REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ARMANDO P. CALIGNER and NARCISO E. CALATON
Accused.

CTA CRIM. CASE No. O- 075
(I.S. No. 2007 – 303)
For: Violation of Section 3602, in relation to Sections 2503 and 2530 of the Tariff & Customs Code of the Philippines

Members:

Acosta, Chairman,
Bautista, and
Casanova, *JJ.*

Promulgated:

AUG 2 4 2009; 2:00pm

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RESOLUTION

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt. In fact, unless the prosecution discharges the burden of

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proving the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.[1]

The above is the basis of the Demurrer to Evidence filed on June 29, 2009 by accused Armando P. Caligner and adopted by co-accused Narciso E. Calaton, *sans* Opposition from the prosecution. The accused avers that due to the prosecution's failure to formally offer documentary evidence and the failure of the offered testimonial evidence to establish the essential elements of the crime, the Demurrer to Evidence should be granted.

The accused are charged with the offense penalized under Section 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines (TCCP) in an Information which reads:

> "That on or about September 13, 2004, in Manila City and within the jurisdiction of the Honorable Court, the above-named accused, in conspiracy with one another, filed an Import Entry and Internal Revenue Declaration with the Bureau of Customs covering the shipment of 12x20' container vans of *covering materials* from Korea with a declared total weight of 70,800 kgs or 5,900 kgs/container. However, after conducting a 100% examination it was revealed that the 12 containers actually contain *imported ceramic tiles* with estimated weight of 23,000 kgs per container resulting to a 74% discrepancy, with a dutiable value of Five Million Sixty Five Thousand Two Hundred Pesos and 95/100 (Php5,065,210.95.) and a total duties and taxes of One Million Six Hundred Fifty Four Thousand Four Hundred Eighty One Pesos (Php1,654,481.00), to the damage and prejudice of herein complainant.
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> CONTRARY TO LAW."

The provisions allegedly transgressed by herein accused provide:

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[1] *People v. Satorre, 408 SCRA 642 (2003).*

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 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 an 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.

SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would *[sic]* less by ten percent (10%) than should be legally collected based on the tariff classification, of *[sic]* when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, quantity, or measurement 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 article/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 penal provision under Section 3602 of this Code.

SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

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i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law;

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l. Any article sought to be imported or exported.

(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;

(2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the

importation or exportation of such article; and

(5) Through any other practice or device contrary to law by means of which such entries was entered through a customhouse to the prejudice of the government.

Rule 132 Section 34 of the Rules of Court provides that the Court shall consider no evidence that has not been formally offered, and that the purpose for which it has been offered must be specified. In other words, evidence not formally offered cannot be considered in deciding the case. In ***People vs. Santito, Jr.***,[2] it has been explained that:

> "xxx Identification of documentary evidence must be distinguished from its formal offer as an exhibit. The first one is done in the course of trial and is accompanied by the marking of the evidence as an exhibit. The second one is done only when the party rests its case and not before. The mere fact that a particular document is identified and marked as an exhibit does not mean that it will be or it has been part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all.
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> In the case at bar, the defense did not identify or formally offer the said entry in the police blotter as evidence for the appellants. Section 35, Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered; and it could not have been offered without being identified and marked as an exhibit. Hence, contrary to the opinion desperate gambit of appellants, the said entry cannot be given consideration at all."

Clearly, the failure of the prosecution to formally offer its documentary evidence leaves the Court with no option but to disregard the same and to consider only the offered testimonial evidence.

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[2] *201 SCRA 87 (1991)*

Consequently, to determine whether the prosecution discharged the burden of overcoming the presumption of innocence of herein accused, the Court examined the offered testimonial evidence:

(1) **Gil Macatangay**, Acting Examiner in the Formal Entry Division of the Bureau of Customs (BOC). Mr. Macatangay testified that as Acting Examiner, he was tasked to compute the taxes and the duties of the shipment of the ceramic tiles covered by Entry No. 104423, consigned to Armancal Trading under the Run After The Smugglers (RATS) program of the BOC. However, he testified that although he examined the Import Entry, only its machine copy was given to him, even though this was not the practice in the BOC.[3]

(2) **Resy Rey Balagtas**, Acting Special Agent of the BOC, assigned to the Intelligence and Enforcement Group (IEG). He testified that his duties included surveillance of shipments in cases where the BOC receives derogatory information regarding infractions against the TCCP. He stated that on September 16, 2004 based on the Alert Order issued by the BOC on certain shipments, he, along with three others, namely Alfredo Litonjua, Jaime Aquino, Jr., and Francisco Colinares IV, witnessed the examination of container vans. He recalled that among those subject to examination were shipments consigned to Armancal Trading (Armancal). He testified that their team recommended the issuance of a Warrant of Seizure and Detention because the contents of the container vans were not the same as those mentioned in the Alert Order. However, he also stated that aside from the Alert Order, he did not have any other document pertaining to the shipment being examined. He testified that the Import Entry declared covering materials and the number of containers but

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[3] *Transcript of Stenographic Notes (TSN), Hearing, July 2 and 9, 2008.*

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also stated that he did not compare the container numbers of the shipments examined with those mentioned in the Alert Order.[4]

(3) **Francisco Colinares IV**, Special Agent II of the Intelligence and Enforcement Group (IEG) of the BOC. He testified that as special agent, his work included monitoring and surveillance of imported shipments. He can also be made Officer-in-Case on "alerted" shipments. He acts as a witness when an "Examiner" conducts an examination of the shipments. In the exercise of his duties, on September 16, 2004, he witnessed the examination of shipments covered by an Alert Order, but also stated on record that he cannot recall the actual container numbers that were examined.[5]

(4) **Jaime Aquino, Jr.**, Acting Special Agent of the Intelligence and Enforcement Group (IEG) of the BOC. Mr. Aquino testified that the was a member of the four-man team who witnessed the examination of the "alerted" shipments on September 16, 2004; his functions include the gathering of information and the monitoring of shipments with derogatory information. His testimony corroborated the testimonies of Mr. Balagtas and Mr. Colinares.[6]

(5) **Alfredo Litonjua**, Special Agent II of the Intelligence and Enforcement Group (IEG) of the BOC. He testified on being a member of the four-man team who witnessed the examination of the shipments on September 16, 2004. He remembered being a witness to the examination of ceramic tiles consigned to Armancal Enterprises. He further testified that he cannot remember whether there were representatives from Armancal during the said examination because, according to him, there were so many people present at the time of the examination. The

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[4] *TSN, Hearing, July 16,, 2008.*
[5] *TSN, Hearing, September 15, 2008.*
[6] *Ibid.*

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testimony of Mr. Litonjua also corroborated the testimonies of Mr. Balagtas, Mr. Colinares, and Mr. Aquino.[7]

(6) **Marlina Osmillo**, Customs Operations Officer V, with the designation of Customs Principal Appraiser. She stated on record that her duties included the supervision and review of the work of her examiners/appraisers. She testified that her Office received the documents relative to the shipment in question. However, because she was assigned to the said Office only on January 15, 2008, her efforts to locate the documents pertaining to the shipment subject of this case were futile. She also identified the Examiners on the September 16, 2004 examination as Mr. Dennis Mañego and Ms. Emma Baliwag. These Examiners told her that the said documents were also not with them.[8]

(7) **Dennis Mañego**, Examiner of the BOC assigned to the Formal Entry Division of the Manila International Container Port. He testified that his main function as examiner is to process import entries and other import documents, such as bills of lading, commercial invoices and packing lists. He testified as to having processed the Import Entry of the shipment consigned to Armancal Enterprises and recalls that the broker of the said shipment is Narciso Calaton Brokerage. However, as testified to by Ms. Osmillo, he stated that he does not have information regarding the whereabouts of the original documents.[9]

The Court finds that the plaintiff failed to establish with moral certainty the following elements of the crime:

(1) Making or attempting to make any entry of imported or exported article;

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[7] *Ibid.*
[8] *TSN, Hearing, October 13, 2008.*
[9] *TSN, Hearing, December 10, 2008.*

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(2) By means of any false or fraudulent invoice, declaration, affidavit, letter, paper; or

(3) By means of any false statement, written or verbal, or

(4) By any means of any false or fraudulent practice whatsoever, or

(5) Knowingly effects entry of goods, wares, merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or

(6) By the payment of less than the amount legally due, or

(7) 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

(8) Makes or files an affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance or refund xxx, greater than that legally due thereon, or

(9) Who shall be guilty of any willful act or omission.

In every criminal prosecution, the guilt of the accused must be established by proof beyond reasonable doubt in order to warrant a conviction. Proof beyond reasonable doubt is that degree of proof which produces conviction in an unprejudiced mind. It is not the absolute certainty of guilt but only a moral certainty as to the presence of the elements constituting the offense, as well as the identity of the offender.[10]

However, all that was established by the testimonies was an examination of shipments on September 16, 2004. The witnesses testified also that included in those

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[10] *People v. Surio, 386 SCRA 537 (2002).*

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shipments were those consigned to Armancal Trading/Enterprises (Armancal). But the members of the team who witnessed the examination all stated that they did not have a copy of the Import Entry filed by Armancal, further, their testimonies were all based on their recollection and on mere machine copies of the pertinent documents.

The Information charges the accused with filing an Import Entry and Internal Revenue Declaration (IERD) with the BOC stating that the shipment contained "covering materials"; when, after examination, it was found that the said shipment actually contained "ceramic tiles". The original IEIRD, a very essential document for the prosecution, was not presented during trial. More so, the prosecution failed to offer even its machine copy. Further, witnesses testified to having only the Alert Order regarding the shipment during the examination, the original IEIRD cannot be located, and efforts to find it have been futile. The witnesses also testified that they were unable to compare the container numbers of the shipments they examined, with the numbers in the Alert Order.

Also, no competent evidence was presented proving that herein accused are the same people referred to in the machine copy of the Import Entry and Internal Revenue Declaration. On the other hand, the witnesses during the said examination all stated that they could not remember who were present on that date; they all stated that there were many present. The witnesses did not know whether there were representatives from Armancal Trading/Enterprises on that day.

Law and jurisprudence demand proof beyond reasonable doubt before any person may be deprived of his life, liberty, or even property. Enshrined in the Bill of Rights is the right of the accused to be presumed innocent until the contrary is proved, and to overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. The constitutional presumption of innocence requires courts to take "a more than casual consideration" of every circumstance or doubt proving the innocence of the accused.[11]

In view of the clear insufficiency of the offered evidence *vis-à-vis* the Constitutional right of the accused to be presumed innocent, this Court hereby **GRANTS** the instant **DEMURRER to EVIDENCE**. This case is **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[11] *Rabanal vs. People, 483 SCRA 601 (2006).*

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