REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REYNALDO M. PAZCOGUIN, JR.,
772 EDSA Corner East Avenue,
Pinyahan, Diliman, Quezon City,
and
RODELITO M. BIAG,
E-74 K-Bin Townhomes,
Townville Subdivision, Project 6,
Quezon City,
Accused.

CTA CRIM. CASE NO. O-221
(I.S. No. XVI-INV-10H-00252)
For: Violation of Sections 3601 and 3602, in relation to Section 2530, paragraphs l(3), (4) and (5) of the Tariff and Customs Code of the Philippines, in relation to Executive Order No. 156.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REYNALDO M. PAZCOGUIN, JR., and **RODELITO M. BIAG,**
Accused.

CTA CRIM. CASE NO. O-223
(I.S. No. XVI-INV-10H-00252)
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x---x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REYNALDO M. PAZCOGUIN, JR., and **RODELITO M. BIAG,**
Accused.

CTA CRIM. CASE NO. O-224
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PEOPLE OF THE PHILIPPINES,

CTA CRIM. CASE NO. O-226
(I.S. No. XVI-INV-10H-00252)

Plaintiff, *- versus -* **REYNALDO M. PAZCOGUIN, JR.,** and **RODELITO M. BIAG,** Accused.	*For: Violation of Sections 3601 and 3602, in relation to Section 2530, paragraphs l(3), (4) and (5) of the Tariff and Customs Code of the Philippines, in relation to Executive Order No. 156.*

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PEOPLE OF THE PHILIPPINES, Plaintiff, *- versus -* **REYNALDO M. PAZCOGUIN, JR.,** and **RODELITO M. BIAG,** Accused.	**CTA CRIM. CASE NO. O-230** (I.S. No. XVI-INV-10H-00252) *For: Violation of Sections 3601 and 3602, in relation to Section 2530, paragraphs l(3), (4) and (5) of the Tariff and Customs Code of the Philippines, in relation to Executive Order No. 156.* Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.* **Promulgated:** JAN 30 2014 3:28 p.m.

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RESOLUTION

For resolution is the "Demurrer to Evidence," filed by accused Rodelito M. Biag on November 22, 2013, with "Vigorous Opposition (Re: Demurrer to Evidence filed by Accused Biag)" filed by the prosecution on December 11, 2013.

In his "Demurrer to Evidence," accused Rodelito M. Biag avers that the prosecution included him in the charges for unlawful importations as an incorporator and corporate officer, without however, any evidence to establish that he had directly participated in the alleged importations of the luxury vehicles; that he had conspired with anyone to effect the importations of the involved shipment; or that he had intervened in any capacity at any stage of the importation process of the subject shipments.

Thus, he argues that based on the evidence adduced on record, not even one overt act has been presented to indicate that he had benefited from said importations or that he had actively intervened in the financial and/or operational management of Viking Haulers, Inc.

Also he asserts that the prosecution failed to prove that the luxury vehicles were imported with fraudulent intent – the main element of unlawful importation; neither documentary nor testimonial evidence to prove that he was in possession of any of the vehicles, or that he had received, concealed, bought or sold, or transported the said vehicles, with knowledge that the same have been imported contrary to law.

Further, he argues that the prosecution's reliance on the ground of gross undervaluation of the subject imported luxury vehicles is merely a desperate attempt to establish the charges of fraudulent importations. Thus, due to insufficiency of evidence to sustain a finding of guilt by the quantum of evidence required by law, accused prays for the dismissal of the present cases.

On the other hand, in the "Vigorous Opposition (Re: Demurrer to Evidence filed by Accused Biag)," the prosecution counters that there is no dispute that accused is the Vice-President of Viking Haulers, Inc., and being a ranking corporate officer, he is primarily liable for the corporate acts and business operations of said corporation; thus, the burden of proof is upon him to prove his lack of knowledge, consent and participation in the subject unlawful importations.

Likewise, the prosecution asserts that based on the evidence adduced, accused had willfully and deliberately failed to pay the correct taxes and duties due on the subject prohibited articles. The totality of the evidence is sufficient to frustrate a demurrer filed by the accused; the prosecution, thus, prays for its denial for utter lack of merit.

After considering the grounds relied upon by the accused, *vis-à-vis* the oppositions made by the prosecution, the Court hereby resolves as follows:

Accused, as an officer of Viking Haulers, Inc., is being charged for violations of Sections 3601 and 3602, in relation to Section 2530, paragraphs l(3), (4) and (5) of the Tariff and Customs Code of the Philippines ("TCCP"),[1] as amended, in relation to Executive Order No. 156, scilicet:

> "SEC. 3601. *Unlawful Importation.* – Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
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> xxx xxx xxx
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> In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation; if the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.
>
> When, upon trial for violation of this section the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: *Provided, however,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section."

> "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 any entry of goods, wares or merchandise, at less than the true weight or measures thereof or upon a classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and wilfully 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

[1] Presidential Decree No. 1464, dated June 11, 1978.

> 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 wilful act or omission, shall, for each offense be punished in accordance with the penalties prescribed in the preceding section."
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> "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 subject to forfeiture:
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> xxx xxx xxx
>
> l. Any article sought to be imported or exported:
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> xxx xxx xxx
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
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> (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 articles was entered through a customhouse to the prejudice of the government."

While Executive Order ("EO") No. 156, entitled "*Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and its Implementing Guidelines*,"[2] bans the importation of all types of used motor vehicles and parts and components, subject to certain exceptions provided therein.

Accordingly, smuggling under Section 3601 of the TCCP, as amended, is committed by any person who:

1) fraudulently imports or brings into the Philippines any article, contrary to law;

[2] Dated December 12, 2002.

2) assists in so doing, any article, contrary to law; or

3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[3]

And under Section 3602 of the TCCP, as amended, the various fraudulent practices against customs revenue are the following:

1) the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice;

2) the entry of goods at less than the true weight or measure; or

3) the filing of any false or fraudulent entry for the payment of drawback or refund of duties.[4]

Lest it be forgotten, a demurrer to 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 to make out a case or sustain the issue.[5] Sufficiency of 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.[6]

Thus, a demurrer to evidence is whether there is competent or sufficient evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.[7]

Here, accused, while alleging his lack of knowledge and/or direct participation as a corporate officer in order for him to be held liable in the present criminal charges; the witnesses' failure to identify him as the

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[3] Rodriguez *v.* Court of Appeals, G.R. No. 115218, September 18, 1995, 248 SCRA 288.
[4] *Ibid.*
[5] Soriquez *v.* Sandiganbayan, G.R. No. 153526, October 25, 2005, 474 SCRA 222.
[6] Ong *v.* People of the Philippines, G.R. No. 140904, October 9, 2000, 342 SCRA 372.
[7] Nicolas *v.* Sandiganbayan, G.R. Nos. 175930-31 and 176010-11, February 11, 2008, 544 SCRA 324.

person who directly intervened in the subject importations; and the prosecution's reliance on public documents, mainly the Securities and Exchange Commission's records of Viking Haulers, Inc., in charging him as a corporate officer, still failed to dispute his capacity as an officer of the said corporation. Accused never made any specific denial that he is an officer of Viking Haulers, Inc., but instead merely asserted his affirmative defense of lack of knowledge and/or participation in the subject importations.

The Court further notes that while in the Pre-Trial Order (As regards accused Rodelito M. Biag only) dated May 29, 2013, the parties had stipulated that "at the time of the alleged commission of the offense, accused Rodelito Manalang Biag was the stockholder, incorporator of Viking Haulers, Inc";[8] a perusal, however, of the records shows that accused has even stated in his Counter-Affidavit dated October 4, 2010, that he is an officer of Viking Haulers, Inc.[9]

Thus, whether he is a responsible or functional officer and his lack of participation and/or knowledge in the subject importations are matters of defense, which he can fully ventilate during trial; mere allegation is not evidence,[10] and is not equivalent to proof.[11] In the same manner that this Court will rule on the assertions made by accused that the valuation method made by the prosecution is erroneous and not in accordance with Republic Act No. 9135[12] or the World Trade Organization Valuation Agreement.

And as to the presence of elements constituting violations of Sections 3601 and 3602, in relation to Section 2530, paragraphs 1(3), (4) and (5) of the TCCP, in relation to EO No. 156, the Court finds as follows:

CTA Criminal Case No. O-221

Based on the records of the case, the prosecution presented, among others, *Exhibits "F,"* with submarkings, *"G,"* and *"H,"* to prove the

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[8] *Records*, p. 648.
[9] *Id.*, at p. 59.
[10] Martinez *v.* National Labor Relations Commission, G.R. No. 117495, May 29, 1997, 272 SCRA 793.
[11] Philippine National Bank *v.* Court of Appeals, G.R. No. 116181, January 6, 1997, 266 SCRA 136.
[12] An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, as amended, and for Other Purposes.

unlawful importation of a Mercedes Benz SL63 model 2010, with uncollected duties and taxes in the amount of ₱4,991,423.36.

Upon perusal, the Court notes that *Exhibit "F,"* with submarkings, pertains to Import Entry and Internal Revenue Declaration ("IEIRD") No. 33828, for "two (2) units motor vehicle brand new Porsche and Mercedes Benz," and "one (1) unit brand new motorcycle"; *Exhibit "G"* refers to a Certificate of Payment with Certificate of Vehicle Physical Check-up for a Mercedes Benz CLK 63 model 2010; and *Exhibit "H"* is the computation of taxes and duties for a Mercedes Benz CLK 63 model 2009.

Further, in the Pre-Trial Order (As regards accused Rodelito M. Biag only) dated May 29, 2013, the parties had entered in the "Statement of the Cases" that in CTA Crim. Case No. O-221, the subject of the unlawful importation is a used Mercedes Benz SL3 model 2012;[13] while in the parties' admitted facts during the Pre-Trial Conference, one of the subject imported luxury vehicle is a Mercedes Benz CLK63 model 2010.[14]

Considering that in the Information dated February 11, 2011,[15] the prosecution has charged accused for unlawful importation of a "Container Van No. OOLU8225232, covered by Import Entry No. 33828, *xxx*, declaring that the said shipment contains brand Porsche and Mercedes Benz when in truth and in fact, after physical examination *xxx*, the said shipment was actually found to contain Mercedes Benz SL63 model 2010 *xxx*, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes *xxx* in the aforesaid amount of *xxx* (₱4,991,423.36); while the evidence that has been presented is for the unlawful importation of another model of the same brand of luxury vehicle, *i.e.*, Mercedes Benz CLK 63 model 2010, the Court, thus, finds the failure of the prosecution to establish a *prima facie* case against the accused.

CTA Criminal Case No. O-223

In this case, the prosecution presented, *inter alia*, *Exhibits "O,"* with submarkings *"P"* and *"Q,"* to prove the unlawful importation of a Porsche

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[13] *Records*, p. 647.
[14] *Ibid.*, p. 648.
[15] *Ibid.*, pp. 1-4.

GT3 model 2010, with uncollected duties and taxes in the amount of ₱4,777,373.44.

The records reveal as follows: *Exhibit "O,"* with submarkings, pertains to IEIRD No. 27338 for "two (2) units brand new motor vehicle Lamborghini and Porsche and Yamaha MC" and "one (1) unit brand new motorcycle"; *Exhibit "P"* refers to a Certificate of Payment with Certificate of Vehicle Physical Check-up for a Porsche GT3 model 2010; and *Exhibit "Q"* is the computation of taxes and duties for a Porsche GT3 RS model 2008.

The Court notes that *Exhibit "Q"* refers to the computation of taxes and duties for a Porsche GT3 RS model 2008, and it is *Exhibit "S"* that actually pertains to the computation of taxes and duties for a Porsche GT3 model 2010, subject of the present Information. And after careful consideration, the Court finds a *prima facie* case against the accused.

CTA Criminal Case No. O-224

As to this case, the prosecution presented, among others, *Exhibits "L,"* with submarkings, *"M"* and *"N,"* to prove the unlawful importation of a Porsche Panamera model 2010, with uncollected duties and taxes in the amount of ₱3,213,588.79.

And upon perusal, *Exhibit "L,"* with submarkings, pertains to IEIRD No. 20120 for "two (2) units brand new motor vehicle Porsche"; *Exhibit "M"* refers to a Certificate of Payment with Certificate of Vehicle Physical Check-up for a Porsche Panamera model 2010; and *Exhibit "N"* is the computation of taxes and duties for a Porsche Panamera model 2010. With the foregoing pieces of evidence, the Court finds that there is indeed a *prima facie* case against accused.

CTA Criminal Case No. O-226

In here, the prosecution presented, *inter alia*, *Exhibits "I"* with submarkings, *"J"* and *"K,"* to prove the unlawful importation of a

Lamborghini Murcielago model 2010, with uncollected duties and taxes in the amount of ₱21,851,687.32.

The records show as follows: *Exhibit "I,"* with submarkings, pertains to IEIRD No. 77473 for "two (2) units brand new motor vehicles Lamborghini and Porsche"; *Exhibit "J"* refers to a Certificate of Payment with Certificate of Vehicle Physical Check-up for a Porsche GT3 RS model 2009; and *Exhibit "K"* is the computation of taxes and duties for a Lamborghini Murcielago model 2010.

Evident from the foregoing that *Exhibit "J"* pertains to the Certificate of Payment with Certificate of Vehicle Physical Check-up for a Porsche GT3 RS model 2009. Nevertheless, it is *Exhibit "R"* that refers to the Certificate of Payment with Certificate of Vehicle Physical Check-up for a Lamborghini Murcielago model 2010, the subject of the present Information. And upon study, the Court likewise finds a *prima facie* case against accused.

CTA Criminal Case No. O-230

Lastly, the prosecution presented, among others, *Exhibit "R"* to prove the unlawful importation of a Lamborghini Murcielago model 2010, with uncollected duties and taxes in the amount of ₱21,851,687.32. And *Exhibit "R"* pertains to a Certificate of Payment with Certificate of Vehicle Physical Check-up for a Lamborghini Murcielago model 2010.

The Court notes, however, that in the Pre-Trial Order (As regards accused Rodelito M. Biag only) dated May 29, 2013, the parties had entered in the "Statement of the Cases" that in CTA Crim. Case No. O-230, the subject of the unlawful importation is a used Porsche GT3 RS model 2010, with uncollected duties and taxes in the amount of ₱3,213,588.79;[16] and that in the parties' admitted facts during the Pre-Trial Conference, one of the subject imported luxury vehicle is a Porsche GTR RS Coupe model 2010.[17]

The Information dated February 22, 2011, filed against accused is for the unlawful importation of "Container Van No. OOLU8159980, covered

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[16] *Ibid.*, pp. 647-648.
[17] *Ibid.*, p. 648.

by Import Entry No. 77473, *xxx*, approximately with DECLARED and PAID dutiable value of ₱3,366,955.00, *xxx*, declaring that the said shipment contains new motor vehicle when in truth and in fact, *xxx*, the said shipment was actually found to contain Lamborghini Murcielago model 2010, *xxx*." However, the said Information regarding the charge for unlawful importation of a Lamborghini Murcielago model 2010 is the subject of CTA Criminal Case No. O-226, which has been earlier considered by the Court.

While a perusal of the evidence shows that the prosecution was able to present *Exhibit "J"* which pertains to the Certificate of Payment with Certificate of Vehicle Physical Check-up for a Porsche GT3 RS model 2009; and *Exhibit "Q"* which refers to the computation of taxes and duties for a Porsche GT3 RS model 2008, the Court still has no recourse but to dismiss the present case.

In sum, for **CTA Criminal Case Nos. O-223, O-224 and O-226**, the Court finds *prima facie* cases for violations of Sections 3601 and 3602, in relation to Section 2530, paragraphs l(3), (4) and (5) of the TCCP, as amended, in relation to EO No. 156, against the accused. On the other hand, for **CTA Criminal Case Nos. O-221 and O-230**, the Court hereby resolves to **DISMISS** the said cases for insufficiency of evidence to sustain the charges against the accused.

Therefore, in **CTA Criminal Case Nos. O-223, O-224 and O-226**, it is now incumbent upon the accused to refute the evidence presented by the prosecution.

It is well to note that albeit the burden of proof to substantiate a charge is with the prosecution, the burden of going forward with the evidence (burden of evidence) shifts to the accused, where the prosecution introduces sufficient evidence and creates a *prima facie* case.[18]

WHEREFORE, the "Demurrer to Evidence," filed by accused Rodelito M. Biag is hereby **PARTLY GRANTED.**

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[18] People *v.* Santiago, G.R. Nos. 137542-43, January 20, 2004, 420 SCRA 248, *citing Bautista v. Sarmiento, G.R. No. L-45137, September 23, 1985, 138 SCRA 587.*

Accordingly, **CTA Criminal Case Nos. O-221 and O-230** are hereby **DISMISSED**.

As regards **CTA Criminal Case Nos. O-223, O-224 and O-226,** let the initial presentation of the evidence for the defense proceed as scheduled on **February 12, 2014, at 1:30p.m.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice