REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

REYNALDO M. PAZCOGUIN, JR.
772 EDSA Cor. East Ave.,
Pinyahan, Diliman, Quezon City

RODELITO M. BIAG
E-74 K-Bin Townhomes, Townville
Subdivision, Project 6, Quezon City
Accused.

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

For: Violation of *Sec. 3601* in relation to *EO No. 156* in relation to *Sec. 3602*, in relation to *Secs. 2503, 2530, pars. (f), (l), 3, 4 & 5; Secs. 1301, 1304 & 1206 of the TCCP*

x---x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

REYNALDO M. PAZCOGUIN, JR.
772 EDSA Cor. East Ave.,
Pinyahan, Diliman, Quezon City

RODELITO M. BIAG
E-74 K-Bin Townhomes, Townville
Subdivision, Project 6, Quezon City
Accused.

CRIMINAL CASE NO. O-224
(I.S. No. XVI-INV-10H-00252)

x---

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

REYNALDO M. PAZCOGUIN, JR.
772 EDSA Cor. East Ave.,
Pinyahan, Diliman, Quezon City

RODELITO M. BIAG
E-74 K-Bin Townhomes, Townville
Subdivision, Project 6, Quezon City
Accused.

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

Promulgated:

JUN 08 2016
1:30 p.m.

x--x

DECISION

BAUTISTA, J.:

THE CASE

The accused, **Rodelito M. Biag** ("Accused") together with **Reynaldo A. Pazcoguin, Jr.** ("Mr. Pazcoguin, Jr."), were charged with three (3) counts[1] of fraudulent practices against customs revenue, as defined and penalized under *Section 3601* in relation to *Executive Order ("EO") No. 156* and *Section 3602* in relation to *Sections 2503 and 2530, paragraphs (f), (l), 3, 4, and 5; Sections 1301, 1304, and 1206 of the Tariff and Customs Code of the Philippines ("TCCP"),* as amended.

It must be stated at the outset, that this Decision is limited to Accused **Mr. Rodelito M. Biag**. Considering that the Court did not acquire jurisdiction over the person of the other accused **Mr. Pazcoguin, Jr.**, it cannot pass upon his guilt or innocence.[2]

THE FACTS OF THE CASE

Accused is a stockholder and incorporator of Viking Haulers Inc. ("Viking") at the time of the alleged commission of the offense.[3]

Viking is the named consignee/importer of the subject five (5) imported luxury motor vehicles, *i.e.*, Mercedes Benz CLK 63 Model 2010, Porsche GT3 Coupe Model 2010, Porsche Panamera Model 2010, Lamborghini Murcielago Model 2010 and Porche GTR RS Coupe Model 2010, in relation to the Amended Informations filed against Accused.[4]

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[1] Originally, prosecution filed five (5) separate Informations against the accused: *CTA Crim. Case Nos. O-221, O-223, O-224, O-226,* and *O-230.* On January 30, 2014, the Court issued a Resolution partially granting the Accused's Demurrer to Evidence, thus dismissing *CTA Crim. Case Nos. O-221* and *O-230* for insufficiency of evidence to sustain the charges against the Accused.
[2] Reynaldo Pazcoguin, Jr. was neither arrested nor arraigned. According to the Supreme Court case of *Mendoza v. People of the Philippines and Juno Cars, Inc.,* G.R. No. 197293, April 21, 2014, "[j]urisdiction over an accused is acquired when the warrant of arrest is served. Absent this, the court cannot hold the accused for arraignment and trial."
[3] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Pre-trial Order (As regards accused Rodelito M. Biag only), II(A)(3),* p. 648.
[4] *Id.*

Atty. Jemina Sy-Flores is a member of the Run After The Smugglers ("RATS"), a program of the Bureau of Customs ("BOC"), which was constituted pursuant to Customs Special Order No. 31-2005.[5] She was tasked to investigate the unlawful importation of ten (10) units of luxury vehicles, with a dutiable value of Php63,392,417.21 and duties and taxes amounting to Php85,900,556.45, consigned to Viking.[6]

The RATS Group discovered that the above shipments, including those covered by Import Entry Nos. 27338, 77473, 27338, 77473, and 20120,[7] were grossly undervalued by 50% to 80%, broken down as follows:[8]

Import Entry	Description as Declared	Description as Found	Duties and Taxes as Declared/Paid	Correct Duties and Taxes	Difference
27338	Motor Vehicles	2010 Lamborghini Gallardo	[Php]3,257,225.30	[Php]10,665,389.73	[Php]7,408,164.44
14988	Motor Vehicle Brand New	2010 Lamborghini Gallardo	[Php]3,214,440.00	[Php]9,521,919.99	[Php]6,307,479.99
77473	**New Motor Vehicles**	**2010 Lamborghini Murcielago**	**[Php]3,366,955.00**	**[Php]25,218,642.32**	**[Php]21,851,687.32**
33828	Porsche & Mercedes Benz	2010 Mercedes Benz CLK 63	[Php]943,128.00	[Php]6,247,438.06	[Php]5,304,310.06
33828	**Porsche & Mercedes Benz**	**2010 Mercedes Benz SL 63**	**[Php]1,100,087.00**	**[Php]6,091,510.36**	**[Php]4,991,423.36**
61288	Brand New Motor Vehicles, Mercedes Benz	2010 Mercedes Benz SL 65	[Php]1,157,851.00	[Php]9,142,495.81	[Php]7,984,644.81
27338	**Motor Vehicles**	**2010 Porsche GT3**	**[Php]932,980.30**	**[Php]5,710,353.74**	**[Php]4,777,373.44**
77473	**Motor Vehicles**	**2009 Porsche GT3 RS**	**[Php]1,174,865.00**	**[Php]4,353,841.93**	**[Php]3,178,976.93**
20120	**Porsche**	**2010 Porsche Panamera**	**[Php]1,203,142.50**	**[Php]4,416,731.29**	**[Php]3,213,588.79**
31875	Motor Vehicles	2009 Maserati Quattroporte	[Php]1,065,558.00	[Php]4,532,233.29	[Php]3,466,675.29
			[Php]17,416,232.10	**[Php]85,900,556.53**	**[Php]68,484,324.43**

On August 3, 2011, after finding probable cause against the Accused, plaintiff, through Assistant State Prosecutor Michael A. Vito Cruz ("ASP Vito Cruz") and Prosecutor General Claro A. Arellano ("PG Arellano"), originally filed five (5) separate Informations before the Court of Tax Appeals ("CTA"), docketed as *CTA Crim. Case Nos. O-221, O-223, O-224, O-226,* and *O-330,* respectively, which were all raffled to the Third Division, charging the accused as follows:

Crim. Case No. O-221[9]

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[5] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibit "B," Complaint-Affidavit,* p. 845.
[6] *Id.*
[7] In bold, for emphasis.
[8] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibit "B," Complaint-Affidavit,* pp. 846-847.
[9] *Id., Vol. 1, Information,* pp. 1-164, with annexes; emphases retained.

The undersigned State Prosecutor of the Department of Justice [("DOJ")], Manila, upon prior authority of the Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses REYNALDO A. PAZCOGUIN and RODELITO M. BIAG with fraudulent practices against customs revenue, as defined and penalized under Section 3601 of the [TCCP] (P.D. 1464), as amended, committed as follows:

> That on March 3, 2010 or thereabout, in Manila International Container Port (MICP), City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. OOLU8225232, covered [by] Import Entry No. 33828 containing cargo described as Porsche and Mercedes Benz on board vessel NYK ATLAS from United States of America, approximately with DECLARED and PAID dutiable value of [Php]1,100,087.00, by means of a false or fraudulent bill of lading, declaring that the said shipment contains brand Porsche and Mercedes Benz when in truth and in fact, after physical examination conducted by COO III Evelyn R. Rivera of Section 5 Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain Mercedes Benz SL63 model 2010 with total estimated duties and taxes in the amount of SIX MILLION AND NINETY ONE THOUSAND FIVE HUNDRED TEN PESOS and 36/100 ([Php]6,091,510.36) the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and value added taxes [("VAT")] due on the motor vehicle, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of FOUR MILLION NINE HUNDRED NINETY ONE THOUSAND AND FOUR HUNDRED TWENTY THREE PESOS AND 36/100 ([Php]4,991,423.36).
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> **CONTRARY TO LAW.**

Crim. Case No. O-223[10]

The undersigned State Prosecutor of the [DOJ], Manila, upon prior authority of the Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses REYNALDO A. PAZCOGUIN and RODELITO M. BIAG with fraudulent practices against customs revenue, as defined and penalized under Section 3601 of the [TCCP] (P.D. 1464), as amended, committed as follows:

> That on February 17, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. ECMU4689493, covered [by] HBL No. FRI740824, and Import Entry No. 27338 containing cargo described generally as Motor Vehicle on board vessel CMA CGM WAGNER from Latvia, approximately with DECLARED and PAID dutiable value of [Php]932,980.30, by means of a false or fraudulent Bill of Lading, declaring that the said shipment contains motor vehicles, when in truth and in fact, after physical e examination conducted by COO III Evelyn R. Rivera of Section 5 Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain Porsche GT3 model 2010 with total estimated correct duties and taxes in the amount of FIVE MILLION SEVEN HUNDRED TEN THOUSAND THREE HUNDRED FIFTY THREE PESOS and 74/100 ([Php]5,710,353.74); the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of FOUR MILLION SEVEN HUNDRED SEVENTY SEVEN THOUSAND AND THREE

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[10] *Records, CTA Crim. Case No. O-223*, pp. 1-194, with annexes; emphases retained.

> HUNDRED SEVENTY THREE PESOS AND 44/100 ([Php]4,777,373.44).
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> **CONTRARY TO LAW.**

Crim. Case No. O-224[11]

The undersigned State Prosecutor of the [DOJ], Manila, upon prior authority of the Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses REYNALDO A. PAZCOGUIN and RODELITO M. BIAG with fraudulent practices against customs revenue, as defined and penalized under Section 3601 of the [TCCP] (P.D. 1464), as amended, committed as follows:

> That on February 5, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. OOLU9054751, covered by HBL No. OOLU250368930, and Import Entry No. 20120 containing cargo described generally as Porsche on board vessel OOCL Europe from United States of America, approximately with DECLARED dutiable value of [Php]4,331,272.00, by means of a false or fraudulent Bill of Lading No. OOLU25030068930 declaring that the said shipment contains motor vehicles, when in truth and in fact, after physical e examination conducted by COO III Aristede V. Ambrosio of Section 5 Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain Porsche Panamera model 2010 with total estimated correct duties and taxes in the amount of FOUR MILLION FOUR HUNDRED SIXTEEN THOUSAND SEVEN HUNDRED THIRTY ONE PESOS and 29/100 ([Php]4,416,731.29); the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle,

[11] *Records, CTA Crim. Case No. O-224, Vol. 1,* pp. 1-180, with annexes; emphasis retained.

> thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of THREE MILLION TWO HUNDRED THIRTEEN THOUSAND FIVE HUNDRED EIGHTY EIGHT PESOS AND 79/100 ([Php]3,213,588.79).
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> **CONTRARY TO LAW.**

Crim. Case No. O-226[12]

The undersigned State Prosecutor of the [DOJ], Manila, upon prior authority of the Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses REYNALDO A. PAZCOGUIN and RODELITO M. BIAG with fraudulent practices against customs revenue, as defined and penalized under Section 3601 of the [TCCP] (P.D. 1464), as amended, committed as follows:

> That on May 17, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. OOLU8159980, covered by Import Entry No. 77473 containing cargo described as new motor vehicle on board vessel HOECHSTE from United States of America, approximately with DECLARED and PAID dutiable value of [Php]1,100,087.00, by means of a false or fraudulent Bill of Lading No. OOLU2504087060, declaring that the said shipment contains new motor vehicle, when in truth and in fact, after physical examination conducted by COO III Evelyn R. Rivera of Section 5 Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain Lamborghini Murcielago model 2010 with total estimated correct duties and taxes in the amount of TWENTY FIVE MILLION TWO HUNDRED EIGHTEEN THOUSAND AND SIX HUNDRED

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[12] *Records, CTA Crim. Case No. O-226*, pp. 1-180, with annexes; emphases retained.

> FORTY TWO PESOS and 32/100 ([Php]25,218,642.32) the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of TWENTY ONE MILLION EIGHT HUNDRED FIFTY ONE THOUSAND AND SIX HUNDRED EIGHTY SEVEN PESOS AND 32/100 ([Php]21,851,687.32).
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> **CONTRARY TO LAW.**

Crim. Case No. O-230[13]

The undersigned State Prosecutor of the [DOJ], Manila, upon prior authority of the Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses REYNALDO A. PAZCOGUIN and RODELITO M. BIAG with fraudulent practices against customs revenue, as defined and penalized under Section 3602, in relation to Section 2530, pars. (l) 3, 4 and 5, of the [TCCP] (P.D. 1464), as amended, committed as follows:

> That on May 17, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, make an entry of Container Van No. OOLU8159980, covered by Import Entry No. 77473 containing cargo described as new motor vehicle on board vessel HOECHSTE from United States of America, approximately with DECLARED and PAID dutiable value of [Php]3,366,955.00, by means of a false or fraudulent [B]ill of [L]ading [N]o. OOLU2504087060, declaring that the said shipment contains new motor vehicle when in truth and in fact, after physical examination conducted by COO III Evelyn R. Rivera of Section 5 Formal Entry Division, MICP, [BOC], the said

[13] *Records, CTA Crim. Case No. O-230*, pp. 1-197, with annexes; emphases retained.

> shipment was actually found to contain Lamborghini Murcielago model 2010 with total estimated correct duties and taxes in the amount of TWENTY FIVE MILLION TWO HUNDRED EIGHTEEN THOUSAND AND SIX HUNDRED FORTY TWO PESOS and 32/100 (Php25,218,642.32) the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the Government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of TWENTY ONE MILLION EIGHT HUNDRED FIFTY ONE THOUSAND AND SIX HUNDRED EIGHTY SEVEN PESOS AND 32/100 ([Php]21,851,687.32).
>
> **CONTRARY TO LAW.**

Finding the existence of probable cause to hold the Accused liable for the commission of the offenses charged, the Court issued Resolutions dated September 26, 2011 for *CTA Crim. Case No. O-224*[14], October 4, 2011 for *CTA Crim. Case Nos. O-221*[15], *O-223*[16], and *O-226*[17], and October 5, 2011 for *CTA Crim. Case No. O-230*[18], ordering the issuance of Warrants of Arrest against the accused. Said Resolutions likewise set bail for provisional liberty for each of the accused at One Hundred Twenty Thousand Pesos (Php120,00.00) per case.[19]

Thereafter, Warrants of Arrest were issued against the Accused and Mr. Pazcoguin, Jr. on September 28, 2011 for *CTA Crim. Case No. O-224*,[20] October 4, 2011 for *CTA Crim. Case Nos. O-221*[21], *O-223*[22], and *O-226*[23]; and October 5, 2011 for *CTA Crim. Case No. O-230*[24] at the following addresses:

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[14] *Records, CTA Crim. Case No. O-224, Vol. 1,* pp. 570-573.
[15] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 176-177.
[16] *Records, CTA Crim. Case No. O-223,* pp. 205-206.
[17] *Records, CTA Crim. Case No. O-226,* pp. 190-191.
[18] *Records, CTA Crim. Case No. O-230,* pp. 207-208.
[19] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 177; *CTA Crim. Case No. O-223,* p. 206; *CTA Crim. Case No. O-224, Vol. 1,* p. 572; *CTA Crim. Case No. O-226,* p. 191; *CTA Crim. Case No. O-230,* p. 208.
[20] *Records, CTA Crim. Case No. O-224, Vol. 1,* pp. 574-575.
[21] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 178-179.
[22] *Records, CTA Crim. Case No. O-223,* pp. 207-208.
[23] *Records, CTA Crim. Case No. O-226,* pp. 192-193.
[24] *Records, CTA Crim. Case No. O-230,* pp. 209-210.

Reynaldo A. Pazcoguin	772 EDSA corner East Avenue, Pinyahan, Diliman, Quezon City
Rodelito M. Biag	E-74 K-Bin Townhomes, Townville Subdivision, Project 6, Quezon City

On October 14, 2011, counsel for Mr. Pazcoguin, Jr. filed her Entry of Appearance with Motion to Reduce Bail in *CTA Crim. Case Nos. O-221*[25], *O-223*[26], *O-224*[27], *O-226*[28], and *O-230*[29], stating that accused is over seventy (70) years of age and has no steady source of income, thus, he has no capacity to post the amount of bail, and prayed for the reduction of the recommended bail to Sixty Thousand Pesos (Php60,000).

On October 18, 2011, Atty. Marie Catherine R. Nolasco ("Atty. Nolasco"), Investigation Agent III of the National Bureau of Investigation Anti-Organized Crime Division ("NBI-AOCD"), filed a Return of Warrant of Arrest issued against Reynaldo M. Pazcoguin for *CTA Crim. Case No. O-224*, stating that he does not reside nor hold office in the address indicated therein.[30]

On October 21, 2011, the Accused posted bail in the amount of Php120,000.00 for all the five (5) cases filed against him.[31] On the same date, he executed Undertakings in all said cases that he will appear before the Court whenever required; that failure to appear at the trial without justification despite due notice shall be an express waiver of his right to be present on the date specified in the notice; that he shall surrender himself for execution of the final judgment; that he shall not leave the country without prior permission of the Court; and that he shall notify the Court of any changes in his residence.[32]

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[25] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, pp. 180-182.
[26] *Records, CTA Crim. Case No. O-223*, pp. 209-211.
[27] *Records, CTA Crim. Case No. O-224, Vol. 2*, pp. 576-578.
[28] *Records, CTA Crim. Case No. O-226*, pp. 194-196.
[29] *Records, CTA Crim. Case No. O-230*, pp. 219-221.
[30] *Records, CTA Crim. Case No. O-224, Vol. 2*, pp. 580-582, with annex.
[31] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, p. 187; *CTA Crim. Case No. O-223*, p. 216; *CTA Crim. Case No. O-224, Vol. 2*, p. 588; *CTA Crim. Case No. O-226*, p. 201; *CTA Crim. Case No. O-230*, p. 215.
[32] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, pp. 185-187, with annexes; *CTA Crim. Case No. O-223*, pp. 214-218, with annexes; *CTA Crim. Case No. O-224, Vol. 2*, pp. 586-590, with annexes; *CTA Crim. Case No. O-226*, pp. 199-203, with annexes; *CTA Crim. Case No. O-230*, pp. 213-218, with annexes.

On October 24, 2011, the Court issued Resolutions[33] in all five (5) cases, setting aside and lifting the Warrants of Arrest issued against the Accused considering that he has voluntarily surrendered and submitted himself to the Court's jurisdiction. Likewise, the Court approved his provisional liberty considering that he has posted the required cash bail bond on October 21, 2011, with Official Receipt ("OR") Nos. 8697932 O[34], 8697933 O[35], 8697934 O[36], 8697935 O[37], and 8697936 O[38] amounting to Php120,000.00 for each of the five (5) cases.

On October 24[39], October 25[40], and 27[41], 2011, the Court issued Resolutions taking note of the Entry of Appearance filed by counsel for Mr. Pazcoguin, Jr., and ordering ASP Vito Cruz and PG Arellano to file their comments within ten (10) days from notice, on the Motion to Reduce Bail filed by Mr. Pazcoguin Jr.'s counsel.

On November 2, 2011, the Philippine National Police ("PNP") Quezon City Metro Manila Criminal Investigation and Detection Team ("QCMMCIDT") Criminal Investigation and Detection Group ("CIDG") returned the copies of the Warrants of Arrest against Reynaldo A. Pazcoguin, and informed the Court that despite diligent efforts to locate and arrest him, the same proved futile as he is a non-resident of the said barangay.[42] They retained the original of the Warrants of Arrest for eventual service.[43]

On November 4, 2011, counsels for the Accused filed their Entry of Appearance with Urgent Motion to Defer Further Proceedings[44]

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[33] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 184; *CTA Crim. Case No. O-223,* p. 213; *CTA Crim. Case No. O-224, Vol. 2,* p. 592; *CTA Crim. Case No.* O-226, p. 198; *CTA Crim. Case No. O-230,* p. 212.

[34] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 187.

[35] *Records, CTA Crim. Case No. O-223,* p. 216.

[36] *Records, CTA Crim. Case No. O-224, Vol. 1,* p. 588.

[37] *Records, CTA Crim. Case No. O-226,* p. 201.

[38] *Records, CTA Crim. Case No. O-230,* p. 215.

[39] *Records, CTA Crim. Case No. O-224, Vol. 2,* pp. 594-595.

[40] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 191-192.

[41] *Records, CTA Crim. Case No. O-223,* pp. 220-221; *CTA Crim. Case No. O-226,* pp. 205-206; *CTA Crim. Case No. O-230,* pp. 223-224.

[42] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 193-199, with annexes; *CTA Crim. Case No. O-223,* pp. 222-228, with annexes; *CTA Crim. Case No. O-224, Vol. 2,* pp. 596-602, with annexes; *CTA Crim. Case No. O-226,* pp. 207-213, with annexes; *CTA Crim. Case No. O-230,* pp. 225-231, with annexes.

[43] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 193; *CTA Crim. Case No. O-223,* p. 222; *CTA Crim. Case No. O-224, Vol. 2,* p. 596; *CTA Crim. Case No. O-226,* p. 207; *CTA Crim. Case No. O-230,* p. 225.

[44] *Records, CTA Crim. Case No. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 207-214, with annexes; *CTA Crim. Case No. O-223,* pp. 236-243, with annexes; *CTA Crim. Case No. O-224, Vol. 2,* pp. 610-617, with annexes; *CTA Crim. Case No. O-226,* pp. 221-228, with annexes; *CTA Crim. Case No. O-230,* pp. 239-246, with annexes.

("Motion to Defer") for each of the cases, stating that they were able to file a timely Motion for Reconsideration of the Resolution to file Information against the Accused before the Department of Justice; that Accused should be given the opportunity to exhaust all administrative remedies available to him; that the filing of the criminal information against the Accused is premature; thus, it prays that the proceedings before the Court be suspended or deferred until the final resolution has been rendered on Accused's motion for reconsideration.

During the November 9, 2011 hearing, the arraignment of the Accused was rescheduled to December 14, 2011 for failure of the Public Prosecutor to appear; and the Court advised counsel for the Accused to file a Motion to Consolidate the several cases filed against its client.[45] Confirming Resolutions were thereafter issued on November 11, 2011 for *CTA Case Nos. O-221*[46] and *O-224*[47]; and November 14, 2011 for *CTA Case Nos. O-223*[48], *O-226*[49], and *O-230*[50].

On November 15, 2011, Atty. Nolasco from the NBI-AOCD filed, by private courier, Returns of Warrant of Arrest issued against Reynaldo A. Pazcoguin for *CTA Crim. Case Nos. O-221*[51], *O-223*[52], *O-226*[53], and *O-230*[54], stating that he does not reside nor hold office in the address indicated therein.

On the scheduled hearing on December 14, 2011, only the Accused and his counsel were present, considering that no comment was filed by the prosecution on his Motion to Defer, the Court deemed it submitted for resolution, hence the Court resolved to cancel the arraignment of the Accused scheduled on that day and reset it to January 18, 2012.[55] Likewise, considering that counsel for the Accused failed to file a Motion to Consolidate *CTA Crim. Case Nos. O-221, O-223, O-224, O-226* and *O-230*, all pending before the Third Division, the

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[45] *Records, Minutes of Hearing dated November 9, 2011, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 215; *CTA Crim. Case No. O-223,* p. 244; *CTA Crim. Case No. O-224, Vol. 2,* p. 618; *CTA Crim. Case No. O-226,* p. 229; and *CTA Crim. Case No. O-230,* p. 247.
[46] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 217-218.
[47] *Records, CTA Crim. Case No. O-224, Vol. 2,* pp. 620-621.
[48] *Records, CTA Crim. Case No. O-223,* pp. 246-247.
[49] *Records, CTA Crim. Case No. O-226,* pp. 231-233.
[50] *Records, CTA Crim. Case No. O-230,* pp. 249-250.
[51] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 220-221.
[52] *Records, CTA Crim. Case No. O-223,* pp. 249-252.
[53] *Records, CTA Crim. Case No. O-226,* p. 234.
[54] *Records, CTA Crim. Case No. O-230,* p. 252.
[55] *Recorss, Minutes of Hearing dated December 14, 2011, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 225; *CTA Crim. Case No. O-223,* p. 257; *CTA Crim. Case No. O-224, Vol. 2,* p. 623; *CTA Crim. Case No. O-226,* p. 242; *CTA Crim. Case No. O-230,* p. 257

Court consolidated the said cases *moto proprio* in order to hasten the proceedings.[56] These were confirmed in a Resolution dated December 23, 2011.[57]

On January 4, 2012, the Court issued a Resolution[58] in *CTA Case No. O-224* denying accused's Motion to Defer for lack of merit.

During the hearing on January 18, 2012,[59] Atty. Christopher Dy Buco ("Atty. Dy Buco") and Jemina Sy-Flores ("Atty. Sy-Flores") appeared as representatives of the BOC, who manifested that ASP Vito Cruz is no longer with the DOJ Task Force on Anti-Smuggling ("TFAS") and they are not aware as to who replaced him. Senior State Prosecutor Edwin S. Dayog manifested that he is a member of the DOJ-TFAS, and moved that he be allowed to enter his special appearance for that particular day. ASP Vito Cruz was ordered to show cause why he should not be cited in contempt for his failure to appear during the December 14, 2011 and January 18, 2012 hearings, meanwhile, the prosecution were ordered to amend the Information in each of the consolidated cases as regards Mr. Pazcoguin, Jr.'s name. The Court issued a confirming Resolution[60] on the same date.

On February 10, 2012, ASP Vito Cruz filed a Manifestation and Explanation[61] stating that he is no longer a part of the DOJ-TFAS, thus, he no longer has the authority to handle any case on the matter; that he never entered his appearance before the Court; that his participation in the instant case is limited to conducting the preliminary investigation of the same; that the subsequent failure to comply with the Court's orders were due to the reorganization of the DOJ-TFAS and the heavy workload; and thus, he is begging the understanding and compassion of the Court and that he has no intention to defy a lawful order of the Court.

On February 20, 2012, the Court issued a Resolution[62] confirming the *motu proprio* consolidation of *CTA Crim. Case Nos. O-221, O-223, O-224, O-226,* and *O-230*. Likewise, and for all the consolidated cases, the Court resolved to: *(1)* grant Mr. Pazcoguin, Jr.'s Motion to Reduce Bail

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[56] *Id.*
[57] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 234-236.
[58] *Records, CTA Crim. Case No. O-224, Vol. 2,* pp. 625-627.
[59] *Records, Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Minutes of Hearing dated January 18, 2012,* p. 238.
[60] *Records, Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 240-242.
[61] *Records, Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 262-268, with annex.
[62] *Id.*, pp. 270-282.

from One Hundred Twenty Thousand Pesos (Php120,000.00) to Sixty Thousand Pesos (Php60,000.00), in case of cash bond, and Eighty Thousand (Php80,000.00), in case of surety bond; *(2)* deny the Urgent Motion to Defer Further Proceedings filed by counsel for Accused; and *(3)* note the Manifestation and Explanation filed by ASP Vito Cruz.

During the hearing[63] on February 22, 2012, only the Accused and his counsel were present while both the prosecution and the special prosecutors failed to appear despite notice. In addition and in view of the manifestation of ASP Vito Cruz that he is no longer authorized to appear in the consolidated cases, the court ordered the special prosecutors from the BOC to request the DOJ to assign a new prosecutor.[64] Accused's arraignment was reset to March 21, 2012 at 1:30 p.m.[65] These were confirmed in a Resolution[66] dated February 23, 2012.

During the March 21, 2012 hearing[67], State Prosecutor Allan A. Mariano entered his special appearance for the prosecution. Thereafter, the Accused, per manifestation and assistance of his counsel, waived the reading of the Information filed against him in the consolidated cases and admitted that he is the same person charged in the separate Information.[68] Upon being arraigned, he entered separate pleas of "Not Guilty" to the five (5) cases against him.[69] A Certificate of Arraignment[70] and Identity Admission of the Accused[71] were issued.

On March 26, 2012, PG Arellano issued Office Order No. 245,[72] addressed to ASP Ramon Chito R. Mendoza ("ASP Mendoza"), designating him to handle/continue the prosecution of the consolidated cases; to enter his appearance in the said cases; and to coordinate with ASP Vito Cruz for the proper turnover of the records.

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[63] *Id., Minutes of Hearing dated February 22, 2012,* p. 283.
[64] *Id.*
[65] *Id.*
[66] *Id.,* pp. 285-287.
[67] *Records, Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Minutes of Hearing dated March 21, 2012,* p. 288.
[68] *Records, Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Minutes of Hearing dated March 21, 2012,* p. 288.
[69] *Id.*
[70] *Id.,* p. 289.
[71] *Id.,* p. 290.
[72] *Id.,* pp. 291-292.

On April 11, 2012, ASP Mendoza filed his Formal Entry of Appearance[73] to the consolidated cases. This was later noted by the Court in its Minute Resolution[74] dated April 16, 2012.

On April 12, 2012, the Court issued a Resolution[75] confirming the March 21, 2012 proceedings and ordering the parties to file their respective Preliminary Conference Briefs, at least three (3) days before April 19, 2012.

On April 19, 2012, the parties filed a Joint Motion to Defer Pre-trial,[76] with ASP Mendoza manifesting that he will file a Motion for Consolidation of all the cases pending against the accused, hence, by agreement of the parties, the preliminary conference set on that day was deferred. This was granted by the Court in its Resolution[77] dated April 30, 2012, which likewise cancelled the pre-trial conference set on May 9, 2012.

On July 4, 2012, ASP Mendoza filed an Ex-parte Motion for Consolidation[78] and Joint Motion to Amend and Admit Amended Information[s].[79]

On July 17, 2012, the Court issued a Resolution[80] declaring the Ex-parte Motion for Consolidation filed by ASP Mendoza to be moot due to the consolidation of *CTA Crim. Case Nos. O-221, O-223, O-224, O-226*, and *O-230* in accordance with the Court's Resolution dated December 23, 2011; noting the Urgent Manifestation filed by the prosecution; and granting and admitting the Joint Motion to Amend and Admit Amended Information[s], thus, the Amended Information bearing the corrections read as follows:

CTA Crim. Case No. O-221[81]

> The undersigned [ASP] of the [DOJ], Manila, upon prior authority of Customs Commissioner Angelito A. Alvarez and

[73] *Id., Minutes of Hearing dated February 22, 2012*, pp. 293-294, with annex.
[74] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, p. 299.
[75] *Id.*, pp. 296-298.
[76] *Id.*, pp. 311-312.
[77] *Id.*, pp. 319-320.
[78] *Id.*, pp. 332-333
[79] *Id.*, pp. 326-331, with annex.
[80] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, 335-339.
[81] *Id.*, pp. 329-331; emphases retained.

approval of the Prosecutor General, hereby accuses **REYNALDO M. PAZCOGUIN JR.** and **RODELITO M. BIAG** with *Unlawful Importation*, as defined and penalized under Section 3601 in relation to [EO] No. 156 in relation to Section 3602, Section 2503, Section 2530, paragraphs (f) (1), 3, 4 and 5; Section 1301, Section 1304 and Section 1206 of the [TCCP], committed as follows[:]

> "That on March 3, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc.," did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. 00LU8225232, covered [by] Import Entry No. 33828 containing cargo described as *"Porsche and Mercedes Benz"* on board vessel NYK ATLAS from United States of America, approximately with DECLARED and PAID dutiable value of [Php]1,100,087.00, by means of a false or fraudulent Bill of Lading, declaring that the said shipment contains brand Porsche and Mercedes Benz when in truth and in fact, after physical examination conducted by COOIII Evelyn R. Rivera of Section 5, Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain used *"Mercedes Benz SL63 model 2010"* with total estimated correct duties and taxes in the amount of **SIX MILLION AND NINETY ONE THOUSAND FIVE HUNDRED TEN PESOS AND 36/100 (Php6,091,510.36)**, the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of **FOUR MILLION NINE HUNDRED NINETY ONE THOUSAND AND FOUR HUNDRED TWENTY THREE PESOS AND 36/100 (Php4,991,423.36)."**
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> CONTRARY TO LAW.

CTA Crim. Case No. O-223[82]

The undersigned [ASP] of the [DOJ], Manila; upon prior authority of Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses **REYNALDO M. PAZCOGUIN JR.** and **RODELITO M. BIAG** with *Unlawful Importation*, as defined and penalized under Section 3601 in relation to [EO] No. 156 in relation to Section 3602, Section 2503, Section 2530, paragraphs (f) (1), 3, 4 and 5; Sections 1301, 1304 and 1206 of the [TCCP], committed as follows:

> "That on February 17, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. ECMU4689493, covered [by] HBL No. FRI740824, and Import Entry No. 27338 containing cargo described generally as *"Motor Vehicle"* on board vessel M/V CMA CGM WAGNER from Latvia, approximately with DECLARED AND PAID taxes and duties in the amount of Php932,980.00[83], by means of a false or fraudulent Bill of Lading, declaring that the said shipment contains "motor vehicle", when in truth and in fact, after physical examination conducted by [COO] III Evelyn R. Rivera of Section 5, Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain used *"Porsche GT3 model 2010"* with total estimated correct duties and taxes in the amount of **FIVE MILLION SEVEN HUNDRED TEN THOUSAND THREE HUNDRED FIFTY THREE EIGHT HUNDRED FORTY ONE** (*sic*) **([Ph]p5,710,353.74)** and 93/100 (*sic*); the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the government by way of uncollected

[82] *Records, CTA Crim. Case No. O-223*, pp. 281-283; emphases retained.
[83] Should be Php932,980.30; see *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Exhibits "C," "C-1" to "C-13," Amended Complaint Affidavit*, pp. 45-58.

duties and taxes due on the subject shipment in the aforesaid amount of **FOUR MILLION SEVEN HUNDRED SEVENTY SEVEN** (*sic*) **THREE HUNDRED SEVENTY THREE** (*sic*) **AND 44/100 (Php4,777,373.44).**"

CONTRARY TO LAW.

CTA Crim. Case No. O-224[84]

The undersigned [ASP] of the [DOJ], Manila, upon prior authority of Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses **REYNALDO M. PAZCOGUIN JR.** and **RODELITO M. BIAG** with *Unlawful Importation*, as defined and penalized under Section 3601 in relation to [EO] No. 156 in relation to Section 3602 Sections 2503 and 2530, paragraphs (f) (1), 3, 4 and 5; Sections 1301, 1304 and 1206 of the [TCCP], committed as follows:

> "That on February 5, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused doing business under the corporate name and style "Viking Haulers Inc.," did then and there willfully, deliberately, unlawfully and criminally, import, facilitated, receive and conceal the transportation of [] Container Van No. 00LU9054751, covered HBL No. 00LU250368930, and Import Entry No. 20120 containing cargo described generally as *"Porsche"* on board vessel M/V OOCL Europe from United States of America, approximately with DECLARED and PAID taxes and duties amounting to Php1,203,142.50 by means of a false or fraudulent Bill of Lading No. 00LU25030068930 declaring that the said shipment contains "Porsche" when in truth and in fact after physical examination conducted by COOIII Aristede V. Ambrosio of Section 5 Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain used *"Porsche Panamera" model 2010* with total estimated correct duties and taxes in the amount of **FOUR MILLION FOUR HUNDRED SIXTEEN THOUSAND SEVEN**

[84] *Records, CTA Crim. Case No. O-224, Vol. 2,* pp. 646-648.

HUNDRED THIRTY ONE PESOS AND 29/100 (Php4,416,731.29); the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of **THREE MILLION TWO HUNDRED THIRTEEN THOUSAND FIVE HUNDRED EIGHTY EIGHT PESOS AND 79/100 ([Php]3,213,588.79).**"

CONTRARY TO LAW.

CTA Crim. Case No. O-226[85]

The undersigned [ASP] of the [DOJ], Manila, upon prior authority of Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses **REYNALDO M. PAZCOGUIN JR.** and **RODELITO M. BIAG** with *Unlawful Importation*, as defined and penalized under Section 3601 in relation to [EO] No. 156 and Section 3602 in relation to Sections 2503 and 2530, paragraphs (f), (l), 3, 4 and 5; Sections 1301, 1304 and 1206 of the [TCCP], committed as follows[:]

"That on May 17, 2010, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. 00LU8159980, covered by Import Entry No. 77473 containing cargo described as "*new motor vehicle*" on board the vessel M/V HOECHSTE from United States of America, approximately with DECLARED and PAID taxes and duties in the amount of Php3,366,955.00 by means of a false or fraudulent Bill of Lading No. 00LU2504087060, declaring that the said shipment contains "*new motor vehicle*" when in truth and in fact, after

[85] *Records, CTA Crim. Case No. O-226*, pp. 260-262; emphases retained.

physical examination conducted by [COO] III Evelyn R. Rivera of Section 5 Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain used *"Lamborghini Murcielago Model 2010"* with total estimated correct duties and taxes in the amount of **TWENTY FIVE MILLION TWO HUNDRED EIGHTEEN THOUSAND AND SIX HUNDRED FORTY TWO PESOS & 32/100 (Php25,218,642.32)**, the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of **TWENTY ONE MILLION EIGHT HUNDRED FIFTY ONE** (*sic*) **SIX HUNDRED EIGHTY SEVEN** (*sic*) **& 32/100 (Php21,851,687.32)**."

CONTRARY TO LAW.

CTA Crim. Case No. O-230[86]

The undersigned [ASP] of the [DOJ], Manila, upon prior authority of Customs Commissioner Angelito A. Alvarez and approval of the Prosecutor General, hereby accuses **REYNALDO M. PAZCOGUIN JR.** and **RODELITO M. BIAG** with *Unlawful Importation* as defined and penalized under Section 3601 in relation to [EO] No. 156 in relation to Section 3602, Section 2503 and Section 2530, paragraphs (l), 3, 4 and 5; Sections 1301, 1304 and 1206 of the [TCCP], committed as follows[:]

"That on May 17, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the corporate name and style "Viking Haulers Inc.," did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of [] Container Van No. 00LU8159980, covered by Import Entry No. 77473 containing cargo

[86] *Records, CTA Crim. Case No. O-230*, pp. 282-284; emphases retained.

> described as *"new motor vehicle"* on board the vessel HOECHSTE from United States of America, approximately with declared and paid dutiable value of [Php]1,174,865.00 by means of a false or fraudulent Bill of Lading No. 00LU2504087060, declaring that the said shipment contains *"new motor vehicle"* when in truth and in fact, after physical examination conducted by [COO] III Evelyn R. Rivera of Section 5, Formal Entry Division, MICP, [BOC], the said shipment was actually found to contain used *"Porsche GT3 RS 2010 model"* with total estimated correct duties and taxes in the amount of **FOUR MILLION THREE HUNDRED FIFTY THREE THOUSAND EIGHT HUNDRED FORTY ONE & 93/100 ([Php]4,353,841.93)**, the said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the government by way of uncollected duties and taxes due on the subject shipment in the aforesaid amount of **THREE MILLION TWO HUNDRED THIRTEEN THOUSAND FIVE HUNDRED EIGHTY EIGHT & 79/100 ([Php]3,213,588.79)**."[87]
>
> CONTRARY TO LAW.

In the same July 17, 2012 Resolution[88], the Court ordered for the records to reflect the correction of accused's name from "Reynaldo A. Pazcoguin" to "Reynaldo M. Pazcoguin, Jr.;" that a Warrant of Arrest be issued against Mr. Pazcoguin, Jr. and set the bail bond for his provisional liberty at Sixty Thousand Pesos (Php60,000.00), if cash bond, and Eighty Thousand Pesos (Php80,000.00) for surety bond, in each case. Accordingly, Warrants of Arrest[89] for each of the cases were issued against Mr. Pazcoguin, Jr. who is said to be found at No. 92 Timog Avenue, Quezon City.

On August 22, 2012, the Public Prosecutor, as counsel for the State, filed a Joint Manifestation and Motion[90] wherein he stated that

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[87] Should be Php3,178,976.93; see *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Exhibits "C," "C-1" to "C-13," Amended Complaint Affidavit*, pp. 45-58.
[88] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, 335-339.
[89] *Id.*, pp. 340-344.
[90] *Id.*, pp. 345-347.

on May 9 and 24, 2012, the Court's Second Division issued separate Resolutions dismissing the cases with prejudice against the Accused for failure to prosecute; that considering the dismissal of the cases pending before the Second Division against the Accused, he manifested that he will no longer file a Motion for Consolidation and moved for the immediate setting of the pending cases for preliminary conference and pre-trial at the earliest time.

On August 29, 2012, the Court issued a Resolution[91] setting the consolidated cases for preliminary and pre-trial conference.

On August 31, 2012, Special Investigator Reynaldo M. Gabionza ("SI Gabionza"), of the NBI filed a Return of Warrant of Arrest[92], stating that Mr. Pazcoguin, Jr. was not found in the address stated in the Warrant of Arrest.

On September 13, 2012, ASP Mendoza filed a Request for the Issuance of *Subpoena Duces Tecum*[93] to Mr. Alfredo Edillor ("Mr. Edillor"), for the production of documents before the next preliminary conference on September 18, 2012. The Court issued a *Subpoena Duces Tecum*[94] to Mr. Alfredo on the same day.

Preliminary conference[95] was held on September 18, 2012, where both parties marked their respective documentary evidence, however, it was discontinued, because most of the documents requested by the prosecution from the BOC were not brought to the Court. On the same date, ASP Mendoza filed a Motion for Postponement of Pre-trial Conference[96], which was granted by the Court in its Resolution[97] dated September 25, 2012.

On October 4, 2012, ASP Mendoza filed two (2) Requests for the Issuance of *Subpoena Duces Tecum*[98] to the Director of Company Registration and Monitoring Department, Securities and Exchange Commission ("CRMD-SEC"), or his duly authorized representative; and Deputy Commissioner Nelson M. Aspe ("Dep. Com. Aspe") of the

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[91] *Id.*, pp. 349-350.
[92] *Id.*, pp. 351-354, with annex.
[93] *Id.*, pp. 355-357.
[94] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, p. 358.
[95] *Id., Minutes of Preliminary Conference*, p. 363-364.
[96] *Id.*, pp. 379-380.
[97] *Id.*, pp. 393-394.
[98] *Id.*, pp. 400-401.

BIR or his duly authorized representative. Both *Subpoenas Duces Tecum*[99] were issued on the same day.

During the continuation of the preliminary conference[100] on October 11, 2012, ASP Mendoza and counsel for the Accused marked their respective exhibits. The parties also agreed that the Accused who was arraigned by the Court is the same Accused charged in the five (5) separate Informations; and that he is the Vice President of Viking.[101]

Also present during the preliminary conference were Atty. Elenita Quimosing ("Quimosing"), representative of Dep. Com. Aspe, and Atty. Mary Anne Magura ("Magura"), representative of the Director of CRMD-SEC.

Atty. Quimosing submitted Dep. Com. Aspe's Compliance and Manifestation,[102] which stated that the BIR does not have copies of the documents requested by the prosecution. She also submitted a Certification[103] from the Large Taxpayers Service - Excise Tax Regulatory Division, which stated that they do not have a record of importation pertaining to *Mercede[s]Benz SL63 Model 2010* (HBL No. 00LU2503350730), *Lamborghini Murcielago Model 2010* (HBL No. 00LU2504087060), *Porsche Panamera Model 2010* (HBL No. FR1740824), and *Porsche GT3 Model 2010* (HBL No. 00LU2503068930).

On the other hand, Atty. Magura handed over to the plaintiff the documents from the SEC subject of the *Subpoena Duces Tecum*.[104] Counsel for the Accused moved for a continuance on the ground that the original Information in all the cases upon which accused was arraigned do not allege a violation of Section 3602 of the TCCP, however, the issues proposed by the prosecution includes a violation of the said provision, thus, the preliminary conference was adjourned.[105]

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[99] *Id.*, pp. 404-406.
[100] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Minutes of Preliminary Conference dated October 11, 2012,* pp. 409-410.
[101] *Id.*
[102] *Id.*, pp. 411-411-a.
[103] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* p. 412.
[104] *Id., Minutes of Preliminary Conference dated October 11, 2012,* p. 409.
[105] *Id.*, p. 410.

On October 17, 2012, ASP Mendoza filed a Motion for the Issuance of Show Cause Order[106] against prosecution witness Mr. Edillor, directing him to explain why he failed to bring before the Court the documents requested from him despite due notice.

On October 10, 2012, PSI Jaime D. Tumpalan of the CIDU filed a Return of Warrant of Arrest[107], stating that despite diligent efforts exerted, Mr. Pazcoguin, Jr. cannot be located at the given address.

During the hearing on October 17, 2012,[108] ASP Mendoza was given five (5) days to file a written motion to re-arraign the Accused in view of the Amended Information, likewise, the Accused was granted the same period from receipt thereof to file his comment thereto.

On October 25, 2012, ASP Mendoza filed a Joint Motion for Re-arraignment[109] and an Urgent *Ex-Parte* Motion to Withdraw Request for Issuance of Show Cause Order[110] in light of Mr. Edillor's compliance.

The November 15, 2012[111] preliminary conference did not proceed as scheduled, for failure of the prosecution to appear. Meanwhile, counsel for the Accused manifested his client's change of address.[112]

During the hearing on November 21, 2012,[113] ASP Mendoza failed to appear again.

On the pre-trial set for January 17, 2013,[114] only the Accused and his counsel were present but without their witness and the prosecution, hence, pre-trial was reset to February 21, 2013.

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[106] *Id.*, pp. 413-414.
[107] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2*, pp. 415-420, with annexes.
[108] *Id.*, p. 421.
[109] *Id.*, pp. 436-438.
[110] *Id.*, pp. 439-440.
[111] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Minutes of Preliminary Conference dated November 15, 2012*, p. 452; see *Attendance Sheet*, p. 453.
[112] *Id.*
[113] *Id., Minutes of Hearing dated November 21, 2012*, p. 454.
[114] *Id., Minutes of Hearing dated January 17, 2013*, p. 471.

On January 24, 2013, the Court issued a Resolution[115] ordering the issuance of an *Alias* Warrant of Arrest be issued against Mr. Pazcoguin, Jr., taking into consideration that the original warrant of arrest was returned by PSI Jaime D. Tumpala, with a notation that the Commissioner of Customs continuously exert diligent efforts to ascertain the whereabouts of the accused and that the same should not be returned until the accused is actually served; and granting the prosecution's Joint Motion for Re-arraignment.

On February 7, 2013, an *Alias* Warrant of Arrest[116] was issued against Mr. Pazcoguin, Jr.

On February 15, 2013, ASP Mendoza filed again a Request for the Issuance of *Subpoena Duces Tecum*[117] to Mr. Edillor or his duly authorized representative to bring before the next preliminary conference hearing the original or certified true copies of the LTO Certificate of Payment No. 13565133 on Import Entry Declaration Form No. 77473. A *Subpoena Duces Tecum*[118] was issued on the same day.

The Accused was re-arraigned on February 21, 2013,[119] where he admitted that he is the same person charged in the five (5) separate Amended Informations. A representative of Mr. Edillor appeared to submit the document subject of the *Subpoena Duces Tecum*.[120] The Court, on motion of ASP Mendoza, ordered counsel for Mr. Pazcoguin, Jr. to show cause why they should not be cited in contempt for failure to comply with the Court's Resolution granting their motion for reduction of bail.[121]

On March 7, 2013, the Accused, with the assistance of his counsel, filed a Waiver of Appearance[122], stating that in case he jumps bail and/or fails to appear at any stage of the proceedings despite due notice, his absence shall be deemed an express waiver of his right to be present and that the trial shall proceed as if he were personally present.

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[115] *Id.*, pp. 466-470.
[116] *Id.*, p. 474.
[117] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1*, p. 475.
[118] *Id.*, p. 476.
[119] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Minutes of Hearing dated February 21, 2013*, p. 477.
[120] *Id.*
[121] *Id.*
[122] *Id.*, pp. 492-493.

The same was granted by the Court in its Resolution[123] dated March 26, 2013, without any objection from the prosecution. The said Resolution also ordered Atty. Maricris Connie B. Pua ("Atty. Pua") of Chato & Vinzons-Chato Law Offices to show cause, within ten (10) days from notice, why she should not be cited in contempt of court for failure to submit the person of Mr. Pazcoguin, Jr. to the jurisdiction of the Court in view of the Resolution dated February 20, 2012 granting their Motion to Reduce Bail.[124]

Preliminary Conference[125] for the Accused only ensued on April 4, 2013.

On April 8, 2013, the prosecution filed a Request for the Issuance of *Subpoena*[126] to Mr. Edillor or his duly authorized representative to bring the original or certified true copies of the LTO Certificate of Payment No. 13565142 on Import Entry Declaration Form No. 77473, and for Ms. Erlinda P. Lazaro of the Human Resource Management Division of the BOC to bring before the next pre-trial conference hearing on April 18, 2013 the complete 201 file of BOC employee Mr. Severino Esplana, who is one of the witnesses for the prosecution.

On April 10, 2013, a *Subpoena Duces Tecum*[127] was issued against Mr. Edillor, and he complied by sending his representative to transmit a certified true copy[128] of the document requested.

On April 18, 2013, the Court deemed the pre-trial terminated.[129]

On April 23, 2013, Atty. Pua filed a Manifestation[130] stating that she lost contact with Mr. Pazcoguin, Jr., despite diligent efforts, the latter could not be located; and that she is exerting all efforts to communicate with him in order for him to post bail and to take part in the proceedings before the Court.

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[123] *Id.*, pp. 506-508.
[124] *Id.*, pp. 506-508.
[125] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1,* pp. 511-517.
[126] *Id.*, pp. 538-539.
[127] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2,* p. 540.
[128] *Id.*, pp. 541-542, with annex.
[129] *Id.*, p. 543.
[130] *Id.*, pp. 548-549.

On April 29, 2013, the prosecution filed a Motion for Inclusion as Additional Prosecution Witness in the Pre-trial Order[131] in order to include Mr. Benjamin P. Valic ("Mr. Valic"), customs broker for Viking. This was granted by the Court in its Resolution[132] dated May 23, 2013.

On May 29, 2013, the Court issued a Pre-trial Order (As regards accused Rodelito M. Biag only),[133] with the following admitted facts: *(1)* the Accused, who was re-arraigned on February 21, 2012, is the same accused charged in the five (5) Amended Informations; *(2)* Viking is the named consignee/importer of the subject five (5) imported luxury motor vehicles in the five (5) Amended Informations; and *(3)* at the time of the alleged commission of the offense, Accused was the stockholder and incorporator of Viking.

Trial ensued. To prove its case, the prosecution presented the following employees of the BOC as witnesses: *(1)* Atty. Sy-Flores[134], Officer-in-Charge, Sub-port of North Harbor, MICP, BOC; and *(2)* Mr. Conrado Q. Dizon[135] ("Mr. Dizon"), Examiner/Appraiser assigned at Assessment and Operations Coordinating Group ("AOCG"), South Harbor, Port Area, Manila. They likewise presented the following hostile witnesses: *(1)* Mr. Valic[136], Customs Broker of Viking; and *(2)* Ms. Evelyn R. Rivera[137] ("Ms. Rivera"), Acting Principal Examiner, Section 5 Formal Entry Division, MICP.

Witness **Atty. Sy-Flores,** in her Amended Complaint-Affidavit,[138] stated that as a member of RATS, she was tasked to investigate the unlawful importation of ten (10) units of luxury vehicles that were consigned to Viking and that upon perusal of the covering entries, she found *prima facie* evidence of fraud when the Accused deliberately and grossly undervalued the subject shipments by 50% to 80%;[139] that based on the computation of Mr. Severino Esplana, Chief of the Certificate of Payment Encoding and Verification Unit, Viking should have paid duties and taxes in the total amount of

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[131] *Id.*, pp. 550-553.
[132] *Id.*, pp. 643-644.
[133] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2*, pp. 646-654.
[134] *Id., Minutes of Hearing dated May 29, 2013*, p. 655.
[135] *Id., Minutes of Hearing dated June 19, 2013*, p. 699.
[136] *Id., Minutes of Hearing dated July 3, 2013*, p. 772.
[137] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Minutes of Hearing dated August 7, 2013*, p. 784.
[138] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 1, Exhibit "C," "C-1" to "C-13," Amended Complaint Affidavit*, pp. 45-58.
[139] *Id., Exhibit "C-4," item 6*, p. 49.

Php85,900,556.45;[140] that the description of the vehicles in the import entries were all in general terms and are not in the correct specific tariff terms, as required under *Title V of Customs Memorandum Order No. 28-2007* and *Title V of Customs Administrative Order 8-2007*; that the Accused used spurious invoices to justify their gross undervaluation to avoid payment of the correct duties and taxes; that majority of the motor vehicles imported were actually used motor vehicles; and that the foregoing violations warrant the forfeiture of the entire subject shipments in favor of the government.[141]

She further stated that complicity/participation of the Accused can be clearly inferred; that as Vice President he has authorized or, at least, consented to the unlawful importations of the subject shipments, considering the fact that he had a hand in the financial operations of the corporation; and that he also authorized the processing and release of the shipments by not paying the correct duties and taxes.[142]

On cross examination,[143] Atty. Sy-Flores testified that the Accused was impleaded because he is the Vice President, incorporator, and stockholder of Viking, an information that she got based on SEC Certification; and that she has not encountered the name "Rodelito Biag" in any of the documents that she has gathered, specifically, the import entry declaration, bill of ladings, and commercial invoices.

Witness **Mr. Dizon,** testified, through his Judicial Affidavit,[144] that upon the instructions of Dep. Com. Atty. Gregorio B. Chavez ("DepCom Chavez"), he made a re-computation of duties and taxes[145] on the vehicles imported by Viking; that after his re-computation he

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[140] *Id., Exhibit "C-2," item 4,* p. 47.
[141] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibits "C-3"* and *"C-4,"* pp. 48-49.
[142] *Id., Exhibit "C-11,"* p. 56.
[143] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol 2, Transcript of Stenographic Notes ("TSN") on May 29, 2013,* pp. 676-677.
[144] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Judicial Affidavit, Exhibits "X," "X-1" to "X-4," and "X-6,"* pp. 936-940.
[145]

Motor Vehicle	Amount paid by Viking	Certificate of Payment
Mercedes Benz CLK 63 Coupe 2010 model	Php943,128.00	13341176
Lamborghini Murcielago Coupe 2010 model	Php3,366,955.00	13565142
Porsche Panamera 2010 model	Php1,203,142.50	13339776
Porsche GT3 Coupe 2010 model	Php932,980.30	13340214
Porsche GT3 RS model	Php1,174,856.00	13565133

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found discrepancies between the duties and taxes actually paid by Viking and the correct amounts due; and that due to the absence of a sales contract or invoice, he used the prevailing selling price of the particular make and model, which he found on the internet as reference values for his computation.

On cross-examination,[146] Mr. Dizon testified that he has been an examiner with the BOC for twenty seven (27) years;[147] that his office only deals with transferring of the certificate of payments of motor vehicles to the Land Transportation Office ("LTO"); that the usual process for evaluation of the motor vehicles starts when the importer/consignee, together with the broker, files the Formal Entry, that is brought to Section 5 for examination and appraisal, then it goes to the collector's office for clearance, and then they have to pay the correct taxes; that the importer must secure a clearance from the Value Reference Information System - Office of the Commissioner ("VRIS-OCOM"), after the clearance, the documents will go back to Section 5 and then the appraiser will affix their final assessment of the motor vehicle for it to be released; that after the motor vehicle has been released, the broker brings back the proper stencils of the chassis and the engine to secure a Certificate of Payment for the motor vehicle; and that the certificate is brought back to their office to be transferred to the LTO.[148]

He also testified that he failed to physically examine the motor vehicles[149] because the motor vehicles were already released from the customs zone when the re-computation was made; that he was not given the opportunity to read all the documents before he made the computation;[150] that he did not use any of the methods[151] prescribed by the World Trade Organization Valuation Agreement ("WTO-VA") as provided under *Republic Act ("R.A.") No. 9135*[152]; that it was Dep. Com. Chavez who gave him the reference values that were sourced from the internet; that the ten (10) luxury vehicles could not be found in the bluebook value; and that there is no law, regulation, or issuance

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[146] *Id., TSN on June 19, 2013*, pp. 713-761.
[147] *Id.*, p. 715.
[148] *Id.*, pp. 719-721.
[149] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2*, p. 722.
[150] *Id.*, p. 745.
[151] WTO guidelines, *to wit:* (1) valuation or the transaction value as invoice value; (2) transaction value of identical goods; (3) transaction value of similar goods; (4) deductive method; (5) computed method; and (6) fall back method.
[152] 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.

that mandates the use of internet value in determining dutiable value of imported goods.[153]

Mr. Valic was presented as a hostile witness and he identified his signature appearing on *Exhibits* "F-6," "O-6," "L-5," and "I-5."[154]

Another hostile witness, **Ms. Rivera,**[155] testified that she has processed six (6) out of the seven (7) entries that were filed by Viking; that she arrived at her computation using the transaction value as invoice value based on the WTO guidelines;[156] that she conducted physical inspection of the subject motor vehicles to determine if the description, *i.e.*, the make, series, and the bill number, as stated in the invoice, are correct and for proper classification appraisal; that her primary duties with respect to motor vehicles are to examine, appraise, classify assigned entries[157] along with the declared duties and taxes to be paid; that classification is standard at 30% but they follow the Memorandum from the Office of the Commissioner that all motor vehicles will submit to the VRIS-OCOM for clearance in order to have uniform valuation; that the valuation is actually done by the VRIS-OCOM;[158] that pursuant to CMO No. 28-2007, they use the specific description of the motor vehicle appearing on the entry; that if the motor vehicle has a defect, they will reflect it in the entry; that the usual process is for the examiners to prepare a memorandum in the form of a recommendation addressed to the Port Collector who will then indorse the same to the VRIS-OCOM;[159] and that she does not have the discretion to declare that the value of the car is higher or lower than what was declared in the import declaration.[160]

Upon cross-examination, Ms. Rivera stated that she does not know the Accused; that she did not encounter the name "Rodelito Biag" in all the import entries filed with them; and that she is certain that the examination she conducted was regular.[161]

After the presentation of its witnesses, on August 28, 2013, the prosecution moved for thirty (30) days to file their Formal Offer of

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[153] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2,* pp. 727-740.
[154] *Id., Minutes of Hearing dated July 3, 2013,* p. 772.
[155] *Id., TSN on August 7, 2013,* pp. 785-827.
[156] *Id.,* p. 798-799.
[157] *Id.,* p. 822.
[158] *Id.,* pp. 804-806.
[159] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2,* p. 801.
[160] *Id.,* pp. 808-809.
[161] *Id.,* pp. 823-824.

Evidence, however, the Court gave them only twenty (20) days or until September 17, 2013, within which to file its Formal Offer of Evidence, accused was given the same period from receipt thereof to file his comment.[162]

On September 18, 2013, accused, through counsel, filed his Comment to Prosecution's Formal Offer of Exhibits,[163] while plaintiff filed its Submission and Prosecution's Formal Offer of Documentary Exhibits[164] on September 25, 2013.

On October 1, 2013, the Court resolved[165] to admit the documentary evidence of the prosecution subject to the Court's final evaluation and appreciation of their purpose, materiality, relevancy, and probative value to the issues involved in the case.

On October 4, 2013, Accused filed a Motion for Consolidation,[166] praying that *CTA Crim. Case Nos. O-229, O-231, O-232, O-233* and *O-236*, which are pending before the First Division, for violation of the same offenses under the TCCP, be consolidated with the instant consolidated cases.

On October 18, 2013, Accused filed a Motion for Leave of Court to File Demurrer to Evidence[167] on the ground that the prosecution failed to prove or establish the guilt of the Accused beyond reasonable doubt.

On November 7, 2013, the Court issued a Resolution[168] denying the Accused's Motion for Consolidation considering that the cases are in different stages and to consolidate the cases from the First Division would cause too much delay in the instant consolidated cases.

During the hearing on November 13, 2013,[169] the Court granted Accused's Motion for Leave of Court to File Demurrer to Evidence due to the failure of the prosecution to appear despite notice. The Court gave the accused ten (10) days from November 13, 2012 or until

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[162] *Id., Minutes of Hearing dated August 28, 2013,* p. 828.
[163] *Id.,* pp. 829-830.
[164] *Id.,* pp. 831-941, with annexes.
[165] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 945-947.
[166] *Id.,* pp. 948-949.
[167] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 950-951.
[168] *Id.,* pp. 954-959.
[169] *Id., Minutes of Hearing dated November 13, 2013,* p. 960.

November 23, 2013, to file his Demurrer to Evidence, while the prosecution has ten (10) days from receipt thereof to file its comment. The Court imposed a fine of One Thousand Pesos (Php1,000.00) against ASP Mendoza for his failure to appear, thus, delaying the administration of justice.[170]

On November 22, 2013, the Accused, through his counsel, filed his Demurrer to Evidence.[171] On December 11, 2013, ASP Mendoza filed his Vigorous Opposition (Re: Demurrer to Evidence filed by Accused Biag).[172]

On January 30, 2014, the Court issued a Resolution[173] partially granting the Accused's Demurrer to Evidence, thus dismissing *CTA Crim. Case Nos. O-221* and *O-230* for insufficiency of evidence to sustain the charges against the Accused.

On February 24, 2014, the Accused filed a Motion for Partial Reconsideration,[174] to which the prosecution filed an Opposition (Re: Accused Biag's Motion for Partial Reconsideration dated February 21, 2014 on the Honorable Court's Resolution dated January 30, 2014)[175] on March 13, 2014. On May 2, 2014, the Court issued a Resolution[176] denying the Motion for Partial Reconsideration for lack of merit.

Thereafter, the presentation of the evidence for the Accused ensued. The defense presented the following witnesses: *(1)* Accused Rodelito M. Biag[177]; *(2)* Mr. Benjamin Silva,[178] Operations Supervisor of Viking (now Envirokings Corp.); and *(3)* Ms. Carlota Coronel,[179] Secretary of Auto Trend and personal secretary of Mr. Reynaldo "Nilo" Pazcoguin III.

The first witness for the defense, the Accused **Rodelito M. Biag**, through his Judicial Affidavit,[180] stated that he is the President of

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[170] Resolution dated November 20, 2013, confirming the November 13, 2013 hearing; *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 962-964.
[171] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 965-972.
[172] *Id.,* pp. 982-995.
[173] *Id.,* pp. 1002-1012.
[174] *Id.,* pp. 1031-1036.
[175] *Id.,* pp. 1040-1044.
[176] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 1051-1053.
[177] *Id. Minutes of Hearing dated June 18, 2014,* p. 1093.
[178] *Id., Minutes of Hearing dated October 15, 2014,* p. 1134.
[179] *Id., Minutes of Hearing dated February 18, 2015,* p. 1152.
[180] *Id., Exhibit "9," Judicial Affidavit,* pp. 1066-1071.

APOGEE Transport Corp., a family corporation purely doing taxi business; that he knows the other accused, Mr. Pazcoguin, Jr., as the father of his sister's husband; that he was named as an incorporator and stockholder of Viking; that he doesn't recall having signed documents relating to Viking and that he did not invest any of his money in order to become a stockholder; that he has never been involved in the operational management, neither did he receive any monetary share or consideration out of his being a stockholder thereof; that it has been the practice in their family to name relatives as incorporator of the various businesses that the family members own; that he got information that Viking is no longer existing, and that a new corporation, "Enviroking Corp.," was formed; that he is not familiar with the customs procedure regarding the process of importation; that he has not, at any time, processed the importation of vehicles belonging to Viking; that he did not, at any point in time, made representations with any office of the BOC that he is intervening on behalf of Viking; that he did not fill up any import entries, bill of ladings, letters of exchange, or any import documents; that he did not purchase any of the subject motor vehicles; and that his personal car is a Toyota Fortuner; and that his taxi units are Toyota Vios.

On cross-examination,[181] the Accused testified that it is his signature appearing in the Certificate of Incorporation of Viking; that he is the Vice President of Viking but he doesn't have hand in its operations; that it has been the practice in his family to name family members as incorporators, but it does not mean that they are actually involved in the operations and management, they are merely nominal incorporators; that he was asked to sign the document by his brother in law, Reynaldo Pazcoguin III[182], who sent the papers to his office for his signature and he just signed it without any question because they are family; and that Reynaldo Pazcoguin, Jr. is his godfather.

The prosecution pointed out that there were discrepancies between Accused's Judicial Affidavit and the Joint Counter-Affidavit ("Counter-Affidavit") that they filed before the DOJ and he explained that the information stated in that Counter-Affidavit were given to him by his brother-in-law; and as far as he knows, Viking is a garbage hauler company in Quezon City.[183]

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[181] *Id., TSN dated June 18, 2014*, pp. 1093-j-1093-jj.
[182] He is the husband of the Accused's sister, Mrs. Edwina Pazcoguin.
[183] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3, pp. 1093-kk–1093-zz.*

On re-direct examination, Accused testified that when he found out that he was being sued before the DOJ for violation of Customs laws, the first thing he did was to call his brother-in law, Pazcoguin III, and he was informed that he will be given a lawyer who will make the affidavit for him and the other accused[184] before the DOJ; that he was not consulted in the drafting of the Counter-Affidavit; that he does not report for work in Viking, nor was he given a specific function; that he has not been to the place of business of Viking; that he doesn't have any employee under his control, neither does he have the power to appoint or recommend any employee of Viking; and that when he saw the case against him, he was surprised because he did not know that he is the vice president, because at the time he signed the incorporation papers, he knew that he would only be a nominal incorporator.[185]

On re-cross examination, the prosecution asked why the Accused did not insist on preparing his own Counter-Affidavit before the DOJ, to which he answered that he trusted his brother-in-law Pazcoguin III that much because of the close relationship they have.[186]

On July 30, 2014, counsel for the Accused filed a Motion for Issuance of *Subpoena Ad Testificandum*[187] to Ms. Carlota "Chuchai" Coronel ("Ms. Coronel") and Mr. Benjamin "Benjie" Silva ("Mr. Silva"). On August 8, 2014, the prosecution filed a Consolidated Partial Opposition (Re: Accused Biag's Motion for Issuance of *Subpoena Ad Testificandum*).[188]

On August 22, 2014, the Court issued a Resolution[189] granting Accused's Motion for Issuance of *Subpoena Ad Testificandum,* to give the Accused the opportunity to fully present his defense against the criminal charges brought against him. Thereafter, a *Subpoena Ad Testificandum* were issued to Mr. Silva[190] and Ms. Coronel.[191]

Mr. Silva, testified through Judicial Affidavit,[192] that he has been with Viking since 2009 as Operations Supervisor and that he is still

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[184] Reynaldo Pazcoguin, Jr., Ofelia Pazcoguin and the brokers.
[185] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 1093-zz–1093-mmm.
[186] *Id.,* pp. 1093-mmm-1093-qqq.
[187] *Id.,* pp. 1106-1108, with annex.
[188] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3,* pp. 1113-1114.
[189] *Id.,* pp. 1120-1122.
[190] *Id.,* p. 1123.
[191] *Id.,* p. 1124.
[192] *Id., Exhibit "10," Judicial Affidavit,* pp. 1165-1167.

holding that position after the change to Envirokings Corp.; that as such Operations Supervisor, he oversees the day-to-day operation of Viking; that he does not know the Accused personally; that he knows him as a relative of Pazcoguin III; and that Accused was never employed nor was he in the premises of Viking at any point in time.

On cross examination[193], Mr. Silva clarified that he is only a supervisory employee of Viking who goes to work everyday; that he is not familiar with the physical appearance of the Accused; that his function as external operations manager includes overseeing the daily trips of their dump trucks to collect garbage in San Juan City; that he has no knowledge about the importation of any motor vehicles; and that he was asked to testify by Pazcoguin III about the tax case filed against the Accused.

Ms. Coronel testified through Judicial Affidavit,[194] that she is connected with Auto Trend since 1993; that she is the personal secretary of Pazcoguin III; that she handles all documents of Auto Trend as well as its sister company, Viking, which later on became Enviroking Corp.; that both companies are being run and managed by Pazcoguin III; that Auto Trend is the main business of Pazcoguin III; that she was the one who gave the Articles of Incorporation and Director's Certificate to the Accused for signature; that the Accused was never a functioning member of the Board of Directors and was just named as such because of his relation to Pazcoguin III; and that the Accused never took part in the importation of the luxury vehicles.

On cross-examination[195], Ms. Coronel testified that she handles all the documents of Auto Trend and Viking, *e.g.*, by asking the parties to sign the papers; that she was not one of the drafters of the Articles of Incorporation; that she was never detailed or assigned to the office of the Accused; that she was never tasked to handle the importation of Viking; that the Accused is not involved in the importation; that the amount of subscription given by the Accused was One Hundred Thousand pesos (Php100,000.00).

On re-direct examination,[196] Ms. Coronel clarified that she was the one who asked the Accused to sign the incorporation documents

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[193] *TSN Folder, CTA Crim. Case No. O-221, TSN for October 15, 2014*, pp. 9-24.
[194] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3, Exhibit "11," Judicial Affidavit*, pp. 1168-1170.
[195] *TSN Folder, CTA Crim. Case No. O-221, TSN for February 18, 2015*, pp. 8-17.
[196] *Id.*, pp. 18-26

of Viking; that she didn't think the Accused was part of the company because he is not active and she has never seen him there; that Accused does not own any of the luxury vehicles that are being sold by the company; that Mr. Reynaldo "Nilo" Pazcoguin III is not the same as Mr. Reynaldo Pazcoguin, Jr., the latter is Pazcoguin III's father.

After the presentation of the last witness for the defense on February 18, 2015[197], the Accused was granted fifteen (15) days or until March 5, 2015, to file his Formal Offer of Evidence, the prosecution was granted the same period within which to file his Comment thereto.[198] This was confirmed in the Resolution[199] dated February 25, 2015.

On March 5, 2015, the Accused filed his Formal Offer of Exhibits.[200] On April 1, 2015, the prosecution filed his Comment (Re: Accused Biag's Formal Offer of Exhibits dated 4 March 2015).[201]

On April 20, 2015, the Court resolved[202] to admit the exhibits for the Accused, and ordered the parties to file their respective Memoranda within thirty (30) days from receipt thereof.

On May 25, 2015, the prosecution filed his Memorandum for the Prosecution,[203] while the Accused filed his Memorandum for Accused Rodelito M. Biag[204] on May 28, 2015.

On June 11, 2015, the Court issued a Resolution[205] submitting the instant consolidated cases for decision, hence, this decision.

ISSUE[206]

WHETHER OR NOT ACCUSED MR. RODELITO M. BIAG IS GUILTY AS CHARGED IN THE FIVE (5) AMENDED INFORMATIONS.

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[197] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3, Minutes of Hearing dated February 18, 2015*, p. 1152.
[198] *Id.*, p. 1152.
[199] *Id.*, pp. 1154-1155.
[200] *Id.*, pp. 1156-1158.
[201] *Id.*, pp. 1194-1198.
[202] *Id.*, pp. 1200-1202.
[203] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 3*, pp. 1203-1219.
[204] *Id.*, pp. 1220-1227.
[205] *Id.*, pp. 1229-1230.
[206] *Id.*, *Pre-Trial Order (As regards accused Rodelito M. Biag only)*, p. 648.

Arguments of the Prosecution

The prosecution alleges that the Accused, as Vice President, member of the Board of Directors, stockholder and incorporator of Viking, is guilty of violations of *Sections 3601* (Unlawful Importation) and *3602* (Various Fraudulent Practices against Customs Revenue) in relation to *Section 2530, paragraph l (3) and (5) of the TCCP*, as amended, in relation to *EO No. 156*[207]; that Viking can only exercise its corporate powers through its Board of Directors; that the Accused, as the Vice President, is tasked to act as President in the absence of the latter; that the ownership of the controlling shares and management of Viking are equally divided among its directors and officers, therefore, the burden of managing and supervising its affairs are equally and proportionately shared by all of them; and that Viking is a close family corporation, hence Accused is very much privy to the transactions involved.

They further claim that the Accused failed to discharge the *onus* of rebutting the presumption that he committed gross undervaluation through the use of false/spurious commercial invoices; that there is *prima facie* evidence of fraud because of the deliberate and gross undervaluation of their shipments; that the transaction value espoused by Viking is baseless; that it was only proper for the BOC to use the reference values that were available to them; that *Republic Act ("RA") No. 9135*[208] was never intended to be used to fraudulently deprive the government of its rightful duties and taxes; that the Commissioner of Customs is empowered to search for the truth and determine the veracity of the transaction values declared by the importers and in case of doubt, he can disregard the transaction value and use alternative methods of valuation; that the BOC, through RATS can make a re-assessment of the subject of importation; and that after a higher assessment has been made, it is the duty of the importer to dispute the higher assessment.

Lastly, they aver that examination of the documents covering the subject shipments reveal that the luxury motor vehicles are actually used motor vehicles; that the importations of the luxury cars violated *EO No. 156;* that the luxury vehicles were fraudulently and suspiciously declared to have the same defect, thus, supporting the

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[207] Providing for a Comprehensive Industrial Policy and Direction for the Motor Vehicle Development Program and its Implementing Guidelines.
[208] 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.

BOC's conclusion that the commercial invoices submitted to it were fabricated; that the post-entry audit system is just an additional administrative tool available to the BOC, the conduct of which does not foreclose the right of the BOC in availing itself of the option of filing a criminal complaint against importers and other persons who may have been found to have violated the TCCP; and that the criminal charge for smuggling need not go through the post-audit system.

Arguments of the Accused

On the other hand, the Accused argues that the only reason why he was charged is because SEC records show that he was named as an incorporator and corporate officer of Viking; that before a director or officer of a corporation can be held liable for acts of the corporation, it must be shown that such board member or officer knows and is aware of the acts by the said corporation; that no overt act was attributed to him that would directly or indirectly indicate that he was the one who called the shots in Viking, or that he benefited from the importations or that he actively intervened in the financial and/or operational management of Viking; that criminal laws are personal in character, therefore, before any person can be held responsible for a criminal act, it is necessary that he directly participates in the act; that the prosecution failed to establish his complicity to the crimes charged; and that speculations and probabilities cannot substitute for proof required to establish the guilt of the accused beyond reasonable doubt.

He counters further that, to be liable for unlawful importation, fraud, as the most important element must be established; that *RA No. 9135* clearly defines the meaning of Transaction Value as the price actually paid or payable for the goods when sold for export to the Philippines plus adjustments if allowed; that there is a hierarchical order of application in determining the dutiable value of a shipment; that the luxury vehicles have been released by the BOC for more than a year before the BOC decided to file criminal charges against the accused; and that the proper action for the BOC would have been to conduct a post-entry audit.

RULING OF THE COURT

The ruling of this Court is limited to the remaining cases, particularly *CTA Crim. Case Nos. O-223, O-224* and *O-226*, considering its January 30, 2014 Resolution dismissing *CTA Crim. Case Nos. O-221* and *O-230* for insufficiency of evidence to sustain the charges against the Accused.

Accused is charged with violation of *Section 3601 of the TCCP* in relation to *EO No. 156, series of 2002.*

Unlawful importation or smuggling is defined under *Section 3601 of the TCCP, viz.:*

> 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
>
> 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.

Section 2, Article 2 of *EO No. 156*[209]*, series 2002,* provides as follows:

> ARTICLE 2
> Prohibition of Used Vehicles Importation
>
> SECTION 2. *Brand new vehicles.* –
>
> 2.1 The importation of brand new motor vehicles shall be allowed pursuant to Executive Order No. 264, series of 1995 and Monetary Board Circular No. 92, series of 1995. To be considered brand new, the motor vehicle shall be (a) of current or advance year model in the country of origin and/or manufacture, or (b) of year model immediately preceding year in the country of origin and/or manufacture provided that:

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[209] Providing For A Comprehensive Industrial Policy And Directions For The Motor Vehicle Development Program And Its Implementing Guidelines, Approved December 12, 2002.

2.1.1 The motor vehicle has a mileage of not more than 200 kilometers; and

2.1.2 The motor vehicle has been acquired by the importer from the dealer as first owner.

SECTION 3. *Used motor vehicles.* –

3.1 The importation into the country, inclusive of the Freeport, of all types of used motor vehicles is prohibited, except for the following: xxx

Based on the aforecited provisions, unlawful importation or smuggling is committed by any person who: *(1)* fraudulently imports or brings into the Philippines any article contrary to law; *(2)* assists in importing or bringing into the Philippines any article, contrary to law; or *(3)* receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of such article after importation, knowing the same to have been imported contrary to law.[210]

The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent.[211] Stated otherwise, the Accused should have knowledge of the unlawful importation as well as of bringing into the country of second hand motor vehicles.

It must be emphasized that importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit for withdrawal shall have been granted.[212] After importation, the act of facilitating the transportation, concealment or sale of the

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[210] *Bureau of Customs v. The Honorable Agnes VST Devanadera, et. al.*, G.R. No. 193253, September 8, 2015, citing *Jardeleza v. People of the Philippines*, G.R. No. 165265, February 6, 2006, 481 SCRA 638.
[211] *Jardeleza v. People of the Philippines*, G.R. No. 165265, February 6, 2006, 481 SCRA 638.
[212] *Rodriguez, et. al., v. The Hon. Court of Appeals, et. al*, G.R. No. 115218, September 18, 1995, 248 SCRA 288.

unlawfully imported article must be with the knowledge that the article was smuggled.[213]

It is undisputed that Viking, as a corporation, is the importer on record of the motor vehicles in the instant case. A corporation is an artificial entity created by fiction of law. It has a personality that is separate and distinct from its stockholders, officers, directors, representatives and other juridical entities.[214]

The prosecution is correct in saying that Viking can only act through its officers. However, consent through its representatives is not consent of the representative, personally. The corporation's obligations, incurred through the official acts of its representatives, are its own. A stockholder, director, or representative does not become a party to a contract just because a corporation executed a contract through that stockholder, director or representative. In other words, the representatives are not personally liable for obligations and liabilities incurred on or in behalf of the corporation.[215]

Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.[216]

Section 31[217] *of the Corporation Code of the Philippines* provides that the directors, trustees or the officers of a corporation can be held solidarily liable for acts of the corporation, when they – *(1)* vote for or assent to patently unlawful acts of the corporation; *(2)* act in bad faith or with gross negligence in directing the corporate affairs; and *(3)* are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.

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[213] *Id.*
[214] *Gerardo Lanuza, Jr., et al., v. BF Corporation, et al.,* G.R. No. 174938, October 1, 2014.
[215] *Id.*
[216] *Heirs of Fe Tan Uy v. International Exchange Bank,* G.R. No. 166282, February 13, 2013, 690 SCRA 519.
[217] *Section 31.* - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. xxx

Hence, before a director or officer of a corporation can be held personally liable for corporate obligations, the following requisites must concur:

> 1. The complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and
>
> 2. The complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[218]

Pertinent portions of the Amended Complaint-Affidavit[219] are herein quoted, *to wit:*

> 2. This complaint is being initiated against the following individuals who may be subpoenaed at their respective address, to wit:
>
> xxx xxx xxx
>
> 2.2. RODELITO M. BIAG - Vice President of Viking Haulers Inc., with residence address at E-74 K-Bin Townhomes, Townville Subdivision, Project 6, Quezon City;
>
> xxx xxx xxx
>
> 3. From December 2009 up to May 2010, **VIKING** made the following importations of luxury vehicles at the [MICP], which were declared in Ten (10) Import Entries, to wit:
>
> xxx xxx xxx
>
> 4. However, upon perusal of the covering entries by the newly re-organized RATS Group, it **shows** that the subject shipments were **deliberately and** grossly undervalued by as low as 50% to a high of 80% as follows:
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> xxx xxx xxx

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[218] *Heirs of Fe Tan Uy v. International Exchange Bank,* G.R. No. 166282, February 13, 2013, 690 SCRA 519.

[219] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibit "C," "C-1" to "C-13,"* pp. 851-867; emphases ours.

Such deliberate and gross undervaluation greatly reduced the corresponding duties, ad valorem and value added taxes due on the motor vehicles to the damage and prejudice of the government. xxxx

5. Further verification revealed the following:

5.1. The description of the vehicles in the import entries did not conform to the correct specific tariff terms as required under Title V of Customs Memorandum Order No. 28-2007 and Title V, 2 of Customs Administrative Order 8-2007, which should have been declared as follows:

Make----------------------------	Lamborghini
Series----------------------------	Gallardo
Body Type---------------------	Coupe
Year Model--------------------	2010
Gross Weight-----------------	3600 Kilos
Net Weight--------------------	1800 Kilos
Piston Displacement---------	5.2L
No. of Cylinder---------------	12 cylinders
Engine No.---------------------	BD499549
Chassis [N]o.------------------	JNRBS08W25X402113
VIN No.------------------------	x x x
Fuel------------------------------	Gas[]

5.2 Aside from declaring the shipment in general terms, private respondents **did not submit the proper sales invoices from their supplier to reflect the transaction value of their shipments that would have ensured the payment of correct duties, ad valorem and value added taxes to the government, in violation of Section 1301 of the TCCP which reads:**

xxx xxx xxx

Based on the deliberate refusal of the importer/brokers to submit the proper invoices covering their shipments, there is no transaction value to speak of that would justify their payment of duties and taxes. Hence, a re-computation was directed to double-check the correct values of said motor vehicles. Xxx

5.3. It was likewise discovered that majority of the motor vehicles imported by VIKING which were declared as brand new 2010 models were actually used motor vehicles without an Authority to Import from the Bureau of Import Service of the Department of Trade

and Industry, in violation of Executive Order No. 156 which prohibits the importation of used motor vehicles in the Philippines. Xxx

xxx xxx xxx

6. Indeed, **all** the foregoing fraudulent acts, as well as the use of spurious documents, clearly constituted a violation of Sections 3601 and 3602, in relation to Sections 2503, 2530 paragraphs 1(3), (4) and (5), 1301, 1304, **1403 and 3604** of the [TCCP] as amended, Titles V and VII of Customs Memorandum Order No. 28-2007, **Executive Order No. 156 or "Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and its Implementing Guidelines",** xxx

xxx xxx xxx

Moreover, VIKING's deliberate and gross undervaluation of their shipment by as low as 50% to a high of 80% creates a prima facie evidence of fraud. xxx

xxx xxx xxx

The rule is that he who alleges fraud or mistake affecting a transaction must substantiate his allegations. Allegations must be proven by sufficient evidence, because mere allegation is definitely not evidence.[220] Moreover, fraud is not presumed - it must be proved by clear and convincing evidence.[221]

Nothing in the allegations in the Amended Complaint-Affidavit would show, with certainty, that the Accused assented to the unlawful importation nor was there any allegation that he was grossly negligent or that he acted in bad faith. The prosecution used sweeping statements and generalizations, citing provisions of the law without substantiation.

To reiterate, three (3) acts constitute unlawful importation. Accused cannot be held liable for the first and second acts (*i.e.*, fraudulently imports or brings into the Philippines any article contrary

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[220] *Spouses Nilo Ramos and Eliadora Ramos v. Raul Obispo and Far East Bank and Trust Company*, G.R. No. 193804, February 27, 2013, 692 SCRA 240, citing *Real v. Sangu Philippines, Inc.* G.R. No. 168757, January 19, 2011, 640 SCRA 67, citing *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010, 615 SCRA 13.

[221] *Mindanao State University v. Roblett Industrial and Construction Corporation*, G.R. No. 138700, June 9, 2004, 431 SCRA 458.

to law; assists in importing or bringing into the Philippines any article, contrary to law) because the prosecution failed to establish that the Accused had knowingly, with fraudulent intent, brought in or assisted in importing the motor vehicles subject of the instant case. Furthermore, importation has been terminated at the time of the discovery of the alleged fraudulent acts. Hence, the only way that the Accused can be found guilty of unlawful importation as defined under *Section 3601 of the TCCP* is under the third act, that is, it must be proved that he received, concealed, bought, sold, or in any manner facilitated the transportation, concealment or sale of such article after importation, knowing the same to have been imported contrary to law. A reading of the above-quoted Amended Complaint-Affidavit failed to convince us that the Accused committed those acts. In fact, it was never alleged therein.

The prosecution alleges that the motor vehicles are not brand new, but are actually used vehicles. To support their claim, the prosecution presented the report[222] of Mr. Dizon, shown on the Table below:

Case No.	Import Entry	Description as Declared	Description as Found	Duties and Taxes as Declared/Paid	Correct Duties and Taxes	Difference	LTO Certificate of Payment No.	Year Model Declared	Year Model Found
O-226	77473	New Motor Vehicles	2010 Lamborghini Murcielago	[Php]3,366,955.00	[Php]25,218,642.32	[Php]21,851,687.32	13565142	2010	2010
O-223	27338	Motor Vehicles	2010 Porsche GT3	[Php]932,980.30	[Php]5,710,353.74	[Php]4,777,373.44	13340214	2010	2010
O-224	20120	Porsche	2010 Porsche Panamera	[Php]1,203,142.50	[Php]4,416,731.29	[Php]3,213,588.79	13339776	2010	2010

At this point, a perusal of the IEIRD[223] show that the motor vehicles are brand new. Prosecution witness Ms. Rivera testified that she, together with their technician, physically examined, the motor vehicles, specifically, its computer box or engines, and that after said examination, she was satisfied that the motor vehicles have the same specifications as that indicated in the IEIRD and other documents submitted to them.

On the other hand, prosecution witness Mr. Dizon, testified that he merely acted on the request of Dep. Com. Chavez based on the information the latter has given him. He did not have the chance to physically examine the motor vehicles, as it were already released

[222] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibits "V,"* and *"U,"* pp. 923-924.
[223] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibits "F,"* pp. 891-892; *"I,"* p. 898; *"L,"* p. 906; *"O,"* pp. 911-912.

from the BOC's custody, neither was he able to review the import documents of the subject motor vehicles, hence, he made the conclusion that there were no documents submitted to the BOC. He explained that since he does not have documents, there is no "transaction value" that can be used, which is the reason why he used internet values as reference values. It is mind boggling how Mr. Dizon arrived at his conclusion that the subject motor vehicles were second hand when he never saw either the vehicles, or the importation documents.

The Court cannot give weight to the allegations of the prosecution that the motor vehicles are used vehicles when there is a positive testimony that based on physical examination, the motor vehicles correspond to the description as appearing on the IEIRD. Thus, as between a testimony of someone who did not see the motor vehicle or the import entry documents, and someone who actually inspected the motor vehicle, the Court is inclined to find merit in the testimony of Ms. Rivera and her claim that the motor vehicles that she inspected are brand new and fits the description in the entry document/s.

The Accused is also charged with violations of *Section 3602* in relation to *Sections 2503*[224] and *2530, paragraphs (f), (l), 3, 4,* and *5; Sections 1301*[225], *1304,* and *1206 of the TCCP.* Pertinent portions of the foregoing provisions read as follows:

Section 3602 of the TCCP

> 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 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,

[224] As amended by RA No. 7651, approved June 04, 1993.
[225] As amended by RA No. 7651, approved June 04, 1993.

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 offence, be punished in accordance with the penalties prescribed in the preceding section.

xxx xxx xxx

Sections 2503 and 2530 of the TCCP

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.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to penal provision under Section 3602 of this Code.

xxx xxx xxx

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 subjected to forfeiture:

xxx xxx xxx

f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

xxx xxx xxx

l. Any article sought to be imported or exported

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;

(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.

Sections 1301 and 1304 of the TCCP

SEC. 1301. *Persons Authorized to Make Import Entry.* - Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft either: (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill, or (c) by a person duly empowered to act as agent or attorney -in -fact for each holder: *Provided,* That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: *Provided, further,* That such statements under

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oath shall constitute *prima facie* evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful

SEC. 1304. *Declaration of the Import Entry.* - Except in case of informal entry, no entry of imported article shall be effected until there shall have been submitted to the Collector a written declaration under penalties of falsification or perjury, in such form as shall be prescribed by the Commissioner, containing statements in Substance as follows:

a. That the entry delivered to the Collector contains a full and true statement of all the articles which are the subject of the entry;

b. That the invoice and entry contain a just and faithful account of the actual cost of said articles, including and specifying the value of all containers or coverings, and that nothing has been omitted, therefrom or concealed whereby the government of the Republic of the Philippines might be defrauded of any part of the duties lawfully due on the articles;

c. That, to the best of the declarant's information and belief, all the invoke and bills of lading to the articles are the only ones in existence relating to the importation in question and that they are in the state in which they were actually received by him;

d. That, to the best of the declarant's information and belief, the entry, invoice and bill of lading, and the declaration thereon are in all respects genuine and true, and were made by the person by whom the same purpose to have been made, respectively.

Section 1206 of the TCCP

SEC. 1206. *Jurisdiction of Collector Over Importation of Articles.* - The Collector shall cause all articles entering the jurisdiction of his district and destined for importation through his port to be entered a customhouse, shall cause all such articles to be appraised and classified, and shall assess and collect the duties, taxes, and other charges thereon, and shall hold possession of all imported articles upon which duties, taxes, and other charges have not been paid or secured to be paid, disposing of the same according to law.

Under *Section 3602,* fraudulent practices can be committed through any of the following acts or omissions[226]: *(1)* making or attempting to make any entry of imported or exported article *(a)* by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal; or *(b)* by any means of any false or fraudulent practice whatsoever; *(2)* knowingly effecting any entry of goods, wares or merchandise, at less than the 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; *(3)* knowingly and willfully filing any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise; or *(4)* making or filing 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.

Section 2503 pertains to undervaluation, misclassification and misdeclaration in entry, which, if committed, will subject the imported articles to forfeiture under *Section 2530 of the TCCP*. The elements to be established in order to convict the Accused under *Section 2503* are: *(1)* there must be an entry of imported or exported articles; *(2)* the entry was made by means of any false or fraudulent invoice, declaration, affidavit, letter, or paper; and *(3)* there must be intent to avoid payment of taxes.[227]

On the other hand, *Sections 1301* and *1304 of the TCCP* pertains to the declaration/s made by the importer or a person authorized to act in behalf of the importer/consignee, which is made under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct. Meanwhile, the Accused cannot be held liable under *Section 1206* because said article refers to the duty of the port collector before the importation is terminated.

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[226] *Bureau of Customs v. The Honorable Agnes VST Devanadera, et. al.,* G.R. No. 193253, September 8, 2015.
[227] *Mercado v. People of the Philippines,* G.R. No. 167510, July 8, 2015.

The term "entry" under the *TCCP* has a triple meaning, *viz: (1)* the documents filed at the Customs house; *(2)* the submission and acceptance of the documents; and *(3)* the procedure of passing goods through the Customs house.[228] Thus, what needs to be proved is the act of making or attempting to make such entry of articles.[229] It also presupposes that there is intent and that it must be willfully done by the Accused.

It must be stressed that a common element in *Sections 3602, 2503, 2530, 1301* and *1304 of the TCCP,* is the element of knowledge of the person committing the offense. The Accused must have willfully and intentionally committed the acts charged against him.

A careful reading of the allegations in the Amended Informations show that the acts imputed against the Accused are *(1)* making entries by means of a false and fraudulent Bill of Lading, and *(2)* employing false and fraudulent practice to avoid payment of the correct duties, *ad valorem* and VAT; for reference is the Amended Information for *CTA Crim. Case No. O-226,* which is substantially similar to the Amended Informations in *CTA Crim. Case Nos. O-223 and 224,* to wit:[230]

> "That on May 17, 2010 or thereabout, in [MICP], City of Manila, Philippines, and within the jurisdiction of this Honorable Court, <u>the above-named accused, doing business under the corporate name and style "Viking Haulers Inc</u>." did then and there willfully, deliberately, unlawfully and criminally, import, facilitate, receive and conceal the transportation of xxxx <u>by means of a false or fraudulent Bill of Lading</u> xxx the <u>said accused did then and there willfully, deliberately, unlawfully and criminally employ false and fraudulent practice to avoid payment of correct duties, ad valorem and [VAT] due on the motor vehicle, thereby causing damage and prejudice to the government by way of uncollected duties and taxes due on the subject shipment</u> xxx"

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[228] *Rodriguez, et. al., v. The Hon. Court of Appeals, et. al,* G.R. No. 115218, September 18, 1995, 248 SCRA 288.
[229] *Bureau of Customs v. The Honorable Agnes VST Devanadera, et. al.,* G.R. No. 193253, September 8, 2015.
[230] *Records, CTA Crim. Case No. O-226,* pp. 1-180, with annexes; emphases retained.

Records reveal that the acts ascribed to the Accused were never proven. The IEIRD[231] clearly shows that the importer/consignee is Viking, and the broker/ attorney-in-fact is Benjamin P. Valic; that all the declarations were made and signed by Benjamin P. Valic, for and on behalf of Viking. Moreover, the Certificates of Payment[232] issued by the BOC shows the name of Viking as the payee. The name of the Accused cannot be found in any of the documents that were submitted to the BOC.

The only way that the accused can be found criminally liable for the declarations made by the broker/attorney-in-fact, would be if the two of them have acted *pursuant to a conspiracy*. If so, there must be an allegation to that effect in the Information. A reading of the Amended Informations clearly show that the Accused was not charged as a co-conspirator.

The prosecution failed to establish that the Accused, as an officer/director of Viking, acted together with the company's customs broker in making the entry. It would violate the constitutional right of the Accused to be informed of the charge brought against him if he were held criminally responsible for the act or omission of the broker/attorney-in-fact of Viking, on the basis that the corporation can only act through its officers/directors. The prosecution failed to sufficiently establish that the Accused had knowledge of and actively participated in the underdeclaration or misdeclaration. Indeed, to allow the act or omission of the broker/attorney-in-fact of Viking to bind the petitioner would be unacceptable under the principle of *res inter alios acta alteri nocere non debet* embodied in *Section 28*[233], *Rule 130 of the Rules of Court,*[234] that is, things done between strangers ought not to injure those who are not parties to them.[235]

In fact, even the prosecution's witnesses, from the complainant herself, Atty. Sy-Flores, Mr. Dizon, and Ms, Rivera, all testified that they have not come across the name of the Accused during the entire importation process. The fact remains, and it was admitted by the complainant in her Complaint-Affidavit, that the Accused was

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[231] *Records, CTA Crim. Case Nos. O-221, O-223, O-224, O-226 and O-230, Vol. 2, Exhibits "F,"* pp. 891-892; *"I,"* p. 898; *"L,"* p. 906; *"O,"* pp. 911-912.
[232] *Id., Exhibits "G,"* p. 896; *"J,"* p. 902; *"M,"* p. 909; *"P,"* pp. 914.
[233] Section 28. *Admission by Third-Party.* - The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.
[234] *Alvin Mercado v. People of the Philippines,* G.R. No. 167510, July 8, 2015.
[235] *People of the Philippines v. Solito Tena,* G.R. No. 100909, October 21, 1992, 21 SCRA 43.

charged because his name appeared as the vice president, incorporator, and stockholder of the importer/consignee, Viking.

Moreover, an allegation of fraud is never presumed and, it is an allegation of fact that must be substantiated through clear and convincing proof.[236] Fraud is a serious accusation that can be so conveniently and casually invoked.[237] Having proven that the Accused never participated in the operations and management of Viking, or never participated in any of the acts that would constitute an entry under the TCCP, or employed false and fraudulent practice to avoid payment of correct duties, *ad valorem* and VAT due on the motor vehicle imported by Viking, the Court finds no basis for the allegation of fraud against the Accused.

WHEREFORE, premises considered, the Accused **RODELITO M. BIAG** is hereby **ACQUITTED**, for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[236] *Department of Public Works and Highways v. Quiwa, et. al.*, G.R. No. 183444, February 8, 2012.
[237] *Id.*

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice