REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,* — **CTA Criminal Case Nos. O-137 & O-138**

- versus-

ENRIQUITO DIZON,
REYNALDO DIZON,
ROBERTO JOSE,
GLORIA LIM-TOLENTINO,
LIBERTY DE RAMOS,
HAROLD DE RAMOS,
WALTER DE RAMOS,
ATTY. EDUARDO UYBUCO,
JOSEPHINE FABRO,
ELENA AMBROSIO,
RENAN S. REYES,
WENDELYN G. CABANG,
TERESITA ARQUERO,
JOEL BAGIO,
ARLENE MAMAED,
RODERICK TAGAYON,
JOSE B. ANACAN,
RAUL D. LUCANAS, and
TERESITA JUGADO,
Accused.

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PEOPLE OF THE PHILIPPINES, *Plaintiff,* — **CTA Criminal Case Nos. O-139 & O-140**

- versus-

ENRIQUITO DIZON,
REYNALDO DIZON,
ROBERTO JOSE,
GLORIA LIM-TOLENTINO,
LIBERTY DE RAMOS,
HAROLD DE RAMOS,
WALTER DE RAMOS,
ATTY. EDUARDO UYBUCO,
JOSEPHINE FABRO,
ELENA AMBROSIO,
RENAN S. REYES,

WENDELYN G. CABANG,
TERESITA ARQUERO,
JOEL BAGIO,
ARLENE MAMAED,
RODERICK TAGAYON,
JOSE B. ANACAN,
JOEL RUIZ, and
TERESITA JUGADO,
Accused.

Members:
Castañeda,Jr.,*Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
AUG 12 2015
3:40 p.m.

x- x

RESOLUTION

For resolution are the following:

1) Accused Teresita Arquero and Jose B. Anacan's Demurrer to Evidence[1], attached to their "Motion for Leave of Court to File Demurrer to Evidence", filed on May 18, 2015;

2) Accused Reynaldo T. Dizon's Demurrer to Evidence[2], filed on July 1, 2015;

3) Accused Gloria Tolentino Agbayani's Demurrer to Evidence[3], filed on July 1, 2015;

4) Accused Joel Bagio and Arlene Mamaed's Demurrer to Evidence[4], filed on July 2, 2015;

5) Accused Roberto Jose's Manifestation[5], filed on July 7, 2015, that he is adopting the Demurrer to Evidence filed by accused Reynaldo T. Dizon dated July 1, 2015;

6) Accused Teresita V. Jugado's Demurrer to Evidence[6], filed on July 8, 2015;

7) Accused Wendelyn Cabang's Demurrer to Evidence[7], filed through registered mail on July 13, 2015 and received by this Court on July 23, 2015;

8) Accused Harold De Ramos' Demurrer to Evidence[8], filed through registered mail on July 13, 2015 and received by this Court on July 23, 2015.

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[1] Docket, pp. 4609-4621.
[2] Docket, pp. 4840-4852.
[3] Docket, pp. 4856-4872.
[4] Docket, pp. 4873-4891.
[5] Docket, pp. 4898-4899.
[6] Docket, pp. 4900-4909.
[7] Docket, pp. 4910-4921.
[8] Docket, pp. 4923-4931.

Prosecution, filed its Comment to the accused's Demurrers to Evidence, on August 10, 2015.

The accused are charged for violation of Section 3601, in relation to Section 2530, paragraph 1, subparagraphs (3), (4), and (5) of the Tariff and Customs Code of the Philippines (TCCP); and violation of Section 3602, in relation to Section 2530, paragraph 1, subparagraphs (3), (4), and (5) of the TCCP, under four (4) Informations, which read:

Crim. Case No. O-137

"That during the period of October 28, 2005 to January 10, 2006, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused Enriquito Dizon, Reynaldo Dizon, Roberto Jose, Gloria Lim-Tolentino, Liberty de Ramos, Harold de Ramos, Walter de Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Wendelyn C. Cabang, Teresita Arquero, Joel Bagio, Arlene Mamaed, Roderick Tagayon, Jose B. Anacan, employees/officers and directors of Great Harbour Forwarding Services Corporation (GHFSC), Teresita V. Jugado and Renan S. Reyes, licensed custom broker, RSR Custom Brokerage, in conspiracy with Raul D. Lucanas, consignee and proprietor of Lucanas Trading, did then and there knowingly, unlawfully and feloniously import/bring into the Philippines under IEIRDs Form Numbers 66330214, 67185562, 67185377, 67154841, 67498812, 66822673, 67498751, 67498742, 68282837, 68282846, 68282952, 68282943, 68282907, and 68282934, covering 66,732 cartoons (*sic*) of STC tiles with total assessed amount of P9,512,740.00, by filing two (2) sets of falsified Import Entry and Internal Revenue Declarations (IEIRDs) and other supporting documents, thereby making it appear that correct taxes or duties have been paid where in fact only less than that amount of duty legally due was paid, and in consequence thereof, the tiles covered by the IEIRDs were accordingly released.

CONTRARY TO LAW."

Crim. Case No. O-138

"That during the period of October 28, 2005 to January 10, 2006, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused Enriquito Dizon, Reynaldo Dizon, Roberto Jose, Gloria Lim-Tolentino, Liberty de Ramos, Harold de Ramos, Walter de Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Wendelyn C. Cabang, Teresita Arquero, Joel Bagio, Arlene Mamaed, Roderick Tagayon, Jose B. Anacan, employees/officers and directors of Great Harbour Forwarding Services Corporation (GHFSC), Teresita V. Jugado and Renan S. Reyes, licensed custom broker, RSR Custom Brokerage, in conspiracy with Raul D. Lucanas, consignee and proprietor of Lucanas Trading, did then and there knowingly, unlawfully and feloniously import/bring into the Philippines certain cartoons (*sic*) of STC tiles under IEIRDs Form Numbers 66330214, 67185562, 67185377, 67154841, 67498812, 66822673, 67498751, 67498742, 68282837, 68282846, 68282952, 68282943, 68282907, and 68282934, by means of falsified Import Entry and Internal Revenue Declarations (IEIRDs) and other supporting documents, making it appear that full payment of taxes and duties were made as evidenced by the fake bank 'rubber stamp' or 'check write' to avoid the corresponding payment of the correct custom duties and import taxes in the aggregate amount of P9,512.740.00 to the damage and prejudice of the Philippine Government.

CONTRARY TO LAW."

Crim. Case No. O-139

"That during the period of November 3, 2005 until December 2, 2005, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused Enriquito Dizon, Reynaldo Dizon, Roberto Jose, Gloria Lim-Tolentino, Liberty de Ramos, Harold de Ramos, Walter de Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Wendelyn C. Cabang, Teresita Arquero, Joel Bagio, Arlene Mamaed, Roderick Tagayon, Jose B. Anacan, employees/officers and directors of Great Harbour Forwarding Services Corporation (GHFSC), Teresita V. Jugado, universal processor of Equitable-PCI Bank, Binondo Branch, and Renan S. Reyes, licensed custom broker, RSR Customs Brokerage, in conspiracy with Joel A. Ruiz, consignee and proprietor of Joruan General Merchandise, did then and there knowingly, unlawfully and feloniously import/bring into the Philippines under IEIRDs Form Numbers 66330494, 66822576, 66822682, 66822655, 67158386, 67185474, 67185553, 67185571, 67154771, and 67154717, covering 53,888 cartoons (*sic*) of STC tiles with total assessed amount of P6,349,652.00, by filing two (2) sets of falsified Import Entry and Internal Revenue Declarations (IEIRDs) and other supporting documents, thereby making it appear that correct taxes or duties have been paid where in fact only less than that amount of duty legally due was paid, and in consequence thereof, the tiles covered by the IEIRDs were accordingly released.

CONTRARY TO LAW."

Crim. Case No. O-140

"That during the period of November 3, 2005 until December 2, 2005, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused Enriquito Dizon, Reynaldo Dizon, Roberto Jose, Gloria Lim-Tolentino, Liberty de Ramos, Harold de Ramos, Walter de Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Wendelyn C. Cabang, Teresita Arquero, Joel Bagio, Arlene Mamaed, Roderick Tagayon, Jose B. Anacan, employees/officers and directors of Great Harbour Forwarding Services Corporation (GHFSC), Teresita V. Jugado, universal processor of Equitable-PCI Bank, Binondo Branch, and Renan S. Reyes, licensed custom broker, RSR Customs Brokerage, in conspiracy with Joel A. Ruiz, consignee and proprietor of Joruan General Merchandise, did then and there knowingly, unlawfully and feloniously import/bring in the Philippines under IEIRDs Form Numbers 66330494, 66822576, 66822682, 66822655, 67158386, 67185474, 67185553, 67185571, 67154771, and 67154717, covering 53,888 cartoons (*sic*) of STC tiles, by means of falsified Import Entry and Internal Revenue Declarations (IEIRDs), making it appear that full payment of taxes and duties were made as evidenced by the fake bank 'rubber stamp' or 'check write' to avoid the corresponding payment of the correct custom duties and import taxes in the aggregate amount of P6,349,652.00 to the damage and prejudice of the Philippine government.

CONTRARY TO LAW."

After presentation and formal offer of prosecution's evidence, the Court resolved as follows:

"xxx, the Court hereby ADMITS Exhibits "D", "PP", "PP-1", "TT" and "TT-1", offered as common exhibits for CTA Criminal Cases Nos. O-137, O-138, O-139, and O-140; Exhibits "TT-2", "XXXXXX", "YYYYYY", "YYYYYY-1", "ZZZZZZ", "ZZZZZZ-1", "AAAAAAA", "AAAAAAA-1", "BBBBBBB" and "BBBBBBB-1", offered for CTA Criminal Case Nos. O-137 and O-138; and Exhibits "VVVVV", "FFFFFF-2", "PPPPPP", "PPPPPP-1", "QQQQQQ", "QQQQQQ-1", "RRRRRR", "RRRRRR-1", "SSSSSS", "SSSSSS-1", "TTTTTT", and "TTTTTT-1", offered for CTA Criminal Case Nos. O-139 and O-140, subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevance, and probative value to the issues involved in this case."[9]

[9] Docket, p. 4594.

On the other hand, the Court denied the admission of the photocopies presented by prosecution, on the ground that the prosecution failed to establish the due execution and subsequent loss of the original documents, and as such, the photocopies did not qualify as secondary evidence.[10]

These photocopies make the bulk of prosecution's evidence, the denial of which prompted the accused to file their respective motions for leave of court to file demurrer to evidence. Leave was granted in the Court's Resolution, dated June 18, 2015. Hence, these demurrers to evidence filed by the accused.

The arguments of the accused in their respective demurrers to evidence are presented below:

Teresita Arquero and Jose B. Anacan

Accused Arquero and Anacan argue, through counsel, that the commission of the crime charged, and the participation of Teresita Arquero and Joselito Anacan was not established. The prosecution's evidence failed to link a single act complained of against accused Teresita Arquero and Joselito Anacan.

Reynaldo T. Dizon, adopted by Roberto Jose

Accused Dizon, through counsel, and adopted by accused Jose, argue that prosecution failed to produce evidence of the commission of the offense. By failing to produce the originals of the relevant Import Entry and Internal Revenue Declarations (IEIRDs), the prosecution also failed to prove that the same were falsified by the accused. Further, the prosecution failed to prove the participation of the accused in the offense charged, as well as failing to prove the existence of conspiracy among the accused.

Gloria Tolentino Agbayani

Accused Gloria Tolentino Agbayani, through counsel, argues that the testimonies presented by the prosecution and the evidence admitted by the Court do not show in particular her involvement in the violations being charged. Furthermore,

[10] Docket, p. 4599.

prosecution failed to show that the accused conspired with the other accused. Accused states that she was impleaded merely because of being a named director in the amended articles of incorporation, however, being a director does not make her automatically liable for crimes imputed against the corporation.

Joel Bagio and Arlene Mamaed

Accused Bagio and Mamaed, through counsel, argue that prosecution failed to provide evidence of the commission of the crime of smuggling, and failed to adduce any testimonial or documentary evidence to show the degree of participation of accused Bagio and Mamaed. Further, prosecution failed to prove conspiracy among the accused.

Teresita V. Jugado

Accused Jugado, through counsel, argues that prosecution has no evidence whatsoever to prove its case, and failed to prove that accused Jugado violated the Tariffs and Customs Code. It is emphasized that accused Jugado had no participation in the questioned release of goods, as the first set of IEIRDs, the ones that were presented to her, were not the same ones used in securing the anomalous release of the goods.

Wendelyn Cabang

Accused Cabang, through counsel, argues that prosecution has failed to prove that accused Cabang committed the violations charged. With the denial of admission of prosecution's evidence, prosecution cannot prove that the IEIRDs were falsified, that accused Cabang processed the IEIRDs before the BOC, or that accused Cabang made the incorrect payment of duties and taxes as alleged. In sum, prosecution failed to prove that accused Cabang fraudulently imported, or assisted in the fraudulent importation of the articles in question. Further, prosecution failed to prove conspiracy among the accused.

Harold De Ramos

Accused Harold de Ramos, through counsel, argues that prosecution failed to sufficiently prove their allegations as to the commission of the crimes charged, and failed to prove accused Harold de Ramos' guilt beyond reasonable doubt. Prosecution was only able to prove that accused Harold de Ramos is one of the employees of GHFSC and nothing more. Further, prosecution failed to prove conspiracy among the accused.

Prosecution, on the other hand, argues that the Court has already admitted the secondary evidence during the hearing on January 20, 2014. On this regard, the Court disagrees. As clarified in that same hearing, the admission of the secondary evidence for the purpose of continuing the hearing and not to delay the proceedings. Upon review of the formal offer, the Court denied the admission of said evidence upon finding that prosecution failed to prove the requirements for the admission of secondary evidence.

The Court shall now resolve the demurrers to evidence.

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, 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.[11]

In the instant case, the Informations charge the offense of unlawful importation through falsified IEIRDs and other supporting documents, and making it appear that full payment of the customs duties and import taxes have been paid, when in fact they have not been fully paid. The Informations specifically relied on Section 2530, par. 1, subparagraphs (3), (4) and (5) of the TCCP, which provides, as follows:

> "Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. – xx
>
> xxx
>
> 1. Any article sought to be imported or exported
>
> (1) xxx

[11] *Gutib vs. Court of Appeals*, G.R. No. 131209, August 13, 1999.

(2) 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;

(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 were entered through a customhouse to the prejudice of the government."

Based on the Informations, prosecution had to prove that the accused conspired and participated in the unlawful importation of ceramic tiles through falsification of the IEIRDs and other supporting documents, making it appear that the correct taxes and duties have been paid, when in fact, the same have not been paid.

The presentation of the IEIRDs and their supporting documents, as well as the alleged "second set" of IEIRDs, is central to the prosecution's theory. However, out of prosecution's voluminous evidence, only one IEIRD was admitted, Exhibit "VVVVV", while the bulk of the admitted evidence refers to notations and logbook entries showing the receipt and transmittal of "specific original copies of the import entries" between and among the divisions of the Port of Manila and Bureau of Customs. These pieces of evidence do not show the alleged falsification of the IEIRDs and supporting documents, which allegedly resulted in the release of the imported tiles without proper payment of the required taxes and duties.

Thus, this Court finds that prosecution failed to prove the alleged scheme employed by the accused of using two sets of IEIRDs to secure the release of the imported tiles, without having completely paid the taxes and duties thereon. Neither was the participation of the various accused in the alleged scheme shown and proven by the evidence. Considering the foregoing, prosecution has not presented evidence sufficient to overturn the presumption of innocence of the accused.

The demurrers to evidence are granted.

In *People vs. Sandiganbayan*[12], the Supreme Court discussed the effect of granting a demurrer to evidence, *to wit*:

> "The demurrer to evidence in criminal cases, such as the one at bar, is *filed after the prosecution has rested its case*, and when the same is granted, it call for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused.*"

WHEREFORE, the Demurrers to Evidence are **GRANTED**. Accordingly, the following accused: **TERESITA ARQUERO**, **JOSE B. ANACAN**, **REYNALDO T. DIZON**, **GLORIA TOLENTINO AGBAYANI**, **JOEL BAGIO**, **ARLENE MAMAED**, **ROBERTO JOSE**, **TERESITA V. JUGADO**, **WENDELYN CABANG**, and **HAROLD DE RAMOS** are **ACQUITTED** of the crime charged.

It appearing that the Court has not acquired jurisdiction over the remaining accused, namely: Enriquito Dizon, Liberty De Ramos, Walter De Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Renan S. Reyes, Roderick Tagayon, Raul D. Lucanas, and Joel Ruiz; and in order that this case may not remain pending in the Court's docket for an indefinite period of time, the abovementioned case is hereby **ARCHIVED**, without prejudice to its revival immediately upon the apprehension of any of the above-named remaining accused.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[12] G.R. Nos. 137707-11, December 17, 2004.