REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

-versus-

JOHN DOES alias TEOFILO G. NAVARRO and alias BONIFACIO BERNARDO,
(Both AT-LARGE),
Accused.

ABRAHAM P. MENCIAS, JR.
(c/o Evergreen Philippine Corporation, 6th Floor, Equitable Bank Tower, 8751 Paseo de Roxas, Makati City),
Accused-Appellant.

CTA CRIM. CASE NO. A-3
(RTC Crim. Case No. 13825)
For: Violation of Section 3601 of the Tariff and Customs Code of the Philippines, as amended. (SMUGGLING)

Members:
BAUTISTA, *Chairperson*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

SEP 23 2013
9:39 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.*:

On appeal before this Court is the Decision[1] dated June 29, 2011 of the Regional Trial Court, Fourth Judicial Region, Branch 84, Batangas City, in Criminal Case No. 13825, finding, the accused-appellant guilty beyond reasonable doubt of the crime of smuggling as defined and penalized under Section 3601 of the Tariff and Customs Code of the Philippines (TCCP), as amended.

The dispositive portion of the Court *a quo's* assailed Decision reads:

> "**WHEREFORE**, premises considered, accused Abraham P. Mencias, Jr. is *hereby found* **guilty** *beyond reasonable doubt of the crime of* Smuggling defined and penalized under Section 3601 of the

[1] Decision in Criminal Case No. 13825 dated June 29, 2011, penned by Presiding Judge Dorcas P. Ferriols-Perez, Docket, Volume II, pp. 634 to 638.

Tariff and Customs Code of the Philippines, as amended and is hereby sentenced to suffer the indeterminate penalty of **eight (8) years and one (1) day, as minimum, to ten (10) years, as maximum and to pay fine in the amount of P8,000.00**.

SO ORDERED."

STATEMENT OF FACTS

Accused Abraham P. Mencias, Jr. was the Junior Vice-President of the Documentation Department of Evergreen Philippines Corporation.[2] Evergreen Philippines Corporation is the branch office of Evergreen Marine Corporation Taiwan, a shipping company engaged in the carriage of cargo.[3]

On December 20, December 24, and December 31, all in the year 2003, and January 3, 2004, nineteen (19) 40-foot high cube containers containing frozen food items were laden on board several vessels (namely: Ever Renown, River Wisdom, Hatsu Ethic) from Savannah, Georgia, Oakland, California and Vancouver, Canada, covered by five (5) Bills of Lading originally issued by Evergreen Marine Corporation.[4] Said five (5) Bills of Lading, numbered EISU450300030926[5], EISU450300031311[6], EISU450300032082[7], EISU465400000890[8], EISU446300058881[9], were all consigned to Greenfields Development Co., with address at 88 Real St., Calamba, Laguna, Philippines.[10]

Sometime in January 2004, the subject cargoes were unloaded in Kaohsiung, Taiwan because the schedule of the carrying vessels which are owned by Evergreen Marine Corporation was only from the United States and Canada to Kaohsiung, Taiwan and not to the Philippines.[11] The carrying vessels did not enter the Philippines.[12]

[2] Transcript of Stenographic Notes (TSN), April 27, 2011, p. 4.
[3] *Id.*
[4] Decision, Docket, Volume II, p. 635; Par. 1, Statement of Facts, Assignment of Errors, Docket, Volume III, p. 650.
[5] Prosecution's Exhibit "D-e", Docket, Volume II, p. 560; Accused's Exhibit "1-c", Docket. Volume II, p. 624.
[6] Prosecution's Exhibit "D-1-e", Docket, Volume II, p. 561; Accused's Exhibit "2-c", Docket, Volume II, p. 626.
[7] Prosecution's Exhibit "D-2-d", Docket, Volume II, p. 562; Accused's Exhibit "3-c", Docket, Volume II, p. 628.
[8] Prosecution's Exhibit "D-4-c", Docket, Volume II, p. 564; Accused's Exhibit "5-c", Docket, Volume II, pp. 621 to 622.
[9] Prosecution's Exhibit "D-3-c", Docket, Volume II, p. 563; Accused's Exhibit "4-c", Docket, Volume II, p. 630.
[10] Decision, Docket, Volume II, p. 635.
[11] Statement of Facts, Assignment of Errors, Docket, Volume III, p. 654.
[12] Decision, Docket, Volume II, p. 635.

On January 19, 2004, a certain Mr. Teofilo G. Navarro, claiming to be the Impex Manager of Greenfields Development Co., the original consignee of the subject shipments, and with the conformity of a certain Bonifacio Bernardo of Von Way Trading, sent five (5) letters[13] addressed to the Documentation Department of Evergreen Philippines Corporation requesting the amendment of the manifests covering the subject five (5) Bills of Lading to reflect the following:

	As Manifested	Requested Amendment
Consignee	Greenfields Development Corporation 88 Real St., Calamba, Laguna, Philippines	Von Way Trading 4-B Garcia St., San Bartolome, Novaliches, Quezon City
Notify Party	Same as Consignee	Von Way Trading 4-B Garcia St., San Bartolome, Novaliches, Quezon City
Description of goods	Frozen Foodstuffs Temp. Set at -18 Degrees C	General Goods ---------o--------

Said five (5) letters were received by Ms. Cynthia Sañez, Assistant Manager of the Documentation Department, Import Section of Evergreen Philippines Corporation.[14] Ms. Sañez forwarded the letters to Ms. Cristeta S. Castro, Manager of Import Documentation Section of Evergreen Philippines Corporation.[15] Ms. Castro forwarded copies of said letters to accused-appellant, for further study and evaluation.[16] After accused-appellant's review and evaluation of said letters, he advised Ms. Castro to effect the requested amendments on the Bills of Lading and Inward Foreign Manifests.[17]

On January 21, 2004, the subject cargoes left Kaohsiung, Taiwan for the Port of Manila on board M/V Brinkness[18], a local vessel owned and operated by Joss Asian Feeders Inc., a company duly registered under Philippine laws.[19] M/V Brinkness was granted a special permit by the Maritime Industry Authority (MARINA) to temporarily engage in overseas trade, more specifically from Manila, Philippines to Kaohsiung, Taiwan and vice versa for a period of three (3) months effective January 14, 2004.[20]

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[13] Prosecution's Exhibits "E", "E-1", "E-2", "E-3" and "E-4", Docket, Volume II, pp. 565 to 569; Accused's Exhibits "1", "2", "3", "4" and "5", Docket, Volume II, pp. 620, 623, 625, 627 and 629.

[14] TSN, March 22, 2011, p. 5; TSN, April 27, 2011, p. 8.

[15] TSN, March 22, 2011, p. 5.

[16] *Id.*

[17] *Id.*, p. 12.

[18] Decision, Docket, Volume II, p. 635; Statement of Facts, Assignment of Errors, Docket, Volume III, p. 655.

[19] Prosecution's Exhibit "J", Docket, Volume II, p. 583.

[20] Prosecution's Exhibits "J" and "J-1", Docket, Volume II, pp. 583 to 584.

M/V Brinkness arrived at the Port of Manila at around 1:40 A.M. on January 23, 2004. On the basis of the special permit issued by MARINA, Customs Entrance and Clearance Officer Pangandoman G. Gasan, Port of Manila, issued a clearance allowing M/V Brinkness to sail to Batangas in order to unload the subject cargoes.[21] The subject cargoes were covered by a Through Foreign Cargo Manifest issued by Cap. Rolando A. Suaverdez.[22]

As early as 6:00 A.M. on January 23, 2004, MV Brinkness loaded with, among others, the subject cargoes, being escorted by Customs Inspector Ernesto C. Labao and Customs Guard, Dionisio G.C. Agustin, departed Manila and arrived at the Port of Batangas at about 2:45 P.M. of January 23, 2004.[23]

The subject cargoes were unloaded from M/V Brinkness[24] and turned over by Customs Inspector Labao and Customs Guard Agustin to Customs Wharfinger Guillermo R. Plata, Port of Batangas.[25]

Von Way Trading, the new consignee, through its broker, filed import entries (Import Entry and Internal Revenue Declarations) in order to withdraw the cargoes from the Bureau of Customs. Although there was a prior request from Dr. Ben B. Bagui, Veterinary Chief of the Quarantine Office of the Port of Batangas, to hold the shipments and permit them to examine the subject cargoes because of the information they received that the shipments contained meat products without any document from the Department of Agriculture, it appears that said request was not acted upon.[26]

Meanwhile, Mr. Fernandino Tuason, the Chief of the Intelligence Division of the Bureau of Customs received information that M/V Brinkness would arrive at the Port of Batangas carrying on board suspected frozen shipments. Mr. Tuason waited for the arrival of M/V Brinkness and ordered the issuance of an alert order. The alert order was submitted to the Office of the District Collector at around 4:00 P.M. or 5:00 P.M. on January 23, 2004, for approval and for eventual dissemination to all offices of the Bureau of Customs. However, it appears that the alert order was not also acted upon.[27]

[21] Prosecution's Exhibit "A", Docket, Volume II, p. 519; Statement of Facts, Assignment of Errors, Docket, Volume III, p. 655.
[22] Prosecution's Exhibit "P", Docket, Volume II, p. 599.
[23] Prosecution's Exhibit "A", Docket, Volume II, p. 519; Statement of Facts, Assignment of Errors, Docket, Volume III, p. 656.
[24] Prosecution's Exhibit "K", Docket, Volume II, p. 585.
[25] Prosecution's Exhibit "Q", Docket, Volume II, p. 600.
[26] Prosecution's Exhibit "A", Docket, Volume II, p. 520; Statement of Facts, Assignment of Errors, Docket, Volume III, p. 656.
[27] TSN, December 1, 2010, pp. 5 to 7.

At around 4:00 P.M. of January 23, 2004, the covering import entries were completely processed after confirming that the consignee had paid the corresponding duties, amounting to Php566,749.00, more or less, and the shipments were released by Assistant Wharfinger Ricardo Mutya, Port of Batangas.[28]

The subject shipments were later apprehended and upon inspection, it was revealed that the shipments actually contain chicken leg quarters.[29]

On January 6, 2005, an Information was filed against accused-appellant and John Does alias Teofilo G. Navarro and Alias Bonifacio Bernardo charging them for violation of Section 3601 of the TCCP, as amended. Said Information is quoted hereunder:

> "The undersigned State Prosecutor of the Department of Justice accuses **ABRAHAM P. MECIAS, JR.** and **JOHN DOES alias TEOFILO G. NAVARRO and alias BONIFACIO BERNARDO** of the crime of smuggling defined and penalized under Section 3601 of the Tariff and Customs Code of the Philippines, as amended, committed as follows:
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> 'That on or shortly before January 23, 2004, at the Port of Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there willfully, unlawfully, feloniously and fraudulently cause or assist the importation or bringing into the Philippines, a shipment contained in nineteen (19) 40-foot refrigerated container vans **declared as general goods and polyester bags** but in truth and in fact, the said shipment is actually **frozen chicken leg quarters** worth Twenty Million (P20,000,000.00) Pesos, more or less, using irregularly an unaccredited Bureau of Customs importer by the name Von Way Trading with business address at No. 4-B Garcia Street, San Bartolome, Novaliches, Quezon City as consignee, to the damage and prejudice of the Bureau of Customs or the Philippine Government in the amount representing the appropriate duties and taxes.'
>
> Contrary to law."

Thereafter, a Warrant of Arrest[30] was issued against accused-appellant on January 21, 2005. After posting a cash bail in the amount of Php120,000.00, accused-appellant was granted provisional liberty.[31] Arraignment was held on April 28, 2006 and accused-appellant, with the

[28] *Supra*, note 26.
[29] Prosecution's Exhibit "T", Docket, Volume II, 604-606; Statement of Facts, Assignment of Errors, Docket, Volume III, p. 656.
[30] Docket, Volume I, p. 138.
[31] Docket, Volume I, p. 144.

assistance of his counsel de parte, pleaded not guilty to the crime charged against him.[32]

During trial, the prosecution presented four (4) witnesses and documentary evidence; which were marked and admitted as Exhibits "A" to "T", together with their sub-markings.[33] On the other hand, the defense presented accused-appellant as witness and documentary evidence which were marked and admitted as Exhibits "1" to "5", inclusive of their sub-markings.[34]

After trial, the Court *a quo* rendered the assailed Decision on June 29, 2011, finding accused-appellant guilty beyond reasonable doubt of the crime of smuggling as defined and penalized under Section 3601 of the Tariff and Customs Code of the Philippines, as amended.[35] Pertinent portions of the assailed Decision are quoted hereunder:

> "It is beyond dispute that it was the approval made by the accused to the request which lead to the amendment of the Inward Foreign Manifest and the bills of lading. By merely looking at the letter-request of this alleged Teofilo Navarro of Greenfield, one can readily see the intent to conceal the true nature of the cargoes. Having discussed the matter with Cristeta Catro [sic], it is not by mere negligence that the accused approved the amendment of the manifest from frozen food stuff to general goods. He cannot just turn a blind eye to this obvious discrepancy. Likewise, being in this business for quite some time, accused knew that such amendment is tantamount to misdeclaration. While the amendment of Inward Foreign Manifest referred to in the last paragraph of Sec. 1005 is generally not allowed after the entry of the vessel, said section still allows amendment by the master, consignee or agent thereof under oath and provided that said amendment is without fraudulent intent. What cannot be done directly cannot be done indirectly. The accused cannot therefore feign innocence in the guise of normal practice that amendment is allowed before entry of the vessel.
>
> Accused Mencias fraudulently assist in the importation of the subject frozen quarter legs in conspiracy with this alleged Teofilo Navarro purporting to be the Impex manager of Greenfield. Though there was no direct evidence showing that all the accused came together and planned the crime charged, however, it is clear that their acts were in pursuance of one common criminal objective. Even without need of knowing the true identify of this alias Teofilo Navarro, the request that he made and the approval of the request by the accused connected the two to each other in the web of conspiracy. They have a common design and that is to conceal the true nature of the cargoes to evade the

32 Docket, Volume I, p. 219.
33 Order dated April 5, 2011, Docket, Volume II, p. 607.
34 Order dated April 27, 2011, Docket, Volume II, p. 608.
35 *Supra*, note 1.

> payment of correct duties and taxes due the government. Their individual participation has been duly established. Since conspiracy has been proved beyond reasonable doubt, all the conspirators, regardless of their degree of participation are criminally liable for the crime charged and proved – the act of one is the act of all (People v. Bulan, G.R. No. 143404, 8 June 2005, 459 SCRA 550, 575).
>
> Undoubtedly, smuggling was committed in this case. xxx."

On July 4, 2011, accused-appellant filed his Notice of Appeal with the Court *a quo*.[36] On July 18, 2011, the Court *a quo* issued an Order[37] for the transmittal of the entire records of the case to this Court for proper disposition.

On June 26, 2012, this Court ordered accused-appellant to file with this Court within thirty (30) days from notice seven (7) copies of Accused-Appellant's Brief with proof of service of two (2) copies thereof upon plaintiff-appellee.[38]

In view of the filing by accused-appellant of his Assignment of Errors[39] on July 25, 2012, and considering plaintiff-appellee's failure to file its brief within the given period, this Court issued a Resolution[40] dated December 13, 2012, submitting the case for decision.

ASSIGNMENT OF ERRORS

The errors[41] assigned by accused-appellant against the Court *a quo* are quoted hereunder:

> "1. That the approval of the Appellant of:
>
> a.) The amendment of the manifest of the 'EVER RENOWN', Voyage No. 0184-057W contained in the letter request of GREENFIELD DEVELOPMENT CO. dated January 19, 2004;
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> b.) The amendment of the manifest of 'EVER RENOWN', Voyage No. 0184-057W contained in a letter request GREENFIELD DEVELOPMENT CO. dated January 19, 2004;

[36] Docket, Volume II, p. 639.
[37] Docket, Volume II, p. 640.
[38] Docket, Volume III, p. 645.
[39] Docket, Volume III, pp. 651 to 663.
[40] Docket, Volume III, pp. 693 to 694.
[41] Assignment of Errors, Docket, Volume III, pp. 651 to 652.

c.) The amendment of the manifest of the 'RIVER WISDOM', Voyage No. 0185-005W contained in the letter request of GREENFIELD DEVELOPMENT CO. dated January 19, 2004;

d.) The amendment of the manifest of the 'MATSU [sic] ETHIC', Voyage No. 0239-010W contained in the letter request of GREENFIELD DEVELOPMENT CO. dated January 19, 2004 and

e.) The amendment of the manifest of the 'MATSU [sic] ETHIC', Voyage No. 0239-090W contained in a letter request of GREENFIELD DEVELOPMENT CO. dated January 19, 2004.

constituted an act of conspiracy with whoever to cause the release of cargoes without payment of the required duties and taxes due thereon without any evidence, much less proof, that such a conspiracy existed.

2. That the approval of the manifest ordered by Appellant MENCIAS caused the release of the subject cargo.

3. In not taking into consideration the fact that the vessels whose manifest were allowed to be amended by accused MENCIAS did not enter the jurisdiction of the Philippines and were never submitted to Philippine Customs Authorities and

4. In assuming jurisdiction over the case in spite of the fact that the duties and tax due on the subject shipment was more than Php6,000,000.00 despite the clear provision of Section 7 Republic Act No. 09282."

RULING OF THE COURT

This Court shall initially discuss accused-appellant's claim that the Court *a quo* erred in assuming jurisdiction over the case considering that the duties and taxes allegedly due on the shipments were more than Php6,000,000.00. Accused-appellant avers that since the very witness and exhibits of the prosecution made it clear that the duties and taxes due on the subject shipments amounted to Php6,014,963.00, this Court, and not the Court *a quo*, has the jurisdiction to try and hear the case, in accordance with Section 7 of Republic Act (RA) No. 9282.

Well-settled is the rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law and not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[42]

[42] *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G. R. No. L-23988, January 2, 1968.

Section 7(b) of RA No. 1125, as amended by RA Nos. 9282 and 9503, limited the jurisdiction of this Court over cases involving criminal offenses to the following:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) xxx
>
> (b) **Jurisdiction over cases involving criminal offenses** as herein provided:
>
> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however*, **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate**. xxx." *(Emphasis supplied)*

Moreover, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> **"RULE 4**
> **JURISDICTION OF THE COURT**
>
> SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> a) xxx
>
> b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> (1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and
>
> (2) **Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the** National Internal Revenue Code or **Tariff and Customs Code and other laws administered by the** Bureau of Internal Revenue or **Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed**; xxx." *(Emphasis supplied)*

Pursuant to Section 7 of RA No. 1125, as amended, jurisdiction over criminal offenses committed in violation of the Tariff and Customs Code where no specified amount of taxes and fees are being claimed against the accused is vested with the regular courts, and the jurisdiction of this Court shall be appellate only. In this case, a plain reading of the Information filed against accused-appellant reveals that no specific amount of taxes and fees are being claimed. Thus, this Court holds that the Court *a quo* did not err in assuming jurisdiction over the case.

With regard to accused-appellant's claim that the Court a quo erred in finding that accused-appellant conspired with the other accused to commit the offense charged, accused-appellant argues that no evidence was presented by the prosecution to prove that he conspired and confederated with anyone in connection with the importation of the subject shipments. Accused-appellant posits that no evidence was shown that he knew, talked or even met with any of the other accused in this case to signify that they conspired to commit the offense charged. Accused-appellant avers that the only evidence relied upon by the prosecution in proving conspiracy were the letters[43] of the original consignee, who was also the holder of the original Bills of Lading[44], requesting the amendment of the manifest.

The accused is being charged with violation of Section 3601 of the TCCP as amended, which states 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;

[43] *Supra*, note 13.
[44] *Supra*, notes 5 to 9.

> 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 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 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 a 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." *(Emphasis supplied)*

Under Section 3601 of the TCCP, as amended, smuggling is committed by any person who (1) fraudulently imports or brings into the Philippines any article contrary to law, 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.[45] Importation commences when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit for withdrawal has

[45] *Angel O. Rodriguez, et al. vs. The Hon. Court of Appeals, et al.*, G.R. No. 115218, September 18, 1995.

been issued, or where the articles are duty-free, once the articles have left the jurisdiction of the customs.[46]

The prosecution has the *onus probandi* to show beyond reasonable doubt that accused-appellant, *in conspiracy* with the other accused, willfully, unlawfully, feloniously and fraudulently caused or assisted in the importation or bringing into the Philippines of the cargoes contained in nineteen (19) 40-foot container vans declared as general goods and polyester bags but which were later on discovered to be frozen chicken leg quarters.

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.[47]

It is also essential for one to be a party to a conspiracy as to be liable for the acts of the others that there be intentional participation in the transaction with a view to the furtherance of the common design. Except when he is the mastermind in a conspiracy, it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.[48]

As stated above, like the offense itself, conspiracy must be proven beyond reasonable doubt. In this case, this Court finds that the prosecution failed to prove beyond reasonable doubt that accused-appellant conspired with the other accused in committing the crime charged.

[46] *Tomas Salvador vs. The People of the Philippines*, G.R. No. 146706, July 15, 2005.

[47] *Violeta Bahilidad vs. People of the Philippines*, G.R. No. 185195, March 17, 2010, citing *Magsuci vs. Sandiganbayan*, G.R. No. 101545, January 3, 1995, 240 SCRA 13, 18.

[48] *Odon Pecho vs. People of the Philippines, et al.*, G.R. No. 111399, September 27, 1996, citing *People vs. Macatana*, 161 SCRA 235 [1988] and *People vs. De Roxas*, 241 SCRA 369 [1995].

No less than the witness for the prosecution, Mr. Nemesio C. Magno, Jr., Chief Investigator of the Prosecution Division, Customs Intelligence Division of the Bureau of Customs, testified on cross-examination that as a matter of practice a bill of lading is being prepared by a shipping agent acting as the agent or owner of the carrying vessel; [49] that the details to be indicated in the bill of lading are being supplied by the person who booked the shipment to a particular shipping agent; [50] that the shipping agent and the captain do not know the contents because they have not opened the containers; [51] that amendments to the inward foreign manifest can be made within forty eight (48) hours before the arrival of the vessel by the captain of the vessel or by the shipping agent, upon the request of the importer or consignee; [52] that an amendment is authorized when there is a request from the consignee in writing to change the name of the consignee and even to change the description of the cargo if there is a mistake in the declaration;[53] that in this particular case, permission of the Collector of Customs is not required or was not secured before the amendments were approved by the shipping agent because the carrying vessels did not enter the Philippines;[54] that in the course of his investigation, he was only able to establish that written requests for amendments of the Inward Foreign Manifests were made to Evergreen Philippines Corporation which were acted upon by accused-appellant, and that Mr. Magno did not know if representatives of Von Way Trading, the new consignee, approached, met with or talked to accused-appellant regarding the requests for amendments.[55]

When Ms. Cristeta S. Castro, Manager of Import Documentation Section of Evergreen Philippines Corporation testified on direct examination as witness for the prosecution, she testified on the standard procedure observed by Evergreen Philippines Corporation with regard to requests for amendments as well the procedure for evaluation of said requests; that a letter requesting amendment, signed by the authorized signatory of the consignee must be submitted to Evergreen Corporation;[56] that the request must be accompanied by a corresponding waiver of whatever claims that may arise against Evergreen Philippines Corporation and all its employees on account of the amendments;[57] that in approving or evaluating requests for amendments, they rely on supporting documents, and normally they do not make verifications with regard to letter-requests received by Evergreen Philippines Corporation for as long as the original Bills of Lading are presented to them[58] because the person who can be in possession of the

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[49] TSN, May 23, 2008, p. 3.
[50] *Id.*
[51] *Id.*
[52] *Id.*, p. 11.
[53] *Id.*, p. 12.
[54] *Id.*, p. 13
[55] *Id.*, pp. 13 to 14.
[56] TSN, March 22, 2011, p. 20.
[57] *Id.*
[58] *Id.*, p. 21.

original Bills of Lading is the owner of the cargo;[59] that in this case, the letters requesting amendments of the Inward Foreign Manifests were submitted to Ms. Cynthia Sañez, Assistant Manager of the Documentation Department, Import Section of Evergreen Philippines Corporation who, in turn, forwarded the letters to her;[60] that she then forwarded copies of said letters to accused-appellant for review and evaluation[61]. On cross-examination, Ms. Castro testified that their office has no knowledge of the contents of the cargoes because the shipping arrangement is on shipper's load and count;[62] that at the time the requests for amendments were made, their office has no knowledge of any irregularity regarding the subject shipments;[63] that there was nothing unusual in the time within which accused-appellant acted upon the requests for amendments.[64]

On the other hand, accused-appellant testified on direct examination that he approved the requests for amendments because he had no information as to any irregularity attending the subject shipments.[65] During his cross-examination, he testified that since it is only the consignee who knows the exact description of the cargoes shipped, the consignee has the right to amend the description of said cargoes.[66] Accused-appellant testified on re-direct examination that their only obligation to the shipper, based on their contract, is to load the cargoes in their vessels and deliver the same to their port of destination.[67]

This Court finds the foregoing insufficient to prove beyond reasonable doubt that the amendments on the Inward Foreign Manifests and Bills of Lading were done by the accused in conspiracy with the other accused, and that it was done willfully, unlawfully, feloniously and fraudulently to cause or assist in the importation into the Philippines of the frozen chicken leg quarters. The prosecution did not present any evidence to show the conduct of the accused, overt or otherwise, before, during and even after the commission of the crime charged which may signify that there was a conscious, common criminal design among them. To this Court's mind, what the prosecution was able to prove was that accused-appellant acted on the requests for amendments because the requests were made in the ordinary course of business, and that prior approval by the Bureau of Customs was not required since the carrying vessels have not entered the Philippines.

[59] *Id.*, p. 22.
[60] *Id.*, p. 6.
[61] *Id.*, p. 11.
[62] *Id.*, p. 37.
[63] *Id.*, p. 38.
[64] *Id.*, p. 42.
[65] TSN, April 27, 2011, pp. 8 to 9.
[66] *Id.*, pp. 38 to 39.
[67] *Id.*, p. 41.

A perusal of the Bills of Lading covering the shipments showed that the term of the shipping arrangement is "Shipper's Load and Count" which means that the shipper was solely responsible for the loading of the container, while the carrier was oblivious to the contents of the shipment.[68] Notably, the testimony of accused-appellant is consistent with the shipping arrangement as indicated in the Bills of Lading. Accused-appellant relied only on the information provided by the original consignee in approving the amendments to the Inward Foreign Manifest, since he has no way of knowing the exact description of the cargoes shipped. Accused-appellant's statement also conforms to the testimony of the prosecution's witness, Mr. Magno, that the shipping agent has no knowledge of the contents of the cargoes since they have not opened the containers.

With regard to the release of the subject cargoes, Mr. Magno testified on direct examination that the subject shipments were released on the basis of the import entries (Import Entry and Internal Revenue Declarations) filed by the new consignee, Von Way Trading, through its broker;[69] that the shipments were released upon the filing of the import entries wherein the subject cargoes were declared by the importer (consignee), through its broker, as polyester bags;[70] that the import entries were forwarded to the Assessment Division for examination and assessment purposes;[71] that the personnel from Assessment Division signed the import entries to confirm that the cargoes were indeed polyester bags;[72] that the same import entries were forwarded to the Cash Division for verification of payment and after confirming that taxes were paid through the authorized agent bank, the cargoes were released by the Customs Wharfinger;[73] that although actual examination of the cargoes should have been conducted prior to their release, his investigation revealed that no actual examination was conducted;[74] that he recommended that the Customs Examiner responsible for the examination of the cargo be criminally and administratively charged[75]; that considering that the original consignee Greenfields Development Corporation denied ownership over the cargoes and denied that it has an employee named Teofilo Navarro, he was able to analyze that accused-appellant is instrumental in making it appear that Von Way Trading is the real consignee, although the latter also denied ownership over the cargoes;[76] that he came to a conclusion that perhaps accused-appellant may

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[68] *International Container Terminal Services, Inc. vs. Prudential Guarantee & Assurance Co., Inc.*, G.R. No. 134514, December 8, 1999, citing *Keng Hua Paper Products Co., Inc. vs. Court of Appeals*, 286 SCRA 257, 270, February 12, 1998.
[69] TSN, April 25, 2007, pp. 17 to 18.
[70] *Id.*, p. 18
[71] *Id.*, p. 19.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*, p. 21.

have knowledge of the actual owner of the cargoes who made the requests for amendments.[77]

Mr. Magno also testified during his cross-examination that the carrying vessels, River Wisdom, Ever Renown, Hatsu Ethic, did not enter the Philippines;[78] that the cargoes were unloaded in Taiwan where they were loaded to M/V Brinkness[79] which transported them from Taiwan to Manila, then to the Port of Batangas;[80] and that the cargoes were covered by the manifest of M/V Brinkness[81] which was the manifest presented to the Bureau of Customs.[82]

Based on the foregoing, it is evident that what caused the release of the subject cargoes was the approval of the Bureau of Customs' personnel of the import entries filed by the consignee through its broker. Said approval was made without conducting an actual examination of the cargoes, notwithstanding that there was a prior request from Dr. Ben B. Bagui, Veterinary Chief of the Quarantine Office of the Port of Batangas, to hold the shipment and permit them to examine the subject cargoes[83] and despite Mr. Tuason's request for approval and dissemination of an alert order.[84]

Relative to Mr. Magno's testimony that accused-appellant is instrumental in making it appear that Von Way Trading is the real consignee and that he may have knowledge of the actual owner of the cargoes who made the requests for amendments, these are mere conjectures, suspicions and accusations which are not supported by any evidence.

Conjectures, suspicions and accusations will never be sufficient to convict an accused. Thus, the Supreme Court, in the case of *The People of the Philippines vs. Capt. Juvenal Zamora, et al.*[85] has ruled:

> "**Accusation is not, according to the fundamental law, synonymous with guilt.** It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and

[77] *Id.*
[78] TSN, May 23, 2008, pp. 3 to 5; TSN, December 4, 2009, p. 9.
[79] TSN, May 23, 2008, p. 22.
[80] TSN, December 4, 2009, p. 11.
[81] Exhibit "P", Docket, Volume II, p. 599.
[82] TSN, May 23, 2008, pp. 22 to 23.
[83] Prosecution's Exhibit "A", Docket, Volume II, p. 520.
[84] TSN, December 1, 2010, pp. 5 to 7.
[85] G.R. No. L-34090, November 26, 1973, citing *People vs. Dramayo*, L-21325, October 29, 1971, 42 SCRA 59 and *Bermudez vs. Castillo*, 64 Phil. 483, 493.

> documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.' If there is any case where such a standard certainly was not met, this is it. **What is even more deplorable is that the decision betrays, on its face, an attempt at rationalization, relying on surmises and conjectures to justify a finding of guilt.** Precisely, the constitutional presumption of innocence calls for the repudiation of such state of mind, at war with all that the Constitution stands for, insofar as the rights of the accused are concerned. As Justice Laurel took pains to emphasize, the constellation of constitutional rights which the accused is vouchsafed, especially in presumption of innocence, is 'sacred', not a mere 'excrescence'." *(Emphasis supplied)*

It is an unbending principle in this jurisdiction that in every criminal prosecution, the accused shall be presumed innocent until the contrary is proved.[86] 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.[87] The requirement of proof beyond reasonable doubt calls for moral certainty of guilt. It has been defined as meaning such proof "to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it.[88]

All told, what the prosecution was able to establish was the fact that the accused-appellant approved the requested amendments on the Inward Foreign Manifests and Bills of Lading in the regular course of business. The prosecution miserably failed to prove that said approval was done by accused-appellant willfully, feloniously and fraudulently to cause or assist in the importation into the Philippines of the nineteen (19) 40-foot refrigerated container vans that were declared in the import entries as polyester bags, instead of frozen chicken leg quarters. The culpability of accused-appellant was not sustained beyond reasonable doubt by the evidence presented by the prosecution.

[86] *People of the Philippines vs. Anastacio Boneo y Bataller, et al.*, G.R. No. L-74522, June 30, 1989.

[87] *Raul Basilio D. Boac, et al. vs. People of the Philippines*, G.R. No. 180597, November 7, 2008, citing *People vs. Velarde*, G.R. No. 139333, July 18, 2002, 384 SCRA 646, 663.

[88] *People of the Philippines vs. Edgardo Ng y Doane*, G.R. No. 71117, July 10, 1986, citing Moreno, Philippine Law Dictionary, 1972 Edition, p. 379, citing *U.S. vs. Reyes*, 3 Phil. 3.

WHEREFORE, premises considered, the appealed Decision dated June 29, 2011 of the Regional Trial Court, Fourth Judicial Region, Branch 84, Batangas City, in Criminal Case No. 13825 finding the accused-appellant ABRAHAM P. MENCIAS, JR. guilty beyond reasonable doubt of the crime of smuggling as defined and penalized under Section 3601 of the Tariff and Customs Code of the Philippines, as amended, is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **ABRAHAM P. MENCIAS, JR.** is hereby **ACQUITTED** on reasonable doubt.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, 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.

ROMAN G. DEL ROSARIO
Presiding Justice