

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,
-versus-

CTA CRIM. CASE NO. -
O-866

Members:
UY, *Chairperson, and*
RINGPIS-LIBAN,
MODESTO-SAN PEDRO, *II.*

HILARIO SANOY (Ship Master)
San Jose Del Monte, Bulacan,
ROGELIO G. DADOVA (Chief
Officer) Sampaguita, Gulodtaal,
Blk. 10 Lot 2B Batangas City,
JOHN CONDIO, SR., (2nd Officer)
Brgy. Plaridel, Bato, Leyte,
Accused.

Promulgated:

JUN 30 2021

3:06 p.m.

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RESOLUTION

For resolution of the Court are the following:

- 1) "*Motion to Admit Affidavits and Additional Exhibits with Motion to Admit Amended Information*" filed by the prosecution on May 17, 2021;
- 2) "*Omnibus Motion*" filed by accused Hilario Sanoy, Rogelio G. Dadova and John Condio, Sr. on May 25, 2021;
- 3) "*Comment/Opposition*" filed by the prosecution on May 17, 2021;
- 4) "*Manifestation*" filed by the prosecution on June 10, 2021; and
- 5) "*Manifestation*" filed by the prosecution on June 16, 2021.

**Prosecution's "Motion to Admit Affidavits
and Additional Exhibits with Motion to
Admit Amended Information"**

In the "*Motion to Admit Affidavits and Additional Exhibits with Motion to Admit Amended Information*," the prosecution states that after the filing of the Information, it has come to their attention that what was submitted to the Court were the un-subscribed affidavit of complainants Samuel M. Delos Santos, Rodney June L. Cruz, Jeffrey C. Asis and Aldo Neil B. Rafols, and the

un-subscribed affidavits of witnesses Carissa L. Villanueva, Edvir M. Dela Cruz and Rey Catalino U. De Mesa. Hence, the prosecution is now submitting the duly subscribed affidavits of the complainants and witnesses and the following documents:

- a. Referral for filing of appropriate criminal action duly signed by Bureau of Customs Commissioner, Rey Leonardo B. Guerrero;
- b. Basis of computation/valuation;
- c. Sworn Affidavit/s of BOC examiner; and
- d. Amended Information.

The prosecution also moved for the Court to admit the Amended Information attached to the said motion.

**“Omnibus Motion” filed by accused
Hilario Sanoy, Rogelio G. Dadova
and John Condio, Jr.**

In the “*Omnibus Motion*,” accused *a)* moved for a judicial determination of probable cause and dismissal of the case because the evidence on record miserably fails to establish probable cause against the three accused; *b)* moved for the reduction of bail; and *c)* moved for the consolidation of the instant case with Criminal Case No. O-864, also pending before this Court, since the facts and the accused alleged in this case are exactly the same as those in Criminal Case No. O-864, except for the character of the goods involved.

**Prosecution’s “Manifestation”
dated June 10, 2021**

On June 10, 2021, the Court received the prosecution’s “Manifestation” stating that the prosecution is submitting the four (4) copies of its Comment/Opposition to accused’s Omnibus Motion previously filed through registered mail together with a copy of the registry receipt pertaining to the proof of mailing to the Court; and that to ensure receipt by the prosecution of the future resolutions, notices, and other court processes issued and/or promulgated by this Court, the prosecution requested that aside from the copy sent to the mail system, the prosecution be furnished electronically through the email address of the its counsel (attydindo@gmail.com).

**Prosecution’s “Manifestation”
Dated June 14, 2021**

In the said “Manifestation”, the prosecution states that prior to its receipt of the Court’s Resolution dated March 22, 2021, the prosecution already

filed a “*Motion to Admit Affidavits and Additional Exhibits with Motion to Admit Amended Information*” dated April 5, 2021. Hence, the prosecution prays that the said motion be treated as the prosecution’s Compliance to the Resolution dated March 22, 2021.

RULING OF THE COURT

A. Motion for Judicial Determination of Probable Cause

After consideration, the Court resolves to **DENY** the accused’s *Motion for Judicial Determination of Probable Cause*.

A *Motion for Judicial Determination of Probable Cause* is a prohibited pleading under subheading III 2(b) of the Revised Guidelines for Continuous Trial of Criminal Cases, to wit:

“III. Procedure

xxx xxx xxx

2. Motions

xxx xxx xxx

(b) **Prohibited Motions.** – Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/or opposition.

The following motions are prohibited:

i. **Motion for judicial determination of probable cause.**

xxx xxx xxx” (*Emphasis supplied*)

Hence, **Motion for judicial determination of probable cause** must be denied outright by the Court. It must be remembered that the Court is already mandated under Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) to determine the existence of probable cause for the issuance of warrant of arrest. Hence, the said motion is a mere superfluity.

B. Motion to Admit Affidavits and Additional Exhibits with Motion to Admit Amended Information

Upon careful examination of the **Amended Information** dated April 5, 2021 and the supporting documents submitted, and after due deliberation, the

Court finds that the prosecution failed to establish the existence of probable cause for the issuance of a warrant of arrest against the accused in this case.

The accusatory portion of the **Amended Information** reads as follows:

“That on or about February 24, 2021, in Orion, Bataan, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another and with evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into this country, did then and there wilfully, knowingly and fraudulently make an entry, import or bring into the country or assist in doing so contrary to law, 1,940 boxes of imported counterfeit cigarettes worth Php7,721,990.55 a prohibited importation since it lacked the proper Statement of Settlement of Duties and Taxes (SSDT) and Coasting Manifest from the Bureau of Customs, after having presented a spurious and falsified SSDT and Coasting Manifest, in violation of Section 1401 of Republic Act No. 10863 also known as the Customs Modernization and Tariff Act (CMTA), resulting in unpaid principal taxes and fees due the government in the total amount of Php42,785,731.89, exclusive of charges and penalties, to the damage and prejudice of the government.

CONTRARY TO LAW.”

The Court finds unmeritorious the **prosecution’s Motion to Admit Amended Information** because the Amended Information is inconsistent with the amounts reflected in the “Computation of Valuation and Duties and Taxes Due to the Government (Cigarettes).” The Information states that the 1,940 boxes of imported counterfeit cigarettes is worth Php7,721,990.55. However, it is not clear how the total value of cigarettes in the amount of P7,721,990.55 was computed. Moreover, the computation submitted mentions “460 Master Cases (loaded in Truck CBJ2017) and 520 Master Cases (loaded in Truck “CZB213)” but the Court cannot identify if the said cigarettes are included in the “1,940 Master Cases” as stated in the Information.

Furthermore, the Information must clearly state the kind of taxes and fees that were unpaid. The Amended Information merely states as follows: “resulting in unpaid principal taxes and fees due the government in the total amount of Php42,785,731.89, exclusive of charges and penalties.”

The Court resolves to deny the **prosecution’s Motion to Admit Affidavits and Additional Exhibits** because the affidavits submitted were not properly executed.

In the Court's Resolution dated March 22, 2021, the Court ordered **Assistant State Prosecutor Dindo D. Beber to take appropriate action relative to the Court's findings and observations.** On May 17, 2021, the prosecution filed its Compliance and submitted the present affidavits which appears to be a "sufficient compliance of the order of the Court." But, upon examination, the Court finds the "Affidavit" executed by Carissa L. Villanueva, Edvir M. Dela Cruz and Rey Catalino U. De Mesa is **undated and unsubscribed**, while the "Affidavit of Seizing/Apprehending Officers" executed by Samuel M. Delos Santos, Rodney June L. Cruz, Jeffrey Asis and Aldo Neil B. Rafols is **undated**. The said affidavits cannot be considered as competent evidence of the alleged criminal offense based on Section 3(a) of Rule 112 of the Revised Rules on Criminal Procedure, which provides that:

"Section 3. Procedure. - The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. **The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.**" (Emphasis supplied)

The prosecution was given the opportunity to take appropriate action on the affidavits attached to the Information filed before this Court on March 1, 2021 still, it presented the same defective affidavits in its *"Motion to Admit Affidavits and Additional Exhibits with Motion to Admit Amended Information"* filed on May 17, 2021.

In view of the foregoing, the Court finds no probable cause to warrant accused's indictment for the charges being lodged against them. The quantum of evidence required to sustain a finding of probable cause has not been sufficiently established.

It must be remembered that while the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of the one's fundamental right to liberty, dismiss

the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause.¹

WHEREFORE, premises considered, the prosecution's "*Motion to Admit Affidavits and Additional Exhibits with Motion to Admit Amended Information*" is **DENIED**.

On the other hand, the accused's *Motion for Judicial Determination of Probable Cause* is **DENIED** for being a prohibited pleading.

The prosecution's "*Manifestation*" filed on June 10, 2021 and "*Manifestation*" filed on June 16, 2021 are **NOTED**.

Finding no probable cause against accused Hilario Sanoy, Rogelio G. Dadova and John Condio, Sr., the instant case is hereby **DISMISSED WITHOUT PREJUDICE**.

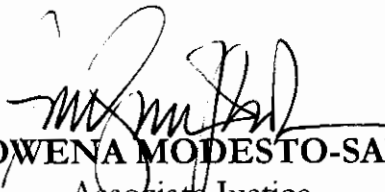
Considering that all accused are detained at Orion Dockyard, Orion, Limay Bataan, they are **ORDERED DISCHARGED IMMEDIATELY** from custody, unless otherwise held for another offense or for lawful ground/s.

On the other hand, the accused's *Motion to Reduce Bail* and *Motion to Consolidate* stated in the "*Omnibus Motion*" are now considered **MOOT AND ACADEMIC** in view of the dismissal of this case.

SO ORDERED.


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

¹ *Alfredo C. Mendoza, vs. People of the Philippines and Juno Cars, Inc.*, G.R. No. 197293, April 21, 2014.