REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-282** (I.S. No. XVI-INV-11L-00459) *For: Violation of Sections 3601 & 3602 in relation to Sections 2503 & 2530 of the TCCP, as amended.*
- versus -	Members: ***Bautista,*** Chairperson, ***Fabon-Victorino,*** and ***Ringpis-Liban,*** *JJ.*
MOISES BAGAN RODRIGUEZ, *Accused.*	Promulgated: JUN 2 8 2017 1:46 p.m.

x---x

DECISION

BAUTISTA, J:

The Case

Accused Moises Bagan Rodriguez is charged with violation of *Sections 3601 and 3602 in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines, as amended ("TCCP")*[1] for unlawful importation and fraudulent practices against customs revenue covering the alleged importation of pastry ingredients and dough, which are, in actuality, importation of onions.

The Facts

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

[1] Approved on June 22, 1957.

Run After the Smugglers ("RATS") Program.

Accused is the sole proprietor of Yanzhen Enterprises, a sole proprietorship duly registered with the Department of Trade and Industry ("DTI") with principal address at 1282 Purok Durian, Lapu-Lapu Extension, San Miguel (ODACA), Digos City, Davao Del Sur,[2] and engaged in the business of dealing and importing surplus auto parts and merchandise.[3]

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

ENTRY NO.	BILL OF LADING NO.	SHIPPER; ADDRESS	DECLARATION	CONTAINER VAN NOS.
C 8995[4]	GOSUQIN6250093	Shandong Sunshine Foodstuff Co., Ltd.; China	6 x 40 pastries ingredients	CAIU5470360 CAIU5470375 CAIU5470631 CAIU5470647
C 9000[5]	HKGRF9021	Xin He Trading Co., Ltd.; Hong Kong	4 x 40 pastries ingredients	MWMU6412675 MSWU0090588 MWCU5315048 MWCU5263643
C 8999[6]	GOSUHKG1240114	Bong Ming Trading Co., Ltd.; Hong Kong	3 x 40 pastries ingredients	ZCSU5118676 ZCSU5809153 ZCSU5922299
C 8998[7]	GOSUQIN3450648	Laiwu Changyuan Fruit & Vegetable Co., Ltd.; China	1 x 40 pastries ingredients	ZCSU5855879
C 8996[8]	HKGRF9017	Rin Hop Trading Co., Ltd.; Hong Kong	2 x 40 pastries ingredients	DAYU6711154 MWCU6211520
C 8994[9]	GOSUQIN3450647	Shandong Sunshine Foodstuff Co., Ltd.; China	2 x 40 pastries ingredients	CAIU5470436 CAIU5471751
C 8993[10]	555182865	Rizhao Wufeng Foods Co. Ltd.; China	1 x 40 dough	MWMU6423495

[2] *Records, CTA Crim. Case No. O-282, Vol. 3, Exhibit "3," Department of Trade and Industry Certificate of Business Name Registration*, p. 1012; *Records, Vol. 3, Exhibit "5," Bureau of Internal Revenue Certificate of Registration*, p. 1013; *Records, Vol. 3, Exhibit "2," with sub-markings, CPRS-Importer Profile Information*, pp. 1015-1018; *Records, Vol. 3, Exhibit "11," Bureau of Customs Certificate of Accreditation and Registration*, p. 1019.
[3] *Records, Vol. 3, Exhibit "7," Business Certificate*, p. 1014.
[4] *Id., Vol. 2, Exhibit "C" and sub-markings, Single Administrative Document ("SAD")*, pp. 752-753.
[5] *Id., Exhibit "D" and sub-markings, SAD*, pp. 754-755.
[6] *Id., Exhibit "E" and sub-markings, SAD*, pp. 756-757.
[7] *Id., Exhibit "F" and sub-markings, SAD*, pp. 758-759.
[8] *Id., Exhibit "G" and sub-markings, SAD*, pp. 760-761.
[9] *Records, Vol. 2, Exhibit "H" and sub-markings, SAD*, pp. 762-763.
[10] *Records, Vol. 2, Exhibit "I" and sub-markings, SAD*, p. 764; *Records, Vol. 1, Exhibits "I-2" and "52-B," Waybill*, p. 265.

C 8997[11]	555182818	Rizhao Wufeng Foods Co. Ltd.; China	1 x 40 dough	MWCU6514677

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

ENTRY NO.	ALERT ORDER NO.	DESCRIPTION	CONTAINER VAN NOS.
C 8995	A/1G/20110923-111[12]	6x40′ contrs. Stc Pastries Ingredients	CAIU5470360
			CAIU5470375
			CAIU5470631
			CAIU5470647
C 9000	A/1G/20110923-113[13]	Pastries Ingredients	MWMU6412675
			MSWU0090588
			MWCU5315048
			MWCU5263643
C 8999	A/1G/20110923-114[14]	Pastries Ingredients	ZCSU5118676
			ZCSU5809153
			ZCSU5922299
C 8998	A/1G/20110925-115[15]	Pastries Ingredients	ZCSU5855879
C 8996	A/1G/20110923-116[16]	Pastries Ingredients	DAYU6711154
			MWCU6211520
C 8994	A/1G/20110923-117[17]	Pastries Ingredients	CAIU5470436
			CAIU5471751
C 8993	A/1G/20110923-118[18]	- Other, not containing cocoa DOUGH	MWMU6423495
C 8997	A/1G/20110923-120[19]	- Other, not containing cocoa DOUGH	MWCU6514677

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

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

---

[11] *Records, Vol. 2, Exhibit "J" and sub-markings, SAD,* pp. 766-767.
[12] *Records, Vols. 1 &2, Exhibits "K" and sub-markings, Alert Order,* pp. 268-269, 768.
[13] *Records, Vols. 1 & 2, Exhibit "L" and sub-markings, Alert Order,* pp. 270-271, 769.
[14] *Records, Vols. 1 & 2, Exhibit "M" and sub-markings, Alert Order,* pp. 272-273, 770.
[15] *Records, Vols. 1 & 2, Exhibit "N" and sub-markings, Alert Order,* pp. 274-275, 771.
[16] *Records, Vols. 1 & 2, Exhibit "O" and sub-markings, Alert Order,* pp. 276-278, 772.
[17] *Records, Vols. 1 & 2, Exhibit "P" and sub-markings, Alert Order,* pp. 279-280, 773.
[18] *Records, Vols. 1 & 2, Exhibit "Q" and sub-markings, Alert Order,* pp. 281-282, 774.
[19] *Records, Vols. 1 & 2, Exhibit "R" and sub-markings, Alert Order,* pp. 283-284, 775.

ENTRY NO.	ALERT ORDER NO.	DESCRIPTION SAD	DESCRIPTION AER	CONTAINER VAN NOS.
C 8995	A/1G/20110923-111	6x40′ contrs. Stc Pastries Ingredients	Onions[20]	CAIU5470360 CAIU5470375 CAIU5470631 CAIU5470647 ZCSU5835506[21] ZCSU5116009[22]
C 9000	A/1G/20110923-113	Pastries Ingredients	Onions[23]	MWMU6412675 MSWU0090588 MWCU5315048 MWCU5263643
C 8999	A/1G/20110923-114	Pastries Ingredients	Onions[24]	ZCSU5118676 ZCSU5809153 ZCSU5922299
C 8998	A/1G/20110925-115	Pastries Ingredients	Onions[25]	ZCSU5855879
C 8996	A/1G/20110923-116	Pastries Ingredients	Onions[26]	DAYU6711154 MWCU6211520
C 8994	A/1G/20110923-117	Pastries Ingredients	Onions[27]	CAIU5470436 CAIU5471751
C 8993	A/1G/20110923-118	- Other, not containing cocoa DOUGH	Onions[28]	MWMU6423495
C 8997	A/1G/20110923-120	- Other, not containing cocoa DOUGH	Onions[29]	MWCU6514677

Based on the aforementioned documents, the shipments in question were found to contain onions; thus, the relevant Customs Officer requested for the issuance of a Warrant of Seizure and Detention ("WSD") covering the said shipments. As a result, a WSD[30] was issued on September 30, 2011 covering Container Van Nos. CAIU5470360, CAIU5470375, CAIU5470631, CAIU5470647, ZCSU5835596[31], ZCSU5116009, MWMU6412675, MSWU0090588, MWCU5315048, MWCU5263643, ZCSU5118676, ZCSU5809153, ZCSU5922299, ZCSU5855879, DAYU6711154, MWCU6211520, CAIU5470436, CAIU5471751, MWMU6423495 and MWCU6514677, which are the subjects of the case; along with two (2) other container vans covered by other alert orders, which do not relate to the case.

Consequently, the RATS Group issued the 1st Indorsement[32] on

[20] *Records, Vol. 2, Exhibits "S" & "S-1," After Examination Report ("AER"),* p. 776.
[21] Not included in the SAD.
[22] Not included in the SAD.
[23] *Records, Vol. 2, Exhibit "S-2," AER,* p. 777.
[24] *Id., Exhibit "S-3," AER,* p. 778.
[25] *Id., Exhibit "S-4," AER,* p. 779.
[26] *Id., Exhibit "S-5," AER,* p. 780.
[27] *Id., Exhibit "S-6," AER,* p. 781.
[28] *Id., Exhibit "S-7," AER,* p. 782.
[29] *Records, Vol. 2, Exhibit "S-8," AER,* p. 783.
[30] *Id., Exhibits "T" & "T-1," Warrant of Seizure and Detention,* pp. 784-785.
[31] Note that Alert Order states ZCSU5835506.
[32] *Records, Vol. 2, Exhibit "U-3," 1st Indorsement,* p. 788.

November 23, 2011 requesting for the valuation and computation of the appropriate duties and taxes supposedly due on the shipment in question. In reply, the Import Assessment Service ("IAS") issued the 2nd Indorsement[33] on November 29, 2011 stating that the total duties and taxes due on the shipment in question is Php1,484,332.00.

On December 21, 2011, a Complaint-Affidavit[34] was filed against the following:

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

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

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

On April 18, 2012, the Department of Justice approved the filing of an information against accused Moises Bagan Rodriguez.[35]

On May 18, 2012, the present Information[36] was filed against accused for violation of *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP*. The Information reads:

> The undersigned prosecutor of the Department of Justice hereby accuses **MOISES BAGAN RODRIGUEZ**, of violation of Sections 3601 & 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines, as amended, committed as follows:
>
> > []That on or about September 2011, in Davao City, and within the jurisdiction of this Honorable Court, the above-named accused, being the owner/proprietor of Yanzhen Enterprises, willfully, unlawfully and feloniously did then and there

[33] *Records, Vol. 2, Exhibit "U," 2nd Indorsement*, pp. 786-787.
[34] *Id., Exhibit "A" and sub-markings, Complaint-Affidavit*, pp. 744-751.
[35] *Records, Vol. 1, Department of Justice Resolution*, pp. 7-14.
[36] *Id., Information*, pp. 4-223, with annexes.

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

In a Resolution[37] promulgated on October 3, 2012, the Court found the existence of probable cause to hold accused for trial. Thus, on October 5, 2012, the Court issued a Warrant of Arrest[38] against accused.

On October 16, 2012, the National Bureau of Investigation issued a Return of Warrant of Arrest[39] stating that accused was arrested on August 16, 2012[40].

On October 17, 2012, accused appeared before the Office of the Executive Judge of the Regional Trial Court, 11th Judicial Region, Davao City, posted the required cash bond, and was released.[41] Accused likewise executed an Undertaking[42] on even date, which was approved by Judge George E. Omelio.[43]

The defense filed a Motion for Preliminary Investigation[44] on November 12, 2012 to which the prosecution filed its Comment (to

---

[37] *Records, Vol. 1, Resolution*, pp. 307-308.
[38] *Id., Warrant of Arrest*, p. 309.
[39] *Id., Return of Warrant of Arrest*, p. 314.
[40] Should be October 16, 2012. *See Records, Vol. 3, Memorandum of Accused*, p. 1074; *Records, Vol. 1, Motion for Preliminary Investigation*, p. 332.
[41] *Records, Vol. 1, Regional Trial Court Order*, p. 322.
[42] *Id., Undertaking*, p. 324.
[43] *Id., Regional Trial Court Order*, p. 322.
[44] *Id., Motion for Preliminary Investigation*, pp. 332-335.

"Motion for Preliminary Investigation")[45] on December 3, 2012 *via* registered mail. The Court, in a Resolution[46] dated December 18, 2012, denied the Motion for Preliminary Investigation filed by the defense.

On March 20, 2013, accused was arraigned. Accused, assisted by his counsel, admitted that he was the same person charged in the Information, and entered a plea of "Not Guilty" to the crime charged.[47]

The defense filed its Preliminary Conference Brief[48] on April 12, 2012; and a preliminary conference[49] was held on April 16, 2013. The prosecution filed its Pre-Trial Brief[50] on May 7, 2013. Thereafter, a pre-trial conference was held on May 29, 2013.[51]

The parties filed their Joint Stipulation of Facts and Issues[52] on June 17, 2013 by registered mail. Thus, the Court issued the Pre-Trial Order[53] on July 12, 2013, wherein the parties admitted the following facts: *(1)* accused is the owner and proprietor of Yanzhen Enterprises with office address at 1282 Purok Durian, Lapu-Lapu Extension, San Miguel, (ODACA) Digos City; *(2)* the prosecution has sent one (1) subpoena with two (2) settings to the accused of the notice of hearing for the preliminary investigation of the above-mentioned case; and *(3)* the charges for violation of *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP* against the customs brokers, namely, Abolkhayr L. Cali and Zahraida M. Abdul, were dropped by the investigating state prosecutor in a resolution of the preliminary investigation.

Trial ensued.

The prosecution presented both testimonial and documentary evidence through the following witnesses: *(1)* Diamongun Datu-

---

[45] *Records, Vol. 1, Comment (to "Motion for Preliminary Investigation"),* pp. 340-343, with annex.
[46] *Id., Resolution,* pp. 350-352.
[47] *Records, Vol. 1, March 20, 2013 Minutes of Hearing,* p. 356; *Records, Vol. 1, Resolution,* pp. 360-361; *Records, Vol. 1, Certificate of Arraignment,* p. 357; *Records, Vol. 1, Identity Admission of the Accused,* p. 358.
[48] *Records, Vol. 1, Preliminary Conference Brief,* pp. 362-365.
[49] *Id., Minutes of Preliminary Conference,* pp. 366-368.
[50] *Id., Pre-Trial Brief,* pp. 370-374.
[51] *Id., Resolution,* pp. 384-385.
[52] *Id., Joint Stipulation of Facts and Issues,* pp. 389-391.
[53] *Id., Pre-Trial Order,* pp. 394-407.

Dacula, a BOC Examiner at the Port of Davao;[54] *(2)* Faisal Basman, a BOC Examiner at the Port of Davao;[55] *(3)* Al Tomas B. Albano, Officer-In-Charge of the Customs Investigation and Intelligence Service ("CIIS") Group of the BOC;[56] *(4)* Nomie V. Gonzales, Chief of the System Management Division ("SMD") of the BOC;[57] *(5)* Atty. Julito L. Doria, Attorney IV of the Legal Service, Revenue Collection Monitoring Group of the BOC;[58] *(6)* Remedios Salazar Espinosa, Acting Director III of the IAS of the BOC;[59] and *(7)* Atty. Martiniano B. Bangcoy, a retired Acting District Collector of the Port of Davao.[60]

The prosecution presented its first witness. Datu-Dacula testified that his office received alert orders issued by the office of the Deputy Commissioner of Customs directing the former to conduct a physical examination of the container vans in question. Thus, on September 29, 2011, Datu-Dacula, together with his colleagues and armed with Inward Foreign Manifests and Bills of Lading, conducted a physical examination of the shipments from China with Yanzhen Enterprises as consignee. Further, the Inward Foreign Manifest indicated that the shipments were declared as pastry ingredients. Upon examination of the same, Datu-Dacula discovered that the contents of the shipments were onion instead of the declared pastry ingredients. Accordingly, Datu-Dacula prepared an AER.

Upon cross examination, Datu-Dacula testified that the Inward Foreign Manifests merely indicated pastry ingredients, and that onions have a different classification under the *TCCP*. He also testified that he and his colleagues who conducted the physical examination of the shipment in question were authorized to do so; that while the alert orders were addressed to the District Collector, the Chief of the Assessment Division to which he belongs verbally assigned the physical examination of the shipments in question to him and his

---

[54] *Records, Vol. 1, Minutes of Hearing dated August 28, 2013*, p. 420; *Transcript of Stenographic Notes ("TSN"), Vol. 1, August 28, 2013 Hearing*, pp. 1-99.
[55] *Records, Vol. 1, Minutes of Hearing dated September 25, 2013*, p. 430; *TSN, Vol. 1, September 25, 2013 Hearing*, pp. 1-104.
[56] *Id.*
[57] *Records, Vol. 1, Minutes of Hearing dated October 16, 2013*, p. 431; *Records, Vol. 1, TSN, October 16, 2013 Hearing*, pp. 432-484; *Records, Vol. 1, Minutes of Hearing dated January 15, 2014*, p. 492; *Records, Vol. 1, TSN, January 15, 2014 Hearing*, pp. 493-510.
[58] *Records, Vol. 1, Minutes of Hearing dated January 29, 2014*, p. 513; *TSN, Vol. 1, January 29, 2014 Hearing*, pp. 1-73; *Records, Vol. 1, Minutes of Hearing dated February 12, 2014*, p. 586; *TSN, Vol. 1, February 12, 2014 Hearing*, pp. 1-37; *Records, Vol. 1, Minutes of Hearing dated February 26, 2014*, p. 626; *Records, Vol. 1, TSN, February 26, 2014 Hearing*, pp. 627-666.
[59] *Records, Vol. 2, Minutes of Hearing dated March 26, 2014*, p. 676; *TSN, Vol. 1, March 26, 2014 Hearing*, pp. 1-32.
[60] *Records, Vol. 2, Minutes of Hearing dated June 25, 2014*, p. 728; *TSN, Vol. 1, June 25, 2014 Hearing*, pp. 1-48.

colleagues. Datu-Dacula then stated that aside from him and his colleagues, other people were present at the time of the physical examination of the shipments in question, *i.e.*, members of the CIIS Group, Customs police, and local media; and that the members of the local media were the ones who took pictures when the shipments in question was opened. According to Datu-Dacula, twenty (20) container vans were opened almost at the same time, and all contained onions; that he personally inspected around seven (7) of the twenty (20) container vans; and that it took the team around three (3) hours to finish inspecting all the container vans. He went on to explain that even if he normally inspects around four (4) to ten (10) container vans *per* day, in this particular case, he inspected twenty (20) container vans. Datu-Dacula likewise testified that while he did not know the consignee or its owner, he was familiar with the brokers.

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

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

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

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

The prosecution presented its fourth witness. Gonzales testified that the SMD is in charge of the whole Philippines and can access each entry *per* lodgment from all the ports. She explained that the Electronic to Mobile Customs System ("E2M System"), which started sometime in 2009, requires importers, brokers, shipping lines, and consolidators to register under the system in order to process or release shipments; that the broker normally encodes entries, which consists of information indicated in the Bill of Lading, in the system through the

BOC-accredited Value-Added Service Provider ("VASP"); and that thereafter, Customs Examiners verify the encoded information with their online database. She further testified that the Single Administrative Document ("SAD"), which is the equivalent of the manual Import Entry and Internal Revenue Declaration ("IEIRD"), is the declaration of the broker while the Bill of Lading is the declaration of the contents of the vessel or of a particular cargo by the shipping line.

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

The prosecution presented its fifth witness. Atty. Doria testified that he was part of the RATS Group; that in September 2011, the Deputy Commissioner issued alert orders for the shipments in question; that the RATS Group took three (3) months to conduct its investigation, beginning from the date the alert orders were issued and received by the Group; and that, accordingly, the complaint-affidavit was filed on December 1, 2011. He further narrated that pursuant to the Group's investigation, they requested the CIIS in the Port of Davao, as well as the other responsible officials who conducted the physical examination, to submit the relevant documents (*e.g.*, alert orders, electronic manifest, SAD, report, and WSD) to the Group; that based on the one hundred percent (100%) physical examination conducted, it appeared that the import entries declared as pastries and dough were actually onions, which are subject to regulatory requirements;

and that it appeared that even the tariff heading on the importation was changed to suit the declaration in the import entry. Atty. Doria also testified that he did not personally examine the shipment, but relied on the results of the examination conducted by the officials in the Port of Davao; and that what he conducted was a document investigation. He explained that the WSD issued stated that, upon 100% examination, the declaration of pastries was actually onions; and that the Enforcement Unit was directed to forfeit and seize the container vans and subject the items to a seizure and detention hearing by the Law Division of the Port of Davao. Personally, however, he had no knowledge if the seized goods were actually forfeited in favor of the government. Finally, Atty. Doria identified the Client Profile Registration System ("CPRS") Profiles of Yanzhen Enterprises[61], Cali[62], and Abdul[63].

On cross examination, Atty. Doria testified that in conducting its investigation, the RATS Group does not normally notify the accused; notification is only made when the case for seizure and forfeiture will be done by the port; that the Group relies on the presumption of regularity in the performance of the functions by the officials in the Port of Davao, hence, he only relied on the documents gathered from the latter; and that seizure is no longer part of the Group's investigation process. Thereafter, Atty. Doria explained that the Group assumed that it was accused who lodged the entry based on the documents the Group gathered and considering Yanzhen Enterprises was owned by accused. Based on Atty. Doria's understanding, a unique code is assigned to the importer and the broker; that the broker can only open the particular shipment pertaining to the importer if the broker is also given the code coming from the importer; and that in this case, considering the importation was coming from Yanzhen Enterprises, the RATS Group was pretty confident all the security measures attendant in the particular entry was provided by the importer itself. Further, Atty. Doria testified that as far as the Group knows, Yanzhen Enterprises and the brokers are accredited importers because their records were still in the Group's file; and that the lodging of a profile with the Interim Customs Accreditation Registration Unit ("iCARE") is part of the accreditation process as an importer. Atty. Doria said that considering he has a copy of Yanzhen Enterprise's CPRS, he assumed the latter renewed its accreditation on October 22, 2011. Further, Atty. Doria testified that once an importer does not

---

[61] *Records, Vol. 2, Exhibits "V" and "V-1," Client Profile Registration System ("CPRS") Profile,* pp. 789-790.
[62] *Id., Exhibits "W" and "W-1," CPRS Profile,* pp. 791-792.
[63] *Id., Exhibits "X" and "X-1," CPRS Profile,* pp. 793-794.

comply with the requirements for the application for accreditation, such importer cannot lodge an entry; that while the BOC can change the electronic entry lodged by another person, the entry in the present case was not cancelled because cancellation can only start from the importer itself; and that once an entry is filed, it cannot be deleted from the system unless the importer does so. As regards the apparent discrepancy in the number of container vans in the shipment in question, Atty. Doria clarified that even though the WSD indicated twenty-two (22) container vans, only twenty (20) container vans were included in the complaint as the investigation focused only on the shipments said to contain onions but were supposed to be pastry ingredients; and that the remaining two (2) container vans contained motor vehicles. Accordingly, the Group intentionally excluded the container vans containing motor vehicles from the complaint notwithstanding the 2nd Indorsement because there are different requirements in the importation of motor vehicles. Atty. Doria then narrated that he attended the preliminary investigation as one of the two (2) complaining witness for the prosecution; however, he has no knowledge whether the accused was notified of the proceedings. Moreover, Atty. Doria stated that in the ordinary course of proceedings, there should be a justification why an alert order is issued against a particular shipment; that in this case, however, he did not receive a copy of the attachments to the alert orders, just the alert orders; and that as regards the forfeiture of the shipments in question, it is a logical conclusion that the same were already forfeited considering a WSD was issued for the same.

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

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

On cross examination, Espinosa stated that she did not compute the taxes and duties due on the two (2) remaining container vans which consisted of items other than onions because she was only requested to compute the taxes and duties due on the onions. According to Espinosa, she arrived at her computation of the twenty (20) container vans based on the documents presented to her together

N

with the 1st Indorsement, which documents were returned upon the issuance of the 2nd Indorsement. Espinosa also testified that the documents were only forwarded to her for computation, and at that point there was already a finding of misdeclaration.

Finally, the prosecution presented its seventh and last witness. Atty. Bangcoy testified that he was the acting District Collector when the shipments in question arrived; that the alert orders were issued on the same day the shipments arrived; and that upon receipt of the same, he directed the assessment people to assign Customs Examiners to conduct the one hundred percent (100%) physical examination. Atty. Bangcoy then narrated that considering the alert orders directly came from the Deputy Commissioner, he made it a point to attend the examination and witness the same personally; that based on the records, the shipment was declared as ingredients for pastries and dough; that, however, after the examination, it was discovered that the actual contents was onions; and that, as a result, the Chief of the CIIS submitted to him a report of the examination, which recommended the issuance of a WSD in view of the blatant misdeclaration of the shipments. Acting on the request for issuance of WSD, Atty. Bangcoy stated that he directed the Law Division to prepare the WSD which he eventually signed; and that the WSD was then issued against the shipment consisting of twenty-two (22) container vans consigned to Yanzhen Enterprises, which same vans were opened and subjected to the one hundred percent (100%) physical examination. Atty. Bangcoy also testified that out of the twenty-two (22) container vans, only twenty (20) contained onions; that the remaining two (2) contained motor vehicles; and that, meanwhile, the WSD was issued to cover all the twenty-two (22) container vans because they were all consigned to the same consignee.

On cross examination, Atty. Bangcoy testified that before being assigned to the Port of Davao, he was a Deputy Collector Administrator in Cebu; that his first alert orders happened to be the alert orders issued in the present case; and that all full alert orders or original copies were submitted to him through the office of the Chief of the CIIS of the Port of Davao. According to Atty. Bangcoy, the physical examination of the shipments in question was done in one day (*i.e.*, September 29, 2011), the report of the CIIS was received by his office the following day, and the WSD was issued on that same day. Finally, Atty. Bangcoy testified that after the issuance of the WSD, the Law Division was responsible for notifying the consignee; that when he signed the WSD, the same had yet to be received by Yanzhen

Enterprises; and that, in issuing the WSD, he relied on the documents on record which stated that Yanzhen Enterprises, an entity which he had no personal knowledge of, was the consignee of the shipment in question.

Thereafter, the prosecution formally offered its evidence on August 1, 2014;[64] to which the defense filed its opposition on September 9, 2014.[65] The Court admitted all of the prosecution's evidence in a Resolution[66] dated September 16, 2014.

The defense filed a Motion for Leave of Court to File Demurrer to Evidence[67] on September 30, 2014, which the Court granted in a Resolution[68] dated November 12, 2014. Thus, the defense filed its Demurrer to Evidence[69] on November 25, 2014. The prosecution filed its Comment/Opposition (To The Demurrer to Evidence Filed by Accused Moises Bagan Rodriguez)[70] on December 9, 2014. In a Resolution[71] promulgated on February 11, 2015, the Court denied the demurrer to evidence filed by the defense.

For its part, the defense presented both testimonial and documentary evidence through the following witnesses: *(1)* Adnan D. Dilangalen, a former employee of accused;[72] *(2)* Moises Bagan Rodriguez, accused in the present case;[73] and *(3)* Marlowe Noble Ejercito, the Sales Import Manager of accused.[74]

The defense presented its first witness. Dilangalen testified that he was hired by Yanzhen Enterprises, a sole proprietorship owned by accused, in June 2010 as a sales representative of the supposed importation of second-hand truck parts; and that, however, he was

---

[64] *Records, Vol. 2, Prosecution's Formal Offer of Evidence,* pp. 731-743.
[65] *Id., Opposition to the Formal Offer of Evidence filed by Accused,* pp. 796-798.
[66] *Id., Resolution,* pp. 800-801.
[67] *Id., Motion for Leave of Court to File Demurrer to Evidence,* pp. 809-813.
[68] *Id., Resolution,* pp. 818-819.
[69] *Id., Demurrer to Evidence,* pp. 820-828.
[70] *Records, Vol. 2, Comment/Opposition (To The Demurrer to Evidence Filed by Accused Moises Bagan Rodriguez),* pp. 842-848.
[71] *Id., Resolution,* pp. 857-868.
[72] *Records, Vol. 2, Minutes of Hearing dated March 18, 2015,* p. 869; *TSN, Vol. 2, March 18, 2015 Hearing,* pp. 1-67.
[73] *Records, Vol. 2, Minutes of Hearing dated June 10, 2015,* p. 875; *TSN, Vol. 2, June 10, 2015 Hearing,* pp. 1-47; *Records, Vol. 2, Minutes of Hearing dated September 2, 2015,* p. 955; *TSN, Vol. 2, September 2, 2015 Hearing,* pp. 1-27; *Records, Vol. 3, Exhibit "58," Judicial Affidavit of Moises Rodriguez,* pp. 1005-1011;
[74] *Records, Vol. 3, Minutes of Hearing dated January 20, 2016,* p. 990; *TSN, Vol. 2, January 20, 2016 Hearing,* pp. 1-28.

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

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

Thereafter, the defense presented its second witness, accused himself. Accused testified that in May 2010, he befriended a certain Mr. Min who encouraged him to enter into the business of selling second-hand spare car parts from Korea for sale to North Cotabato and Cotabato City; that Min provided the necessary capital while Dilangalen helped secure the necessary papers (*i.e.*, DTI Certificate of Business Name Registration, BIR Certificate of Registration, Mayor's

Permit, CPRS - Importer Profile Importation, Certificate of Accreditation and Registration) to establish Yanzhen Enterprises, a sole proprietorship; and that Yanzhen Enterprises secured all the necessary documents in October 2010. Accused stated, however, that Yanzhen Enterprises never had the opportunity to conduct business due to the lack of capital; and that in fact, accused executed an Affidavit of No Operation in February 2011 in order to retire the business. As regards the shipment in question, accused testified that he did not have the capacity to import the same; neither did he know how to use the internet. Further, accused stated that he had no knowledge whatsoever of the importation of the container vans in question, including the investigation conducted thereon, notwithstanding that Yanzhen Enterprises was indicated as the consignee of the shipments. Accused explained that aside from himself, he did not authorize any other person to use the name Yanzhen Enterprises; that he never appointed or even knew the brokers of the shipment in question, Cali and Abdul; that he never saw or signed any document in relation to the shipment in question; that in fact, from the time the permits of Yanzhen Enterprises was secured up to the present, he never imported goods which arrived at the Port of Davao; and that the first time he learned about the shipments in question was when he was arrested in October 16, 2012.

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

Finally, the defense presented its third and last witness. Ejercito testified that he was hired by Yanzhen Enterprises as a sales import manager, who was supposed to be in charge of processing any importations made by Yanzhen Enterprises; and that accordingly, he has a CPRS Profile. Ejercito explained that while employed by

Yanzhen Enterprises, no importation was made either by accused or by Yanzhen Enterprises; and thus, he has no knowledge who the owner of the shipment in question is, considering Yanzhen Enterprises is only authorized to import second-hand truck parts.

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

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

Having finished presenting its evidence, the defense formally offered its evidence on February 1, 2016.[75] The prosecution filed its comment/opposition to the formal offer of evidence on March 9, 2016,[76] which was deemed by the Court as having been filed out of time.[77] Accordingly, the Court admitted all of the evidence formally offered by the defense in a Resolution[78] dated March 22, 2016.

In compliance with the Court's March 22, 2016 Resolution, which ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof, the prosecution filed its Memorandum[79] on May 30, 2016, while the defense filed its Memorandum[80] on June 24, 2016. Thus, the Court issued a Resolution[81] on June 28, 2016 submitting the case for decision; hence, this Decision.

The Issues

Based on the Pre-Trial Order, the following are the issues to be

---

[75] *Records, Vol. 3, Formal Offer of Evidence of Accused*, pp. 1001-1004.
[76] *Id., Comment/Opposition to Accused' Formal Offer of Evidence*, pp. 1036-1039.
[77] *See Records, Vol. 3, Resolution*, pp. 1041-1042.
[78] *Records, Vol. 3, Resolution*, pp. 1041-1042.
[79] *Id., Prosecution's Memorandum*, pp. 1059-1069.
[80] *Id., Memorandum of Accused*, pp. 1072-1082.
[81] *Id., Resolution*, p. 1084.

resolved by the Court:

WHETHER ACCUSED IS THE AUTHOR WHO BENEFITED FROM THE PROCEEDS/EFFECTS OF THE FALSIFIED/SPURIOUS CARGO MANIFEST/WAY BILL THAT FACILITATED THE COMMISSION OF THE COMPLAINED MISDECLARATION;

WHETHER ACCUSED ENGAGED THE SERVICES OF ABOLHAYR L. CALI AND ZAHRAIDA M. ABDUL TO BE THE CUSTOMS BROKERS OF THE SUBJECT IMPORTED GOODS;

WHETHER ACCUSED CONSENTED TO THE IMPORTATION OF PASTRIES INGREDIENTS/DOUGH/ONIONS FROM CHINA, WITHOUT HAVING THE BILL OF LADINGS DULY SIGNED BY HIM AS CONSIGNEE OF THE SUBJECT IMPORTED GOODS; AND

WHETHER ACCUSED IS GUILTY OF VIOLATING *SECTIONS 3601 AND 3602* IN RELATION TO *SECTIONS 2503 AND 2530 OF THE TCCP*.[82]

Ultimately, the main issue to be resolved by the Court is whether accused is guilty of violating *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP.*

Arguments of the Prosecution[83]

The prosecution claims that accused performed overt acts indicative of a criminal objective, *i.e.*, knowingly, feloniously, fraudulently, and willfully importing onions without a permit to import from the Bureau of Plant and Industry ("BPI"); and that consequently, accused committed undervaluation of the imported articles. The prosecution further alleges that accused merely raised the defenses of alibi and denial, instead of presenting evidence to disprove the prosecution's allegations. Finally, the prosecution avers that the self-serving testimony of accused was worsened by the immaterial, irrelevant, and purely hearsay testimonies of his witnesses.

---

[82] *Records, Vol. 1, Pre-Trial Order, Issues*, p. 395.
[83] *Id., Vol. 3, Prosecution's Memorandum*, pp. 1059-1069.

ᵞ

Arguments of the Defense[84]

On the other hand, the defense argues that the prosecution was not able to prove that accused actually imported or assisted in so doing, by fraudulent means, onions in the shipments in question. In addition, the defense avers that the prosecution utterly failed to prove that accused knowingly facilitated an entry of goods upon a false classification as to quality to lower the payment of tax, and that accused was duly notified of the arrival of the shipments in question. The defense also claims that Yanzhen Enterprises practically ceased to operate from February 2011 onwards, seven (7) months before the importation of the shipments in question; that consequently, Yanzhen Enterprises could not have imported the onions. The defense argues that, indeed, the name of accused does not appear on any document presented by the prosecution; that only Yanzhen Enterprises, which is a person that cannot be sued, appears on the same. Moreover, the defense posits that the prosecution failed to present evidence that the brokers were authorized by accused to facilitate or process the documents of the imported onions; that in fact, the prosecution failed to prove a relationship or agency between the shipper, broker, consignor, and consignee; and that neither did accused claim or demand ownership over the shipments in question. Thus, the defense argues that the prosecution failed to prove the culpability of accused in knowingly importing the onions; and that on the other hand, the defense vehemently denies the same. Finally, the defense claims that, surprisingly, the prosecution has set free the brokers who were culpable of the importation at the expense of accused whose business name was unscrupulously used to import the onions.

The Ruling of the Court

The evidence presented by the prosecution is sufficient to indict accused of the violation charged.

Accused is charged with violating *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP. Sections 3601 and 3602* refer to acts that amount to unlawful importation and those that amount to fraudulent practices against customs revenue, respectively, and their corresponding penalties. They read:

---

[84] *Records, Vol. 3, Memorandum of Accused,* pp. 1072-1082.

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 xxx xxx

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

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 defence in any prosecution under this section.

xxx xxx xxx

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

N

section.

On the other hand, *Sections 2503 and 2530* imposes the surcharge for undervaluation, misclassification, and misdeclaration in entry and the forfeiture of articles and objects. They provide:

> Sec. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided,* That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: *Provided, further,* That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.
>
> When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.
>
> xxx xxx xxx
>
> 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 xxx 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 xxx 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 xxx xxx
>
> 1. 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.

Applying the foregoing provisions to the present case, the Court finds the prosecution's allegation that the eight (8) shipments declared to contain "pastries ingredients" and "dough" were actually onions, given direct evidence from the various prosecution witnesses proving this fact. In addition, it is worthy to note that considering the shipments in question were declared as "pastries ingredients" and "dough," the importation was clearly made without the required import clearance from the BPI.[85] Thus, there is clear and intentional

---

[85] *See* Department of Agriculture Administrative Order No. 08-09, May 7, 2009.

misdeclaration of the shipments in question and unlawful importation and fraudulent practice against the BOC, as contemplated in the *TCCP*.

Considering that the violation charged was clearly committed, it is now necessary to determine the guilt of accused.

Accused denies that he was involved in the commission of the violation of the *TCCP*. As his defense, accused argues that Yanzhen Enterprises never operated and had in fact ceased operations as early as February 2011; that he has no capacity to make any importations because he has no capital; that he does not know the brokers who facilitated the shipment in question; and that Yanzhen Enterprises was unscrupulously used to make the unlawful importation.

However, the Court notes that the defenses of the accused are only supported by self-serving and hearsay evidence, *i.e.*, the testimony of accused, his Affidavit of No Operation[86], and the testimony of two other witnesses whose employment with Yanzhen Enterprises already ended in December 2010 and who cannot therefore validly claim that Yanzhen Enterprises did not make the unlawful importation on September 23, 2011. While there is no direct evidence pointing to accused as the one who committed the crime, there is ample circumstantial evidence by the prosecution showing that he is the person responsible therefor.

In *Zabala v. People*[87], the Supreme Court explained that circumstantial evidence is sufficient to support a conviction, thus:

> It is a settled rule that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This is but a recognition of the reality that in certain instances, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence. In *Bacolod v. People*, this Court had the occasion to say:
>
>> The lack or absence of direct evidence does not necessarily mean that the guilt of the accused cannot be proved by evidence other than direct evidence. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt, because circumstantial evidence, if sufficient, can supplant the absence of

---

[86] *Records, Vol. 3, Exhibit "6," Affidavit of No Operation*, p. 1020.
[87] G.R. No. 210760, January 26, 2015, 748 SCRA 246.

> direct evidence. The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence. Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."

The Rules of Court itself recognizes that circumstantial evidence is sufficient for conviction, under certain circumstances:

> Sec. 4. *Circumstantial evidence, when sufficient.* - Circumstantial evidence is sufficient for conviction if:
>
> (1) There is more than one circumstance;
>
> (2) The facts from which the inferences are derived are proven;
>
> (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

Moreover, in *Lozano v. People*, this Court clarified the application of the circumstantial evidence rule:

> To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime.

In the present case, it is worthy to note the following evidence presented by the prosecution:

1. The waybill of the shipment indicates Yanzhen Enterprises as the owner of the shipments in question and different entities from China and Hong Kong as the supplier;

2. The E2M System of the BOC shows Yanzhen Enterprises as the importer of the shipments;

3. The BOC Certificate of Accreditation and Registration[88] of Yanzhen Enterprises was still valid and subsisting at the time the shipments in question were made; and

4. The parties have jointly admitted that accused is the owner and sole proprietor of Yanzhen Enterprises, the consignee of the shipments in question.

The aforementioned evidence, while circumstantial, clearly show beyond reasonable doubt that accused was guilty of the crime charged. Further, under the E2M System, there is a fair and reasonable conclusion that accused, acting through Yanzhen Enterprises, was the one who committed the violations of the *TCCP*. The claim of accused that he does not know how to use the internet and that he does not know the brokers of the shipments in question deserves scant consideration considering the feature of the E2M System which only allows the consignee and/ or its broker to lodge entries therein through the unique access code granted to each of them. There is none other than the consignee and/or its broker who can lodge import entries under the E2M System.

Considering the foregoing, the Court finds that the defense failed to overcome the convincing proof presented by the prosecution. Accordingly, the Court holds accused Moises Bagan Rodriguez liable for the charged acts under *Sections 3601 and 3602* in relation to *Sections 2503 and 2530 of the TCCP*. In addition, the Court notes that the appraised value of the unlawfully imported onions, including duties and taxes, clearly exceeds Php150,000.00.[89]

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

---

[88] *Records, Vol. 3, Exhibit "11," Bureau of Customs Certificate of Registration*, p. 1019.

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

indeterminate penalty of eight (8) years and one (1) day, as a minimum, to twelve (12) years, as a maximum, and to pay a fine in the amount of Php10,000.00.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - MOISES BAGAN RODRIGUEZ, Respondent.	CTA CRIM. CASE NO. O-282 Members: BAUTISTA, Chairperson, FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.* Promulgated: JUN 28 2017 1:40 pm.

x- -x

SEPARATE CONCURRING OPINION

Fabon-Victorino, *J.*:

I subscribe to the pronouncement of the Honorable Ponente that the accused Moises Bagan Rodriguez is GUILTY BEYOND REASONABLE DOUBT of violation of Sections 3601 and 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines (TCCP), for importing onions but declared as pastry ingredients and dough in the Import Entries and Internal Revenue Declarations and other documents pertinent to such importation.

Violation of Section 3601 of the TCCP or Unlawful Importation or smuggling is committed by (i) fraudulently importing/bringing into the country any article, contrary to law; (ii) assisting in such importing/bringing of any article, contrary to law; (iii) receiving, concealing, buying or selling such prohibited article; and (iv) facilitating the transportation, concealment, or sale of such prohibited article.

Importation commences when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit for withdrawal has been issued, or where the articles are duty-free, once the articles have left the jurisdiction of the customs.[1]

In the present case, accused is charged with smuggling through fraudulent practice against customs revenue. To sustain such charge the following must be established, to wit:

1) There was importation made by the accused;
2) Such importation must be illegal or contrary to law.

The fact of importation was unarguably established by the prosecution through the testimonies of its 7 witnesses who identified relevant importation documents such as but not limited to the Import Entries[2] and Inward Foreign Manifests.

The prosecution was also able to prove that the importer/owner of the subject shipments was Yanzhen Enterprises, owned by accused as appearing in the waybill of the shipment and in the Electronic to Mobile Customs System (E2M System) of the Bureau of Customs (BOC). Significantly, accused himself admitted to be the owner and sole proprietor of Yanzhen Enterprises, whose BOC Certificate of Accreditation and Registration was still valid and subsisting at the time of the subject importation.

On the second element, it must be pointed out that the imported article itself - the onions - is not illegal *per se*. The subject importation of onions became illegal when it was entered or misdeclared[3] in the importation documents as

---

[1] Salvador vs. People, G.R. No. 146706, August 15, 2005
[2] Exhibits B to J, and sub-markings.
[3] Section 2503. *Undervaluation, Misclassification and Misdeclaration of Entry.* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided,* That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code:

pastry ingredients and dough, when in truth and in fact as unveiled during the physical inspection, was onions.

In the present case, the Import Entries[4] declared that the shipment contained either pastry ingredients or dough. The Alert Orders[5] however revealed that upon physical inspection, the shipment inside the container vans was found to be onions. This fact is clearly indicated in the After-Examination Reports[6] and unequivocally declared by prosecution witnesses Diamongun Datu-Dacula, Faisal Basman, Al Tomas B. Albano, and Atty. Martiniano B. Bangcoy.

Section 3602[7] of the TCCP, on the other hand, enumerates the various fraudulent practices against customs revenue, i.e., the entry of imported or exported articles by means of false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.

In the case of *Jardeleza v. People*[8], the Supreme Court had the occasion to discuss at length the kind and nature of fraud contemplated by law on the matter, thus:

> The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The

---

Provided, further, That any misdeclared or underdeclared imported articles/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provision 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.

[4] Exhibits B to J, and sub-markings.

[5] Exhibits K to R, and sub-markings.

[6] Exhibits S, and sub-markings.

[7] 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, 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 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.

[8] G.R. No. 165265, February 06, 2006

> offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.
>
> Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.

Thus, for violation of Section 3602 of the TCCP to exist, there must be:

(1) fraudulent practices against customs revenue, such as the entry of imported or exported articles by means of false or fraudulent invoice, statement or practice;
(2) the entry of goods at less than the true weight or measure; or
(3) the filing of any false or fraudulent entry for the payment of drawback or refund of duties.

In the instant case, fraudulent practice by means of false or fraudulent declarations or entries in the import documents was established. The evidence presented point to a logical conclusion that fraud was intentional as there were clear false representations made by accused as the owner of the shipment calculated to mislead the collecting agent as to the subject of importation with the end in view of defeating taxes.

Precisely, I concur with the verdict.

ESPERANZA R. FABON-VICTORINO
Associate Justice