REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-1037** For: Violation of Section 1401(f), in relation to Sections 1400, 1403 and 113 (f), (l) (3, 4 & 5), 117, 118, 107 and 405, of Republic Act No. 10863 (CMTA), National Tobacco Memorandum Circular No. 03, s. 2004 and Customs Memorandum Circular Order No. 20-2006
- versus -	Members:
	MODESTO-SAN PEDRO, *Chairperson, and*
SHELLA MARIE LATOMBO AGUADO 183 San Vicente, Macabebe, Pampanga, Accused.	**FERRER-FLORES,** *JJ.* Promulgated: FEB 23 2026 11:25 a.m.

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RESOLUTION

For the Court's resolution is accused's **Demurrer to Evidence (For Accused, Shella Marie L. Aguado)** filed via accredited courier on September 5, 2025 and received by the Court on September 8, 2025, with plaintiff's **Comment/Opposition (Motion for Leave to File Demurrer to Evidence)** filed via registered mail on September 17, 2025 and received by the Court on September 24, 2025, and accused's **Reply to Prosecution's Comment/Opposition to Accused Motion for Leave to File and Admit Attached Demurrer to Evidence** filed via accredited courier on September 22, 2025 and received by the Court on September 23, 2025.

On April 13, 2023, an *Information* was filed before this Court against accused Shella Marie Latombo Aguado (accused Aguado) indicting her for violation of Section 1401(f), in relation to Sections 1400, 1403 and 113 (f) (l) (3, 4 & 5), 117, 118, 107 and 405, of Republic Act (R.A.) No. 10863 or

Customs Modernization and Tariff Act (CMTA), in relation to Section II(E) of the Customs Memorandum Circular (CMC) Order No. 20-2006 and the National Tobacco Memorandum Circular No. 03, s. 2004, allegedly committed as follows:[1]

> That on or about August 2, 2021, at the Port of Subic, Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in her capacity as owner/proprietor of SHEMALA International Commercial Equipment Wholesaling, with evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from the merchandise imported into this country, did then and there willfully, unlawfully and knowingly import or bring into the Philippines, or assist in so doing, contrary to law, the following, to wit: declared as 1,650 Cartons of 'Laminating Films', through false declaration in Import Entry No. C-13056 covering a 1x40 container bearing Number BMOUS873977, consigned to SHEMALA International Commercial Equipment Wholesaling, but found to contain 196 master cases of counterfeit Mighty Menthol 100's; 255 master cases of counterfeit Fortune International Menthol 100's; 195 master cases of Two Moon Premium Filter; 203 master cases of counterfeit Marlboro Gold; and 146 master cases of Marlboro Selected Premium Tobaccos, without the requisite Export/Import Commodity Clearance from the National Tobacco Administration as required under NTA Memorandum Circular No. 03-2004, and the application for Authority to Release Imported Goods (ATRIG) from the Bureau of Internal Revenue required under Customs Memorandum Circular Order No. 20-2006, with a total appraised value, including duties and taxes amounting to Sixty-Nine Million Seven Hundred Forty-Four Thousand Six Hundred Sixty Eight Pesos and Thirty One Centavos (PHP69,744,668.31), thus, evading higher customs duties, taxes and fees amounting to Thirty Five Million Seven Hundred Fifty-Four Thousand Two Hundred Five Pesos (PHP35,754,205.00), excluding charges and penalties, to the damage and prejudice of the government.
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> CONTRARY TO LAW.

After examining and evaluating the allegations in the *Information* together with the supporting documents, the Court found the existence of probable cause to hold the accused for trial; thus, the Court ordered the issuance of Warrant of Arrest against her.[2]

On September 13, 2023, accused filed an *Ex-Parte Motion to Reduce Bail*,[3] to which the prosecution filed its *Comment (To the Accused's Ex Parte Motion to Reduce Bail dated September 13, 2023)* on October 20, 2023.[4] This was granted in the Resolution dated January 25, 2024.[5] Considering accused's voluntary surrender and submission to the jurisdiction of the Court and the

[1] Docket, pp. 5 to 7.
[2] Resolution dated July 11, 2023, Docket, pp. 153 to 154.
[3] Docket, pp. 166 to 167.
[4] Docket, pp. 176 to 177.
[5] Docket, pp. 186 to 187.

posting of her cash bail bond, the Warrant of Arrest against her was then lifted and set aside, and declared without further force and effect.[6]

Thereafter, the *Pre-Trial Brief (For the Accused)* was filed on February 26, 2024,[7] while the *Pre-Trial Brief (For the Plaintiff)* was filed on March 11, 2024.[8]

During her arraignment on April 2, 2024, accused pleaded "not guilty" to the crime charged.[9]

On April 30, 2024, the pre-trial conference was held,[10] and the parties admitted the following facts: (1) the jurisdiction of the Court over the person of accused, and over the subject matter of the case; (2) the identity of the accused; (3) that the accused is the owner and sole proprietor; and, (4) that the name appearing in the client profile is the accused herself.

Trial then ensued.

The prosecution presented the testimonies of the following witnesses: (1) Mr. Evez Dexter A. Carcedo, Customs Operations Officer IV, and designated as Valuation and Classification Officer of the Bureau of Customs (BOC) – Valuation and Classification Division, Imports and Assessment Service (IAS);[11] (2) Mr. Anthony D. Sanga, Computer Maintenance Technologist II of BOC – Management Information Systems and Technology Group (MISTG);[12] and, (3) Mr. Lysander G. Baviera, Jr., Assistant Customs Operations Officer of BOC – Accounts Management Office (AMO).[13]

Subsequently, the prosecution filed its *Formal Offer of Exhibits* through registered mail on October 28, 2024,[14] to which the accused filed her *Comment/Opposition (To Prosecution's Formal Offer of Evidence)* via accredited courier on November 14, 2024.[15] Before proceeding to resolve the *Formal Offer of Exhibits*, the Court gave the plaintiff an opportunity to submit the duly marked exhibits within five days from notice.[16]

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6 Resolution dated February 20, 2024, Docket, p. 189.
7 Docket, pp. 201 to 204.
8 Docket, pp. 207 to 211.
9 Minutes of the hearing, and Order, dated April 2, 2024, Docket, pp. 214 to 215.
10 Minutes of the hearing, and Pre-Trial Order, dated April 30, 2024, Docket, pp. 218 to 219 and 222 to 225, respectively.
11 Minutes of the hearing, and Order dated June 20, 2024, Docket, pp. 272 to 273.
12 Minutes of the hearing held on, and Order dated July 9, 2024, Docket, pp. 274 to 275.
13 Minutes of the hearing held on, and Order dated September 26, 2024, Docket, pp. 280 to 281-A.
14 Docket, pp. 285 to 290.
15 Docket, pp. 293 to 298.
16 Resolution dated February 27, 2025, Docket, pp. 306 to 307.

On April 29, 2025, the prosecution filed yet another *Formal Offer of Exhibits*,[17] to which accused filed her *Manifestation on the Adoption of the Earlier Filed Comment Opposition to Prosecution's Formal Offer of Exhibits* via accredited courier on June 3, 2025.

In the Resolution dated August 20, 2025, the Court admitted Exhibits "P-1", "P-16", "P-17" and "P-18", but denied the admission of the following:

1. Exhibits "P-2", "P-3", "P-4, "P-5", "P-6, "P-7", "P-8", "P-9", and "P-14", for failure to submit the duly marked exhibits;

2. Exhibits "P-11" and "P-13", for failure to identify and for failure to submit the duly marked exhibits; and,

3. Exhibits "P-12" and "P-15", for not being found in the records.

Accused then filed a *Motion for Leave to File and Admit Attached Demurrer to* Evidence, which was granted by the Court.[18] Hence, the prosecution filed its *Comment/Opposition (Motion for Leave to File Demurrer to Evidence)* on September 18, 2025.

ARGUMENTS OF THE PARTIES

In her *Demurrer to Evidence*, accused moves for the dismissal of the present case for utter failure of the prosecution to prove the crime charged due to insufficiency of evidence offered and actually admitted. Thus, there is failure to establish her guilt beyond reasonable doubt.

Accused contends that the four pieces of evidence admitted by the Court are utterly insufficient to warrant a verdict of guilty beyond reasonable doubt so that the case against her must be dismissed in accordance with the constitutional guarantee of presumption of innocence.

In assailing the insufficiency of the prosecution's evidence, accused raised the following arguments.

First, accused points out that, other than the complaint-affidavit of Customs Examiner Silvestre L. Martinez, whose untimely demise precluded him from testifying in court, there was no evidence to prove beyond reasonable doubt that the alleged shipment was actually imported and had arrived into the Philippines at the Port of Subic in Zambales. The prosecution did not bother to have the said complaint-affidavit identified or authenticated

[17] Docket, pp. 317 to 322.
[18] Minutes of the Hearing held on September 11, 2025, Docket.

by other persons who can or may do such authentication, thus, the same has no probative value whatsoever on any matters it purports to prove or establish for being mere hearsay.

Second, accused claims that there is no evidence to prove beyond reasonable doubt that she is the owner/proprietress of the ostensible consignee, Shemala International Commercial Equipment Wholesaling (Shemala), given the lack of certifications or similar document from the Department of Trade and Industry, registration documents from the BOC, or other records of same import from pertinent government agencies.

Accused also highlights the Court's denial of the admission of Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", and "P-7" offered by the prosecution and reiterates that the bare words of the prosecution's witnesses in their Judicial Affidavits as well as the statement of the customs examiner in his unauthenticated complaint-affidavit are insufficient to prove that she is the owner/proprietress of the ostensible consignee, Shemala.

Accused explains that, even assuming *arguendo* that the testimonies of the prosecution's witnesses will somehow prove that she is the owner/proprietor of Shemala, the same still do not prove that the alleged shipment really arrived in the Philippines or that accused is the importer thereof or that accused caused the importation thereof into the Philippines. Accused also avers that the same neither proved that there were actually cigarettes found upon physical examination of the said shipment other than laminating films.

Third, accused argues that, granting for argument's sake that she was proven to be the owner/proprietor of Shemala, there is still no sufficient evidence to prove beyond reasonable doubt the allegation that she had willfully, unlawfully and knowingly imported or brought into the Philippines the said shipment or assisted in so doing.

In the absence of the particular acts committed or evidence to prove the overt act constituting the same, accused insists that the allegation—that she had willfully, unlawfully and knowingly imported or brought into the Philippines the alleged shipment or assisted in doing so—was palpably not proven by the prosecution.

Fourth, accused manifests that there is no evidence to prove beyond reasonable doubt the allegation that an import entry declaration with number C-13056 was filed for the alleged shipment and that the same was falsely declared therein as 1,650 Cartons of "Laminating Films" considering that the copy of the Single Administrative Document (SAD) or import entry presented by the prosecution was denied admission by the Court as per Resolution dated August 20, 2025.

Fifth, accused claims that there is no evidence sufficient to prove beyond reasonable doubt the allegation that a physical examination of the alleged shipment was actually conducted upon which 196 master cases of counterfeit Fortune International Menthol 100's, 195 master cases of Two Moon Premium Filter, 203 master cases of counterfeit Marlboro Gold and 146 master cases of Marlboro Selected Premium Tobaccos were found.

Ostensibly, the best evidence to prove that indeed a physical examination was conducted is the testimony of the Customs Examiner Mr. Martinez and his report; however, the said testimony was unauthenticated and his report was denied admission as evidenced by the Court so that the above allegation remains to be unsubstantiated.

Accused reiterates that the prosecution did not bother to present a witness who can testify on the conduct of the physical examination and the result thereof, thus, sans proof of physical examination, the conduct of which and its purported result remain unproven.

Sixth, accused contends that, since there was no sufficient proof to support the allegation in the *Information* that a physical examination was conducted on the alleged shipment, then there is also no proof to the allegation that the shipment contained imported cigarettes. Consequently, the allegation that the cigarettes were imported into the Philippines without the requisite Export/Import Commodity Clearance from the National Tobacco Administration (NTA), as required under NTA Memorandum Circular No. 03-2004 and the Application for Authority to Release Imported Goods (ATRIG) from Bureau of Internal Revenue (BIR), as required under Customs Memorandum Circular No. 20-2006, need not be further discussed.

Seventh, accused asserts that there is likewise no sufficient proof to prove beyond reasonable doubt the allegation in the *Information* that the appraised value of the imported cigarettes is Sixty-Nine Million Seven Hundred Forty-Four Thousand Six Hundred Sixty-Eight Pesos and Thirty-One Centavos (₱69,744,668.31), inclusive of duties and taxes.

Accused alleges that the best evidence which may prove the fact of appraisal and the amount thereof is the Computation of Duties and Taxes, which was offered as Exhibit "P-14" by the prosecution but was denied admission by the Court. Thus, while the nearest evidence to such allegation is the testimony of Mr. Dexter A. Carcedo as contained in his Judicial Affidavit, the bare testimony on its own will not suffice without the document showing the actual appraisal and computation.

Eighth, accused avers that there is also no evidence sufficient to prove beyond reasonable doubt that she evaded duties, taxes and fees amounting to Thirty-Five Million Seven Hundred Fifty-Four Thousand Two Hundred Five Pesos (₱35,754,205.00).

Inasmuch as there is no proof of actual cigarettes imported and even the bare existence of the shipment itself has not been sufficiently established or proven by the prosecution, accused asserts that the allegation that she evaded paying alleged duties and taxes has no leg to stand on.

With that, accused believes that the foregoing arguments and discussions glaringly show the utter insufficiency of the prosecution's evidence to establish her guilt of the crime charged beyond reasonable doubt. As such, the Court ought to grant the present demurrer and dismiss the case against her.

On the other hand, the prosecution contends that the evidence presented is sufficient not only to deny the relief sought but more so to convict the accused.

The prosecution claims that its witness, Lysander G. Baviera, Jr., testified on the following: (1) that accused is registered as the president/proprietor of Shemala based on the documents submitted by accused herself to the Accounts Management Office; (2) that accused was given a unique username and password known only to her so that she may use the E2M to transact with the BOC electronically; (3) that, for the accused to transact with the BOC, she will have to log in to Client Profile Registration System (CPRS) which accused did to lodge the shipment; that accused was given a unique username and password for CPRS which was personal and known only to her; and, (4) that, as a consequence of the importer's accreditation, any use, misuse, or unauthorized use of the password shall be the sole responsibility of the importer, which, in this case, is the accused herself.

According to the prosecution, its witness, Anthony D. Sanga, testified that: (1) being a Computer Maintenance Technologist II, he has access to transactions such as filing of entries and declarations of importers and registered broker; and, (2) based on the records of the BOC, Shemala was the importer/consignee of Bill of Lading (BL) No. CDI0105111 filed under Single Administrative Document No. C-13056 which is the subject shipment in this case.

Lastly, the prosecution alleges that Customs Assessment Officer IV of the BOC – IAS, Evez Dexter A. Carcedo, testified that, based on the Request for Computation and Appraised Value, Duties and Taxes, Shemala owed the Philippine Government a Dutiable Value of Thirty-three Million Nine Hundred Ninety Nine Thousand Four Hundred Sixty-Three 31/100 pesos (₱33,990,463.31) and Estimated Duties and Taxes amounting to Thirty-Five Million Seven Hundred Fifty-Four Thousand Two Hundred Five Pesos (₱35,754,205.00).

The prosecution, thus, concludes that accused Aguado, the president/proprietor of Shemala, is the consignee of the subject shipment composed of 1 x 40-foorter container of "laminating films" that arrived at the Port of Subic, with container number BMOU5873977 which was covered by Bill of Lading CDI0105111.

In her *Reply to Prosecution's Comment/Opposition*, accused opposes the prosecution's allegations and advances that the testimonies of its witnesses palpably failed to establish material allegations in the *Information.*

As for the testimony of Mr. Baviera, accused asserts that the same may only show that Shemala is a registered or accredited importer with the AMO of the BOC but does not establish the existence of the alleged imported various cigarettes or the importation thereof into the Philippines by the accused.

With regard to the testimony of Mr. Sanga, accused contends that the same may only prove that import entry with number C-13056-21, covering goods declared as "laminating films" and made to be consigned to Shemala, was electronically filed or lodged in the E2M System of the BOC. Ostensibly, it did not prove the existence of the alleged imported various cigarettes or the importation of which into the Philippines by the accused.

In relation to the testimony of Mr. Carcedo, accused claims that it only tends to prove that Carcedo caused his staff at the BOC-IAS to compute the duties and taxes of the shipment covered import entry with number C-13056-21, allegedly found to contain various imported cigarettes.

Accused insists that these testimonies did not prove the existence of the alleged imported various cigarettes or that the same were imported into the Philippines by the accused.

Thus, accused reiterates that the prosecution's pieces of evidence presented, formally offered and allowed admission by the Court utterly failed to prove the guilt of the accused beyond reasonable doubt.

THE COURT'S RULING

The Court finds merit in the present *Demurrer to Evidence*.

Item 13 (d) of the Revised Guidelines for Continuous Trial of Criminal Cases[19] provides that, after the prosecution has rested its case, the Court shall inquire from the accused if he/she desires to move for leave of court to file a demurrer to evidence, or to proceed with the presentation of his/her evidence. The demurrer to evidence shall be filed within a non-extendible period of 10 calendar days from the date leave of court is granted, and the corresponding comment shall be filed within a non-extendible period of 10 calendar days counted from date of receipt of the demurrer to evidence.

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which his adversary produced is insufficient in point of law to make out a case or sustain the issue. The party filing the demurrer challenges the sufficiency of the prosecution's evidence. The Court's task is to ascertain if there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.[20]

Essentially, a demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.[21]

In resolving the instant *Demurrer to Evidence*, the Court takes into consideration the ruling of the Supreme Court in the case of *Republic of the Philippines vs. Gimenez, et al.*[22] that an order granting demurrer to evidence is a judgment on the merits, viz.:

> xxx An order granting demurrer to evidence is a judgment on the merits. This is because while a demurrer "is an aid or instrument for the expeditious termination of an action," it specifically "pertains to the merits of the case."
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> In *Cabreza, Jr., et al. v. Cabreza*, this court defined a judgment rendered on the merits:

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[19] A.M. No. 15-06-10-SC.
[20] *People vs. Sandiganbayan (2nd Division), et al.* G.R. No. 197953, August 5, 2015.
[21] *Republic of the Philippines vs. De Borja*, G.R. No. 187448, January 9, 2017.
[22] G.R. No. 174673, January 11, 2016.

> A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections"; or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."

> To reiterate, "[d]emurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his [or her] part, as he [or she] would ordinarily have to do, if plaintiff's evidence shows that he [or she] is not entitled to the relief sought." The order of dismissal must be clearly supported by facts and law since an order granting demurrer is a judgment on the merits:

>> As it is settled that an order dismissing a case for insufficient evidence is a judgment on the merits, it is imperative that it be a reasoned decision clearly and distinctly stating therein the facts and the law on which it is based.

As such, it is imperative for the Court to carefully scrutinize the evidence presented by the prosecution in this case—whether the said evidence sufficiently establish a *prima facie* case against the accused.

In the present case, accused is being charged under Section 1401(f), in relation to Sections 1400, 1403 and 113 (f), (l) (3, 4 & 5), 117, 118, 107 and 405, of R.A. No. 10863, otherwise known as the CMTA, National Tobacco Memorandum Circular No. 03, s. 2004 and CMC Order No. 20-2006.

The subject shipment has a total dutiable value of Thirty-Three Million Nine Hundred Ninety Thousand Four Hundred Sixty-Three Pesos and Thirty-One Centavos (₱33,990,463.31) and an aggregate amount of customs duties, taxes and fees of Thirty-Five Million Seven Hundred Fifty-Four Thousand Two Hundred Five Pesos (₱35,754,205.00), exclusive of charges and penalties. Pertinent provisions of Section 1401 allegedly violated by the accused are as follows:

> **SEC. 1401.** ***Unlawful Importation or Exportation***. - Any person who shall fraudulently import or export or bring into or outside the Philippines any goods, or assist in so doing, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such goods after importation, or shall commit technical smuggling as defined in this Act shall be penalized by:
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> xxx xxx xxx
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> (f) Imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years, or a fine of not less than fifteen million pesos (₱15,000,000.00) but not more than fifty million pesos (₱50,000,000.00), or both, if the appraised value of the goods

> unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds fifty million pesos (₱50,000,000.00) but not more than two hundred million pesos (₱200,000,000.00); xxx

Based on the foregoing, unlawful importation is committed by any person who: (a) fraudulently import or export or bring into or outside the Philippines any goods; (b) assist in so doing contrary to law; (c) receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such goods after importation; or, (d) commits technical smuggling.

To prove the culpability of accused, the prosecution presented the testimonies of the following witnesses: (1) Mr. Carcedo;[23] (2) Mr. Sanga;[24] and, (3) Mr. Baviera, Jr.[25]

Mr. Carcedo, Customs Operations Officer IV and currently designated as Valuation and Classification Officer of the Valuation and Classification Division, BOC IAS, testified as follows: (1) that he was assigned to evaluate the estimated duties and taxes of the shipment consigned to Shemala International under Import Entry No. P13 C-13056-21 pursuant to the Memorandum that the IAS received from the BOC Legal Service; (2) that the proof of the result of his computation is the Memorandum dated September 2, 2021 from the BOC IAS addressed to the BOC Legal Service with attached computation of duties and taxes of consignee, Shemala International, under Import Entry No. P13 C-13056-21 for the shipment which was said to contain 1x40' container of various cigarette brands; (3) that submitted his computation to Atty. Christopher M. Inducil for review and approval; (4) that his computation was approved as evidenced by the IAS Memorandum dated September 2, 2021 bearing his computation which was forwarded to the Legal Service; (5) that, in accordance with the CMTA, his computation was the basis of the appropriate charge for violation of Section 1401 thereof, relative to the complaint filed by the BOC regarding the unlawful importation of the subject shipment consigned to Shemala International; and, (6) that, based on the valuation of the goods and the components factored in the computation of duties and taxes of a shipment as provided in customs rules, the dutiable value of the subject shipment of 1x40' container of various cigarette brands is ₱33,990,463.31, with the corresponding duties and taxes of ₱35,754,205.00, thus a total appraised value of ₱69,744,668.41.[26]

On cross-examination, Carcedo admitted: (1) that a certain Beverly Lacambra (Lacambra), purportedly a Customs and Tax Specialist, actually made the computation of the estimated value of the subject shipment as well

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[23] Minutes of the hearing, and Order dated June 20, 2024, Docket, pp. 272 to 273.
[24] Minutes of the hearing held on, and Order dated July 9, 2024, Docket, pp. 274 to 275.
[25] Minutes of the hearing held on, and Order dated September 26, 2024, Docket, pp. 280 to 281-A.
[26] Judicial Affidavit of Evez Dexter A. Carcedo (Exhibit "P-16"), Docket, pp. 241 to 248.

as the duties and taxes thereon; (2) that his participation extends only to the evaluation of the said computation; (3) that he has no personal knowledge as to the basis of Ms. Lacambra's computation of the cost of insurance and freight value or CIF value which is a dutiable value; (4) that he approved the said computation of Ms. Lacambra based on the guidelines on the provisions of the valuation; (5) that the method of valuation used by Ms. Lacambra in its computation was the transactional value of identical goods; (6) that the value of the identical goods was sourced by Ms. Lacambra from their database which has the capacity to go over 15 days before and 15 days after or well within the 45-day rule; and, (7) that he does not have the actual import entry or the specific entry number that was used by Ms. Lacambra as reference for the subject shipment.[27]

Mr. Sanga, Computer Maintenance Technologist II of the BOC-MISTG, testified as follows: (1) that his position gives him access to information involving stakeholders' transactions such as filing of entries and declarations; and, (2) that per Single Administrative Document (SAD) No. C-13056 dated August 3, 2023, Shemala is the importer/consignee of the goods in question.[28]

On cross-examination, Mr. Sanga confirmed the following: (1) that his only participation as regards the SAD was the printing thereof; (2) that he did not witness who filed or lodged the same; (3) that the SAD is lodged or electronically filed in the mobile system of the BOC; (4) that he did not bother to investigate if accused was the one who imported the subject shipment into the Philippines; (5) that he merely relied on the information as appearing in the SAD; and, (6) that he has not read the complaint filed by Customs Examiner Silvestre in relation to this case.[29]

Mr. Baviera, Jr., Assistant Customs Operations Officer of the BOC–AMO, testified as follows: (1) that his position gives him access to matters related to accreditation of BOC stakeholders; (2) that accused is registered as the president/proprietor of Shemala based on the documents (*i.e.*, CPRS and Shemala's Certificate of Business Name Registration) submitted by the accused herself to the AMO; (3) that the Department of Trade and Industry (DTI) Certificate of Business Registration and DTI Certification of accused shows that she owns the said business; and, (4) that taking into consideration the process of accrediting an importer or broker to the CPRS, it is the accused who used her username and password to lodge the subject shipment for the reason that the passwords or codes given to the applicant shall be personal and known only to her and as a consequence of the accreditation of the broker or importer, any use, misuse or unauthorized use of the password shall be the sole responsibility of the importer or customs broker.[30]

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[27] Transcript of Stenographic Notes (TSN) dated June 20, 2024, pp. 5 to 14.
[28] Judicial Affidavit of Anthony D. Sanga (Exhibit "P-18"), Docket, pp. 236 to 249.
[29] TSN dated July 9, 2024, pp. 7 to 8.
[30] Judicial Affidavit of Lysander G. Baviera, Jr. (Exhibit "P-17"), Docket, pp. 230 to 235.

On cross-examination, Mr. Baviera, Jr. declared that: (1) lodgment of import entries into the electronic mobile system of the BOC is not part of his function as an Assistant Customs Operations Officer but only the registration of the importer and broker; and, (2) he cannot state with absolute certainty that it was really the accused or the customs broker who actually lodged the documents or importation documents for the subject shipment, rather, it was just an assumption.[31]

In addition to the foregoing testimonies, the prosecution presented documentary evidence, as admitted by the Court in the Resolution dated August 20, 2025:[32]

Exhibit	Description
P-1	Complaint-Affidavit of Silvestre L. Martinez
P-16	Judicial Affidavit of Evez Dexter A. Carcedo
P-17	Judicial Affidavit of Lysander G. Baviera Jr.
P-18	Judicial Affidavit of Anthony D. Sanga

In the same resolution, however, the following documentary evidence were denied admission by the Court:

Exhibit	Description
P-2	DTI Certificate or Business Name Registration
P-3	Certification from the DTI
P-4	BOC E2M Client Profile Registration (Importer)
P-5	Application for Accreditation and Registration (Sole Proprietor)
P-6	BOC E2M Client Profile Information (Broker)
P-7	Application for Accreditation and Registration (Customs Broker)
P-8	Manifest Waybill/Bill of Lading
P-9	BOC Single Administrative Document
P-11	BOC Examination report with photos during the physical examination
P-12	Tax charges/fees based on the items declared
P-13	Warrant of Seizure and Detention
P-14	Computation of Duties and Taxes of the subject case
P-15	NTA Memorandum Circular No. 03, s. 2004

At this juncture, it is important to note that sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character,

[31] TSN dated September 26, 2024, pp. 7 to 12.
[32] Docket, pp. ___ to ___.

weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and, (b) the precise degree of participation therein by the accused.[33]

In *Bureau of Customs vs. Devanadera, et al.*,[34] the Supreme Court held, in its discussion of Section 3601 of the already repealed Tariff and Customs Code of the Philippines, from which the present Section 1401 of the CMTA was lifted, that, before the charge of unlawful importation can prosper, the prosecution must first prove that an importation has indeed taken place, from which the subject goods were brought into the country, viz.:

> xxx the Court reviews the following findings of the Acting Secretary of Justice in affirming the State Prosecutor's dismissal of the BOC's complaint-affidavit for lack of probable cause:
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> > Respondents are being charged for unlawful importation under Section 3601, and fraudulent practices against customs revenues under Section 3602, of the TCCP, as amended. For these charges to prosper, complainant must prove, first and foremost, that the subject articles were imported. On this score alone, complainant has miserably failed.
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> xxx xxx xxx
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> After a careful review of records, the Court affirms the dismissal of the BOC's complaint-affidavit for lack of probable cause, but partly digresses from the reasoning of the Acting Secretary of Justice in arriving at such conclusion. While the Acting Secretary of Justice correctly stated that the act of fraudulent importation of articles must be first proven in order to be charged for violation of Section 3601 of the TCCP, the Court disagrees that proof of such importation is also required for various fraudulent practices against customs revenue under Section 3602 thereof.
>
> As held in *Jardeleza v. People*, the crime of unlawful importation under Section 3601 of the TCCP is complete, in the absence of a *bona fide* intent to make entry and pay duties when the prohibited article enters Philippine territory. Importation, which consists of bringing an article into the country from the outside, is complete when the taxable, dutiable commodity is brought within the limits of the port of entry. xxx *(Underscoring supplied)*

In this case, the Court finds that the prosecution failed to present competent and sufficient evidence to prove the fact of importation.

For one, the documents which can establish that the alleged shipment was actually imported and had arrived into the Philippines at the Port of Subic in Zambales, such as Manifest Waybill/Bill of Lading, BOC SAD and BOC

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[33] *Singian, Jr. vs. Sandiganbayan (3rd Division), et al.*, G.R. Nos. 195011-19, September 30, 2013.
[34] G.R. No. 193253, September 8, 2015.

Examination report with photos during the physical examination, were all denied admission by the Court.

For another, the person who executed the complaint-affidavit who supposedly witnessed the examination of the subject shipment was no longer presented in Court.

Strangely enough, the prosecution could have easily submitted the duly marked documents of the said denied exhibits and presented other competent witness to testify on the importation of the alleged subject shipment and the conduct of the examination thereof, yet it opted not to do so.

Hence, the foregoing testimonies of the prosecution's witnesses merely prove, at best: (1) thataccused is the registered owner/proprietor of Shemala International Commercial Equipment Wholesaling, which fact was already stipulated by the parties; (2) that accused is also the same person registered as an importer in the CPRS of the BOC, as also stipulated by the parties; (3) that the estimated duties and taxes of the alleged shipment amounting to ₱35,754,205.00 was evaluated and approved by Mr. Carcedo; and, (4) that Mr. Carcedo has no knowledge, however, of the basis used by the customs and tax specialist in computing the cost of insurance and freight value or CIF value which is a dutiable value.

In fine, having failed to prove that an importation actually took place, the prosecution failed to establish unlawful importation within the contemplation of Section 1401 of the CMTA.

Considering that the prosecution's evidence is not competent and sufficient to establish a *prima facie* case for violation of Section 1401(f) of the CMTA, it will necessarily fall short of proof beyond reasonable doubt. As such, the Court deems it no longer necessary to discuss the other issues raised.

As a final note, the Court emphasizes the ruling of the Supreme Court in the case of *Macayan, Jr. vs. People of the Philippines*[35] that:

> Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:
>
>> Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[35] G.R. No. 175842, March 18, 2015.

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be 'presumed innocent until the contrary is proved.' 'Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.' Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
>
> > We ruled in *People v. Ganguso*:
> >
> > > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
> >
> > Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.,* "he who asserts, not he who denies, must prove." The conviction of accused must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[36] In this case, the prosecution's evidence is weak and lacks concreteness; hence, the presumption of innocence prevails.

ACCORDINGLY, the **Demurrer to Evidence (For Accused, Shella Marie L. Aguado)** is **GRANTED**.

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[36] *People of the Philippines vs. Nenita B. Hu*, G.R. No. 182232, October 6, 2008.

In view thereof, accused Shella Marie L. Aguado is **ACQUITTED** of the offense charged against her for failure of the prosecution to present competent or sufficient evidence to warrant a conviction.

The cash bail bond posted by the accused in the total amount of ₱60,000.00 is hereby **ORDERED** to be released, subject to the usual accounting procedure and requirements.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice