REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,* - versus- **FRANCISCO BILLONES**, **ANGEL T. DERAY, JR.**, **MARY LUCILLE BILLONES**, **SUSANA DELA CRUZ GO**, **ANACLETO SANCHEZ**, **ROBERT C. AMPOSTA**, **OSCAR TORRES**, **MARIA CATAPANG JUMENTO**, **ROSALIO TEVES**, **LEONARD DELA PAS**, **HANNAH AILEEN LIM FERNANDEZ**, **ANTONIO M. TALAUE**, **LEANDRO ANTONIO P. TALAUE**, **ANALYN G. FERNANDEZ**, and **MEYNARDO B. BANAYO**, *Accused.*	**CTA CRIM. CASE NO. O-128** For: Violation of Section 3601, in relation to Sec. 101(k) of the TCCP and Sugar Order no. 8, Series of 1994-1995 of the Sugar Regulatory Administration and Joint Memorandum Order No. 4-2002

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PEOPLE OF THE PHILIPPINES, *Plaintiff,* - versus- **FRANCISCO BILLONES**, **ANGEL T. DERAY, JR.**, **MARY LUCILLE BILLONES**, **SUSANA DELA CRUZ GO**, **ANACLETO SANCHEZ**, **ROBERT C. AMPOSTA**,	**CTA CRIM. CASE NO. O-129** For: Violation of Section 3602, in relation to Sections 2503 and 2530 of TCCP and Art. 172 of the Revised Penal Code

/-

OSCAR TORRES, **MARIA CATAPANG JUMENTO,** **ROSALIO TEVES,** **LEONARD DELA PAS,** **HANNAH AILEEN LIM FERNANDEZ,** **ANTONIO M. TALAUE,** **LEANDRO ANTONIO P. TALAUE,** **ANALYN G. FERNANDEZ,** and **MEYNARDO B. BANAYO,** *Accused.*	**Members:** Castañeda, *Chairperson* Casanova, and Cotangco-Manalastas, *JJ.* **Promulgated:** JUL 30 2014 9:26 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

These are charges against the abovenamed accused for violation of Section 3601 in relation to Section 101(k) and 3602 in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines, as amended, Sugar Regulatory Administration issuances in Relation to Joint Memorandum Order No. 4-2002, and Art. 172 of the Revised Penal Code.

FACTS

Plaintiff is the People of the Philippines, represented by the Office of the State Prosecutor, from a complaint instituted by the Bureau of Customs, through the Run After the Smugglers (RATS) Program.[1]

Accused are as follows[2]:

1. FRANCISCO BILLONES – President of Rubills International Inc.
2. ANGEL T. DERAY JR. – Director for Operations of Rubills International Inc.
3. MARY LUCILLE BILLONES – Director/Treasurer of Rubills International Inc.

[1] Docket, C.T.A. Crim Case No. O-128, p. 2151.
[2] Docket, pp. 1743-1746.

4. SUSANA DELA CRUZ GO – Director of Rubills International Inc.

5. ANACLETO SANCHEZ – Director of Rubills International Inc.

6. ROBERT C. AMPOSTA – Director of Rubills International Inc.

7. OSCAR TORRES – Director of Rubills International Inc.

8. MARIA CATAPANG JUMENTO – Director of Rubills International Inc.

9. ROSALIO TEVES – Director of Rubills International Inc.

10. LEONARD DE LA PAS – Corporate Secretary of Rubills International Inc.

11. HANNAH AILEEN LIM FERNANDEZ – Proprietress/Owner of Fil Haus Enterprises and Corporate Secretary of Shore Philippines Inc.

12. ANTONIO M. TALAUE – President of Shore Philippines, Inc.

13. LEANDRO ANTONIO P. TALAUE – General Manager of Shore Philippines, Inc.

14. ANALYN G. FERNANDEZ – Executive Secretary of Shore Philippines, Inc.

15. MEYNARDO B. BANAYO – Licensed Customs Broker

Rubills International Inc. is a corporation duly organized and existing under the laws of the Philippines with principal address at Rm. 603 S&L Bldg., 1500 Roxas Blvd., Ermita Manila, engaged in the business of warehousing, trading all kinds of items, goods, commodities, wares and merchandise of every kind and description.[3]

Fil Haus Enterprises is a single proprietorship duly registered with the Department of Trade and Industry with

[3] Docket, p. 1730.

principal address at 1166 M.H. del Pilar St., cor. Arquiza St., Ermita, Manila.[4]

Shore Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines with principal address at Rm. 501 VIP Bldg., Roxas Blvd., Ermita, Manila.[5]

The circumstances leading to the filing of the Informations, are as follows[6]:

> "The cases at bar involves(*sic)* as their subject matters three (3) shipments of Refined Sugar (Thailand) consigned to Rubills International, Inc. (Rubills) for the account of Filhaus Enterprises (Filhaus) covered by Bill of Lading Nos. SHT2008030025, SHT2008030026 and EGLV070800059876.
>
> The shipment covered by Bill of Lading No. SHT2008030025 and declared under Warehousing Entry No. W-9130 consists of 5 x 20' container vans with the following Serial Nos.:
>
> a. GLDU3937080
> b. TGHU2257037
> c. GESU2282124
> d. CAXU6660089
> e. GESU2230820
>
> On the other hand, the shipment covered by Bill of Lading No. SHT2008030026 and declared under Warehousing Entry No. W-9128 consists of 5 x 20' container vans with the following Serial Nos.:
>
> a. TEXU2166324
> b. GLDU2925459
> c. GLDU0345739
> d. SCZU7839333
> e. TRLU2164206
>
> Meanwhile, the shipment manifested in the covering Bill of Lading No. EGLV0708000059876 consists of 5 x 20' container vans with the following Serial Nos.:
>
> a. BSIU2233293
> b. IMTU3025061
> c. TGHU3634840

[4] *Id.*
[5] *Id.*
[6] Docket, pp. 2152-2156.

d. TGHU245692
e. LTIU3015488

The above imported shipments were imported and arrived at the Port of Manila from Singapore on 02 April 2009(*sic*) on board vessel 'Bay Bridge V N016', with Registry Receipt No. KLS0005.

On 4 April 2008, Rubills, through the employee of Shore Philippines, Inc. (Shore), Meynardo Banayo, Licensed Customs Broker, filed the two shipments covered by Bill of Lading Nos. SHT2008030025 and SHT2008030026, with Warehousing Import Entry Nos. W-9130 and W-9128, respectively, declaring under oath said shipments as 204,000 kgs. of Soya Beans (6,800 bags/25 kgs. per bag) with a total dutiable value of Php3,010,423.5 under Tariff Heading No. 1201.00.90, with Tariff Rate of 1%.

On one hand, the shipment covered by B/L NO. EGLV070800059876 was made to appear/manifested therein as containing 102,000 kgs. of Soya Beans (3,400 bags/25 kgs. per bag) valued at Php 1,505,211.55.

The aggregate weight of the three shipments per declaration thereof and as manifested in the subject Warehousing Entries and Bill of Lading, repectively, is 306,000 kgs. of Soya Beans (10,200 bags/25 kgs. per bag) with a declared/manifested aggregate value of Php 4,515,634.6368, with the corresponding duties and taxes of merely Php 48,157.00

On 14 April 2008, Commissioner Morales issued Alert Order Nos. A/OC/20080414-103 and A/OC/20080414-104, against the shipments covered by Bill of Lading Nos. SHT2008030025 and SHT2008030026, and declared under Warehousing Entry Nos. W-9130 and W-9128, respectively, directing RATS Operatives Arnel Tangkeko and Rolando Rodolfo to conduct/witness the 100% examination over the same.

On 15 April 2008, Commissioner Morales issued Alert Order No. A/OC/20080415-107 against the shipment covered by/manifested in Bill of Lading No. EGLV070800059876, directing RATS Operatives Arnel Tangkeko and Rolando Rodolfo to conduct/witness the 100% examination over the same.

Upon examination of the subject shipments, the following were actually found:

1. That all the shipments actually contained Refined Sugar (Thailand) and not Soya Beans;
2. That the actual aggregate weight of the subject shipments of Refined Sugar (Thailand) is 510,000 kgs. (10,200 bags/50 kgs. per bag);
3. That the supposed total redemption value of the subject shipments is Php 11,852,400.00;
4. That the correct Tariff Heading of the subject shipments of Sugar is H.S. 1701.99.11 with a corresponding tariff rate of 50%;
5. That the correct declaration of duties and taxes for the subject shipments should at least be in the aggregate amount of Php 5,073,418.8;
6. That the misclassification, misdeclaration and undervaluation of the subject shipments resulted to more than 30% undervaluation of the taxable value thereof;
7. That the subject shipments of Sugar were not covered by Import Permit/Clearance from Sugar Regulatory Administration (SRA) as required under SRA existing Rules and Regulations;

Instead of Import Permit/clearance from Sugar Regulatory Administration (SRA), Phytosanitary Certificate with Serial Nos. 490600508048651 and No. 490600508048652, were the ones submitted/accompanied for the shipments covered by Bill of Lading Nos. SHT2008030025 and SHT2008030026, and declared under Warehousing Entry Nos. W-9130 and W-9128, respectively.

In the said Phytosanitary Certificates, the shipment was indicated/made to appear as Soya Beans instead of its actual contents which is Sugar."

Based on the foregoing, a Complaint-Affidavit[7] charging the accused was referred to the DOJ Task Force on Anti-Smuggling, for preliminary investigation.[8]

On January 20, 2009, the Department of Justice (DOJ) found probable cause to charge the accused for violation of Section 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines and falsification of

[7] Exhibit "A", docket, pp. 1727-1742.
[8] Exhibit "B", docket, pp. 1743-1748.

commercial document and of Section 3601, in relation to Section 101(k) of the Tariff and Customs Code of the Philippines and Sugar Order No. 8, Series of 1994-1995 of the Sugar Regulatory Administration and Joint Memorandum Order No. 4-2002.[9]

On March 27, 2009, two Informations were filed against the accused, docketed as CTA Criminal Case Nos. O-128 and O-129. The Informations charged the accused, as follows:

<u>CTA Crim Case No. O-128</u>

> "The undersigned State Prosecutor of the Department of Justice, accuses FRANCISCO BILLONES, ANGEL T. DERAY, JR., MARY LUCILLE BILLONES, SUSANA DELA CRUZ GO, ANACLETO SANCHEZ, ROBERT C. AMPOSTA, OSCAR TORRES, MARIA CATAPANG JUMENTO, ROSALIO TEVES, LEONARD DELA PAS, HANNAH AILEEN LIM FERNANDEZ, ANTONIO M. TALAUE, LEANDRO ANTONIO P. TALAUE, ANALYN G. FERNANDEZ and MEYNARDO B. BANAYO of violation of Section 3601 in relation to Section 101(k) of the Tariff and Customs Code of the Philippines and Sugar Order No. 8, Series of 1994-1995 of the Sugar Regulatory Administration and Joint Memorandum Order No. 4-2002, committed as follows, to wit:
>
> > 'That sometime in April 2008, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, with intent to defraud the government, did then and there willfully, unlawfully and feloniously import, to wit:
> >
> > xxx
> >
> > whereby upon a spot checking examination thereof, the same actually contained refined sugar, the undervaluation is computed, to wit:
> >
> > xxx
> >
> > to the damage and prejudice of the government."

[9] Docket, pp. 16-17.

CTA Crim Case No. O-129

"The undersigned State Prosecutor of the Department of Justice, accuses FRANCISCO BILLONES, ANGEL T. DERAY, JR., MARY LUCILLE BILLONES, SUSANA DELA CRUZ GO, ANACLETO SANCHEZ, ROBERT C. AMPOSTA, OSCAR TORRES, MARIA CATAPANG JUMENTO, ROSALIO TEVES, LEONARD DELA PAS, HANNAH AILEEN LIM FERNANDEZ, ANTONIO M. TALAUE, LEANDRO ANTONIO P. TALAUE, ANALYN G. FERNANDEZ and MEYNARDO B. BANAYO of violation of Section 3602 in relation to Sections 2503 and 2530 of TCCP, as amended, and Art. 172 of the Revised Penal Code, committed as follows, to wit:

'That sometime in April 2008, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, with intent to defraud the government, did then and there wilfully, unlawfully and feloniously import, to wit:

xxx

whereby upon a spot checking examination thereof, the same actually contained refined sugar, the undervaluation is computed, to wit:

xxx

through the use of falsified/spurious Bill of Lading, Invoices and Packing List, to the damage and prejudice of the government"

Plaintiff's Motion for Consolidation[10], also filed on March 27, 2009, was granted in the Resolution, dated April 23, 2009.[11]

On May 5, 2009, the Court found the existence of probable cause for the issuance of warrants of arrest against the accused.[12]

Of the accused, the following voluntarily surrendered: Francisco Billones, Angel T. Deray, Jr., Susana Dela Cruz Go,

[10] CTA Crim Case No. O-129, pp. 210-211.
[11] *Ibid.*, pp. 213-214.
[12] Docket, p. 176.

Anacleto Sanchez, Maria Catapang Jumento, Hannah Aileen Lim Fernandez, Antonio M. Talaue, Leandro Antonio P. Talaue, Analyn G. Fernandez, and Meynardo B. Banayo during the period May 26 to June 9, 2009.[13] Accused Mary Lucille Billones voluntarily surrendered on August 6, 2010.[14]

Accused Francisco Billones was arraigned on June 3, 2009, where he pleaded not guilty to both charges.[15] On the other hand, accused Mary Lucille Billones was arraigned on September 14, 2011, where she pleaded not guilty to both charges.[16]

The rest of the accused who voluntarily surrendered, namely: Angel T. Deray, Jr., Susana Dela Cruz Go, Anacleto Sanchez, Maria Catapang Jumento, Hannah Aileen Lim Fernandez, Antonio M. Talaue, Leandro Antonio P. Talaue, Analyn G. Fernandez, and Meynardo B. Banayo, were also scheduled for arraignment. However, after several postponements and before said accused could be arraigned, the nine accused were dropped and excluded from the Informations after a non-finding of probable cause by the Department of Justice and subsequent motions to withdraw information[17] by the plaintiff, together with the filing of Amended Informations.[18]

The preliminary conference, with respect to Francisco Billones only, proceeded on July 6, 2009, but without the appearance of the prosecution.[19] The preliminary conference was then continued on August 26, 2009 for the marking of prosecution's documentary evidence.[20] Pre-trial, with respect to accused Francisco Billones, was set on March 22, 2010.[21] Plaintiff filed its Preliminary Conference Brief on March 17, 2010.[22]

[13] Docket, pp. 216, 614, 619, 628, and 642.
[14] Docket, p. 1092.
[15] Docket, p. 646.
[16] Docket, p. 1312.
[17] Docket, pp. 902-906, 962-965, 1120-1124.
[18] Docket , pp. 854-856, 927-930.
[19] Docket, p. 767.
[20] Docket, p. 815.
[21] Docket, p. 987.
[22] Docket, p. 988-1000.

On March 22, 2010, instead of proceeding with pre-trial, counsel for the accused manifested that it will file a Motion for Judicial Determination of Probable Cause[23]. On April 12, 2010, plaintiff filed its Comment/Opposition to the Motion for Judicial Determination of Probable Cause.[24] On June 21, 2010, the Court denied accused's motion.[25]

On August 10, 2010, accused Mary Lucille Billones, through counsel, filed a Motion for Preliminary Investigation.[26] On the other hand, accused Francisco Billones filed his Motion for Reconsideration of the resolution denying his motion for determination of probable cause.[27] Both motions were denied in the resolution dated October 19, 2010.[28] Accused Mary Lucille Billones' motion for reconsideration was likewise denied on February 16, 2011.[29]

The preliminary conference, which has not yet been terminated, continued with respect to accused Francisco Billones, who filed his Preliminary Conference Brief on June 22, 2011.[30] Pre-trial was held on July 20, 2011[31], with the Pre-Trial Order promulgated on August 10, 2011[32].

Plaintiff's initial presentation of evidence, originally set for August 10, 2011, was reset to September 14, 2011.[33] This was however, subsequently reset to October 26, 2011, to accommodate accused Mary Lucille Billones' preliminary conference and pre-trial, in the hopes that trial against both Mary Lucille Billones and Francisco Billones can proceed simultaneously.[34] On October 26, 2011, an Amended Pre-Trial Order was issued, amending the previous pre-trial order to include accused Mary Lucille Billones' name therein.[35]

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[23] Docket, pp. 1025-1030.
[24] Docket, pp. 1047-1054.
[25] Docket, pp. 1066-1069.
[26] Docket, pp. 1094-1095.
[27] Docket, pp. 1098-1102.
[28] Docket, pp. 1120-1124.
[29] Docket, pp. 1151-1153.
[30] Docket, pp. 1224-1227.
[31] Docket, p. 1248.
[32] Docket, pp. 1271-1284.
[33] Docket, pp. 1289-1290.
[34] Docket, pp. 1311-1312.
[35] Docket, pp. 1325-1337.

During trial, plaintiff presented five witnesses, as follows:

1. Atty. Christopher M. Inducil – Attorney III, Prosecution and Litigation Division of the Bureau of Customs

2. Mr. Rolando C. Rodolfo – former Customs Operations Officer V, Run After the Smugglers Program of the Bureau of Customs

3. Ms. Dolores M. Domingo - Customs Operation Officer IV, Import Valuation and Classification Division, Import Assessment Service of the Bureau of Customs

4. Atty. Tristan Armando III – Deputy Collector for Operations of the Port of Manila, concurrent with position as lawyer of the Ruling and Research Division of the Bureau of Customs

5. Mr. Jesus Bajacan – Chief, Plant Quarantine Service of the Department of Agriculture, assigned to South Harbor Port of Manila

After formal offer, this Court admitted into evidence Exhibits "A", "A-1", "C", "C-1", "C-2", "C-3", "C-4". "C-5", "C-5", "C-6", "E", "E-1", "E-2", "E-3", "H", "J", "L", "O", "Q", "V", "V-3" to "V-8", "W", "X", "Y", "Z", "Z-1", "GG", "GG-1", and "GG-2".[36] Exhibit "B" was subsequently admitted in the Resolution dated January 31, 2013.[37]

Accused Francisco Billones and Mary Lucille Billones filed a Motion to Admit Demurrer to Evidence[38] and Demurrer to Evidence[39] via registered mail on November 2, 2012. However, the same was denied for having been filed beyond the non-extendible 5-day period provided in the Rules within which to file the said motion. Furthermore, the court found that the accused failed to specifically state the grounds for its

[36] Docket, pp. 1948-1952.
[37] Docket, pp. 1990-1994.
[38] Docket, pp. 1956-1957.
[39] Docket, pp. 1958-1975.

filing.[40] Accused's motion for reconsideration was likewise denied on March 27, 2013.[41]

After the reorganization of this Court and the transfer of the case to the Second Division, the initial presentation of evidence for the accused was reset to May 8, 2013.[42]

Both accused took the stand and submitted their respective judicial affidavits. Upon formal offer, the Court admitted Exhibits "1, 1-A, 1-B, 2, 2-A, 2-B, 2-C, 3, 3-A, 3-B, 4, 4-A, 4-B, 5, 5-A, 5-B, 6-A, 6-B, 7, 7-A, 7-B, 8, 8-A, 8-B, 8-C, 9, 9-A, 9-B and 9-C".[43] Exhibits "10-10-A, 10-B, 12, 12-A, and 13" were subsequently admitted in the Resolution dated March 21, 2014.[44]

The parties were then granted thirty days from notice within which to submit their memoranda. Plaintiff filed its Memorandum on November 22, 2013.[45] Accused filed their Memorandum on April 15, 2014.[46] The case was deemed submitted for decision on May 2, 2014.

ISSUE

Plaintiff presented the following issue:

> "Whether or not accused Francisco Billones and Lucille Billones, as President and Officer of the Importer, is liable for the fraudulent misdeclaration and importation contrary to law of the instant shipment."

Accused, on the other hand, raised the following:

> "The prosecution failed to present proof beyond reasonable doubt sufficient to overcome the presumption of innocence."

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[40] Docket, p. 1993.
[41] Docket, pp. 2023-2025.
[42] Docket, p. 2029.
[43] Docket, p. 2132.
[44] Docket, pp. 2188-2190.
[45] Docket, pp. 2150-2161.
[46] Docket, pp. 2191-2225.

ARGUMENTS OF THE PARTIES

Plaintiff argues the following: that the subject shipments are fraudulently misdeclared and imported contrary to law; and that the accused Francisco Billones and Mary Lucille Billones, as officers of the consignee, are clearly responsible for the fraudulent acts.

On the other hand, both accused raised as defense the allegation that Rubills International Inc. (Rubills) has already ceased operations effective December 31, 2002 and that ownership, management and/or operation of Rubills was transferred effective July 1, 2007 and that they are no longer officers of Rubills. Accused Mary Lucille Billones further argues that she has long migrated and/or resided in the United States since year 2002.

DISCUSSION/RULING

These cases were filed against the accused for the violation of the following provisions of the Tariff and Customs Code of the Philippines (TCCP):

<u>Crim Case O-128</u>

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

5. The penalty of prison may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of reclusion perpetua to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

xxx

Sec. 101. Prohibited Importations. – The importation into the Philippines of the following articles is prohibited:

xxx

(k) All other articles the importation of which is prohibited by law.

<u>Crim Case O-129</u>

"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 the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.

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

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

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

xxx

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

xxx

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

xxx

1. Any article sought to imported or exported:

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."

In fine, the foregoing TCCP provisions deal with misdeclaration and unlawful importations punishable under the TCCP.

In the instant case, the Court finds uncontroverted plaintiff's allegation that three shipments declared to be containing 306,000 kgs. of Soya Beans (10,200 bags/ 25 kgs. per bag) valued at P4,515,634.64, were actually 510,000 kgs. (10,200 bags/ 50 kgs. per bag) of Refined Sugar with aggregate value of P11,822,400.00.[47]

However, only the shipments declared under Entry Nos. W-9130 and W-9128 and covered by Bills of Lading Nos. SHT2008030025 and SHT2008030026 were included in the Informations and Amended Informations filed, to wit:

Shipment No.	Entry No.	Bill of Lading No.	Container No.	Declaration	No. of bags (25 kgs./bag)	Net weight	Declared Dutiable Value
1	W-9130	SHT2008030025	GLDU3937080 TGHU2257037 GESU2282124 CAXU666089 GESU2230820	Soya Beans	3,400	102,000	P1,505,215.55
2	W-9128	SHT2008030026	TEXU2166324 GLDU2925459 GLDU0345739 SCZU7839333 TRLU2164206	Soya Beans	3,400	102,000	P1,505,215.55

[47] Exhibit "C, docket, p. 1750.

These shipments declared as soya beans were, upon examination, found to be Refined Sugar (Thailand). Thus, there is clear and intentional misdeclaration of the imported products as contemplated under Section 3602, in relation to Section 2503, of the TCCP.

On the other hand, sugar imported into the Philippines, must undergo inspection, thus:

> "Sugar Order No. 8, Series of 1994-1995
>
> Section 1. This Sugar Order shall apply to all imported sugar, whether raw or refined, except as hereinafter provided.
>
> Sugar, whether raw or refined, imported or consigned to and exclusively for the use of local processors/manufacturers as ingredients of sugar-based products shall be subject to separate rules and regulations which the SRA may from time to time promulgate.
>
> Section 2. The importer/consignee of the imported sugar by this Sugar Order shall apply for clearance from the SRA prior the release of the commodity by the Bureau of Customs.
>
> * * * * *
>
> Joint Memorandum Order No. 4-2002
>
> General Provisions
>
> 1. Pursuant to Sugar Order No. 8 s. 1994-95, dated May 17, 1995, as amended, issued pursuant to EO No. 18 dated May 28, 198, all imported sugar, off whatever type/kind as above described, MAV or Out-MAV, shall be subject to Clearance duly issued by the Sugar Regulatory Authority (SRA) prior to its release from Customs. The SRA Clearance shall specify, among others, the market classification of the imported sugar either as "B" (Domestic Sugar), or "C" (Reserve Sugar), or "D" (World Market Sugar).
>
> 2. No imported sugar shall be released to the importer/consignee without an SRA Clearance. Imported sugar not covered by SRA Clearance shall be turned over to SRA upon compliance by the importer/consignee with Customs rules and regulations, including that payment of taxes, duties and

> other charges. SRA shall identify the market classification of said sugar and cause its disposition in accordance with such classification pursuant to its rules and regulations."

In the instant case, the importation of Refined Sugar (Thailand), was clearly without the concomitant inspection and clearances from the Sugar Regulatory Authority since the same were declared as soya beans. Clearly, these are disallowed importations of Refined Sugar (Thailand) under Section 3601 of the TCCP, in relation to Section 101(k) of the same law.

Considering that there has indeed been an unlawful importation of Refined Sugar (Thailand) into the Philippines, it is now necessary to determine the guilt of the accused.

The initial fifteen accused were the officers and owners of Rubills International Inc. (importer), Filhaus Enterprises (consignee), and Shore Philippines, Inc. (employer of customs broker Meynardo Banayo). However, the cases were dropped against the rest of the accused except for the two remaining, Francisco Billones and Mary Lucille Billones. Accused Francisco Billones is the President of Rubills, and Mary Lucille Billones is alleged to be the Treasurer of Rubills.

As their defense, accused argue that Rubills has ceased operations as early as December 31, 2002, and that ownership has been transferred to the group of Mr. Leandro P. Talaue on July 1, 2007. As such, accused argue that they are no longer officers of Rubills. Accused Mary Lucille Billones further argues that she was out of the country at the time the importation was made.

The prosecution relies on Rubills' Articles of Incorporation[48] and General Information Sheet(GIS)[49] filed with the SEC. On the other hand, accused presents letters[50] informing various agencies of Rubills' cessation of operations, and the notarized letter-Deed of Assignment[51] purportedly

[48] Exhibit "E", docket, pp. 1759-1768.
[49] Exhibit "E-1", docket, pp.1754-1757.
[50] Exhibits "3", "4", "5", and "6", docket, pp. 2111-2114.
[51] Exhibit "8", docket, p. 2116.

transferring the operations and ownership of Rubills, and a certification[52] from Leonardo Antonio Talaue that Rubills International Inc. Bonded Warehouse operation was turned-over/assigned/ transferred effective January 2007.

Upon evaluation of the evidence presented, this Court finds that plaintiff has proven that accused are the officers of the importer Rubills, whereas accused's evidence have not sufficiently proven that Rubills has ceased operations for the period and that they are no longer the officers of Rubills.

In Rubills' Articles of Incorporation filed with the Securities and Exchange Commission, it is shown that both accused were incorporators and members of the board of directors at the time of incorporation.[53] Rubills' GIS, filed on January 10, 2002, shows that accused Francisco Billones is the President and a member of the board of directors, and accused Mary Lucille Billones is also a member of the board of directors.

The documents presented by the accused, however, do not sufficiently and effectively controvert the information contained in the Articles of Incorporation and GIS. Firstly, the letters forwarded by the accused to various government agencies specifically state that Rubills is merely ceasing to operate effective December 31, 2002. In two letters, it was even specifically stated as "ceased temporarily" or "temporary closure" and not dissolution.[54] This temporary closure and cessation of operations does not operate to remove the corporate officers from their positions. As such, temporary closure and cessation of operations is not inconsistent with the accused Francisco Billones and Mary Lucille Billones remaining as officers and members of the board of directors. In other words, the accused remain to be officers and members of the board during such temporary closure and cessation of operations.

Indeed, the GIS is a document required to be filed annually with the SEC within thirty calendar days from the

[52] Exhibit "10", docket, p. 2138.
[53] Docket, pp. 1765-1766.
[54] Exhibits "3" and "5".

date of the annual stockholders meeting. If no meeting is held, the GIS must still be submitted together with an affidavit of non-holding of the meeting within thirty calendar days from the date of the scheduled annual stockholders meeting.[55] Obviously, from January 10, 2002, the date of the last GIS, to year 2007 when the corporation was alleged to have been transferred, or during the period of the alleged closure of business, the officers have not filed the required annual GIS. This being the case we are bound by the last available corporate filing by Rubills International Inc.

This Court also notes several inconsistencies in the documentary pieces of evidence presented by accused Francisco Billones as compared to his testimony in his judicial affidavit:

1. In his judicial affidavit, accused Francisco Billones referred to a Mr. Leonardo de la Paz as the Chairman and an incorporator of Rubills.[56] The question was vague as to the period referred to, but an examination of the articles of incorporation show that there is no Leonardo de la Paz in the list of incorporators. Neither does it appear that said Leonardo de la Paz was an officer or a member of the board of directors, as his name does not appear in the GIS.

2. In his judicial affidavit, accused Francisco Billones referred to a Cpt. Oscar Torres as the In-Charge of the Shipping Department and as an incorporator of Rubills.[57] Oscar Torres does not appear in the articles of incorporation as an incorporator. However, he is listed as a member of the board of directors in the GIS.

3. In his judicial affidavit, accused Francisco Billones referred to co-accused Mary Lucille Billones as the treasurer and incorporator of Rubills.[58] While Mary Lucille Billones is an incorporator according to the

[55] Docket, p. 1864.
[56] Docket, p. 2032.
[57] *Id.*
[58] *Id.*

articles of incorporation, she does not appear to be the treasurer of Rubills under both the articles of incorporation or the GIS. Under the GIS, accused Mary Lucille Billones is indicated only as a member of the board of directors.

4. In his judicial affidavit, accused Francisco Billones gave the following answers:

> "9. Q: Do you still undertake such function up to the present?
>
> A: Not anymore since 2002.
>
> 10. Q: Why did you stop in 2002?
>
> A: Our Chairman Leonardo de la Paz and Cpt. Oscar Torres and Teresa Apura died.
>
> 11. Q: What happened to Rubills International Inc. when they died?
>
> A: I was constrained to close the operations of said company."[59]

On the other hand, in the letters sent to the various government agencies, accused Francisco Billones stated that the reason for the cessation of operations was due to "financial losses" and the intolerable corrupt practices in some government agencies.

Generally, inconsistencies in the testimonies with respect to minor details and collateral matters do not affect the substance, veracity or weight of such testimony, and may in fact enhance the worth of the testimony for they guard against memorized falsities.[60] However, the Court finds the inconsistencies in the instant case to be relevant and not at all related to minor details. A major part of accused's defense is the cessation of operations of Rubills, and yet, accused failed to consistently identify the reason for its cessation of operations. This casts doubt in the Court's mind whether

[59] Docket, pp. 2032-2033.
[60] *Juanito T. Merencillo vs. People of the Philippines*, G.R. Nos. 142369-70, April 13, 2007.

Rubills had in fact suspended its operations for the said period.

Second, the allegation that the ownership and operations of Rubills has been transferred to the Talaue Group cannot be given full credence. Rubills is a stock corporation with ownership divided among stockholders and its operations decided by its board of directors. While it appears that accused Francisco Billones is the majority stockholder, any decision on the transfer of operations or closure of operations will require the vote of the majority of the board of directors, which decision has not been presented to this Court.

Assuming that accused Francisco Billones had the authority to transfer the ownership and operations of Rubills, this Court finds the alleged Letter-Deed of Assignment[61], signed by accused Francisco Billones and a Mr. Leonardo Antonio Talaue, to be insufficient to prove that the transfer has been consummated, or that there was in fact a deed of assignment executed by the two parties.

An examination of the Letter-Deed of Assignment reveals that it is a letter that merely *refers* to a Deed of Assignment and purports to officially put in writing the agreement between accused Francisco Billones and Mr. Leonardo Antonio Talaue. Thus, in its subject line it reads "RE: DEED OF ASSIGNMENT".

Even assuming that the parties intended for this Letter to be the Deed of Assignment evidencing their agreement for the transfer of ownership and operations of Rubills, it is insufficient to bind third parties. Section 23, Rule 132 of the Rules of Court, as amended, provides:

> "Sec. 23. Public documents as evidence. – xxx All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter." (*Underscoring ours*)

[61] Exhibit "8", docket, p. 2116.

A public document, on the other hand, may be any of the following:

> "Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) <u>Documents acknowledged before a notary public</u> except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> All other writings are private."[62] (*Underscoring ours*)

Clearly, to be classified as a public document, documents must be <u>acknowledged</u> before a notary public.

It is thus relevant to distinguish between an acknowledgment and a jurat, which are both common forms of notarization. Acknowledgment refers to an act in which an individual appears in person before the notary public and presents and integrally complete instrument or document. Such person must be personally known to the notary public, or identified through competent evidence of identity, and represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument, and declares that he has executed the instrument or document as his free and voluntary act and deed.[63] Jurat refers to an act in which an individual appears in person before the notary public and presents an instrument or document. Such person must be personally known to the notary public, or identified through competent evidence of identity, and signs the instrument or document in the presence of the notary. Such person takes an

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[62] Rules of Court, Rule 132, Section 19.
[63] 2004 Rules on Notarial Practice, Rule II, Section 1.

oath or affirmation before the notary public as to such instrument or document.[64]

In the instant case, the Letter presented by the accused was merely subscribed and sworn to by way of jurat, and was not properly acknowledged, as such, the Letter remains a private document.[65] As a private document, its due execution and authencity must have been proven in accordance with Section 20, Rule 132 of the Rules of Court. Unfortunately, accused failed to so prove the authenticity and due execution of the Letter-Deed of Assignment purportedly transferring the ownership and operation of Rubills. It is also significant to note that accused failed to present said Mr. Leonardo Antonio Talaue as a witness for the defense despite the major role that Mr. Talaue plays as the alleged transferee and new owner of Rubills.

The Certification[66] allegedly issued by Mr. Leonardo Antonio Talaue also cannot be given credence. This Court is at a loss as to how said certification was notarized, considering that the jurat does not state that the person is personally known to the notary public, or has presented competent evidence of identity.

Finally, this Court notes the obvious discrepancy between the Letter-Deed of Assignment which states that the transfer of operations and ownership is effective July 2007, as against the Certification by Mr. Leonardo Antonio Talaue which states that the transfer of operations was effective January 2007. This glaring inconsistency as to the date of the supposed transfer of Rubills, as well as the infirmities in the documents themselves, leads this Court to conclude that the explanation of having transferred the operations of Rubills is, at best, a mere ruse between the parties.

We now come to accused Mary Lucille Billones' defense that she was out of the country at the time the importation was made. This Court finds that the prosecution has failed to provide sufficient evidence to link accused Mary Lucille

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[64] *Id.*, Rule II, Section 6.
[65] *Zenaida B. Tigno, et al vs Spouses Aquino*, G.R. No. 129416, November 25, 2004.
[66] Exhibit "10", docket, p. 2139.

Billones to the operations of Rubills, said accused not being an officer thereof as shown in Rubills' articles of incorporation and GIS. Coupled with the fact that accused Mary Lucille Billones has been out of the country for the months leading up to and during the importation, the Court does not find sufficient basis to hold accused Mary Lucille Billones responsible for the acts charged.

In the Informations charged, it was alleged that the 15 initially accused conspired and confederated to undertake the unlawful importation, however, the charges were dropped with respect to the other accused. As *obiter*, the dropping of the charges against the other accused, to this Court's mind, was thus premature and unnecessary as there is sufficient evidence to have held them to trial considering the pieces of evidence linking them to the importation subject of this case.

Considering the foregoing, this Court finds that accused failed to prove his main points of defense sufficient to overcome the convincing proof presented by plaintiff. Thus, We hold the accused Francisco Billones to be the responsible officer for the charged acts in violation of Sections 3601 and 3602, in relation to Sections 101(k), 2503 and 2530 of the TCCP.

The appraised value of the unlawfully imported Refined Sugar (Thailand) clearly exceeds one hundred fifty thousand pesos and thus, subject to the penalties under Section 3601(4) of the TCCP, which provides:

> "Section 3601. Unlawful importation. – xxx
>
> xxx
>
> 4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos"

WHEREFORE, premises considered, judgment is hereby rendered:

1. In Criminal Case No. O-128, finding accused Francisco Billones GUILTY beyond reasonable doubt for violation of Section 3601 of the Tariff and Customs Code, in relation to Section 101(k) of the same Code, Sugar Order No. 8, Series of 1994-1995, and Joint Memorandum Order No. 4-2002; and is hereby SENTENCED to suffer an indeterminate penalty of eight (8) years and one (1) day, as minimum, to nine (9) years, as maximum, and is ordered to pay a fine in the amount of P10,000.00.

   Accused Mary Lucille Billones is found NOT GUILTY for failure of prosecution to prove her guilt beyond reasonable doubt.

2. In Criminal Case No. O-129, finding accused Francisco Billones GUILTY beyond reasonable doubt for violation of Section 3602 of the Tariff and Customs Code, in relation to Sections 2503 and 2530 of the same Code; and is hereby SENTENCED to suffer an indeterminate penalty of eight (8) years and one (1) day, as minimum, to nine (9) years, as maximum, and is ordered to pay a fine in the amount of P10,000.00.

   Accused Mary Lucille Billones is found NOT GUILTY for failure of prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice