REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIMINAL CASE NO. O-438** For: Violation of Section 3601in relation to Sections 101 and 2530 of the Tariff and Customs Code of the Philippines, as amended
- versus -	Members:
GEMMA AIDA BELARMA y TORREDA, (Room 201 G.K. Chua Bldg., M.J. Cuenco Ave., Brgy. San Roque, Cebu City/F. Pacana St., Tisa Labangon, Cebu City), - AT LARGE - Accused.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.* **Promulgated:** FEB 2 0 2015 11:54 a.m.

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RESOLUTION

For resolution is the prosecution's "**Consolidated Omnibus Motion**", filed on February 4, 2015, which prays for the following:

1. Reconsideration of the Resolution dated January 14, 2015;

2. Admission as part of the records the certified true copies of the documents attached to the present motion;

3. Issuance of a warrant of arrest against accused Gemma Aida Belarma y Torreda; and

4. Consolidation of the instant case with CTA Criminal Case No. O-434 that is pending before the Third Division of this Court.

The Court aptly observes that the resolution of the prosecution's motion for the issuance of a warrant of arrest against herein accused and for the consolidation of the above-enumerated criminal cases is dependent upon the grant or denial of the prosecution's motion for reconsideration of the Resolution dated January 14, 2015, the dispositive portion of which reads:

> "For failure of Assistant State Prosecutor Ramon Chito R. Mendoza to comply, despite notice, with the Resolution dated November 28, 2014, the above-captioned case is hereby **DISMISSED**, without prejudice.
>
> **SO ORDERED**."

The dismissal of the present case arose from the failure of the prosecution to submit before the Court the original or certified true copies of the supporting documents attached to the Information as set forth in the Resolution dated November 28, 2014. Upon examination of the instant omnibus motion, it appears that the prosecution already submitted the certified true copies required to be submitted by this Court in the Resolution dated November 28, 2014. Hence, the admission of the said documents and the reconsideration of the Resolution dated January 14, 2015 are hereby **GRANTED**.

Accordingly, the Court shall determine the existence of probable cause in this case for the issuance of the Warrant of Arrest against the accused.

Section 6 of Rule 9 of the Revised Rules of the Court of Tax Appeals provides:

> SEC. 6. *When warrant of arrest may issue.*— Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five (5) days from notice.

Probable cause to issue a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. It bears remembering that "in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance." Thus, the standard used for the issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him.[1]

Upon careful evaluation of the Information and its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest in this case.

It is worthy to emphasize that accused is being charged of violation of Section 3601 of the TCCP, as amended, which provides:

> "Sec. 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:
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> xxx xxx xxx"

As such, it is imperative that the evidence shows that there is a *prima facie* case that the accused committed unlawful importation which would be a sufficient ground for the arrest of the accused.

On November 10, 2014, the Information was filed against accused Gemma Aida Belarma y Torreda, charging her for violation of Section 3601 in relation to Section 101, paragraph (k), in relation to Sections 2503 and 2530, paragraph (f) of the Tariff and Customs Code of the Philippines (TCCP), as amended, the accusatory portion of which is as follows:

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[1] *Chester de Joya vs. Judge Placido Marquez,* G.R. No. 162416, January 31, 2006, 481 SCRA 376, 380.

> "That on or about March 22, 2013, in Cebu City, 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 of the legitimate duties accruing to it from merchandise imported to this country, did then and there willfully, unlawfully and knowingly fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit; declared as 'Stone Slab' in Bill of Lading No. **APLU074759163**, but found to contain five hundred twenty (520) bags of "**White Rice**" per 10 x 20 container van on the board the vessel S/S **CAPE FRANKLIN**, which arrived from the Port of Vietnam, without the requisite import permit from National Food Authority, (NFA), and with an approximate market value of **SIX MILLION SIX HUNDRED FIFTY SIX THOUSAND PESOS (₱6,656,000.00)**, to the damage and prejudice of the Government of the Philippines in principal duties and taxes estimated at **THREE MILLION EIGHT HUNDRED FIFTY ONE THOUSAND TWO HUNDRED FIFTY FIVE THOUSAND PESOS (₱3,851,255.00)**."

The Information alleges that the accused unlawfully imported five hundred twenty (520) bags of white rice per 10 x 20 container van without the required import permit from National Food Authority. The said shipment was covered by Bill of Lading No. APLU074759163, and the content of the same was declared as stone slab. To support the said allegations, the prosecution submitted the Detailed Findings of Inventory, the Complaint Affidavit of Atty. Danilo M. Campos, Jr., Affidavit of Nomie V. Gonzales, Memorandum dated May 22, 2013, Alert Order No. A/IG/20130325-101, Justification Sheet and E2M Manifest-Waybill.

On the other hand, Atty. Danilo M. Campos, Jr. alleges in his Complaint-Affidavit that the shipment allegedly containing 10x20' stone slab under Bill of Lading No. APLU074759163 which is also the subject of the Information filed before this Court was consigned to herein accused. Atty. Campos states that based on derogatory information that the subject shipment involved smuggled rice, an Alert Order was issued by the police authorities to witness the examination of the said shipment by the assigned examiner who, in this case, was a certain Arneth Von G. Manquiquis.

In this regard, the prosecution submitted before the Court the memorandum prepared by Mr. Manquiquis, showing the inventory results in relation to the Alert Order, i.e., shipments declared as other products which were actually found to be smuggled rice. However, a perusal of the Detailed Findings of Inventory attached to the said memorandum shows that the shipment covered by Bill of Lading No. APLU074759163 was not part of the said inventory. In fact, none of the detailed findings of inventory involved Melma Enterprises, the business entity allegedly registered in the name of the accused.

Considering the surrounding circumstances, and based on the evidence submitted by the prosecution, the Court finds no probable cause to issue a warrant of arrest against the accused. *Ergo*, the Court may not acquire jurisdiction over the person of the accused. Hence, the instant criminal case necessarily fails.

Consequently, the Court finds it unnecessary to resolve the prosecution's prayer for the consolidation of the case for being moot and academic.

WHEREFORE, in view thereof, the instant case is hereby **DISMISSED**, without prejudice.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice