REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,* *-versus-* **KDT CARGO LOGISTICS, INC.,** (Zone 3, RN Pelaez Blvd, Kauswagan, Cagayan de Oro City, Misamis Oriental), **NELSON C. CHUA (Corporate Secretary)** (14th Street, Tomas Saco, Macasandig, Cagayan de Oro City) (at large), **KATHY GO SHI** (Director) (B7 L28 Xavier Estates, Upper Balulang, Cagayan de Oro City) (at large), *Accused.*	**CTA Crim. Case No. O-879** (NPS Docket No. XVI-INV-19D-00133) For: Violation of Section 130, in relation to Sections 253(d), 255 and 256, of the NIRC of 1997, as amended. Members: **DEL ROSARIO**, *P.J., Chairperson* *and* **MANAHAN**, *JJ.* Promulgated: JUN 18 2021 10:35 am

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RESOLUTION

The accused, **KDT Cargo Logistics, Inc.**, **Nelson C. Chua**, and **Kathy Go Shi** are charged in an Information which reads as follows:

> "The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **KDT Cargo Logistics, Inc.**, a domestic corporation, and **NELSON C CHUA**, being its corporate secretary, and **KATHY GO SHI**, being a member of its board of directors, of violation of Section 130, in relation to Sections 253(d), 255 and 256, of the National Internal Revenue Code of 1997, as amended, committed as follows:
>
> That on or about March 7, 2019, in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the accused **KDT Cargo Logistics, Inc.**, a domestic corporation, and

> NELSON C. CHUA, being its corporate secretary, and KATHY GO SHI, being a member of its board of directors, required by law to file excise tax returns and pay the corresponding excise taxes, did then and there, willfully, unlawfully and feloniously, fail to file excise tax return and pay excise tax in the amount of Two Hundred Ten Million Seven Hundred Thousand Pesos (210,700,000), exclusive of surcharges and interests, to the damage and prejudice of the government.

CONTRARY TO LAW."

Initial perusal of said Information apparently shows that the same has satisfied the requisites under Section 6, Rule 110[1] of the Rules of Court. It is also supported by certified true copies of the Prosecutor's Resolution, Investigation Data Form, and Joint Complaint-Affidavit of the complainants with annexes.

However, upon closer look at the Prosecutor's Resolution, some features prove otherwise.

Sections 253(d) and 256 of the 1997 National Internal Revenue Code, as amended, provide:

> "SEC. 253. *General Provisions.* -
>
> (a) xxx xxx xxx.
>
> (b) xxx xxx xxx.
>
> (c) xxx xxx xxx.
>
> (d) In the case of associations, partnerships or corporations, **the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation**.

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[1] Rule 110 Prosecution of Offenses
Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
When an offense is committed by more than one person, all of them shall be included in the complaint or information.

> xxx xxx xxx.
>
> SEC. 256. *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein **upon the responsible corporate officers, partners, or employees** shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

Nowhere in the enumeration of the liable persons in a corporation of the abovementioned provisions did it include the Corporate Secretary and the member of the Board of Directors. Thus, it is indispensable for the plaintiff to show that accused Nelson C. Chua and Kathy Go Shi are the responsible officers or employees referred to by the said provisions who committed particular acts that constitute the crime charged.

In the abovementioned Information, the accused are charged with the offense of failure to file excise tax return and pay excise tax. However, nowhere in the Prosecutor's Resolution did it indicate the accused's particular action or participation that caused the corporation's failure to file the excise tax return and pay the excise tax due.

Said resolution did not establish if the responsibility of filing and payment of the excise tax rests on accused Chua and Go Shi. It merely deduced that being the Corporate Secretary and member of the Board, respectively, of the accused corporation, they should be held criminally liable therefor.

The Prosecutor's Resolution did not even bother to identify the accused corporation's President to be held liable thereto but due to the fact that accused Chua and Go Shi were the only corporate officers who submitted their counter affidavit, they were held liable thereto as a consequence of being the Corporate Secretary and member of the Board of said corporation. Hence, the prosecutor failed to establish probable cause against accused Chua and Go Shi.

Lastly, there is no copy of the Letter-referral from the Commissioner of Internal Revenue (CIR) for preliminary investigation and filing of an Information attached to the Information.

WHEREFORE, premises considered, the charges against accused Nelson C. Chua and Kathy Go Shi are hereby **DISMISSED** for lack of probable cause.

Accordingly, the plaintiff is **ORDERED** to amend the Information as to the identification of the proper officer of the corporation to be charged and to **SUBMIT** the original or certified true copy of the Letter-referral from the CIR for preliminary investigation and filing of an Information within ten (10) days from receipt hereof.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice