with the Securities and Exchange Commission (SEC) in 2002, wherein, Talaue's name does not appear.

Accused Billones, on the other hand, claims that as of the time of the commission of the alleged crime, he is no longer connected with Rubills. The only evidence on record which have reference to him is the 2002 GIS of Rubills, which was filed several years before the alleged commission of the offense. In fact, the investigating prosecutor, during the preliminary investigation, did not include him in the charge for violation of smuggling on the ground that the ownership and operation of Rubills had already been transferred to accused Talaue when the subject importation took place.

[12] G.R. No. 193253, September 8, 2015.

Moreover, accused Billones highlighted the fact that he was acquitted in a similar case, CTA Crim. Case Nos. O-128 and O-129, where the Court found that the 2002 GIS of Rubills is insufficient to prove beyond reasonable doubt that the unlawful importation and fraudulent practices were committed by accused Billones in conspiracy with the other accused.

The prosecution, on the other hand, counters the above-mentioned arguments of the accused as follows:

> "5. Contrary to the allegations of accused Talaue, the prosecution has sufficiently shown that this Honorable Court possesses jurisdiction over the subject matter of this case.
>
> 6. Based on the Affidavit of Computation and Detailed Computation (Exhibits "P-29" and "P-30") of witness for the prosecution, Mr. Stanley Villavicencio, the principal amount of customs duties claimed by the Bureau of Customs is One Million Eighty-Nine Thousand Eight Hundred Fifty-One Pesos and Nine Centavos (P1,089,851.09) – an amount well above that required for this Court to assume jurisdiction.
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> 7. Accused Talaue, however, calls into question the method of valuation used to arrive at the basis for such amount by alleging that the prosecution failed to prove the customary, regular and official nature of Mr. Villavicencio's method of valuation. (Exhibits "P-29" and "P-30")
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> 8. Section 201 of the Tariff and Customs Code provides that dutiable value shall be computed as follows:
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> **Section 201.** *Basis of Dutiable Value.* Whenever an imported article is subject to an ad valorem rate of duty, the duty shall be assessed upon **the market value or price at which, at the time of exportation, the same, like or similar article is freely offered for sale in the principal markets of the exporting country for exportation to the Philippines**, in the usual wholesale quantities and in the ordinary course of trade (excluding internal

excise taxes to be remitted or rebated), plus ordinary expenses prior and incidental to the lading of such article on board the vessel or aircraft at the port of export (including taxes or duties, if any) and freight paid as well as insurance premium paid covering the transportation of such article to the port of entry in the Philippines.

When the value of the article cannot be ascertained in accordance with the preceding paragraph, the value shall be **the domestic wholesale market value or selling price of the same, like or similar imported article in the principal market of the Philippine on the date of exportation of the article under appraisement**, in the usual wholesale quantities and in the ordinary course of trade, minus the import duty and other taxes as well as a commission not exceeding six per centum if any has been paid or contracted to be paid on goods secured otherwise than by purchase, and profits not to exceed eight per centum on purchased goods, and all other expenses incidental to the delivery from the port of importation to the principal market in the Philippines. (Emphasis supplied)

9. Thus, the law provides that the value of an imported article subject to duty shall be set at the market value or selling price in the principal markets of the exporting country, failing which the domestic value or selling price will be used.

10. The exporting country in this case being China, Mr. Villavicencio testified in open court that he used the Alibaba.com website to determine the value of the articles in question.

11. Mr. Villavicencio testified in his capacity as Valuation and Classification Officer of the Bureau of Customs and therefore has in his favour a presumption of the regularity in the performance of official duties. Said presumption has not been overcome by clear and convincing evidence to the contrary.

12. Based on Rubills International Inc.'s (Rubills) General Information Sheet (GIS) for 2002 (Exhibits "P-31" to "P-31-3"), accused Billones was President and accused Talaue General Manager, of Rubills. The fact alone signifies knowledge and conspiracy on their part in receiving fraudulently imported shipment subject of this case.

13. In this regard, we must be mindful of the presumption that a thing once proved to exist continues as long as is usual with things of the nature. The accused have yet to rebut the presumption with clear and convincing evidence that, at the time of the commission of the crime charged, Rubills had either ceased to exist or the accused had ceased to hold the positions stated in said GIS.

14. Both accused Talaue and Billones emphasize the non-admission of a few pieces of evidence for the prosecution.

15. The fact remains, however, that a witness for the prosecution, Mr. Bienvenido Rubio, testified that, on May 2, 2008, pursuant to an Alert Order (Exhibit "P-47") issued by the Bureau of Customs, he personally witnessed a 100% examination of the shipment in question, which originated from China and was consigned to Rubills.

16. Mr. Rubio testified that said examination was done on three (3) container vans with Container Numbers GVCU7503410, GVCU7504090 and SYMU8002914.

17. After witnessing such examination, Mr. Rubio executed a Joint Affidavit narrating the circumstances behind the apprehension of the subject shipment (Exhibit "P-49").

18. Mr. Rubio likewise submitted Officer-on-Case Report CMO No. 92-91 dated May 6, 2008 to Mr. Jairus Paguntalan, Director of the Customs Intelligence and Investigation Service (Exhibit "P-50").

19. Mr. Rubio confirmed in the abovementioned Joint Affidavit and Officer-on-Case Report that the 100% examination of the subject shipment, which he personally witnessed, revealed that it was misdeclared as to quantity and description.

20. In particular, he clearly stated that the subject shipment was declared in the Inward Foreign Manifest as 3x40' containers containing 3,900 bags of garlic but was instead revealed to contain only 405 bags of garlic and 7,590 cartons of ginger. The positioning of the garlic and ginger, with the garlic placed in the front portion of the containers to conceal the ginger behind it, is blatantly indicative of fraud.

21. Mr. Rubio's testimony is substantiated by two photographs showing the apprehended shipment of Rubills International, Inc. (Exhibit "P-52").

22. Furthermore, Mr. Rubio testified that the shipment was seized and forfeited after the said examination pursuant to a Warrant of Seizure and Detention and Order of Forfeiture (Exhibits "P-53" and "P-54").

23. The aforementioned pieces of evidence fully support and corroborate the allegations contained in the Complaint-Affidavit of Atty. Reynaldo Yacat ("Exhibit "P-5" to "P-16).

24. Atty. Yacat, as member of the Run After the Smugglers (RATS) Group of the Bureau of Customs, was tasked to investigate this case by a Letter of Authority (Exhibits "P" to "P-4"), which led to the filing of the instant case with this Honorable Court."

Section 23 of Rule 119 of the Revised Rules of Criminal Procedure, which governs the filing of demurrer to evidence, reads:

"SEC. 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment."

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.[13]

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the

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

circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[14]

In the instant case, accused is being charged under Section 3601, in relation to Section 2530 pars f and l (3), (4), and (5) of the TCCP for unlawful importation. The total amount of corresponding principal duties and taxes, exclusive of charges and penalties is P1,089,851.09. Pertinent provisions of the law allegedly violated by the accused are as follows:

> "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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> xxx xxx xxx
>
> When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section."

While Section 2530, paragraphs (f) and (l) (3), (4), and (5), reads:

> "SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* — Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions be subject to forfeiture:

[14] *Singian, Jr. vs. Sandiganbayan (3rd Division), et al.*, G.R. Nos. 195011-19, September 30, 2013.

(f) Any article the importation or exportation of which is effected or attempted contrary to law, or 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.

xxx xxx xxx

(l) Any article sought to be imported or exported.

xxx xxx xxx

(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

(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."

The charge against the accused was in further relation to Section (B) BPI Plant Quarantine Circular No. 02 Series of 1996, which states:

"B. GARLIC CLOVES FOR CONSUMPTION

Application

Any person intending to import garlic cloves shall file an application for Permit to Import (BPI Q Form No. 1) with the Plant Quarantine Service (PQS) prior to importation.

Moreover, Section 2 Rule II of the Bureau of Plant Industry (BPI) Quarantine Administrative Order No. 1, Series of 1981 provides:

> "SEC. 2. *Plants, Plant Products and Other Materials which a 'Permit to Import' is Required.* – The following materials, as a condition of their entry, must be covered by a 'Permit to Import' issued by the Directory of Plant Industry.
>
> xxx xxx xxx
>
> - Fresh fruits, vegetables and other plant products which have been declared as prohibited/restricted imports under Special Quarantine Orders by virtue of their being known hosts of certain plant pests, or because they originate from restricted areas."

Lastly, Department of Agriculture Administrative Order No. 4, Series of 1998, as amended by Administrative Order No. 18, Series of 2000 states that:

> II. An Import Permit (SPS Certificate) must be required prior to importation of Agricultural Products; Live Animals; Plants; Fishes; their products and by-products. Such importation must be accompanied by a Sanitary/Phytosanitary/Health Certificate from the country of origin."

The Court shall resolve each argument raised by the accused.

The Court has jurisdiction over the instant case

As regards the allegation that this Court has no jurisdiction over the case, accused maintains that the prosecution failed to establish that using the amount provided in Alibaba.com to determine the value of imported goods is a customary, regular and official procedure being conducted by the BOC Valuation Officers.

The Court disagrees and maintains that it has jurisdiction over the instant case. The Court *En Banc* has held in the case of *Sayson* *vs. People of the Philippines,*[15] citing the Supreme Court case of *People of the Philippine Islands vs. Co Hiok,*[16] that jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information and not by the result of the evidence presented at the trial. Thus, inasmuch as the accused was charged of a crime arising under TCCP and considering further that the amount of taxes and duties involved in this case, as alleged in the information, is above one million pesos, the Court in Division can properly take cognizance of the case and exercise jurisdiction.

Interestingly, accused Billones has previously admitted that this Court has jurisdiction over this case.[17]

The prosecution was able to establish the fact of importation

Section 3601 of the TCCP defines the crime of smuggling. Smuggling is committed by any person who: (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[18]

In the case of *Rimorin, Sr. vs. People of the Philippines*[19], the Supreme Court laid down the requisites of the crime of smuggling, to wit:

> In his discussion of a similarly worded provision of Republic Act No. 455, a criminal law authority explained thus:
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> > "In order that a person may be deemed guilty of smuggling or illegal importation under the foregoing statute three requisites must concur: (1) that the merchandise must have been fraudulently or knowingly imported contrary to law; (2) that, the defendant, if he

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[15] CTA EB Crim. Case No. 025, April 1, 2014.
[16] G.R. No. 43154, November 7, 1935.
[17] Preliminary Conference Brief, Statement of Admitted Facts, docket, vol. II, p. 548.
[18] *Jardaleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006.
[19] G.R. No. 146481, April 30, 2003, citing Luis B. Reyes, *The Revised Penal Code*, Vol. II (14th ed., 1998), p. 300.

> is not the importer himself, must have received, concealed, bought, sold or in any manner facilitated the transportation, concealment or sale of the merchandise; and (3) that the defendant must be shown to have knowledge that the merchandise had been illegally imported. If the defendant, however, is shown to have had possession of the illegally imported merchandise, without satisfactory explanation, such possession shall be deemed sufficient to authorize conviction."

Consequently, before the charge of unlawful importation can prosper, the prosecution must first prove that an importation has indeed taken place, from which the subject goods were brought into the country. In *Bureau of Customs vs. Devanadera, et al.*[20], the Supreme Court held:

> xxx the Court reviews the following findings of the Acting Secretary of Justice in affirming the State Prosecutor's dismissal of the BOC's complaint-affidavit for lack of probable cause:
>
> > Respondents are being charged for unlawful importation under Section 3601, and fraudulent practices against customs revenues under Section 3602, of the TCCP, as amended. <u>For these charges to prosper, complainant must prove, first and foremost, that the subject articles were imported.</u> On this score alone, complainant has miserably failed.
>
> xxx xxx xxx
>
> After a careful review of records, the Court affirms the dismissal of the BOC's complaint-affidavit for lack of probable cause, but partly digresses from the reasoning of the Acting Secretary of Justice in arriving at such conclusion. While the Acting Secretary of Justice correctly stated that <u>the act of fraudulent importation of articles</u>

[20] G.R. No. 193253, September 8, 2015.

must be first proven in order to be charged for violation of Section 3601 of the TCCP, the Court disagrees that proof of such importation is also required for various fraudulent practices against customs revenue under Section 3602 thereof.

As held in *Jardeleza v. People*, the crime of unlawful importation under Section 3601 of the TCCP is complete, in the absence of a *bona fide* intent to make entry and pay duties when the prohibited article enters Philippine territory. Importation, which consists of bringing an article into the country from the outside, is complete when the taxable, dutiable commodity is brought within the limits of the port of entry. xxx (*Underscoring ours*)

With regard to the argument that the prosecution failed to establish the fact of importation as the Bill of Lading and the Inward Foreign Manifest were denied admission by the Court, accused is mistaken. The said documents are not the only evidence that could prove the fact that garlic and ginger were imported. Such may be shown by other evidence.

Corpus delicti signifies the fact of specific injury or loss sustained.[21] It is the fact of the commission of the crime that may be proved by testimonial evidence.[22]

Also in the case of *Rimorin, Sr. vs. People of the Philippines*[23], the Supreme Court debunked the argument of the accused when he similarly equated the actual physical evidence with *corpus delicti* and held that *corpus delicti* could be established by circumstantial evidence to wit:

"Since the *corpus delicti* is the fact of the commission of the crime, this Court has ruled that even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant conviction therefor. *Corpus delicti* may even be established by circumstantial evidence.

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[21] *Cortez, et al. vs. The Court of Appeals, et al.*, G.R. Nos. L-32246-48, June 30, 1988.
[22] *The People of the Philippines vs. Comendador*, G.R. No. L-38000, September 19, 1980.
[23] G.R. No. 146481, April 30, 2003, citing Luis B. Reyes, *The Revised Penal Code*, Vol. II (14th ed., 1998), p. 300.

> Both the RTC and the CA ruled that the *corpus delicti* had been competently established by respondent's evidence, which consisted of the testimonies of credible witnesses and the Custody Receipt issued by the Bureau of Customs for the confiscated goods.
>
> Col. Panfilo Lacson's testimony on the apprehension of petitioner and on the seizure of the blue seal cigarettes was clear and straightforward. xxx"

Although the Bill of Lading and the Inward Foreign Manifest were denied admission by this Court, still, Mr. Bienvenido Rubio testified that he witnessed the 100% examination of the shipment and submitted the corresponding Case Report (Exhibit "P-50").

The lack of required clearances or permits need not be positively proved by the prosecution

The Court finds no merit in accused's argument that the prosecution failed to establish the fact that the alleged importation does not have the proper permits/certifications from the concerned government agency, due to the denial of Exhibit "P-55" or the letter from the director of BPI stating that no Plant Quarantine Clearance (Import Permit) were issued for the importation of fresh ginger consigned to Rubills.

The Supreme Court held in the case of *Rieta vs. People of the Philippines,*[24] that there is an exception to the general rule requiring the prosecution to prove a criminal charge predicated on a negative allegation, or a negative averment constituting an essential element of a crime, to wit:

"xxx In *People vs. Julian-Fernandez,* we held:

> 'Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the onus probandi rests upon him. Stated otherwise, ***it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which***

[24] G.R. No. 147817, August 12, 2004.

> ***is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control.*** For example, where a charge is made that defendant carried on a certain business without a license x x x, the fact that he has a license is a matter which is peculiar[ly] within his knowledge and he must establish that fact or suffer conviction.' (Emphasis supplied)"

Similarly, the fact that the importation was made with the mandatory permits and certificates from the concerned government agency is a fact that is within the knowledge of the accused, and hence, the accused may readily disprove the prosecution's negative averment by producing the subject permits/certificates.

The participation of accused Billones and Talaue was not established

Finally, accused Talaue and Billones claim that the prosecution failed to establish their participation in the alleged importation. Insofar as accused Talaue is concerned, he avers that his name does not appear in the 2002 GIS as a General Manager. On the other hand, accused Billones contends that he has no participation in the alleged unlawful importation considering that the basis for his charges is the 2002 GIS where he was indicated as the President of Rubills. The alleged crime was committed in 2008, where he is no longer the President of the Company. Accused Billones reiterates that he has been acquitted in a similar case before this Court as it was proved that by merely basing the charges against him on the fact that he was the President of Rubills in 2002 is insufficient to prove that he is still the President by the time the alleged importation was committed in 2008.

In this case, the only evidence that connects accused Billones to Rubills is the 2002 GIS of Rubills showing him as the president and chairman of the said company[25]. However, it should be stressed that the importation occurred in April 2008. Hence, the 2002 GIS does not sufficiently establish that accused Billones was still the president of Rubills in 2008, when the unlawful importation occurred, who could have participated in the said criminal act. Moreover, the prosecution failed to present any evidence, testimonial or otherwise,

[25] Exhibit "P-31-1", docket, vol. I., p. 475.

showing that accused somehow participated in the criminal act. Not a single document was presented by the prosecution showing, at the very least, the name of accused Billones that would somehow connect him to Rubills at the time the crime was committed or that he somehow participated in the subject importation.

This Court cannot subscribe to the prosecution's argument that there is a presumption that a thing once proved to exist continues as long as is usual with things of the nature and that the accused have yet to rebut this presumption with clear and convincing evidence that, at the time of the commission of the crime charged, Rubills had either ceased to exist or the accused had ceased to hold the positions stated in said GIS.

A conviction cannot be predicated on a presumption or speculation. A conviction for a criminal offense must be based on clear and positive evidence and not on mere assumptions.[26] Hence, the Court cannot assume that accused Billones is still the president of Rubills in 2008. In order to conclude that accused Billones is still the president of Rubills at the time of the subject importation, it must be supported by clear and positive evidence.

Upon perusal of the records of the case, it appears that the BOC included accused Talaue in the charge because he was found to be the General Manager of Rubills[27] as shown in the Petition filed by Rubills before this Court concerning a different importation made in 2008. Said Petition dated May 5, 2008 entitled "Rubills International, Inc. and Fil Haus Enterprises, represented by Leandro Antonio P. Talaue vs. Customs Commissioner Napoleon L. Morales, et al.", which was attached to Atty. Yacat's Complaint-Affidavit as Annex "J"[28], clearly indicates that accused Talaue is the General Manager of Rubills (par. 1 of the Petition). The Verification attached to said petition was signed by accused Talaue. Moreover, a Secretary's Certificate dated April 23, 2008, citing Resolution No. 01-2008, also indicates accused Talaue as the General Manager of Rubills. However, the said petition, with its attachments, was not offered in evidence.

Moreover, in the re-cross examination conducted by Atty. Dikko Jay C. Perez on the prosecution's witness, Atty. Reynaldo N. Yacat, the latter confirmed that the basis for filing the Complaint-Affidavit

[26] *Francisca Puzon Gaerlan vs. Court of Appeals, et al.*, G.R. No. L-57876, November 6, 1989.
[27] Footnote 10, Exhibit "P-14", docket, vol. I, p. 453.
[28] Docket, vol. I, pp. 502-524.

against accused Talaue is the 2002 GIS. Further, Atty. Yacat admitted that accused Talaue's name does not appear in the said GIS and therefore the filing of the criminal complaint against him has no basis, to wit:

> "ATTY. PEREZ
>
> Q. A while ago Mr. Witness, you confirm before this Court that the General Information Sheet which you used in filing your Complaint-Affidavit is the one which is marked as Exhibit "P-31", is that correct?
>
> ATTY. YACAT
>
> A. That is the one dated 2002.
>
> ATTY. PEREZ
>
> Q. You confirm a while ago, do you remember that, that it is Exhibit "P-31" which is the General Information Sheet which you used in filing your complaint?
>
> ATTY. YACAT
>
> A. Yes.
>
> ATTY. PEREZ
>
> Q. Now Mr. Witness, kindly go over the same and kindly tell this Court if there appears to be a name of Accused Leandro Antonio P. Talaue in that General Information Sheet marked as Exhibit "P-31" to "P-31-3"?
>
> ATTY. YACAT
>
> A. Well, it's not in the record, his name does not appear in the GIS.

ATTY. PEREZ

Q. So Mr. Witness, would you then agree with me that your answer in Question No. 9 which you said you mentioned Rubills Corporation, please tell this Court which officers and Board members are and one of the names appearing therein Leandro Antonio M. Talaue has no basis based on that Exhibits "P-31" to "P-31-3"?

ATTY. YACAT

A. Yes.

ATTY. PEREZ

That would be all, you Honors."[29]

Had the prosecution presented in evidence the 2008 GIS of Rubills, the Court could have easily confirmed whether accused Billones and Talaue were officers of Rubills at that time. It could be possible that Rubills did not file a GIS for 2008 with the SEC, however, a negative certification was not presented either to confirm this fact. Regardless, the prosecution could have presented and offered other documentary evidence to prove the participation of both accused in the crime charged, unfortunately, the prosecution failed to do so.

Thus, while there may be sufficient evidence proving the fact of unlawful importation, still, the Court finds that the evidence presented by the prosecution failed to establish the participation of accused Billones and Talaue in the said crime.

In view of the foregoing, the Court deems it no longer necessary to discuss the other issues raised.

WHEREFORE, premises considered, the **Demurrer to Evidence (With Leave of Court)**, filed by accused Billones is **GRANTED**. Likewise, the **Demurrer to Evidence**, filed by accused Talaue is **GRANTED**. Accordingly, accused Billones and Talaue are

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[29] TSN, July 12, 2017, pp. 34-35.

ACQUITTED for failure of the prosecution to present competent or sufficient evidence to warrant a conviction.

It appearing that the Court has not acquired jurisdiction over the accused Hannah Aileen Lim Fernandez who is still at large, and in order that this case may not remain pending in the Court's docket for an indefinite period of time, the instant case as against accused Fernandez is **ARCHIVED**, without prejudice to its revival immediately upon the apprehension of said accused.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice