REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

****

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MARIVIC BRIONES, DAVID BANGA, BENJAMIN VALIC,
Accused.

CTA CRIMINAL CASE NO. 0-158
For: Violation of Section 3602 of the Tariff and Customs Code of the Philippines in relation to Article 172 of the Revised Penal Code

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JAN 09 2012
10:45 a.m.

x -x

RESOLUTION

This resolves accused **MARIVIC J. BRIONES' "Demurrer to Evidence"** filed on November 8, 2011, without any comment/opposition from the prosecution.

On November 20, 2009, the Information was filed whereby accused Briones, accused David Banga and Benjamin Valic were charged with violation of Section 3602 of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to Article 172 of the Revised Penal Code (RPC), committed as follows:

> "That on or about June 25, 2001, at the Port of San Fernando, La Union, and within the jurisdiction of this Honorable Court, the above-named accused Marivic Briones and David Banga, being the general manager and customs representative, respectively of Skyrider, in

conspiracy with Benjamin Valic of BP Valic Brokerage, did then and there, willfully, unlawfully and feloniously, filed before the Bureau of Customs of the aforesaid port, Import Entry No. 95-2001 covering 9,667 prilled urea in bulk with the equivalent duty in the amount of P1,829,496.00, by means of fraudulent statement or declaration making it appear that the subject shipment is exempt from payment of duties and taxes on the basis of fraudulent certificate of eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro Philippines, to avoid payment of rightful duties and taxes".

During trial, the Court adopted the testimonies of Atty. Rey Roland F. Bergado, and Mr. Manuel A. Rico in Criminal Case No. O-157 after the prosecutor made a manifestation that his witness will testify on almost the same allegations except for different entry number, with accused counsel proposed stipulation that the same testimonies will be made by the witnesses.[1] The prosecution also presented as witness Ms. Cecille C. Abo.

The prosecution also formally offered as documentary evidence the following:

Exhibit	**Description**
A	Affidavit of Atty. Rey Roland F. Bergado dated July 27, 2004
E	Certificate of Eligibility dated August 22, 2001
E and **E-1**	Certification dated September 22, 2011stating to the effect that Mr. Bienvenido N. Toralba is not connected with the Philippine Carabao Center, signed by Ms. Cecille C. Abo,
L	Affidavit of Manuel A. Rico dated February 13, 2003

In a "Resolution" dated November 18, 2011, the Court denied the admission of the following documentary evidence: (a) Certificate of Eligibility dated August 22, 2001 (Exhibit "E"), and (b) Certification dated September 22, 2011, signed by Ms. Cecille C. Abo (Exhibits "E" and "E-1"). In the same "Resolution", the Court

[1] Transcript of Stenographic Notes (TSN), CTA CRIM. Case No. 0-158, August 24, 2011

considered plaintiff to have formally rested its case with the admission of its documentary evidence.

On November 8, 2011, accused Briones filed a "Motion for Leave of Court to File Demurrer to Evidence" with attached "Demurrer to Evidence." In a "Resolution" dated November 18, 2011, the Court granted accused Briones' "Motion for Leave of Court to File Demurrer to Evidence" and admitted the "Demurrer to Evidence" attached to said Motion. In said "Resolution", the Court ordered the prosecution to file a comment/opposition on accused Briones' "Demurrer to Evidence", within ten (10) days from notice. The prosecution failed to submit any comment/opposition within the period required by the Court; hence, this Resolution on accused Briones' "Demurrer to Evidence".

Accused Briones asserts that the prosecution failed to present sufficient evidence required to convict her for the crime charged in the Information; thus, she filed the instant "Demurrer to Evidence" pursuant to Section 23, Rule 119 of the Rules of Court, which provides:

> "**Section 23.** *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court."

Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is **competent** or **sufficient** evidence to sustain the indictment or to support a verdict of guilt.[2]

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[3]

After evaluating the testimonies of the witnesses for the prosecution and the admitted documentary evidence, the Court finds them grossly insufficient to warrant the conviction of accused Briones.

As correctly pointed out by the counsel for the accused Briones, the prosecution failed to prove that there was Import Entry No. 95-2001 that was filed at the Bureau of Customs, Port of San Fernando, La Union on June 25, 2001 since such document was not offered in evidence. Hence, the prosecution likewise failed to prove that the item or article as described in the Information was indeed imported, and that the same were exempted from taxes and duties on the basis of the alleged fraudulent Certificate of Eligibility issued by Philippine Carabao Center. Moreover, while the prosecution offered in evidence the alleged fraudulent Certificate of Eligibility (Exhibit "E"), the admission thereof was denied by the Court for failure of the prosecution to present the original document.

---

[2] Arcangel Gutib vs. Court of Appeals and People of the Philippines, G.R. No. 131209, August 13, 1999
[3] *Ibid.*

Furthermore, the Affidavit of Atty. Rey Roland F. Bergado (Exhibit "A"), the Affidavit of Manuel A. Rico (Exhibit "L"), and the testimonies of the said witnesses are not sufficient to prove the guilt of accused Briones.

Pertinent portions of the Affidavit and testimony of Atty. Bergado are quoted below:

Affidavit of Atty. Bergado dated July 27, 2004:

"3. That in the course of investigation, it was discovered that for a period covering the years 2001 to 2002, Norsk filed before the Bureau of Customs-Port of San Fernando La Union, the following Import Entries (see attachments) for their shipments of fertilizer, to wit:

a. Entry No. C-70-2001
b. Entry No. C -95-2001
c. Xxxxxx

4. That no duties were assessed against the above shipments of Norsk Hydro on the basis of a false misrepresentation that the same is subject to zero percent (0%) tariff as provided under Executive Order No. 133.

5. It turned out that all along, Norsk was remitting to its customs broker, Skyrider Customs Brokerage, represented by its president Ms. Marivic Briones, one of the respondents herein the rightful amount of duties and taxes corresponding to the above shipments of the company. However, instead of paying the said amount to the Bureau of Customs, respondent Marivic Briones, with Messrs. David Banga of Jesurito Pareja Brokerage and Benjamin P. Valic of BP Valic Customs Brokerage, her co-respondents herein, conspiring and confederating with one another to defraud the government and without authority from Norsk Hydro filed before the Bureau of Customs-Port of San Fernando La Union Certificates of Eligibility (See attachments) purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro Philippines showing that all the above shipments of the company are exempted from payment of duties and taxes.

6. That investigation conducted by herein affiant disclosed that all the Certificates of Eligibility filed by respondents Briones, Banga and Valic for the subject shipments are spurious in the light of the certification of Director Felix Mumuad of the Philippine Carabao Center that his office did not issue the said certificate inasmuch as said office was not authorized to do so under Executive Order No. 133 (see attachments)."

Atty. Rey Roland Bergado testimony[4] in CRIM Case No. 0-157, which has been adopted in this case

"PROSECUTOR PARICO:
Q: Mr. Witness, what is the participation of this Marivic Briones with respect to this Entry No. 08-2002?

ATTY. BERGADO:
A: **The name of Marivic Briones came up because one of the employees of Norsk Hydro implicated her because she was the president of Skyrider Broker which allegedly the firm hired by Northern Shipping to facilitate to release of the shipments**.

PROSECUTOR PARICO:
Q: You stated that one of the employees of Norsk Hydro implicated her?

ATTY. BERGADO:
A: No, Your Honors, I said Northern.

PROSECUTOR PARICO:
Q: Can you still remember who was that person?

ATTY. BERGADO:
A: It was Mr. Kebanite, I don't remember his first name. (Emphasis supplied)

Likewise, quoted hereunder are the relevant portions of Mr. Rico's Affidavit and testimony, to wit:

Affidavit of Mr. Rico dated February 13, 2003:

"That I actually examined the shipments consigned to Norsk Hydro (Phils.), Inc., Fully Filipino Enterprise Inc., and Philippine Planters Consumers Inc. from May 2001 until April 2002 to [sic] particularly the shipments as represented by the following import entries:

a. 70-01
b. 83-01
c. 95-01
d. Xxx xxx

That the above shipment was assigned to me for actual examination by virtue of the order of Mr. Ruperto Fabie then COO V assigned at the same Port and that all of the above shipments consists of **FERTILIZERS** as actually examined by me;

---

[4] TSN for CRIM. Case No. 0-157, August 24, 2011, pp. 49-50

That after conducting the actual examination relative thereto, I indicated therein that the same was **EXEMPTED** under Executive Order Number 133 dated July 31, 1999;

That after the same was completed, I forwarded the subject Import Entry to the Principal Appraiser, this port [sic], Mr. Ruperto Fabic for final assessment of the shipment."

Mr. Manuel Rico testimony[5] in CRIM Case No. 0-157 which has been adopted in this case

PROSECUTOR PARICO:
Q: Mr. Witness, in connection with this case, in your affidavit dated February 13, 2003, you stated that you conducted actual examination of the content of the shipment which arrived at the Port of La Union, is that correct?

MR. RICO:
A. Yes, sir.

PROSECUTOR PARICO:
Q: And the subject shipment who also stated that subject shipment, one of the subject shipments is covered by import no. 08-2002, is that correct?

MR. RICO:
A. Yes, sir.

PROSECUTOR PARICO:
Q: Mr. Witness, if you can still recall, what was the content of the said shipment?

MR. RICO:
A. It's a fertilizer, sir.

PROSECUTOR PARICO:
Q: You stated, Mr. Witness, that this shipment was exempted under Executive Order No. 133, is that correct?

MR. RICO:
A. Yes, sir.

PROSECUTOR PARICO:
Q: Mr. Witness, are you willing to affirm and confirm the allegation in this affidavit?

MR. RICO:
A. Yes, sir."

---

[5] TSN, CRIM. Case No. 0-157, August 24, 2011, pp. 69-71

Evidently, the affidavits and the testimonies of Atty. Bergado and Mr. Rico are not sufficient to establish that accused Briones participated, whether directly or indirectly, in the alleged used of fraudulent certificate of eligibility purportedly issued by Philippine Carabao Center in favor of Norsk Hydro Philippines to make it appear that the shipment in Import Entry No. 95-2001 is exempt from payment of duties and taxes.

The testimony of Atty. Bergado merely confirmed that the name of accused Briones came up only when one of the employees of Norsk Hydro implicated her as she was the president of Skyrider Brokerage. Apparently, Atty. Bergado lacks any personal knowledge with regard to accused Briones' participation on the alleged use of fraudulent Certificate of Eligibility. The prosecution should have presented as witness Mr. Kebanite, the one who implicated accused Briones, to attest to the alleged participation of the said accused on the offense charged.

Above all, the witness, Atty. Bergado, admitted in open court that, in his Memorandum dated September 24, 2003, he recommended to absolve accused Briones from criminal liability. Pertinent portions of his testimony[6] are quoted below:

> "ATTY. SARMIENTO:
> Q: Mr. Witness, do you remember having executed a Memorandum dated September 24, 2003?
>
> ATTY. BERGADO:
> A: What page?
>
> ATTY. SARMIENTO:
> Q: At the time the document presented by prosecution, it was on page . . .
>
> JUSTICE CASTANEDA:
> Q: Was that pre-marked?

---

[6] TSN for CTA Crim. Case No. 0-157, August 24, 2011, pages 56 to 60

ATTY. SARMIENTO:
Q: This was not pre-marked by the prosecution, after having been identified by the witness, Your Honors. On September 24, 2003, consisting of 11 pages, can you please browse that photocopy?

JUSTICE CASTANEDA:
Q: Do you affirm that you executed that affidavit?

ATTY. BERGADO:
A: This is not an affidavit, Your Honors, this is a memorandum. Yes, Your Honors.

ATTY. SARMIENTO:
Q: Considering that this is but a photocopy and you affirmed having executed this Memorandum, in the last page of the memorandum, there is a name Atty. Rey Roland Bergado and there is a signature appearing above said name, would you know whose signature is that?

ATTY. BERGADO:
A: That is my signature, sir.

Xxx xxx xxx

ATTY. SARMIENTO:
Q: Now in page 12 of the Memorandum, in the recommendation item no. 1, there is a statement here saying ***the recommendations contained in the IIPD Investigation Report dated June 6, 2002 and July 25, 2003 be modified so as to absolve Ms. Marivic Briones, the president and general manager of Skyrider Brokerage from any criminal liability in connection with the filing of the spurious certificate of eligibility in the port of San Fernando La Union and Cagayan de Oro City***, do you affirm having made such recommendation?

ATTY. BERGADO:
A: Yes, sir.

All told, this Court concludes that the prosecution's evidence against accused Briones is grossly insufficient to sustain a verdict of guilt. There was nothing in the evidence presented by the prosecution which would establish the direct or indirect participation of accused Briones in the commission of the offense charged in the Information.

WHEREFORE, the prosecution's evidence not being sufficient to establish the guilt of accused Marivic J. Briones, the instant "Demurrer to Evidence" is **GRANTED**, and the Information for violation of Section 3602 of the Tariff and Customs Code of the Philippines, as amended, in relation to Article 172 of the Revised Penal Code, is hereby **DISMISSED** but only as to the accused Marivic J. Briones.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice