24-000339-0010

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1158

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NORALYN T. ASARIA, MONACAT TRADING, ROLANDO A. CUEVAS Owner/Proprietor of Monacat Trading, MERMELINDA C. DELA CRUZ, Manager of Monacat Trading,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASST. STATE PROS. CHRISTINE FATIMA V. ESTEPA
ASST. STATE PROS. AGNES FARIDA BAGAFORO-ARELLANO II
Department of Justice
Padre Faura Street, Ermita
1000 Manila

RIGOROSO GALINDEZ RABINO LARON & MARISTELA LAW OFFICES
(Counsel for Noralyn T. Asaria)
Rm 901-903, 9th Floor, FilGarcia Tower
140 Kalayaan Avenue, Diliman
Quezon City

GREETINGS:

You are hereby notified by these presents that on **January 28, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 30, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NORALYN T. ASARIA,
(Port of Batangas, Sta. Clara, Batangas)

MONACAT TRADING,
(Unit 2, Matic Building, National Highway, Canlalay, Biñan City, Laguna)

ROLANDO A. CUEVAS Owner/Proprietor of Monacat Trading,
(Unit 2, Matic Building, National Highway, Canlalay, Biñan City, Laguna
and
2915 Calia Street, Elvinda Village, San Pedro City, Laguna)

MERMELINDA C. DELA CRUZ Manager of Monacat Trading,
(437, 4th Floor Regina Building, Escolta, Manila)

Accused.

CTA Crim. Case No. **O-1158**

For: Violation of Section 3602, in relation to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP), as amended

Members:

DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 28 2025; 9:45AM

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RESOLUTION

In a Resolution dated 22 August 2024[1], the Court ordered plaintiff to show cause as to why the Information for **Criminal Case No. O-1158** shall not be dismissed after it appears to carry identical allegations with the previously filed Amended Information in **Criminal Case No. O-1092**.

[1] Division Docket, pp. 117-121.

On 01 October 2024, plaintiff filed a "Comment/ Opposition (To the Motion to Dismiss and Motion for Show Cause Order of Accused Noralyn T. Asaria and Resolution of the Honorable Court dated 22 August 2024)"[2] (**Comment/Opposition**) through private courier. In response thereto, accused Noralyn T. Asaria (**Asaria**) filed a Reply[3] on 11 October 2024.

In the Comment/Opposition, plaintiff admitted that while the two (2) Informations involve the unlawful importation of the same vehicle; particularly, one (1) unit of brand new silver Mercedes Benz C200 sedan (with Chassis No. WDD209342FF137940 in container van number MSKU3857137, covered by Bill of Lading No. MCC821022 under Import Entry No. C-6381) but was actually found to be one (1) unit of brand new Mercedes Benz CLK DTM AMG, the two (2) charges pertain to different acts that accused Asaria committed in violation of Section 2503[4], in relation to Section 3602[5] of the Tariff and Customs Code of the Philippines (**TCCP**).

Plaintiff stated further that the Information in **Criminal Case No. O-1158** alleges connivance between accused Asaria and Monacat Trading (**Monacat**), through Rolando A. Cuevas (**Cuevas**) and Mermelinda C. Dela Cruz (**Dela Cruz**). There, it is averred that Asaria continued to process the assessment of the imported luxury vehicle under Import Entry No. C-6381 despite knowledge of the misdeclaration, misdescription and undervaluation made by Monacat, which led the latter to pay less than the amount legally due to the government. *On the other hand*, the Amended Information in **Criminal Case No. O-1092** alleges that accused Asaria placed the importation under Import Entry No. C-6381 on tentative liquidation and release without any authority and clearance from the Import Assessment Service (**IAS**) and Bureau of Internal Revenue (**BIR**) and despite knowledge of the violation of the tariff and customs law.

With the foregoing, plaintiff thus maintained that **Criminal Case No. O-1158** should not be dismissed because the complained omission of accused is different from that complained of in **Criminal Case No. O-1092**.

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2 Id., pp. 126-139.
3 Id., pp. 142-160, including attached annexes.
4 SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.*
5 SEC. 3602. *Various Fraudulent Practices Against Customs Revenue.*

In the Reply, accused Asaria vehemently argued that the two (2) Informations refer to only one crime of unlawful importation under Section 2503, in relation to Section 3602 of the TCCP. According to Asaria, a plain reading of the said provisions immediately reveals that the charges relate to an imported article that allegedly had been undervalued, misclassified, misdeclared or fraudulently imported thus the government was deprived of the lawful duties, taxes and other charges. Hence, with the plaintiff's admission that both subject Informations pertain to the same imported subject vehicle under Import Entry No. C-6381, it then cannot split one act of unlawful importation into two (2) Informations or criminal charges.

Asaria also invokes her constitutional right against double jeopardy and expounds that no person shall be put twice in trial for the same offense. Asaria also forwards that plaintiff's act of charging several offenses out of a single violation comes within the proscription against splitting of a cause of action in civil cases.

As to the plaintiff's claim that there are two (2) separate and different acts, Asaria contends that the assessment for customs duties, and the placement thereof under tentative liquidation is only a single and continuous act of processing the importation. Therefore, there can only be one violation for the supposed unlawful importation of the subject vehicle under Import Entry No. C-6381. She adds that the alleged criminal act in **Criminal Case No. O-1158** is already subsumed in the criminal act described in **Criminal Case No. O-1092**; specifically, the processing of the assessment of the customs duties is part of the inculpatory allegation of "after making an assessment, the importation is placed under tentative liquidation and release despite having knowledge or information of a violation of the tariff and customs law or any fraud".

Lastly, Asaria claims that there is an inordinate delay of eight (8) years from the conduct of the preliminary investigation of the case on 09 October 2015 to the filing of the Information (under **Criminal Case No. O-1158**) on 10 June 2024. Hence, being violative of her constitutional right to speedy disposition of the case, **Criminal Case No. O-1158** must be dismissed.

We resolve.

After considering the parties' arguments, this Court finds that a dismissal of the present Information is warranted.

First, We do not subscribe to accused's claim that there may be a violation of her right against double jeopardy. Jurisprudence holds that the defense of double jeopardy places upon the accused the burden of proving the following three requisites: (1) the first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first; or the second offense is necessarily included in the first.[6]

An examination of the relevant case docket reveals that accused Asaria is yet to be arraigned before the Second Division in Criminal **Case No. O-1092**. Evidently, the stage in the said criminal proceedings is far from the termination of the trial *i.e.* determination of accused's guilt or acquittal of the relevant criminal charges. Thus, all the requisites for the defense of double jeopardy are still wanting.

Nonetheless, We also do not agree with plaintiff that the accused's acts of processing the assessment despite knowledge of misdeclaration and the subsequent placement of the importation under tentative liquidation and release are two (2) distinct acts that must be charged and tried separately. Section 2503, in relation to Section 3602 of the TCCP, state:

> ...
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> SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* — ... Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.
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> **When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code** (as amended by R.A. 7651, June 04, 1993).

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[6] *Andres S. Suero v. People of the Philippines, Represented by the Office of the Ombudsman-Mindanao, et al.*, G.R. No. 156408, 31 January 2005.

> ...
>
> SEC. 3602. *Various Fraudulent Practices Against Customs Revenue.* — Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.[7]
>
> ...

Section 3602 of the TCCP enumerates the various fraudulent practices against customs revenue such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.[8]

In the various fraudulent practices, or technical smuggling, the goods and articles are brought into the country through fraudulent, falsified or erroneous declarations, to substantially reduce, if not totally avoid, the payment of correct taxes, duties and other charges. Such goods and articles pass through the Bureau of Customs (**BOC**), but the processing and clearing procedures are attended by fraudulent acts in order to evade the payment of correct taxes, duties, and other charges.[9]

There must thus be a concurrence of the following elements to constitute a violation under technical smuggling: **(1)** entry of imported or exported articles/goods; **(2)** the entry was made by means of any

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[7] Emphasis supplied and italics in the original text.

[8] *Angelo O. Rodriguez, et al. v. The Honorable Court of Appeals and The People of the Philippines*, G.R. No. 115218, 18 September 1995.

[9] See *Bureau of Customs v. The Honorable Agnes VST Devanadera, et al.*, G.R. No. 193253, 08 September 2015.

false or fraudulent invoice, declaration, affidavit, document or fraudulent practice; and, **(3)** intent to avoid payment of taxes.[10]

Based on the above, an accused may be charged with technical smuggling if he or she effected the entry of the imported or exported articles, through the performance of any of the enumerated fraudulent practices (under Section 3602 of the TCCP), with the main intent of evading or avoiding the payment of correct taxes.

Applying the foregoing, a comparison of the two (2) Informations reveals that both charges involve the **same offense of technical smuggling of (the same) imported article**. Based on the allegation, there is:

(i) An entry of the imported subject vehicle under Import Entry No. C-6381;

(ii) The entry was made through various fraudulent practices, specifically, the assessment of the customs duties despite misdeclaration of the subject vehicle, and the subsequent release thereof under tentative liquidation without the proper clearance from the concerned offices; and,

(iii) The accused had the intent to avoid payment of the correct taxes.

Thus, as it appears that the charges in **Criminal Case No. O-1092** and **Criminal Case No. O-1158** pertain to one (1) criminal offense.

Further, a closer examination of the case dockets reveals that both Informations arose out of the same Resolution (for NPS Docket No. XVI-INV-15J-00377) dated 28 June 2022[11] which determined the charges for the accused based on the same complaint-affidavit and supporting documents filed by SA1 Alexander D.G. Ugay and SA1 Doy O. De Castro, members of the Enforcement and Security Service (**ESS**) Enforcement Group of the BOC. Hence, it may reasonably be presumed that plaintiff intends to present the same pieces of evidence in both cases to prosecute the accused for the unlawful importation of the same vehicle.

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10 See *Danilo L. Opiniano v. People of the Philippines, et al.*, G.R. No. 243517, 05 December 2022.

11 Division Docket, pp. 8-47; Division Docket for Criminal Case No. O-1092, pp. 8-47.

In addition, Section 13, Rule 110 of the Rules of Criminal Procedure, states that a complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses. Parenthetically, Section 3(f), Rule 117[12] of the same law allows the accused to move for the quashal of an information that charges more than one offense. The objection must be made at any time before the accused enters his or her plea. Otherwise, the accused is deemed to have waived the ground for objection.[13]

Applying by analogy, here, accused Asaria immediately filed a Motion to Dismiss objecting to the charges made in the Information in **Criminal Case No. O-1158** after she was apprised thereof. Having timely interposed an objection against the duplicitous charges, accused did not waive her right against it. If the Court were to allow **Criminal Case No. O-1158** to proceed, not only will this burden the State but the court and the accused as well. The time and resources to be spent to hear the case and have the plaintiff present similar pieces of evidence will serve no logical purpose. More importantly, allowing it to proceed will abet (and not deter) the rule against multiplicity of suits. While indeed ordinarily observed in civil cases, public policy is firmly set against unnecessary multiplicity of suits whose primary objective is unduly burdening the court dockets.[14]

ACCORDINGLY, the Information for Criminal Case No. O-1158 is hereby **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[12] **Sec. 3**. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

...

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law[.]

[13] *People of the Philippines v. XXX*, G.R. No. 254254, 16 February 2022.

[14] See *Riviera Golf Club, Inc. v. CCA Holdings, B.V.*, G.R. No. 173783, 17 June 2015.

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LANEE S. CUI-DAVID
Associate Justice