REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIMINAL CASE NO. O-437** For: Violation of Section 3601in relation to Sections 101 and 2530 of the Tariff and Customs Code of the Philippines, as amended
- versus -	Members:
GEMMA AIDA BELARMA y TORREDA, (Room 201 G.K. Chua Bldg., M.J. Cuenco Ave., Brgy. San Roque, Cebu City/F. Pacana St., Tisa Labangon, Cebu City), - AT LARGE - Accused.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.* **Promulgated:** FEB 20 2015 11:58 a.m.

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RESOLUTION

Before this Court is prosecution's **"Consolidated Omnibus Motion"** filed on February 4, 2015, seeking the following:

1. To reconsider this Court's Resolution dated January 14, 2015, dismissing the instant case, viz:

> "For failure of Assistant State Prosecutor Ramon Chito R. Mendoza to comply, despite notice, with the Resolution dated November 28, 2014, the above-captioned case is hereby DISMISSED, without prejudice."

2. To issue a Warrant of Arrest against accused Gemma Aida Belarma y Torreda; and

3. To consolidate this instant case with Criminal Case No. O-434, pending before the Third Division of this Court.

On November 10, 2014, Information was filed against accused Gemma Aida Belarma y Torreda, charging her for violation of Section 3601 in relation to Section 101, paragraph (k), in relation to Sections 2503 and 2530, paragraph (f) of the Tariff and Customs Code of the Philippines (TCCP), as amended, the accusatory portion of which is as follows:

> "That on or about March 31, 2014, in Cebu City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported to this country, did then and there willfully, unlawfully and knowingly fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit; declared as 'Granite Tiles' in Bill of Lading No. EGLV235300130193, on board the vessel of S/S UNI-ACCORD, which arrived from Vietnam, but found to contain about five hundred twenty (520) bags of 'White Rice' per 10 x 20 container van, without the requisite import permit from National Food Authority, (NFA), and with an approximate market value ELEVEN MILLION THREE HUNDRED FIFTEEN THOUSAND TWO HUNDRED PESOS (₱11,315,200.00), to the damage and prejudice of the Government of the Philippines in principal duties and taxes estimated at SIX MILLION SIX HUNDRED SIXTEEN THOUSAND FOUR HUNDRED SIXTY EIGHT PESOS (₱6,616,468.00)."

Attachments in the Information are the following:

(1) Resolution dated January 13, 2014 signed by the Assistant State Prosecutor Rohairah A. Lao, Senior Assistant State Prosecutor Susan F. Dacanay, and Prosecutor General Claro A. Arellano;
(2) Referral of the Commissioner of the Bureau of Customs;
(3) Complaint of BOR-RATS with annexes; and
(4) Record of the Preliminary Investigation.

However, the Court noticed that the aforesaid documents are mere photocopies. As such, the Court held in abeyance the determination of probable cause for the issuance of warrant of arrest against the accused, and ordered the submission of the originals or certified true copies of the above-mentioned documents.[1]

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[1] Resolution dated November 28, 2014.

In the instant motion, the prosecution manifests that it took some time to obtain the required certified true copies of the said documents since some of them are to be secured from the Port of Cebu.

Further, prosecution states that it has submitted the certified true copies of the following documents:

1. Resolution dated January 13, 2014 signed by Assistant State Prosecutor Rohairah A. Lao, Senior Assistant State Prosecutor Susan F. Dacanay, and Prosecutor General Claro A. Arellano;
2. Officer Order No. 1195;
3. Memorandum dated August 26, 2014;
4. Office Order No. 917;
5. Minutes of the Hearing dated November 15, 2013;
6. Minutes of the Hearing dated November 11, 2013;
7. Subpoena to Respondent;
8. Subpoena to Complainant;
9. Transmittal of Documents;
10. Memorandum dated June 6, 2013;
11. Memorandum dated May 22, 2013;
12. Detailed Findings of Inventory;
13. Alert Orders, Evaluation of Reporting Officer, Waybills and Justification Sheets;
14. Affidavit of Nomie V. Gonzales;
15. Client Profile Information;
16. Investigation Data Form;
17. Referral for Preliminary Investigation; and
18. Complaint-Affidavit of Atty. Danilo M. Campos, Jr.

After careful scrutiny of the records, it shows that the prosecution submitted only the certified true copies of the following documents:

1. Resolution dated January 13, 2014 signed by Assistant State Prosecutor Rohairah A. Lao, Senior Assistant State Prosecutor Susan F. Dacanay, and Prosecutor General Claro A. Arellano;
2. Officer Order No. 1195;
3. Minutes of the Hearing dated November 15, 2013;
4. Minutes of the Hearing dated November 11, 2013;
5. Memorandum dated June 6, 2013;
6. Memorandum dated May 22, 2013;
7. Detailed Findings of Inventory;
8. Alert Orders, Evaluation of Reporting Officer, Waybills and Justification Sheets;
9. Affidavit of Nomie V. Gonzales;
10. Investigation Data Form;

11. Referral for Preliminary Investigation; and
12. Complaint-Affidavit of Atty. Danilo M. Campos, Jr.

Considering the foregoing, the prosecution has substantially complied with the Court's Resolution dated November 28, 2014. Thus, prosecution's motion for reconsideration of the Resolution dated January 14, 2015 is hereby **GRANTED**.

Accordingly, the Court shall determine the existence of probable cause in this case for the issuance of the Warrant of Arrest against the accused.

Section 6 of Rule 9 of the Revised Rules of the Court of Tax Appeals provides:

> SEC. 6. *When warrant of arrest may issue.*— Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five (5) days from notice.

Probable cause to issue a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. It bears remembering that "in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance." Thus, the standard used for the issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him.[2]

Upon careful evaluation of the Information and its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest in this case.

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[2] *Chester de Joya vs. Judge Placido Marquez,* G.R. No. 162416, January 31, 2006, 481 SCRA 376, 380.

It is worthy to emphasize that accused is being charged of violation of Section 3601 of the TCCP, as amended, which provides:

> "Sec. 3601. *Unlawful Importation.* — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
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> xxx xxx xxx"

As such, it is imperative that the evidence shows that there is a *prima facie* case that the accused committed unlawful importation which would be a sufficient ground for the arrest of the accused.

The Information alleges that the accused unlawfully imported five hundred twenty (520) bags of white rice per 10 x 20 container van without the required import permit from National Food Authority. The said shipment was covered by Bill of Lading No. EGLV235300130193, and the content of the same was declared as Granite Tiles. To support the said allegations, the prosecution submitted the Detailed Findings of Inventory, the Complaint Affidavit of Atty. Danilo M. Campos, Jr., Affidavit of Nomie V. Gonzales, Alert Order No. A/IG/20130402-129, Justification Sheet and E2M Manifest-Waybill.

On the other hand, the Complaint-Affidavit of Atty. Danilo M. Campos, Jr. states that the 17x20' Granite Tiles shipment consigned to MELMA arrived at the Port of Cebu from Vietnam on March 31, 2013, on board the vessel UNI-ACCORD under the Bill of Lading No. EGLV235300130193. It has likewise expressed that the vessel has 17 containers, bearing container van nos. BMOU2162234, EMCU3777120, LTIU 3003698, TEMU4269971, DRYU2724862, FCIU3249189, MAGU2167563, UESU2292764, EGHU3099707, FSCU7541921, MAGU2185968, EISU3925494, IMTU3067107, MAGU2217941, EMCU3703642, INBU3955029 and TCLU3333739.

Atty. Campos, Jr. further alleges in the aforesaid complaint-affidavit that based on derogatory information, an Alert Order No. A/IG/20130402-129 was issued for the examination of the subject shipment to be conducted by the assigned examiner.

At the outset, it must be noted that while the Information states that the alleged unlawful importation was committed on or about March 31, 2014, the Complaint-Affidavit, however, states that the subject shipment arrived on March 31, 2013.

Furthermore, records reveal that there is no indication in the Memorandum dated May 22, 2013, Memorandum dated June 6, 2013 and Detailed Findings of Inventory that the shipment under the Bill of Lading No. EGLV235300130193, or even the containers with nos. BMOU2162234, EMCU3777120, LTIU 3003698, TEMU4269971, DRYU2724862, FCIU3249189, MAGU2167563, UESU2292764, EGHU3099707, FSCU7541921, MAGU2185968, EISU3925494, IMTU3067107, MAGU2217941, EMCU3703642, INBU3955029 and TCLU3333739 contained bags of smuggled white rice. Further, in the above-stated memorandum and inventory, there is no mention of either accused's name or of Melma Enterprises, the entity which the accused is the Sole Proprietor as alleged in the Information.

Considering the foregoing, and based on the documents submitted by the prosecution, the Court finds no probable cause to issue a warrant of arrest against the accused. *Ergo*, the Court may not acquire jurisdiction over the person of the accused. Hence, the instant criminal case necessarily fails.

Consequently, the Court finds it unnecessary to resolve the prosecution's prayer for the consolidation of the case for being moot and academic.

WHEREFORE, in view thereof, the instant case is **DISMISSED,** without prejudice.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice