

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

UGNAYANG MAGBUBUKID NG
SAN ISIDRO INC.

CTA CRIM. CASE NO. O-380

For: Violation of Section 3601
in relation to Section 101 of
the Tariff and Customs Code
of the Philippines, as
amended

EMILY G. ALABADO,
CHRISTOPHER A. HERNANDEZ,
EDITHA C. ALABADO,
TERESITA G. MANALASTAS,
ARLEY E. GUEVARRA,
LUCIANO M. ALABADO,
SANTIAGO B. FRANCISCO
(Brgy. San Isidro, Candaba,
Pampanga and/or Ugnayang
Magbubukid ng San Isidro,
Pampanga),

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated:

DEC 06 2017

Accused.

1:35 p.m.

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DECISION

Fabon-Victorino, J.:

In the Amended Information¹ dated May 2, 2014,
accused **Ugnayang Magbubukid ng San Isidro Inc.,
Emily G. Alabado, Christopher A. Hernandez, Editha C.
Alabado, Teresita G. Manalastas, Arley E. Guevarra,
Luciano M. Alabado, and Santiago B. Francisco,** are
charged with violation of Section 3601 in relation to Section
101 of the Tariff and Customs Code of the Philippines (TCCP),
as amended, committed as follows:

¹ Docket Volume 1 pp. 213-215; admitted in the Resolution dated June 30, 2014, docket
Volume 1 pp. 317-320.

"On or about 2nd of September 2012, in Legazpi City, Province of Albay, 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, and of the legitimate duties accruing to it from the merchandise imported in this country, conspiring, confederating and mutually helping and aiding one another, fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit: 1) declared as Vietnamese Long Grain White Rice 5% Broken, consisting of Sixteen Thousand Five Hundred (16,500) bags; and 2) declared as Vietnamese Long Grain White Rice 10% Broken, consisting of Four Thousand Five Hundred (4,500) bags summing up as declared Twenty-One Thousand Bags (21,000) bags of Vietnamese Long Grain White Rice in Bill of Lading No. 2 and consigned to the National Food Authority (NFA) for the account of the Ugnayang Magbubukid ng San Isidro Inc., on board vessel M/V Minh Tuan 68 that arrived from Ho Chi Minh, Vietnam and with taxes/duties amounting to THIRTEEN MILLION FIVE HUNDRED NINETY SEVEN THOUSAND THREE HUNDRED FOURTEEN PESOS AND NINE CENTAVOS (P13, 597,314.09), more or less, exclusive of charges and penalties, thereby exceeding its rice importation quota allocation balance of 340 MT/6,800 bags under the Private Sector Finance Program of National Food Authority (NFA) for the year 2012 and were imported without the requisite permit/authority from the National Food Authority (NFA), to the damage and prejudice of the government."

CONTRARY TO LAW.

On September 12, 2014, accused **Emily G. Alabado** and **Luciano M. Alabado** surrendered their persons to the jurisdiction of the Court and posted the recommended bond for their provisional liberty.²

During their arraignment on September 24, 2014, accused **Emily G. Alabado** and **Luciano M. Alabado**, duly assisted by counsel, refused to enter a plea, thus, a plea of "NOT GUILTY" for both accused was entered into the record of the case.³

After the Pre-Trial Conference⁴, a Pre-Trial Order⁵ was issued only as regards accused **Emily G. Alabado** and **Luciano M. Alabado**.

To prove the indictment, the prosecution presented as witnesses Divina B. Garrido, Attorney Leovigildo M. Dayoja, Joel C. Pinawin, Minette M. Arcilla, Rodolfo R. Merioles, Jr., Lisette C. Pineda, and Attorney Leizl B. Villanueva.

Divina B. Garrido,⁶ testified that as part of her duties as Customs Operations Officer III of the Bureau of Customs (BOC) assigned at the Legazpi Port District 5 in Naga City, she examines packages from abroad to determine if the value declared by the importer is in accordance with Customs rules.

Pursuant to the Warrant of Seizure and Detention (WSD)⁷ dated September 11, 2012 issued by the BOC, she, with other BOC employees, supervised the unloading of the cargo of vessel M/V Minh Tuan 68. Thereupon, they discovered the shipment of 94,000 bags of rice in the name of five (5) consignees. Rice, being perishable in nature, the

² See Order dated September 12, 2014, docket Volume 1 pp. 407-408.

³ See Minutes of the hearing dated September 24, 2014, docket Volume 1 p. 414; Resolution dated October 2, 2014, docket Volume 1 pp. 420-421.

⁴ See Minutes of the hearing dated November 12, 2014, docket Volume 2 p. 518; Resolution dated November 25, 2014, docket Volume 2 pp. 592-593.

⁵ Docket Volume 2 pp. 603-612.

⁶ Minutes of the hearing dated January 28, 2015, docket Volume 2 p. 615; Resolution dated February 2, 2015, docket Volume 2 pp. 617-618.

⁷ Exhibit P-7, docket Volume 3 pp. 1049-1051.

✓

Commissioner of Customs (COC) ordered the public auction of the said seized items. For that purpose and upon instruction, she prepared a matrix of computation⁸ of the taxes and duties due and used as basis for such computation the pertinent Bill of Lading⁹ and Inward Foreign Manifest.¹⁰

Per the Load Port Survey of the BOC POD, the value of the seized 94,000 bags of rice was \$437,325.00 US dollars. From this value, the taxes and duties due on the portion consigned to Ugnayang Magbubukid ng San Isidro Inc. amounted to P9,958,205.00, inclusive of value-added tax (VAT).

BOC Deputy Collector for Assessment¹¹, **Attorney Leovigildo M. Dayoja** testified¹² that at the time the subject incident occurred, he was the District Port Collector of Customs at the Port of Legazpi.

Per information received, M/V Minh Tuan 68 was sighted somewhere along the coast of Albay, which was within his jurisdiction, on September 2, 2012.

Normally, when a vessel is sighted within the jurisdiction of the port and after the submission of the notice of arrival, the port authorities, including the BOC and customs police, would inspect the vessel as part of boarding formalities. In this case, the vessel was actually inspected by the head of BOC of the Port of Legazpi POD Chief Minette Arcilla, Customs Police Rodolfo Merioles of the Enforcement and Security Service (ESS), and the Chief of the Customs Intelligence and Investigation Service (CIIS), Patrick S. Encinareal only on September 4, 2012, as the Notice of Arrival was submitted to the port authorities on September 3, 2012. During the said inspection, they discovered that it was of foreign origin carrying as cargo bags of rice.

⁸ Exhibit P-1, docket Volume 3 p. 1027.

⁹ Exhibit P-2, docket Volume 3 p. 1028.

¹⁰ Exhibit P-12-a, docket Volume 3 p. 1054.

¹¹ Witness to retire on March 25, 2015, two (2) days after his testimony.

¹² Minutes of the hearing dated March 25, 2015, docket Volume 2 p. 640; Resolution dated March 31, 2015, docket Volume 2 p. 642.



Upon his instruction, Alert Notice¹³ dated September 7, 2012 was issued against M/V Minh Tuan 68. It was signed in his behalf upon his instruction by POD Minette Arcilla, as he was then in Manila.

The Alert Notice was issued on the ground that M/V Minh Tuan 68 irregularly entered Philippine jurisdiction at the Port of Legazpi without prior Notice of Arrival and its cargo consisting of 94,000 bags of rice was without import authority from the NFA.

Normally, the Notice of Arrival is submitted to the Chief of the POD twenty-four (24) hours before arrival to the port. In this case, the vessel arrived on September 2, 2012, or before the Notice of Arrival was served upon the port authority on September 3, 2012, indicating that the vessel was to arrive on September 5, 2012 when it was already at the port of Legazpi on September 2, 2012.

Despite directive, the agent of the owner of the vessel, Port Cargo Services, represented by a certain Efrain Nabares, failed to submit the requisite import authority. The witness, however, at the time of presentation, did not have a copy of said directive.

After receipt of the Alert Notice, a request from the vessel was received that it be re-directed from Legazpi Port to the port of Manila on the ground that there was no available warehouse in Legazpi to store its cargo. The request was unusual and highly suspicious as no legitimate importer has done it.

All the foregoing was narrated in the Memorandum¹⁴ dated September 11, 2012 submitted to him by the members of the group who conducted the boarding formalities and recommended the issuance of a Warrant of Seizure and Detention (WSD)¹⁵ dated September 11, 2012 against M/V Minh Tuan 68 for violation of Section 2513, paragraph A of the TCCP, the cargo for violation of Section 2530 paragraphs F, and L-4,3, & 5 of the TCCP and the five

¹³ Exhibit P-6, docket Volume 3 p. 1048.

¹⁴ Exhibit P-13-e, docket Volume 3 pp. 1062-1063.

¹⁵ Exhibit P-7, docket Volume 3 pp. 1049-1051.



consignees, Ugnayang Magbubukid of San Isidro, Inc., included. Allegedly, copies of the WSD were served upon the NFA and the cooperatives/consignees, but no proof of such service was presented in court.

Witness **Joel C. Pinawin**,¹⁶ presently a Customs Intelligence Officer-In-Charge at the Ninoy Aquino International Airport, but at the time of the subject incident was the Intelligence Officer-In-Charge of the Port of Batangas and Legazpi, testified that on September 2, 2012, his office received information about an unidentified vessel entering the gulf of Albay without any Notice of Arrival. The Notice of Arrival is submitted by the shipping agent to the BOC POD at least 24 hours prior to arrival, to inform the BOC that a certain vessel would arrive on a certain date.

Upon investigation by his subordinates per his instruction, it was discovered that it was a Vietnamese registered vessel.

The shipping agent filed the requisite Notice of Arrival to the BOC POD and not to his office only on September 3 2012, but District Collector Leovigildo Dayoja denied it since the vessel was already at the Gulf of Albay under the latter's jurisdiction as early as September 2, 2012.

On September 4, 2012, boarding formalities were conducted on the vessel during which the captain was required to submit the stowage plan, inward foreign manifest, crew list, and import authority from the NFA since the cargo was rice, a regulated commodity in the country. The captain however did not submit any.

Formal notice was thereafter issued by the District Collector for the submission of the import authority but still the captain failed to comply, thus, an Alert Order was issued. Upon receipt thereof, he prepared a Memorandum Report¹⁷ dated September 7, 2012, informing the Director of the Customs Intelligence Operation Division Service of the arrival of M/V Minh Tuan 68 with cargo of 94,000 bags of Vietnamese rice consigned to the NFA but without the

¹⁶ Minutes of the hearing dated April 22, 2015, docket Volume 2 p. 643.

¹⁷ Exhibit P-19, docket Volume 3 p. 1066.



required Notice of Arrival. While the cargo was consigned to the NFA, it was actually for the account of certain cooperatives, one of which was Ugnayang Magbubukid ng San Isidro, Inc., but without any import authority.

In view thereof, the District Collector issued a WSD against the 94,000 bags of Vietnamese rice.

The BOC requested the NFA that it be furnished with a copy of the balance of the import allocation quota of the cooperatives for whose accounts the importation of rice was made. The NFA indicated in its reply that all the cooperatives, except one, already exceeded their import quotas.

He then prepared a Memorandum Report ¹⁸ dated September 14, 2012 relative to the issuance of the WSD against M/V Minh Tuan 68 and its cargo of 94,000 bags of Vietnamese rice. This was followed by another Memorandum Report ¹⁹ dated September 19, 2012 stating that the cooperatives, except one, for whose account the subject rice was imported, already exceeded their import allocation quotas. In view of his findings, he recommended the sale at public auction of the seized rice, being perishable goods, and hearings to determine the truth about the said importation.

The Chief of the BOC POD at the Port of Legazpi, **Minette M. Arcilla**, testified ²⁰ that she also holds the position of Boarding Officer since January 31, 2012. Her duties include the supervision of the clearance and entry of all foreign vessels and the unloading of cargoes. As a Boarding Officer, she conducts boarding formalities and receives all the required documents of incoming vessels.

She, together with Customs Police Rodolfo Merioles of the Enforcement and Security Service (ESS), and Patrick S. Encinareal of the Customs Intelligence and Investigation

¹⁸ Exhibit P-18, docket Volume 3 pp. 1064-1065.

¹⁹ Exhibit P-10, docket Volume 3 p. 1053.

²⁰ Minutes of the hearing dated June 17, 2015, docket Volume 2 p. 653; Resolution dated June 29, 2015, docket Volume 2 p. 740.

Service (CIIS), conducted the verification and boarding formalities of M/V Minh Tuan 68 at the Port of Legazpi.

The verification was conducted to ascertain the identity of the vessel as well as the nature of its cargo. Verification commenced on September 2, 2012, when she received a telephone call about a foreign vessel spotted at the Gulf of Albay without a Notice of Arrival having been submitted 24 hours before its actual arrival.

On September 3, 2012, she, Rodolfo Merioles of the ESS, and Patrick S. Encinareal of the CIIS, approached the vessel but did not board it. After talking with its crew, they learned that the vessel was from Vietnam and loaded with 94,000 bags of rice. On the same day, a certain Efren Lavarez, representing Port Area Cargo Services, submitted to her the vessel's Notice of Arrival²¹ dated September 3, 2012.

On September 4, 2012, boarding formalities were conducted, during which the boarding team, consisting of a medical quarantine officer, a BOC boarding officer, the Customs Inspector, two (2) Customs security guards, an Immigration Officer, and a plant and animal quarantine officer, boarded the vessel in which she received the documents presented by the Captain and the shipping agent of the vessel, namely, the Inward Foreign Manifest,²² the Bills of Lading, the Cargo Storage Plan, the oath of master, the crew list, way safe declarations, shift particular, shift storage, among others.

Upon receipt, she noticed the alteration made on the Inward Foreign Manifest. The originally entered information under the port of destination was covered and over it was written Legazpi City. Hence, she asked the captain of the vessel to countersign that alteration although she did not know who caused it. She however did not discount the possibility that it could have been due to clerical error. She also had no evidence that the Bill of Lading was received by the BOC since nothing in the document indicating receipt thereof.

²¹ Exhibit P-13-a, docket Volume 3 p. 1055.

²² Exhibit P-12-a, docket Volume 3 p. 1054.



During the boarding formalities, she was not able to see the cargo. Nevertheless, she was able to ascertain that the warehouses containing the shipment were sealed, for medical quarantine reasons. Only after the medical quarantine officer had cleared the vessel that the shipment could be inspected.

District Collector Leovigildo Dayoja issued an Alert Notice²³ against the rice shipment on September 7, 2012 for non-submission of the import authority from the NFA. She signed the Alert Notice in behalf and under the directive of the District Collector who was then in Manila. This was resorted to as the vessel tried to leave the Port of Legaspi on that day. The Alert Notice was issued merely for the information of customs personnel and was not served on the cooperatives with interest on the cargo.

She confirmed that she, Rodolfo Merioles of the ESS, and Patrick S. Encinareal of the CIIS, prepared the Memorandum²⁴ dated September 11, 2012 with the pertinent information about the arrival of the vessel. In the said Memorandum, they recommended the issuance of a WSD against the rice shipment aboard the M/V Minh Tuan 68 on the ground that the said vessel entered Philippine jurisdiction without the Notice of Arrival submitted 24 hours prior to arrival and due to failure of the importer or the broker to submit the import authority covering the shipment of 94,000 bags of Vietnamese rice, 21,000 bags of which were consigned to Ugnayang Magbubukid ng San Isidro, Inc.

Witness **Rodolfo R. Merioles, Jr.**,²⁵ a Special Agent, in charge of the Enforcement and Security Service (ESS) of the BOC in Legazpi City declared that his duties include among others, the supervision of security and the monitoring of all incoming foreign vessels within the jurisdiction of the Port of Legazpi to suppress smuggling.

²³ Exhibit P-6, docket Volume 3 p. 1048.

²⁴ Exhibit P-13-e, docket Volume 3 pp. 1062-1063.

²⁵ See Minutes of the hearing dated September 16, 2015, docket Volume 2 p. 782; Resolution dated September 21, 2015, docket Volume 2 pp. 810-811; no cross examination on account of the objection by counsel for the accused on the Court's ruling allowing the presentation of the witness despite previously having deemed the prosecution to have waived the right to present further evidence, see TSN dated September 16, 2015 docket Volume 2 pp. 799-802. ✓

As officer in charge of the ESS, he was among those who conducted the verification and boarding formalities of the vessel sighted in the Gulf of Albay 4 or 5 nautical miles away from the Port of Legazpi.

According to him, boarding formalities is conducted by a boarding officer/team leader by requesting from the captain of the vessel the required documents pertinent to its arrival and cargo. In this case, the boarding team was provided only with the Inward Foreign Manifest but not the import permit for its cargo of 94,000 bags of rice. Thus, in coordination with the Philippine Coast Guard, an Alert Order was issued to secure the vessel and its cargo to prevent it from leaving the port or escaping.

He confirmed their submission of Memorandum²⁶ dated September 11, 2012 recommending the issuance of a WSD due to failure to present the required import permit covering the rice shipment.

Prosecution witness **Lisette C. Pineda**,²⁷ assigned at the Foreign Operating Division, Grains Marketing Operations Department of the NFA, testified that as part of her responsibilities, she receives shipping documents, prepares and releases to importers Memorandum of Undertaking and Certification of Official Importation.

The Memorandum of Undertaking is forwarded to the Commissioner of Customs (COC) indicating the quantity and the variety of rice subject of importation and the amount of customs duties to be paid. Attached thereto is the Certification of Official Importation which also indicates the quantity and the variety of rice being imported.

Ugnayang Magbubukid ng San Isidro was one of the rice importers to which she issued Memorandum of Undertaking²⁸ dated October 22, 2012 and the Certification of Official Importation²⁹.

²⁶ Exhibit P-13-e, docket Volume 3 pp. 1062-1063.

²⁷ See Minutes of the hearing dated October 7, 2015, docket Volume 2 p.839; Resolution dated October 19, 2015, docket Volume 2 pp. 896-897.

²⁸ Exhibit P-27, docket Volume 3 p. 1067.

²⁹ Exhibit P-24, docket Volume 3 p. 1068.



Also part of her duties is the preparation of the Summary of Import Allocation under the Farmer's Organizations/Association/Cooperatives Rice Importation Program for 2012³⁰ as of December 31, 2012. Stated therein is the allowable import allocation for rice of a particular entity, as well as the actual volume already imported.

In the case of Ugnayang Magbubukid ng San Isidro, Inc., its import allocation of 1,600 metric tons of rice for the year 2012 had been exhausted.³¹ However, when the subject importation occurred in September 2012, Ugnayang Magbubukid ng San Isidro, Inc. still had remaining allocation.

Aside from the Memorandum of Undertaking, Certification of Official Importation, and the Summary of Import Allocation, she also prepared the Certification³² dated October 13, 2014 which OIC-Administrator of the NFA Attorney Efren J. Sabong signed.³³ The said document certified that Ugnayang Magbubukid ng San Isidro Inc. was not authorized to make the subject importation and was not issued the requisite Memorandum of Undertaking and Certification of Official Importation for that purpose.

Attorney Leizl³⁴ B. Villanueva,³⁵ was the chairman of the Technical Working Group and Secretariat of the Special Bids Awards Committee (SBAC) of the Private Sector Financing (PSF) importation program of the NFA when the subject importation was made.

She assisted in the bidding and verification of the documents submitted by the bidders in the PSF program of the NFA which grants farmer-cooperatives and other entities the privilege to import certain volume of rice.

To qualify for the PSF program, the farmer-cooperatives and other entities must join the bidding and if

³⁰ Exhibit P-25, docket Volume 3 pp. 1078-1093.

³¹ Exhibit P-25-a, docket Volume 3 p. 1083.

³² Exhibit P-8, docket Volume 3 p. 1052.

³³ See TSN dated October 7, 2015 pp. 24-28, docket Volume 2 pp. 863-867.

³⁴ This is the spelling of the name of the witness based on a document (Exhibit P-26) wherein she is the signatory.

³⁵ See Minutes of the hearing dated December 2, 2015, docket Volume 2 p. 923; Resolution dated December 10, 2015, docket Volume 3 pp. 972-973.



they meet the requirements and submit all the required documents, they are allowed by the NFA Administrator to import rice under the allotment. The documents submitted by the bidders are in the custody of the SBAC of the NFA, the custodian of the documents during the Bids and Awards Process.

As a bidder, Ugnayang Magbubukid ng San Isidro, Inc. submitted its Certificate of Incorporation, Articles of Incorporation and General Information Sheet.³⁶ It was eventually declared as one of the winning bidders in the 2012 PSF importation program of the NFA, as shown in the Certification³⁷ dated September 10, 2012.

After formal offer of evidence, the prosecution rested per the Resolution³⁸ dated March 8, 2016.

Thereafter, accused Emily G. Alabado and Luciano M. Alabado, joined by the rest of their co-accused³⁹, filed a Demurrer to Evidence with leave of court,⁴⁰ praying for the dismissal of the instant criminal case for failure of the prosecution to prove beyond reasonable doubt any of the material allegations in the Information. They argued that being a juridical entity, not only must the prosecution prove that Ugnayang Magbubukid ng San Isidro, Inc. committed the alleged smuggling, but that all accused claimed to be the directors or officers of the corporation, willfully and knowingly voted for or assented to a patently unlawful act of the corporation, or are guilty of negligence or bad faith in directing the affairs of said corporation, which were patently wanting in the present case.

In the Resolution⁴¹ dated July 19, 2016, the Court partially granted the Demurrer to Evidence by dismissing the criminal case not only against accused Emily G. Alabado and Luciano M. Alabado, but against all the accused.

³⁶ Exhibit P-4, docket Volume 3 pp. 1029-1047.

³⁷ Exhibit P-26, docket Volume 3 p. 1094.

³⁸ Docket Volume 3 pp. 1114-1116.

³⁹ Resolution dated May 13, 2016, docket Volume 3 pp. 1146-1148.

⁴⁰ Docket Volume 3 pp. 1149-1164, posted on May 27, 2016.

⁴¹ Docket Volume 3 pp. 1211-1224.



The Court ruled that the evidence presented are not sufficient to sustain a conviction of all the accused as the prosecution failed to establish that individually, all the accused had knowingly, with fraudulent intent, brought in or assisted in importing the subject Vietnamese rice in violation of the law. All the documents and testimonies presented points to the corporation Ugnayang Magbubukid ng San Isidro, Inc. as the one responsible for the subject importation. Nothing in evidence points to the individual accused as the one responsible for the acts allegedly constituting smuggling. Nevertheless, the Resolution maintained the charge against Ugnayang Magbubukid ng San Isidro, Inc. as the evidence presented by the prosecution are sufficient in point of law, whether true or not, to make out a case or sustain the issue.

The defense, in behalf of Ugnayang Magbubukid ng San Isidro, Inc., manifested that it had no evidence to present.⁴² Thereafter, the instant case was submitted for decision on November 21, 2016.⁴³

THE RULING OF THE COURT

With the dismissal of the charge against all individual accused, only the culpability of Ugnayang Magbubukid ng San Isidro, Inc. for the offense charged remains for the determination of the Court.

It is basic rule in evidence that the burden of proof lies on the party who makes the allegations – *et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probation nulla sit* (The proof lies upon him who affirms, not upon him who denies since by nature of things, he who denies a fact cannot produce any proof).⁴⁴

Likewise elementary is the tenet that under the Constitution, accusation is not synonymous with guilt. It is therefore incumbent upon the prosecution to prove the guilt of the accused for the crime charged beyond reasonable

⁴² See Minutes of the hearing dated October 12, 2016, docket Volume 3 p. 1230; Order dated October 12, 2016, docket Volume 3 p. 1231.

⁴³ Resolution dated November 21, 2016, docket Volume 3 p. 1265.

⁴⁴ Ching v. Nicdao, 522 SCRA 316.



doubt. The burden of proof rests on the prosecution and never shifts to the accused.⁴⁵

In other words, the prosecution bears the *onus probandi* of showing beyond moral certainty that each and every essential element of the crime charged exists to sustain a conviction. Otherwise, the scale of justice must necessarily tilt in favor of accused who deserves an acquittal.

Under the amended Information⁴⁶ dated May 2, 2014, Ugnayang Magbubukid ng San Isidro, Inc. is indicted for unlawful importation or smuggling in violation of Section 3601, in relation to Section 101 of the Tariff and Customs Code of the Philippines (TCCP), as amended. They pertinently provide, as follows:

SECTION 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:

1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;
2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;
3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed

⁴⁵ Caugma V. People, 486 SCRA 611.

⁴⁶ Docket Volume 1 pp. 213-214.

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under this Code, including duties and taxes, of the article unlawfully imported is more than fifty thousand pesos but does not exceed one hundred fifty thousand pesos;

4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos;
5. The penalty of *prision mayor* may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of *reclusion perpetua* to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

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 an 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 defense in any prosecution under this section.⁴⁷

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

1. Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law.
2. Written or printed articles in any form containing any matter advocating or inciting treason, or rebellion,

⁴⁷ From customs.gov.ph.



insurrection, sedition or subversion against the Government of the Philippines, or forcible resistance to any law of the Philippines, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines.

3. Written or printed articles, negatives or cinematographic film, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character.

4. Articles, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or gives directly or indirectly information where, how or by whom unlawful abortion is produced.

5. Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other articles when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof.

6. Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof, and lists of drawings therein.

7. Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof, the stamps, brands or marks or which do not indicate the actual fineness of quality of said metals or alloys.

8. Any adulterated or misbranded articles of food or any adulterated or misbranded drug in violation of the provisions of the "Food and Drugs Act".

9. Marijuana, opium, poppies, coca leaves, heroin or any other narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medicinal purposes only.

10. Opium pipes and parts thereof, of whatever material.

All other articles and parts thereof, the importation of which is prohibited by law or rules and regulations

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issued by competent authority. (As amended by Presidential Decree No. 34)⁴⁸

Unlawful importation or smuggling is therefore committed by any person who (1) fraudulently imports or brings into the Philippines or (2) assists in importing or bringing into the Philippines any article, contrary to law, or (3) receives, conceals, buys, sells or in any manner facilitates the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law.⁴⁹

Under Section 3601 of the TCCP, the offense of unlawful importation is committed by any person:

- (1) Who imports or brings into the Philippines
- (2) Who assist in such importing or bringing into the Philippines
- (3) Who receives, conceals, buys or sells, or facilitate the transportation, concealment, or sale after importation any article knowing the same to have been imported contrary to law.

To sustain conviction, the prosecution is charged with the burden of proving that Ugnayang Magbubukid ng San Isidro, Inc. falls under any of the foregoing enumeration of persons, including those created by legal fiction such as Ugnayang Magbubukid ng San Isidro, Inc., liable for smuggling. Per the Amended Information, the charge is the first variety which indicts one who "fraudulently imports or brings into the Philippines x x any article, contrary to law."

Thus, the elements of smuggling under Section 3601 of the TCCP are as follows:

- (1) the accused imports or brings into the Philippines any article, and

(2) such article/s is/are imported knowing the same to have been imported contrary to law.

⁴⁸ From customs.gov.ph.

⁴⁹ Salvador vs. People, G.R. No. 146706, August 15, 2005.



The first element under Section 3601 is that "the accused imports or brings into the Philippines any article."

The Bill of Lading⁵⁰ clearly brought into the country through the vessel M/V Minh Tuan 68 the 21,000 bags of Vietnamese Long Grain White Rice imported by the consignee National Food Authority (NFA) for the account of Ugnayang Magbubukid ng San Isidro, Inc.

The Inward Foreign Manifest⁵¹ likewise shows that 21,000 bags of Vietnamese Long Grain White Rice were imported by the NFA and Ugnayang Magbubukid ng San Isidro, Inc. using the Vietnam-registered vessel M/V Minh Tuan 68.

The testimonies of witnesses Attorney Leovigildo M. Dayoja, Joel C. Pinawin, Minette M. Arcilla, and Rodolfo R. Merioles Jr. proved the arrival of the shipment on September 2, 2012 at the Port of Legazpi via M/V Minh Tuan 68, thus, the first element has been established.

The second element of the charge is that "such article/s is/are imported knowing the same to have been imported contrary to law."

The phrase "contrary to law" in Section 3601 qualifies the phrase "imports or brings into the Philippines".⁵²

Obviously, the imported rice subject of this case, by itself, is not illegal or unlawful article or item. Further, rice is not one of the specifically prohibited articles as enumerated in Section 101 of the TCCP. However, Section 101 provides that "[A]ll other articles and parts thereof, the importation of which is prohibited by law or rules and regulations issued by competent authority," shall be deemed as Prohibited Importations.

The Amended Information⁵³ dated May 2, 2014 states the reasons for considering the subject importation unlawful.

⁵⁰ Exhibit P-2, docket Volume 3 p. 1028.

⁵¹ Exhibit P-12-a, docket Volume 3 p. 1054.

⁵² Jardeleza v. People, 481 SCRA 638.

The first of the two reasons is that the importer Ugnayang Magbubukid ng San Isidro, Inc. exceeded its rice importation quota allocation allowed under the Private Sector Finance Program of the NFA. The second is that the Vietnamese rice was imported without the requisite permit/authority from the NFA.

Thus, to prove the second element, *viz*, that the importation of rice was made contrary to law, it must be shown that (1) the importer Ugnayang Magbubukid ng San Isidro, Inc. exceeded its rice importation quota allocation balance as allowed under the Private Sector Finance Program of the NFA; or (2) that the importer Ugnayang Magbubukid ng San Isidro, Inc. made the importation without the requisite permit/authority from the NFA.

The Summary of Import Allocation under the Farmer's Organizations /Association/Cooperatives Rice Importation Program for 2012⁵⁴ as of December 31, 2012, prepared by witness Lisette C. Pineda of the NFA, shows that the allowable import allocation for rice of Ugnayang Magbubukid ng San Isidro, Inc. for the year 2012 was 1,600 MT of rice. The same appears in the Certification⁵⁵ dated September 10, 2012 identified by witness Attorney Leizl B. Villanueva of the NFA.

Clearly, for the year 2012, Ugnayang Magbubukid ng San Isidro, Inc. had an import allocation of 1,600 MT of rice. But did it exceed such allowable import allocation?

The matrix of computation⁵⁶ prepared by witness Divina B. Garrido of the BOC shows that out of the 94,000 bags of rice comprising the cargo of the vessel M/V Minh Tuan 68, 1,050 MT or 21,000 bags of rice were for the account of Ugnayang Magbubukid ng San Isidro, Inc. This fact is also evident in the Bill of Lading⁵⁷ and Inward Foreign Manifest.⁵⁸

⁵³ Docket Volume 1 pp. 213-215; admitted in the Resolution dated June 30, 2014, docket Volume 1 pp. 317-320.

⁵⁴ Exhibit P-25, docket Volume 3 pp. 1078-1093.

⁵⁵ Exhibit P-26, docket Volume 3 p. 1094.

⁵⁶ Exhibit P-1, docket Volume 3 p. 1027.

⁵⁷ Exhibit P-2, docket Volume 3 p. 1028.

⁵⁸ Exhibit P-12-a, docket Volume 3 p. 1054.



However, the amount of 1,050 MT of rice is still within the allowable import allocation of 1,600 MT of Ugnayang Magbubukid ng San Isidro, Inc.⁵⁹ Thus, to establish excess importation, the previous importation prior to the subject importation of Ugnayang Magbubukid ng San Isidro, Inc. must be scrutinized. The only pieces of evidence of other importation of the Corporation are the Memorandum of Undertaking⁶⁰ dated October 22, 2012 and the Certification of Official Importation⁶¹, both pertain to a single importation of 340 MT of rice.

Adding the 1,050 MT of the subject importation to the 340 MT indicated in the Memorandum of Undertaking dated October 22, 2012 and the Certification of Official Importation would result to a total of 1,390 MT of rice which is still within the allowable limit of 1,600 MT for Ugnayang Magbubukid ng San Isidro, Inc.

Even the Summary of Import Allocation under the Farmer's Organizations/Association/Cooperatives Rice Importation Program for 2012⁶² as of December 31, 2012, prepared by witness Lisette C. Pineda of the NFA, fails to convince the Court that Ugnayang Magbubukid ng San Isidro, Inc. exceeded its import allocation for the year 2012. While the said document indicates that the Corporation already imported 1,600 MT of rice aside from the importation subject of this case, the witness admitted that when the subject importation occurred in September of 2012, the Corporation still had sufficient allocation left.⁶³ In other words, there is no sufficient evidence on record to prove that Ugnayang Magbubukid ng San Isidro, Inc. exceeded its import allocation for the year 2012, to make the subject importation unlawful and illegal.

However, it must alternatively be established that the importer Ugnayang Magbubukid ng San Isidro, Inc. made the importation without the requisite permit/authority from the NFA to make such importation illegal.

⁵⁹ Exhibit P-1, docket Volume 3 p. 1027.

⁶⁰ Exhibit P-27, docket Volume 3 p. 1067.

⁶¹ Exhibit P-24, docket Volume 3 p. 1068.

⁶² Exhibit P-25, docket Volume 3 pp. 1078-1093.

⁶³ See TSN dated October 7, 2015 pp. 28-30, docket Volume 2 pp. 867-869.

✓

The Certification⁶⁴ dated October 13, 2014 which was signed by the OIC-Administrator of the NFA Attorney Efren J. Sabong, indicates that Ugnayang Magbubukid ng San Isidro Inc. was not authorized to make the subject importation and was not issued the requisite Memorandum of Undertaking and Certification of Official Importation.

The Certification states, as follows:

"This is to certify that **UGNAYANG MAGBUBUKID NG SAN ISIDRO, INC.** was not issued a Memorandum of Undertaking (MOU), Certification of Official Importation (COI) and Tentative Statement of Account or any import permit by National Food Authority on its importation of 21,000 bags of Vietnamese White Rice which arrived in the Port of Legaspi on September 2, 2012 under 2012 Private Sector Financed (PSF) importation thru the NFA Tax Expenditure Subsidy. x x x"

The Certification was further strengthened by the testimony of Lisette C. Pineda of the NFA that Ugnayang Magbubukid ng San Isidro Inc. was not authorized to make the subject importation and was not issued the requisite Memorandum of Undertaking and Certification of Official Importation for the same, making the importation contrary to law. Significantly, the defense did not present any evidence for the Corporation to counter or even dilute the content of the Certification or rebut the testimony of the prosecution witness on the matter.

As to evidence proving that the unlawful importation was willfully or knowingly done, the term "willful" is defined as voluntary and intentional.⁶⁵ In tax crimes statutes, "willful" is defined as voluntary or intentional violation of a known legal duty.⁶⁶ Note that the only issue left for the resolution of the Court is the culpability of Ugnayang Magbubukid ng San Isidro, Inc. for the crime of smuggling. Being a juridical person created by legal fiction, the issue of

⁶⁴ Exhibit P-8, docket Volume 3 p. 1052.

⁶⁵ Black Law Dictionary 8th Ed., p. 1630.

⁶⁶ Mertens Law of Federal Income Taxation, Vol. 15, 1988 Ed., Chapter 55A, p. 76.

whether the commission of the offense charged was willful or knowingly made by the Corporation has been rendered irrelevant and moot.

Considering that both elements of the offense charged have been sufficiently established, Ugnayang Magbubukid ng San Isidro, Inc. is found liable of the charge of smuggling or unlawful importation under Section 3601, in relation to Section 101, of the Tariff and Customs Code of the Philippines (TCCP), as amended.

The quantum of evidence required in criminal cases is proof beyond reasonable doubt. Section 2 of Rule 133 of the Rules of Court provides that "[p]roof beyond reasonable doubt does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."⁶⁷

Finally, to be sure a corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.⁶⁸

Smuggling is penalized as follows:

1. x x x;
2. x x x;
3. x x x;
4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos; x x x⁶⁹

⁶⁷ People vs. Garcia, G.R. No. 124514, July 06, 2000.

⁶⁸ Alfredo Ching vs. The Secretary of Justice, Asst. City Prosecutor Cecilyn Burgos-Villavert, Judge Edgardo Sudiam of the Regional Trial Court, Manila, Branch 52; Rizal Commercial Banking Corp. and The People of the Philippines, G. R. No. 164317, February 06, 2006.

⁶⁹ Jardeleza vs. People, G.R. No. 165265, February 06, 2006.

Based on the matrix of computation⁷⁰ of witness Divina B. Garrido, the total appraised value of the 1,050 MT or 21,000 bags of rice imported in this case, including duties and taxes, amounts to P13,597,314.09. Since the appraised value of the imported rice exceeds one hundred fifty thousand pesos, the maximum fine may be imposed.

WHEREFORE, the Court hereby finds **UGNAYANG MAGBUBUKID NG SAN ISIDRO, INC.** liable for the crime of smuggling as defined under Section 3601, in relation to Section 101, of the Tariff and Customs Code of the Philippines (TCCP), as amended.

Accordingly, it is hereby sentenced to pay a fine of TEN THOUSAND PESOS (P10,000.00).

SO ORDERED.


ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

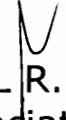

LOVELL R. BAUTISTA
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

⁷⁰ Exhibit P-1, docket Volume 3 p. 1027.

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 Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ROMAN G. DEL ROSARIO
Presiding Justice