REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-543, O-544, & O-545**
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
SANSHANE S. BARITA and **DIORITO R. ALBERCA,** *Accused.*	Promulgated: NOV 02 2017 1:50 p.m.

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RESOLUTION

For resolution are the following:

1. Prosecution's Motion for Partial Reconsideration (of the Resolution dated 11 September 2017), filed on September 15, 2017, without accused's comment;

2. Prosecution's Motion for the Issuance of a Hold-Departure Order, filed on September 15, 2017, also without accused's comment; and

3. Accused Diorito R. Alberca's Demurrer to Evidence, filed through registered mail on September 18, 2017, and received by this Court on September 25, 2017, with prosecution's Comment (on the Demurrer to Evidence dated September 15, 2017) filed through registered mail on October 2, 2017 and received by this Court on October 12, 2017.

Prosecution's Motion for Partial Reconsideration (of the Resolution dated 11 September 2017)

Prosecution seeks reconsideration of this Court's resolution which denied several of plaintiff's exhibits.

The pertinent portion of the assailed September 11, 2017 Resolution states:

> On the other hand, the Court DENIES the admission of the following:
>
> 1. Exhibits "P-4", "P-4-A" to "P-4-E", "P-9", "P-9-A" to "P-9-E", "P-10", "P-10-A" to "P-10-D", "P-14", "P-14-A" to "P-14-E", "P-21", "P-21-A", "P-39-1" to "P-39-38", "P-39-40" to "P-39-70", for failure to present the originals for comparison;
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> 2. Exhibit "P-32", for failure to present the original for comparison and for failure to identify the exhibit; and
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> 3. Exhibit "P-39-39", for not being found in the records of the case. (*Emphasis removed*)

In its motion, prosecution proffers the following explanations to support its prayer that the denied exhibits be admitted:

> 8. In the case at bar, for Exhibit "P-21" to "P-21-A" (Ms. Corrales' Memorandum to Atty. Manzano of the Bureau of Customs (BOC) dated 22 September 2012), apart from the fact that witness Corrales duly identified her Memorandum dated 22 September 2012 to Atty. Manzano, she specifically explained in her Judicial Affidavit the reasons why said Memorandum to Atty. Manzano was a mere photocopy, thus:
>
>> 45. Q: How did you report the findings/result of the investigation to Atty. Manzano?
>> A: I submitted a Memorandum to Atty. Manzano to inform him about the result of the examination in connection with the shipment of CSB Import and Export.
>>
>> 46. Q: You said that you submitted a Memorandum to Atty. Manzano, Head of RATS Group. In this regard, I am going to show you a document denominated as Memorandum dated 22 September 2012, previously marked in evidence by the prosecution as Exhibit "P-21-A" (*sic*), with submarking "P-21-A", please tell this Court if this is the same Memorandum you submitted to Atty. Manzano?
>> A: Yes, that is the same Memorandum, Sir.

> 47. Q: In this Memorandum dated 22 September 2012, there appears to be [a] signature on the last page, particularly on top of the name Ma. Cristina M. Corrales, please tell this Court whose signature is this?
> A: That is my signature, Sir.
>
> 48. Q: This Memorandum marked as Exhibit P-21 is a mere photocopy of the Original, could you please tell this Court, who is in possession of the original copy of the document?
> A: I was in possession, but I send (*sic*) the original to the RATS Group.
>
> 49. Q: Where is the original now?
> A: It was with the RATS Group, I requested the original but the original cannot be produce (*sic*) anymore, and for all intents and purposes we consider it lost.

9. Evidently, witness Corrales having identified her Memorandum dated 22 September 2012, and having satisfactorily explained the fact that the original copy [of the] Memorandum dated 22 September 2012 was already lost, as RATS Group could not locate nor find it anymore, Exhibit "P-21" to "P-21-A" should have been admitted in evidence by this Honorable Court.

10. With regard to Exhibits "P-4", "P-4-A" to "P-4-E", "P-9", "P-9-A" to "P-9-E", "P-10, "P-10-A" to "P-10-D", "P-14", and "P-14-A" to P-14-E", said documents are all photocopies because the common practice in export trading is that the original copies of bills of ladings are retained either by the exporters or importers. As such, only its photocopies are usually submitted to the BOC.

11. The Minutes of Preliminary Conference on 26 September 2016 and Pre-Trial Order promulgated by this Honorable Court on 1 December 2016 noted therein that Exhibits "P-9", "P-9-A" to "P-9-E", "P-14" and "P-14-A" to "P-14-E" were with the original stamp of the IEIRD Numbers. The original stamp appearing thereof would attest to the fact that only photocopies of the subject Exhibits were submitted when the documents in connection with the importation of the accused was filed before the BOC. Consequently, Exhibits "P-4", "P-4-A" to "P-4-E", "P-9", "P-9-A" to "P-9-E", "P-10", "P-10-A" to "P-10-D", "P-14", and "P-14-A" to "P-14-E" should be treated as if they are original documents and, thus, are admissible in evidence.

> 12. Also, Exhibits "P-9" and "P-14" are common exhibits.
>
> 13. Anent Exhibits "P-39-1" to "P-39-70, they were presented by witness Corrales during her cross-examination when she was asked by the defense counsel to show evidence that would prove that the shipment of the accused was indeed FLOAT GLASSES AND CLEAR GLASSES. Hence, said Exhibits "P-39-1" to "P-39-70" were duly marked in evidence by the prosecution during witness Corrales' re-direct examination. The fact that said Exhibits are mere photocopies was not disputed by the defense.
>
> 14. Lastly, for Exhibit "P-39-39", we submit to this Honorable Court that the same is inadmissible in evidence if it could not be found in the records of these cases.

The motion for reconsideration is partially granted.

With respect to Exhibits "P-4", "P-4-A" to "P-4-E", "P-10", "P-10-A" to "P-10-D", "P-21", "P-21-A", "P-39-1" to "P-39-38", "P-39-40" to "P-39-70", the Court finds no reason to reconsider the denial of the subject exhibits. The witness' declaration that the originals of the same have been lost are merely self-serving and unsupported by any document from the office which supposedly had custody thereof.

Exhibits "P-32" and "P-39-39" were not included in prosecution's motion for reconsideration.

With respect to Exhibits "**P-9**", "**P-9-A**" to "**P-9-E**", "**P-14**", and "**P-14-A**" to "**P-14-E**", the Court **ADMITS** the same in light of the original stamped IEIRD number thereon. However, said admission is still subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

<u>Demurrer to Evidence filed through registered mail on September 18, 2017, and received by this Court on September 25, 2017</u>

Accused Diorito R. Alberca filed his Demurrer to Evidence praying that the instant cases be dismissed for insufficiency of evidence. *vm*

In CTA Crim. Case No. O-543, accused Sanshane S. Barita and Diorito R. Alberca are accused of violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP), as amended, allegedly committed as follows:

> That on or about September 14, 2012, at the Port of Davao, Philippines, and within the jurisdiction of this Honorable Court, the said accused Sanshane S. Barita and Diorito R. Alberca, in their capacity as proprietor of CSB Import and Export and customs broker, respectively, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and fraudulently make an entry of imported articles by means of a false and fraudulent Import Entry & Internal Revenue Declaration No. C9302/12-09878 which misdeclared the shipment as Victory Clear Glass under Tariff Heading 7003.19.90 supported by a false and spurious bill of lading and packing list/invoice, when in truth and in fact, the shipment consisted of Victory Float Clear Glass under Tariff Heading 7005.21.90 which is subject to an unpaid Customs duties and taxes in the principal amount of P1,293,696.00 exclusive of charges and penalties, with evident intent to defraud the government of legitimate taxes accruing to it from the imported articles, to its damage and prejudice.
>
> CONTRARY TO LAW.

In CTA Crim. Case No. O-544, accused Sanshane S. Barita and Diorito R. Alberca are accused of violation of Section 3602 in relation to Section 2503 of the TCCP, as amended, allegedly committed as follows:

> That on or about September 14, 2012, at the Port of Davao, Philippines, and within the jurisdiction of this Honorable Court, the said accused Sanshane S. Barita and Diorito R. Alberca, in their capacity as proprietor of CSB Import and Export and customs broker, respectively, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and fraudulently make an entry of imported articles by means of a false and fraudulent Import Entry & Internal Revenue Declaration No. C9303/12-09877 which misdeclared the shipment as Victory Clear Glass under Tariff Heading 7003.19.90 supported by a false and spurious bill of lading and packing list/invoice, when in truth and in fact, the

> shipment consisted of Victory Float Clear Glass under Tariff Heading 7005.21.90 which is subject to an unpaid Customs duties and taxes in the principal amount of P1,022,776.00 exclusive of charges and penalties, with evident intent to defraud the government of legitimate taxes accruing to it from the imported articles, to its damage and prejudice.
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> CONTRARY TO LAW.

In CTA Crim. Case No. O-545, accused Sanshane S. Barita and Diorito R. Alberca are accused of violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines, as amended, allegedly committed as follows:

> That on or about September 14, 2012, at the Port of Davao, Philippines, and within the jurisdiction of this Honorable Court, the said accused Sanshane S. Barita and Diorito R. Alberca, in their capacity as proprietor of CSB Import and Export and customs broker, respectively, conspiring and confederating together and mutually helping another, did then and there willfully, unlawfully and fraudulently make an entry of imported articles by means of a false and fraudulent Import Entry & Internal Revenue Declaration No. C9304/12-09879 which misdeclared the shipment as Clear Mistlite Glass under Tariff Heading 7003.19.90 supported by a false and spurious bill of lading and packing list/invoice, when in truth and in fact, the shipment consisted of Bronze Float Glass under Tariff Heading 7005.21.90 which is subject to an unpaid Customs duties and taxes in the principal amount of P4,445,972.00 exclusive of charges and penalties, with evident intent to defraud the government of legitimate taxes accruing to it from the imported articles, to its damage and prejudice.
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> CONTRARY TO LAW.

On January 21, 2016, the three cases were consolidated.[1] Subsequently, the Court ordered the issuance of warrants of arrest for accused Sanshane S. Barita and Diorito R. Alberca.[2]

Accused Diorito R. Alberca posted his cash bail bond with the Regional Trial Court (RTC) Branch 22, Cebu City.[3] The Court set accused Alberca's arraignment on May 18, 2016, however,

[1] Docket, CTA Crim. Case No. O-543, Vol. 1, pp. 249-250.
[2] Docket, Vol. 1, Resolution dated March 9, 2016, pp. 462-464.
[3] Docket, Vol. 1, pp. 471-486.

accused Alberca failed to appear therein.[4] Upon reconsideration, the Court reset the arraignment of accused Alberca on August 22, 2016.[5]

Upon arraignment, accused Alberca pleaded "NOT GUILTY".[6]

The case proceeded to preliminary conference and pre-trial. The Pre-Trial Order as regards accused Alberca was issued on December 1, 2016.[7]

During trial, the prosecution presented the following witnesses: (1) Arab C. Sacampong; (2) Ma. Cristina M. Corrales; (3) Atty. Lyndon F. De Los Santos; and (4) Lodem Lascuña.

On September 11, 2017, the Court admitted the documentary exhibits formally offered by the prosecution, with the exception of several exhibits. On September 15, 2017, prosecution filed its Motion for Partial Reconsideration, which was resolved above.

On September 18, 2017, accused Alberca filed by registered mail, his Demurrer to Evidence, which was received by this Court on September 25, 2017. Upon notice, prosecution filed its Comment (on the Demurrer to Evidence dated September 15, 2017) through registered mail on October 2, 2017, which this Court received on October 12, 2017.

In the Demurrer to Evidence, accused Alberca cites the following reasons: (1) the alert orders subject of the instant case are invalid due to the absence of the dry seal of the Office of the Commissioner; (2) the complainant did not examine the contents of the subject 25 container vans, one by one; (3) there is no proof of the 100% examination other than the complainant's self-serving allegation; (4) the accused were not duly notified of the 100% examination; (5) the complainant did not wait for 15 days after publication of the Customs Memorandum Circular (CMC) No 24-2012 before implementing it; (6) the prosecution's second witness, Ms. Cristina Corrales, claims to have witnessed the supposed 100% examination of the subject glasses but cannot show the Office Order that she was

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[4] Docket, Vol. 1, Resolution dated April 19, 2016, p. 489, in relation to Minutes of Hearing dated May 18, 2016, p. 490.
[5] Docket, Vol. 2, Resolution dated July 21, 2016, pp. 507-509.
[6] Docket, Vol. 2, Order dated August 22, 2016, pp. 513-514.
[7] Docket, Vol. 2, pp. 547-560.

assigned in Davao in 2012; xxx (9) Ms. Cristina Corrales cannot connect the photos supposedly taken to support their complaint; (10) the credibility of Ms. Cristina Corrales is very poor because most of her allegations are baseless; (11) the prosecution's third witness, Atty. Lyndon F. Delos Santos cannot show a single proof that he is indeed a lawyer; (12) the said Atty. Delos Santos cannot prove that he was assigned as a lawyer in the Office of the Deputy Commissioner Peter Manzano and currently with RATS Group; (13) Atty. Delos Santos cannot even prove that Deputy Commissioner Atty. Peter M. Manzano was the concurrent Executive Director of RATS; (14) Atty. Delos Santos does not even know what CMC No. 24-2012 is all about; (15) Atty. Delos Santos does not have personal knowledge on the 100% examination that were conducted by Arab Sacampong; (16) Atty. Delos Santos is not an expert in classifying glasses; (17) the supposed expert on glasses Mr. Lascuña testified for the first time in Court; (18) Mr. Lascuña does not have the required qualifications to be considered an expert on glasses; (19) Mr. Lascuña does not even know why the subject glasses are regulated; (20) Prosecutor Guhit was the one asking (interfering) the witness when said witness was on cross-examination by the defense counsel; (21) Mr. Lascuña is not an expert nor independent witness; (22) Mr. Lascuña is a paid witness pretending to be an expert on glasses; and (23) The source of the sample glasses is unclear and doubtful.

In its Comment, the prosecution argues that the alert orders issued by the BOC are valid notwithstanding that they do not bear the dry seal of the Office of the Commissioner of the BOC; that BOC examiners Arab Sacampong and Ma. Cristina Corrales conducted 100% examination of the shipment not only on 19 September 2012 but also on 2-3 October 2012; CMC No. 24-2012 dated January 11, 2012 and Department of Trade and Industry (DTI) Order dated December 13, 2011 are valid issuances by the BOC and DTI, respectively; and that even if the safeguard duties are not imposed, it would still be improper to dismiss the instant case since the accused still committed violation of Section 3602 of the TTPC, as amended.

To summarize, the Informations charge the accused with violations of Section 3602 (Various Fraudulent Practices Against Customs Revenue) in relation to Section 2503 (Undervaluation, Misclassification and Misdeclaration in Entry) of the TCCP, as amended. Said violations were alleged to be committed by the accused by conspiring and mutually helping each other to make a fraudulent entry of imported articles. Said imported articles were allegedly misdeclared as Victory Clear Glass under Tariff Heading 7003.19.90 when allegedly, after examination, said items were actually Victory Float Clear Glass under Tariff Heading 7005.21.90 for CTA Crim. Case Nos. O-543 and O-544. For CTA Crim. Case No. O-545, accused allegedly misdeclared the imported items as Clear Mistlite Glass under Tariff Heading 7003.19.90 when allegedly, after examination, said items were actually Bronze Float Glass under Tariff Heading 7005.21.90.

The provisions read:

> Sec. 3602. Various Fraudulent Practices Against Customs Revenue. – Any person who makes or attempts to make an 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 offense, 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 be less by ten percent (10%) than should be legally collected based on the tariff classification, or 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, 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.

To prove their case, the prosecution presented the following witnesses:

1) Arab C. Sacampong

Mr. Sacampong testified, by way of Judicial Affidavit,[8] that he has been working in the BOC for almost 12 years, since 2004 and that his official station is at the BOC, Port of Davao. He is currently a Customs Examiner though during September 2012, he was still an Acting Customs Examiner. He testified, among other things, that he conducted the 100% examination of the importation from China consigned to CSB Import and Export, consisting of 25 container vans in relation to three different IEIRDs, pursuant to Alert Orders issued by the BOC. His examination was conducted on September 19, 2012 and October 2 and 3, 2012. He testified that the importation was attended with fraud because there was misdeclaration, undervaluation, and misclassification because the imported goods or articles inside all the container vans he examined were different from those declared by Sanshane Barita (owner of CSB Import and Export), and customs broker Diorito R. Alberca in the IEIRD and its supporting documents.

He testified that he determined that what was inside the container vans were Clear Float Glass and Bronze Float Glass instead of Victory Clear Glass and Clear Mistlite Glass from the labels indicating the same and from the valuation findings, remarks and recommendations of Mr. Lodem R. Lascuña. He further testified that float glass is subject to additional safeguard duties of fifteen percent (15%) of the value of the

[8] Docket, Vol. 2, Exhibit "P-35", pp. 563-584.

imported goods or articles as provided in Customs Memorandum Order (CMO) No. 24-2012. He testified that accused Barita and Alberca did not pay the additional safeguard duties for their importation. However, he testified that since accused Barita and Alberca filed a Motion for Settlement for the release of the imported articles and they knew the contents of the importation, then the accused cannot claim good faith.

He also provided samples of the Clear Float Glass and Bronze Float Glass.

2) Ma. Cristina M. Corrales

Ms. Corrales testified, by way of Judicial Affidavit,[9] that she works at the BOC, assigned to the defunct Run After The Smuggles (RATS) Group, and was in Port of Davao sometime September 19, 2012 to investigate and witness the 100% examination by Arab Sacampong of the shipment of imported goods from China consigned to CSB Import and Export. The investigation was pursuant to Alert Orders issued by the BOC. She also stated that the investigation involved 25 container vans in connection with three IEIRDs. She further testified that the subject shipments were misdeclared through the use of simulated/fake commercial documents, in order to misclassify the same to circumvent CMO 24-2012, which requires float glass must be assessed with safeguard duties. Thus, the actual goods inside the container vans were Clear Float Glass and Bronze Float Glass instead of the declared Victory Clear Glass and Clear Mistlite Glass. She stated that she was able to determine the same through the labels attached to the glasses inside the container vans.

She further testified that accused Barita and Alberca made an entry of imported goods by means of false statements in the IEIRD, including its invoices or supporting documents through the undervaluation, misclassification and misdeclaration of the imported goods declared in the IEIRD.

3) Atty. Lyndon Delos Santos

Atty. Delos Santos testified, by way of Judicial Affidavit,[10] that he is an Attorney III at the BOC Prosecution and Litigation Division, and sometime in 2012 he was concurrently assigned

[9] Docket, Vol. 2, Exhibit "P-38", pp. 693-708.
[10] Docket, Vol. 2, Exhibit "P-40", pp. 763-775.

as a lawyer in the Office of the Deputy Commissioner and RATS Group. He testifies that Alert Orders were issued against the shipments involved in the instant cases; that pursuant to said Alert Orders, Ms. Corrales submitted a Memorandum to the Deputy Commissioner recommending the issuance of a warrant of seizure and detention (WSD) against the subject shipment; and that Atty. Delos Santos also submitted his own Memorandum concurring with the recommendation of Ms. Corrales. Pursuant to the recommendations, a WSD was issued docketed as Davao Seizure Identification No. 09-2012, upon which proceedings were held and where the District Collector rendered a decision ordering the forfeiture of the subject shipment in favor of the government.

4) Lodem Lascuña

Mr. Lascuña testified, by way of Judicial Affidavit,[11] that he is employed by Asahi Glass Corporation (AGC) Flat Glass, Davao Branch as Warehouseman where he is in charge of inventory, classification, determination of kind, quality, thickness, count of glasses coming in and going out of the company. He is also affiliated with the Federation [of] Philippine Industries (FPI) as Industry Technical Expert (For Glasses). He testified that sometime October 2-3, 2012 he was at the BOC Port of Davao to assist and witness the 100% examination, by BOC Examiner Arab C. Sacampong, of the importation consigned to CSB Import and Export. His presence was due to the request by BOC for an FPI representative to assist and witness the said examination. He testified that float glasses were found in the subject shipments.

The documentary and object evidence presented by the prosecution are as follows:

Exhibit	Description
P-1	Referral Letter dated November 8, 2012, to Prosecutor General Claro A. Arellano by Commissioner Rozzano Rufino B. Biazon of the Bureau of Customs
P-2, and submarkings	Complaint-affidavit of Ma. Cristina M. Corrales and Arab C. Sacampong consisting of twelve pages subscribed and sworn to on December 6, 2012 and their signatures
P-3, and submarkings	Import Entry and Internal Revenue Declaration (IEIRD) No. 12-09877 consisting of two pages
P-5, and submarkings	Commercial Invoice No. 08242012 dated August 24, 2012

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[11] Docket, Vol. 2, Exhibit "P-41", pp. 811-821.

P-6	Packing List for IEIRD No. 12-09877 dated August 24, 2012
P-7, and submarkings	Industry Technical Expert Report No. 15925
P-8, and submarkings	IEIRD No. 12-09878 consisting of two pages
P-9, and submarkings	Bill of Lading No. DLC1208001688
P-11	Packing List for IEIRD No. 12-09878 dated August 28, 2012
P-12, and submarkings	Industry Technical Expert Report No. 15927
P-13, and submarkings	IEIRD No. 12-09879 consisting of two pages
P-14, and submarkings	Bill of Lading No. TAOCB12003260
P-15, and submarkings	Commercial Invoice No. 08202012 dated August 20, 2012
P-16	Packing List for IEIRD No. 12-09879 dated August 20, 2012
P-17, and submarkings	Industry Technical Expert Report No. 15928
P-18, and submarkings	Alert Order No. A/RC/20120917-101 dated September 17, 2012 for Bill of Lading No. DLC1208001688
P-19, and submarkings	Alert Order No. A/RC/20120917-102 dated September 17, 2012 for Bill of Lading No. XGG1208005895
P-20, and submarkings	Alert Order No. A/RC/20120917-103 dated September 17, 2012 for Bill of Lading No. TAOCB12003260
P-22, P-22-A	Memorandum of Arab C. Sacampong dated October 4, 2012, consisting of three (3) pages
P23, P-23-A	Warrant of Seizure and Detention No. 09-2012 dated October 16, 2012, consisting of two (2) pages
P-24, and submarkings	Computation of the total taxes and duties due on the subject articles by Arab Sacampong
P-25	Customs Memorandum Circular No. 24-2012 dated January 11, 2012
P-26	Letter from the Department of Trade and Industry (DTI) dated December 13, 2011
P-27	Order from the DTI dated December 13, 2011 consisting of three (3) pages with attachments
P-28	Motion for Settlement dated October 23, 2012
P-29	Motion for Express Abandonment dated November 12, 2012
P-30	Decision in Davao Seizure Identification No. 09-2012 dated January 7, 2013 consisting of 14 pages
P-31	Certificate of Finality
P-33, and submarkings	Pictures (Tinted Bronze)
P-34, and submarkings	Pictures (Clear Float)
P-35, P-35-A	Judicial Affidavit of Arab Sacampong
P-36	Clear Float Glass
P-37	Tinted/Bronze Float Glass

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P-38, P-38-A	Judicial Affidavit of Ma. Cristina M. Corrales
P-40, P-40-A	Judicial Affidavit of Atty. Lyndon Delos Santos
P-41, P-41-A	Judicial Affidavit of Lodem Lascuña

Upon evaluation of the foregoing, the Court GRANTS the Demurrer to Evidence upon finding that the charges filed against the accused Diorito R. Alberca were not adequately proven.

Records reveal that the witnesses Arab C. Sacampong and Ma. Cristina M. Corrales both testified that they conducted the 100% examination of the three (3) shipments; that they determined that the contents were Clear Float Glass and Bronze Float Glass through reliance on the labels alleged to have been found therein or through the opinion of the other witness, Lodem Lascuña; and that they have pictures of the examination and labels mentioned.

Mr. Sacampong testified as follows:

> 59. Q: How did you know, that the container vans you examined really contained "CLEAR FLOAT GLASS" and "BRONZE FLOAT GLASS" instead of "VICTORY CLEAR GLASS and CLEAR MISLITE GLASS"?
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> A: Because when I conducted the 100% examination, the Industry Technical Expert (ITE), LODEM R. LASCUÑA, was present and per his valuation findings, remarks and recommendations, I was able to determine that the contents of the importation of CSB Import & Export were "CLEAR FLOAT GLASS" and "BRONZE FLOAT GLASS". Besides, there were labels indicating CLEAR FLOAT GLASS and BRONZE FLOAT GLASS.
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> 60. Q: These labels that you are saying, do you have proofs, if any?
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> A: Yes, there were pictures taken during the conduct of the 100% examination.
>
> 61. Q: I am going to show you several pictures, previously marked as Exhibits P-33, P-33-A to P-33-E and P-34, P-34-A to P-34-I, please tell this court whether these pictures were the pictures taken during the 100% examination?
>
> A: Yes, these are the same pictures taken during the 100% examinations.[12]

[12] Docket, Vol. 2, Exhibit "P-35" Judicial Affidavit of Arab C. Sacampong, p. 575.

Ms. Corrales testified:

60. Q: How did you know that the container vans really contained "CLEAR FLOAT GLASS" and "BRONZE FLOAT GLASS" instead of "VICTORY CLEAR GLASS and CLEAR MISLITE GLASS", as declared in the IEIRD by accused Barita and Alberca?

A: I was able to know that the container vans contained "CLEAR FLOAT GLASS" and "BRONZE FLOAT GLASS" instead of "VICTORY CLEAR GLASS and CLEAR MISLITE GLASS" through the labels attached to the glasses inside the container vans.

61. Q: I am showing you pictures previously marked in evidence for the prosecution during the Preliminary Conference Hearing as Exhibits P-33-A, P-33-C, and P-33-E, can you please go over the said pictures, browse and check the same, and then tell us whether this is related to the labels you mentioned?

A: Those are the pictures of the labels I mentioned, sir.[13]

Upon evaluation of the testimony and documentary evidence proffered by the prosecution, the Court is not convinced as to the conduct of the 100% examination, the attachment of the labels to the contents of the subject container vans, and the classification of the imported glass.

First, the Court notes that the pictures submitted as evidence did not show the container van numbers, in order for the Court to trace that a 100% examination was indeed conducted of all the subject container vans. The Court finds only three (3) pictures, Exhibits "P-33-B",[14] "P-34-B",[15] and "P-34-D"[16] clearly showing the container van number. This may have been explained by witness Mr. Sacampong's testimony during cross-examination, to wit:

ATTY. MERGINO:
Q: My question is, how did you conduct the 100% examination within that two (2) hour period on the 25 container [v]ans?

WITNESS:
A: The three (3) shipments were consisting of three (3) separate bills. One bill consisting of five (5) containers

[13] Docket, Vol. 2, Exhibit "P-38" Judicial Affidavit of Ma. Cristina M. Corrales, p. 705.
[14] Docket, Vol. 3, p. 922.
[15] Docket, Vol. 3, p. 925.
[16] Docket, Vol. 3, p. 926.

> and another is consisting of five (5) containers and the other of (*sic*) consisting of fifteen (15) containers. <u>And I just randomly examined two or three containers per shipment on that day because of the short period of time</u>.[17] (*Underscoring ours*)

However, even if the Court were to consider the pictures as a mere sampling of the 100% examination actually conducted, the prosecution failed to prove that the container vans subject of CTA Crim. Case No. 543 were examined. This is shown in the table below:

CTA Crim. Case	IEIRD No. (based on Information)	Container Numbers (from IEIRD)	Container Van Numbers from pictures
O-543	12-09878	IPXU3543320 TCKU3526828 FCIU2543650 FCIU2820246 CAXU6806912	No exhibit
O-544	12-09877	FCIU3065330 DRYU2186880 IPXU3543779 CAIU[redacted]	Exh. "P-34-B" 2907076 Exh. "P-34-D" FSCU3134949
O-545	12-09879	REGU3128863 EGU3109441 FICU2674199 TEMU2212154 TCKU3260466 FCIU3274833 REGU3176671 [redacted] REGU3184240 REGU3194016 REGU3142223 REGU3168207 FCIU3016593 FCIU3842316 REGU3208249	Exh. "P-33-B" GLDU5774926

Second, the Court cannot determine from the pictures if the labels are indeed attached to the contents of the container vans examined. Exhibits "P-33-A", "P-33-C", and "P-33-E" are close-ups of said labels attached to wooden frames. However, upon examination of the other pictures showing the wooden frames, Exhibits "P-33-B", "P-33-D", "P-34", "P-34-B", "P-34-C", "P-34-E", "P-34-G", and "P-34-H", no such labels are attached.

Witness Ms. Corrales relied solely on these labels and concluded that the subject contents were as labeled, however, the Court also notes that only labels for "Bronze Float Glass" were shown. Thus, the Court cannot determine how Ms.

[17] Transcript of Stenographic Notes (TSN), Hearing on January 18, 2017, p. 19.

Corrales arrived at her conclusion that the shipments contained both "Bronze Float Glass" and "Clear Float Glass".

The same is true for witness Mr. Sacampong. However, Mr. Sacampong also relied on the remarks and findings of witness Lodem Lascuña, which the Court will discuss below.

Finally, the Court is not convinced with the classification of the subject shipments as "Bronze Float Glass" and "Clear Float Glass" instead of "Victory Clear Glass" and "Clear Mistlite Glass". Prosecution's witness Mr. Sacampong relied on the valuation findings, remarks and recommendations of witness Mr. Lascuña, however, prosecution failed to prove that Mr. Lascuña is an expert on glasses. Apart from Mr. Lascuña's testimony, prosecution failed to show any evidence as to Mr. Lascuña's qualifications as an expert on glass. Further, Mr. Lascuna's testimony did not clarify how he determined that the contents of the shipment were "Bronze Float Glass" and "Clear Float Glass" instead of "Victory Clear Glass" and "Clear Mistlite Glass". At the very least, he should have explained what makes "Victory Clear Glass" and "Clear Mistlite Glass" different from "Clear Float Glass" and "Bronze Float Glass", but he failed to do so.

An excerpt of his testimony on cross-examination is quoted below:

> JUSTICE MANAHAN:
> How do you distinguish... What are the distinguishing characteristics of one type of glass versus the other? Because I think, this is a case of misdeclaration of a type of glass, from clear glass to float glass whatever. <u>So can you tell this Court what are the distinguishing characteristics of one type of glass which you have just testified earlier and other one?</u> So what are those distinguishing characteristics? Clear glass, what are the characteristics of a clear glass versus the other one, the bronze or tinted?
>
> MR. LASCUÑA:
> A. This importation entry... can I speak Tagalog? *Ang nakalagay doon kasi Ma'am ay* clear figured mis[t]lite.
>
> JUSTICE CASTAÑEDA:
> So what is the declaration again?

> MR. LASCUÑA:
> A. Clear figured mis[t]lite. From the actual examination on the items is...*ito ang laman,* clear *at* tinted. *Ang* clear figured mis[t]lite with patterned *at saka iba ang* its each code *sa* import entry. *Nakalagay doon na* each code, 70039090 as a figured, clear figured mis[t]lite. For actual examination, this is, I found is clear *at saka* bronze. Its code is 70052090,70052190.[18]

Nowhere in the entries is there a declaration for "Clear Figured Mistlite". Instead, there is "Victory Clear Glass" for IEIRD Nos. 12-09877[19] and 12-09878,[20] and "Clear Mistlite Glass" for IEIRD No. 12-09879.[21] Thus, the Court finds Mr. Lascuña's testimony that "Clear Figured Mistlite" is patterned, as irrelevant.

With respect to the samples of glass[22] submitted by the prosecution, while these may very well be the "Clear Float Glass" and "Bronze Float Glass", the Court cannot say with moral certainty that the said samples came from the subject shipments. The testimonies merely contained a general statement that said samples were the subject of the shipment, as follows:

> 83. Q: Do you have samples of those float glasses?
> A: Yes, your honor.
>
> 84. Q: Can you show this court samples of clear float glass and bronze float glass, which you said were the subject of shipment?
> A: Yes, I have samples.[23]

On direct examination in Court, witness Mr. Sacampong testified:

> PROS. CAPONONG:
> Q In Question 84, you were asked, can you show this Court samples of clear float glass and bronze float glass which you said were the subject of the shipment and you answered, yes, I have samples. Do you have the samples with you, Mr. Witness?

[18] TSN, Hearing on August 2, 2017, p. 12.
[19] Docket, Vol. 3, Exhibit "P-3", p. 864.
[20] Docket, Vol. 3, Exhibit "P-8", p. 870.
[21] Docket, Vol. 3, Exhibit "P-13", p. 876.
[22] Docket, Vol. 3, Exhibits "P-36" and "P-37", p. 929.
[23] Docket, Vol. 2, Exhibit "P-35" Judicial Affidavit of Arab C. Sacampong, pp.579-580.

WITNESS:
A Yes, Sir.

PROS. CAPONONG:
Q Could you please show these to the Honorable Court?

WITNESS:
A Yes, Sir. These are the samples of the clear float and bronze float glass.[24]

xxx xxx xxx

PROS. CAPONONG:
Yes, Your Honors, but the marking of the evidence was the result of his being the examiner of the shipment. It will prove that these were the same articles found in the shipment of this subject case, Your Honors, and they are the float glass. And we want him to present what he saw, what he examined in the shipment, Your Honors.

ATTY. MERGINO:
Actually, Your Honors, that is hearsay because the said witness merely relied on the expert witness that he brought along with him. Supposedly the expert witness along with him, Your Honors.

JUSTICE CASTAÑEDA:
All right. Are those the samples that you got from the shipment?

WITNESS:
A Yes, Your Honors.[25]

On the other hand, the other witness, Mr. Lascuña merely testified, *to wit*:

47. Q: You mentioned that what was found in the subject shipment was FLOAT GLASSES. If sample of the said glasses are shown to you, would you be able to identify it?
A: Yes Sir.

48. Q: I'm going to show you some glass samples taken from the shipment of CSB Import & Export, which was previously marked as Exhibit P-36 and P-37 by the prosecution. Please tell us what kind of glass is this?

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[24] TSN, Hearing on January 18, 2017, p. 8.
[25] *Id.*, pp. 8-9.

A: CLEAR FLOAT (P-36) and TINTED/BRONZE FLOAT (P-37) GLASSES.

There was no testimony as to what date the samples were taken, who actually took the samples, and from which container vans said samples came from. It is unclear to this Court whether there is a proper procedure for the taking of samples during examinations and whether this procedure was followed in the instant case. It is also unclear whether there is a protocol in the BOC for the storage and custody of said samples. These information would assure the Court of the integrity of these samples which have been offered as object evidence.

Further, there seems to be confusion as to what was actually found in the shipments. Witness Mr. Sacampong gave conflicting answers to the Court's clarificatory questions, as follows:

JUSTICE CASANOVA:
For clarification, awhile ago, you brought two (2) different glasses and identified before the court and according to you, you found that and saw in a containerize van.

WITNESS:
Yes, Your Honors.

JUSTICE CASANOVA:
You are referring to? How do you call that two (2) glasses?

WITNESS:
The clear float glass and the other one is the bronze float glass.

JUSTICE CASANOVA:
And you found that the (*sic*) containerize van?

WITNESS:
Yes, Your Honors.

JUSTICE CASANOVA:
Those glasses that you brought and identify before this Court. That you saw that in the 25 containerize van?

JUSTICE CASTAÑEDA:
Only for clarification, did you find only the clear glass or did you find also the bronze glass?

JUSTICE CASANOVA:

According to the witness, awhile ago, he found that in the containerize van. The one that he brought. Now, my only question for clarification whether he found that and saw in all the containerize vans, referring to 25 container vans.

WITNESS:

They are all the same. The two (2) ...(interrupted)

JUSTICE CASANOVA:

No. Simple lang ang tanong ko eh. Ang sabi mo kanina, yon dinala mo dito at saka yong ipinakita mo sa amin eh nakita at you ay nakita mo dun sa containerize van, di ba?

WITNESS:

Yes, Your Honors.

JUSTICE CASANOVA:

Ngayon ang tanong ko lang for clarification kasi ng tumatagal, 25 containerize vans. Yun lahat. Yun lang din lahat ang nakita mo dun sa 25 containerize vans, yong mga glasses lang na yun, yun lang?

WITNESS:

Yes, Your Honors.

JUSTICE CASANOVA:

Let us clarify, what did you find in that 25 containerize vans. Just the clear glass or does it include the other one which you also marked as evidence, which are the bronze? What did you find?

WITNESS:

The clear float glass and the bronze float glass, Your Honors.

JUSTICE CASANOVA:

You stated already awhile ago that you found that saw it di bas a containerize vans? Yang dalawang pinakita mo. Di ba?

WITNESS:

Yes, Your Honors.

JUSTICE CASANOVA:

Pagkatapos ng clarification, tinanong ko kung sa lahat ba ng containerize vans yan, sinagot moo o. Ano ba, for clarification?

JUSTICE CASTAÑEDA:
The question is, did you find both the glasses inside the 25 containerize vans or just the clear glass?

JUSTICE CASANOVA:
He already answered na eh, di ba? Ilang beses ko inulit. Tinagalog ko, inenglish ko pa di ba?

JUSTICE CASTAÑEDA:
What did you find, the clear glass or the bronze? Answer the question. Did you see? What did you see?

WITNESS:
The 10 by 20 container vans are containing clear float glasses and the other 15 by 20 is containing a bronze float glass.

JUSTICE CASTAÑEDA:
Ok.

WITNESS:
I got a sample from the bronze float glass and I got a sample from the clear float glass.

JUSTICE CASANOVA:
Which is now the truth? Alin sa dalawa ang sagot mo? Naging dalawa na.[26]

Prosecution also failed to prove the participation of the accused Alberca in the crimes charged. The Court also notes that conspiracy was alleged in the Information, but was not sufficiently proven by the prosecution.

The allegations and testimony of the witness merely repeated that accused Alberca made an entry of imported goods by means of false statements in the IEIRD, including its invoices or supporting invoices. However, prosecution failed to show accused Alberca's participation in the preparation of the supporting documents. Further, witness Ms. Corrales' testimony[27] as to the conduct of the accused Alberca in coming to her office and threatening to file an Ombudsman case, which was later indeed filed and withdrawn, does not show the guilt of said accused. Rather, to this Court, it shows a customs broker who believed that his importation was being wrongfully held. *am*

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[26] TSN, Hearing on January 18, 2017, pp. 53-56.
[27] Docket, Vol. 2, Exhibit "P-38" Judicial Affidavit of Ma. Cristina M. Corrales, pp. 695-696.

For all the foregoing, the Court GRANTS accused Diorito R. Alberca's Demurrer to Evidence.

Motion for Hold-Departure Order filed by prosecution on September 15, 2017

Prosecution filed the instant motion alleging that the offenses charged are of paramount interest to the government in view of its far-reaching and deleterious effect on the national economy; that said Hold-Departure Order (HDO) is being requested so as not to frustrate the ends of justice by preventing the accused from leaving the country during the pendency of the case, and that the motion is not intended to delay the proceedings.

Considering the grant of the Demurrer to Evidence, prosecution's Motion for Hold Departure Order is rendered MOOT as to accused Diorito R. Alberca.

With respect to accused Sanshane S. Barita, the Court deems it proper to issue a Hold-Departure Order to prevent the departure of the accused. However, prosecution has provided incomplete details as to Sanshane S. Barita's date and place of birth, as well as last known residence, which are necessary in order to fully apprise the Bureau of Immigration of the identity of the accused. Thus, prosecution is ORDERED to submit the complete requirements for the issuance of a hold-departure order as provided under Supreme Court Circular No. 39-97 entitled "Guidelines in the Issuance of Hold-Departure Orders."

WHEREFORE, premises considered, the Court resolves as follows:

1. Prosecution's Motion for Partial Reconsideration (of the Resolution dated 11 September 2017), filed on September 15, 2017, is hereby **PARTIALLY GRANTED**.

   Accordingly, Exhibits "**P-9**", "**P-9-A**" to "**P-9-E**", "**P-14**", and "**P-14-A**" to "**P-14-E**", are **ADMITTED** in light of the original stamped IEIRD number thereon. However, said admission is subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. *am*

2. Accused Diorito R. Alberca's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Crim. Case Nos. O-543, O-544, O-545 are **DISMISSSED** with respect to Diorito R. Alberca.

   Consequently, accused Diorito R. Alberca is **ACQUITTED** on reasonable doubt.

   It appearing that the Court has not acquired jurisdiction over the remaining accused, Sanshane S. Barita, and in order that this case may not remain pending in the Court's docket for an indefinite period of time, the abovementioned cases are hereby **ARCHIVED**, without prejudice to its revival immediately upon the apprehension of accused Sanshane S. Barita.

3. Prosecution's Motion for the Issuance of a Hold-Departure Order is **PARTIALLY GRANTED**.

   Considering the acquittal of Diorito R. Alberca, prosecution's Motion for Hold Departure Order is rendered **MOOT** as to said accused.

   With respect to the issuance of a Hold-Departure Order for accused Sanshane S. Barita, the same is **GRANTED** subject to the prosecution's compliance with the requirements. Accordingly, prosecution is **ORDERED** to submit the complete requirements for the issuance of a hold-departure order as provided under Supreme Court Circular No. 39-97 entitled "Guidelines in the Issuance of Hold-Departure Orders."

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice