REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

ROEL PAQUIT SAYSON,
Trex Eve Auto Sales and Services
A.S. Fortuna St., Bakilid
Mandaue City, Cebu.
Accused.

CTA CRIM CASE NO. O-094
(I.S. No. 2008-375)
Re: Violation of Section 3601 in rel. to Section 2530, paragraphs f, l(3),(4), and (5) of the Tariff and Customs Code of the Philippines

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

DEC 12 2012
ABFernando 1:53 p.m.

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DECISION

BAUTISTA, J.:

THE CASE

Accused Roel Paquit Sayson is being charged, as the proprietor of Trex Eve Auto Sales and Services, for Violation of Section 3601, in relation to Section 2530, paragraphs f, l(3), (4), and (5) of the Tariff and Customs Code of the Philippines.

THE FACTS

On July 31, 2008, the accused, Roel Paquit Sayon, is charged before this Court with the crime of Violation of Section 3601 (Illegal Importation) of the Tariff and

Customs Code of the Philippines.[1] On August 12, 2008, the Court ordered the prosecution to amend the Information so as to include Violation of Section 2530, paragraphs f, l(3), (4), and (5) of the Tariff and Customs Code of the Philippines.[2]

On August 27, 2008, the prosecution filed an Amended Information.[3]

On September 5, 2008, the Court finds the existence of probable cause and consequently, a Warrant of Arrest was issued on September 19, 2008, fixing the bail for the provisional liberty of the accused at One Hundred Twenty Thousand Pesos (Php120,000). On March 27, 2009, the accused voluntarily surrendered to this Court's jurisdiction and filed the required bail, thus, the Court lifted and recalled the Warrant of Arrest.

On March 31, 2009, accused filed a "Motion to Quash with Motion to Defer Schedule of Arraignment." In a Resolution dated June 2, 2009,[4] the Court denied the said motion and ordered the prosecution to make the necessary formal correction on the Information.

On June 15, 2009, the prosecution filed its Second Amended Information,[5] which the Court admitted in a Resolution dated June 23, 2009.[6]

On June 24, 2009, accused filed a "Motion for Reconsideration (Of the Resolution dated 2 June 2009), which was granted by the Court in a Resolution dated August 11,

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[1] *Records*, pp. 1-67, with Annexes A to K-2, pp. 23-67. Raffled to the then First Division of the Court before the issuance of CTA Administrative Circular No. 01-2010, dated January 5, 2010.
[2] *Records*, pp. 68 to 70.
[3] *Records*, p.78, with Annexes A to K-2, pp. 92-144.
[4] *Records*, pp. 213 to 218.
[5] *Records*, p. 221.
[6] *Records*, pp. 230 to 231.

2009.[7] Thus, the Second Amended Information was dismissed, without prejudice to the filing of a new Information in the proper forum.

Hence, the prosecution filed an "Omnibus Motion" with attached "Third Amended Information,"[8] on August 27, 2009, which charges accused, Roel Paquit Sayson, of Violation of Section 3601, in relation to Section 2530 paragraphs f, l(3), (4), and (5) of the Tariff and Customs Code of the Philippines, which reads, as follows:

> "That on or about February 7, 2008 in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into this country, did then and there willfully, unlawfully and knowingly fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit: 1) declared Used Truck Replacement Parts in Bill of Lading No. 0058000965 but found to contain Six (6) units of Kia Sportage; 2) declared Used Truck Replacement Parts in Bill of Lading No. 0058000969 but found to contain Six (6) units of Kia Sportage; and 3) declared Used Truck Replacement Parts in Bill of Lading No. 0058000970 but found to contain Three (3) Units of Hyundai Galloper on board the vessel S/S Maas Trader and <u>with estimated taxes and duties amounting to ONE MILLION SEVEN HUNDRED SEVENTY NINE THOUSAND SEVEN HUNDRED SEVENTY PESOS AND SIXTY ONE CENTAVOS (Php1,779,770.61)</u>, which were found to have been prohibited importation under Section 3 of Executive Order No. 156 and relevant customs laws, rules and regulations.
>
> CONTRARY TO LAW"

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[7] *Records*, pp. 248 to 255.
[8] *Id.*, at pp. 256-264, in relation to Court's Resolution dated October 28, 2009, pp. 289-296.

On October 28, 2009, the Court granted the "Omnibus Motion," and accordingly admitted the "Third Amended Information."[9]

On December 7, 2009, the accused, assisted by his defense counsel de parte, entered a plea of "Not Guilty" to the crime charged.[10]

On January 8, 2010, a Resolution was issued transferring the case to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2010, dated January 5, 2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals."[11]

On April 20, 2010, a preliminary conference was held,[12] and pre-trial ensued. In the Pre-trial Order dated June 11, 2010,[13] both parties admitted that: (1) Accused is the same Roel Paquit Sayson being charged in the Information; (2) under Executive Order No. 156 and other relevant customs laws, rules and regulations the importation of second hand motor vehicles is prohibited in all parts and freeports; and (3) the said imported second hand motor vehicles were seized and forfeited in favor of the government upon the orders of District Collector Ricardo R. Belmonte of the Port of Cebu.

Trial ensued. After prosecution rested its case on July 26, 2011, accused filed his "Motion for Leave to File Demurrer to Evidence,"[14] with attached "Demurrer to

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[9] *Records*, pp. 289 -296.
[10] *Records*, p. 308.
[11] *Records*, p. 321.
[12] *Id.*, at pp. 354-437, with Annexes A to Y-2, pp.365-437.
[13] *Id.*, at pp. 485-493.
[14] *Id., at. pp. 704-71.*

Evidence," praying for the dismissal of the instant case on the ground that the prosecution presented insufficient evidence to prove his guilt.

In a Resolution[15] dated October 19, 2011, the said Demurrer was denied for lack of merit. Accused then filed a Motion for Reconsideration[16] of the denial, but the same was denied in a Resolution[17] promulgated on January 13, 2012

Consequently, accused filed his Formal Offer of Evidence[18] on April 2, 2012.

After which, the prosecution, filed on June 7, 2012, its "Memorandum for the Prosecution." On the other hand, accused filed his "Memorandum," on June 18, 2012.

On June 21, 2012, the case was considered submitted for decision.[19]

Hence, this Decision.

ISSUE

The sole issue for the Court's consideration is:

WHETHER OR NOT ACCUSED MAY BE HELD OF THE CRIME OF VIOLATION OF SECTION 3601, IN RELATION TO SECTION 2530, PARAGRAPHS f, 1(3), (4), and (5) OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES.

<u>Evidence for the Prosecution</u>

Prosecution presented in evidence *Exhibits "A"* to *"Y-2,"* and in a Resolution[20] dated July 14, 2012, *Exhibits "G"* to *"G-1," "G-2," "G-3," "R"* to *"R-9," "D"* to *"D-2,"* and *"E,"* were denied, but the following pieces of evidence were admitted:

[15] *Id.*, at pp. 739-745.
[16] *Id.*, at pp. 746-748.
[17] *Id.*, at pp. 764-766.
[18] *Id.*, at pp. 779-781.
[19] *Id.*, at p. 824.

Exhibits	Documents
"A" to "A-5"	DOJ Resolution of State Prosecutor Ramon Chito R. Mendoza dated July 7, 2008 on the case entitled "Bureau of Customs vs. Roel P. Sayson"docketed as I.S. No. 2008-375.
"B" to "B-2"	Letter Referral for Preliminary Investigation to the Department of Justice by Commissioner Napoleon L. Morales of the Bureau of Customs.
"C" to "C-7"	Affidavit-Complaint of Atty. Lyndon F. De Los Santos of the Run After the Smugglers Program, Bureau of Customs.
"F"	Original of the recommendation for approval by Customs Accreditation Secretariat (CAS) on the application of Trex Eve Auto Sales and Services dated May 17, 2007.
"H"	Inward Foreign Manifest covering the shipment of 3x40 foot container vans with Nos. WHLU5013819, WHLU5211650 and GATU8495827.
"H-1"to "H-3"	Supplies and Consignees portion of Exhibit H.
"I"	Alert Order No. A/0C/20080207-101 dated February 2008 issued by Atty. Lourdes V. Mangaoang, Head, BOC X-Ray Inspection Project.
"I-1"	Signature of Atty. Ma. Lourdes V. Mangaoang.
"I-2"	Name of the Company portion of Exhibit I.
"I-3"	Container Van Nos. portion of Exhibit I.
"J" to "J-1"	Officer on Case Report dated February 29, 2008 of Robert E. Ecleo of BOC X-Ray Inspection Project.
"J-2"to J-4"	Alert Order, Container Number, Consignee, Declaration Per Manifest, Actual Contents and Origin portions of Exhibit J
"J-5"	Signature of Roberto E. Ecleo, Officer on Case

[20] *Id.*, at pp. 702-703.

"J-6"	Signature of Renato D. Palgan, Field Officer
"K"	X-Ray Scanning Image of the contents of the undeclared second hand motor vehicles contained in container van No. WHLU5013819.
"L"	X-Ray Scanning Image of the contents of the undeclared second hand motor vehicles contained in container van No. WHLU5211650.
"M"	X-Ray Scanning Image of the contents of the undeclared second hand motor vehicles contained in container van No. GATU8496827.
"N"	Bill of Lading No. 0058000965 from Wan Hai Lines, Ltd., covering the shipment of 1x40 container van with no. WHLU5013819.
"N-1"	Consignee portion of Exhibit N
"N-2"	Description of goods portion of Exhibit N
"O"	Bill of Lading No. 0058000969 from Wan Hai Lines, Ltd., covering the shipment of 1x40 container van with No. WHLU5211650.
"O-1"	Consignee portion of Exhibit O
"O-2"	Description portion of Exhibit O
"P"	Bill of Lading No. 0058000970 from Wan Hai Lines, Ltd., covering the shipment of 1x40 container van with No. GATU8496827.
"P-1"	Consignee portion of Exhibit P
"P-2"	Description of Goods portion of Exhibit P
"Q" to "Q-1"	Affidavit dated 25 April 2008 of Atty. Edward Campos, BOC RATS operative.
"S"	Warrant of Seizure and Detention dated 03 March 2008 docketed as Cebu Seizure Identification No. 12-2008 issued

	by District Collector Ricardo R. Belmonte, Port of Cebu against the shipments covering container van No. WHLU5013819.
"S-1"	Signature of District Collector Ricardo R. Belmonte
"T"	Warrant of Seizure and Detention dated 03 March 2008 docketed as Seizure Identification No. 13-2008 issued by District Collector Ricardo R. Belmonte, Port of Cebu against the shipment covered by container van No.WHLU5211650.
"T-1"	Signature of District Collector Ricardo R. Belmonte.
"U"	Warrant of Seizure and Detention dated 03 March 2008 docketed as Seizure Identification No. 14-2008 issued by District Collector Ricardo R. Belmonte, Port of Cebu against the shipment covering container van Nos. GATU8496827.
"V" to "V-1"	Customs Collector Decision in Cebu Seizure Identification Case No. 14-2008 issued by District Collector Ricardo R. Belmonte, Port of Cebu against the shipments covered by B/L No. 0058000965.
"W" to "W-1"	Customs Collector Decision in Cebu Seizure Identification Case No. 13-2008 issued by District Collector Ricardo R. Belmonte, Port of Cebu against the shipments covered by B/L No. 0058000969.
"W-2"	Signature of District Collector Ricardo R. Belmonte.
"X" to "X-1"	Customs Collector Decision in Cebu Seizure Identification Case No. 12-2008 dated 26 March 2008 issued by District Collector Ricardo R. Belmonte, Port of Cebu against the shipments covered by B/L No. 0058000970.
"Y" to "Y-2"	RATS Program Memorandum dated April 30, 2008 addressed to Atty. Reynaldo V. Umali, Deputy Commissioner, RCMG & Executive Director, RATS Re: Stripping of Containers Consigned to Trex Eve Auto and PPK Trading, signed by Atty. Edward M. Campos and Mr. Ildefonso G. Mantilla, Jr. and five other witnesses.

The prosecution also presented the testimonies of the following witnesses:

1. Atty. Lyndon De Los Santos- Member of Run After The Smugglers (RATS) Program, Bureau of Customs, who investigated the unlawful importation of fifteen (15) units of Used Korean Motor Vehicles consigned to Trex Eve Auto Sales and Services. He testified that he filed a case against Trex Eve Auto Sales and Services for violation of Section 3601 of the Tariff and Customs Code, as amended, for fraudulently importing used motor vehicles into the Philippine territory contrary to law;[21]

2. Atty. Lourdes V. Mangaoang- Head of BOC X-Ray Inspection Project. She testified that she received information that a shipment of motor vehicles which was not properly declared arrived in the Philippine territory. She testified that she issued an Alert Order in order to conduct a 100% physical examination of the shipment;[22]

3. Roberto E. Ecleo- X-ray inspector, Bureau of Customs. He testified that he spot check the container vans belonging to Trex Eve Auto Sales and Services upon receiving the Alert Order and found the shipments to contain sportage and galloper vehicles instead of used truck replacement parts;[23]

4. District Collector Ricardo R. Belmonte-CESO VI, District Collector of Customs, Port of Cebu. He testified that he issued a Warrant of Seizure and Detention.[24]

Evidence for the Defense

Accused presented in evidence the following Exhibits, which were all admitted by the Court in a Resolution[25] promulgated on May 7, 2012.

Exhibits	Documents
"1"	Bill of Lading No. 0058000965, from Wan Hai Lines, Ltd., covering the shipment of 1x40 container van with no. WHLU5013819.
"2"	Bill of Lading No. 0058000969, from Wan Hai Lines, Ltd., covering the shipment of 1x40 container van with no. WHLU5211650.

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[21] TSN dated July 7, 2010, pp. 17-32.
[22] TSN dated October 6, 2010, pp. 15-32.
[23] TSN, April 6, 2011, pp.17-56.
[24] TSN, dated May 11, 2011, pp. 20-32.
[25] *Id.*, at pp. 794-795.

"3" Bill of Lading No. 0058000970, from Wan Hai Lines, Ltd., covering the shipment of 1x40 container van with no. GATU8496827.

"4" Inward Foreign Manifest covering the shipment of 3x40 container vans with Nos. WHLU5013819, WHLU5211650 and GATU8496827.

Furthermore, accused presented the testimony of Ms. Joy Mallari, Document Supervisor of Wan Hai Shipping Lines.[26] She testified that accused did not participate in the preparation of the Bill of Lading, Inward Foreign Manifest, or any participation whatsoever on the shipment.[27]

RULING OF THE COURT

The accused is being charged with Violation of Section 3601, in relation to Section 2530, paragraphs f, l(3), (4), and (5) of the Tariff and Customs Code of the Philippines ("TCCP"), which provide, as follows:

> Section 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:
>
> 1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;

[26] TSN, dated February 22, 2012, p. 8.
[27] *Id.*, at pp. 5-6.

2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;

3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported is more than fifty thousand pesos but does not exceed one hundred fifty thousand pesos;

4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos;

5. The penalty of prison mayor shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of *reclusion perpetua* to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: *Provided, however,* That the payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

Section 2530. *Property Subject to Forfeiture under Tariff and Customs Laws.* — **Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture**:

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:

1. 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 article was entered through a customhouse to the prejudice of the government. (**Boldfacing Supplied**)

Preceding from the foregoing, Section 3601 of the TCCP provides the acts which constitute smuggling. Smuggling[28] is committed by any person who:

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

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

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

Types of Smuggling

The first type of smuggling pertains to fraudulent importation. Fraud is defined in the case of *Maribel B. Jardeleza v. People of the Philippines,*[29] as follows: "must be intentional fraud, consisting of deception, wilfully 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 xxx; even false representations or statements or omissions of material facts come within fraudulent intent xxxx." While, importation[30] is defined as, "consisting of bringing an article into the country from the outside. xxxx And the crime of unlawful importation is complete, in the absence of a *bona fide* intent to make entry and pay duties when the prohibited article enters Philippine territory." In addition, "Importation commences 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

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[28] Rodriguez vs. CA, G.R. No. 115218, September 18, 1995, 248 SCRA 288, 296.
[29] Maribel B. Jardeleza vs. People of the Philippines, G.R. No. 165265, February 6, 2006, 481 SCRA 638.
[30] *Id.*

other charges due upon the articles and the legal permit for withdrawal has been issued, or where the articles are duty-free, once the articles have left the jurisdiction of the customs."[31]

While the second type of smuggling refers to any degree of participation in the commission of unlawful importation. In the case of *Rene Francisco v. People of the Philippines,*[32] the Supreme Court found petitioners guilty of the crime of smuggling or Violation of Article 3601 of the TCCP on the ground of assisting in the unlawful importation of dutiable articles, by facilitating their release from the Bureau of Customs without payment of proper duties and taxes due the government by omitting certain acts in light of glaring discrepancies and suspicious entries present in the documents involved in the subject importation (Formal Entry and Internal Revenue Declaration No. 118302, invoice, bill of lading and packing list).

Finally, in the third type of smuggling, the Supreme Court, in the case of *Tomas Salvador v. People of the Philippines,* convicted petitioner and his co-accused for having in possession of dutiable articles while inside the premises of the airport, to quote.[33]

> In the instant case the prosecution established by positive, strong, and convincing evidence that **petitioner and his co-accused were caught red-handed by a team from the PAF Special Operations Squadron, while in the possession of highly dutiable articles inside the premises of the airport.** The contraband items were taken by petitioner and his co-accused from a PAL plane which arrived from Hong Kong on the night of June 3, 1994. Petitioner and his colleagues then attempted to bring out these items in the cover of darkness by concealing them inside their uniforms. When confronted by

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[31] Llamado v. Commissioner of Customs, G.R. No. 28809, May 16, 1983, 122 SCRA 118.
[32] G.R. No. 177430, G.R. No. 178935, July 14, 2009, 592 SCRA 675
[33] G.R. No. 146706, July 15, 2005, 463 SCRA 489.

> the PAF team, they were unable to satisfactorily explain why the questioned articles were in their possession. They could not present any document to prove lawful importation. Thus, their conviction must necessarily be upheld. Clearly, the Court of Appeals committed no reversible error in affirming the trial court's Decision convicting petitioner and his co-accused. (**Boldfacing Supplied**).

It is evident in the instant case, that the commission of smuggling through the first type transpired when the shipments of 3x40 container vans were declared to contain "Used Truck Replacement Parts,[34] when in truth and in fact, (even based on the report of Roberto E. Ecleo),[35] the shipment contained fifteen (15) units of Sportage and Galloper under the following descriptions:

ALERT ORDER NUMBER	CONTAINER NUMBER	CONSIGNEE	DECLARATION PER MANIFEST	ACTUAL CONTENTS	ORIGIN
A/OC/20080207-101	WHLU 5013819	TREX EVE AUTO	USED TRUCK REPLACEMENT PARTS	6 UNITS SPORTAGE	KOREA
A/OC/20080207-101	WHLU 5211650	TREX EVE AUTO	USED TRUCK REPLACEMENT PARTS	6 UNITS SPORTAGE	KOREA
A/OC/20080207-101	GATU 8496827	TREX EVE AUTO	USED TRUCK REPLACEMENT PARTS	3 UNITS GALLOPER	KOREA

And the Court finds these facts to be further corroborated by Edward M. Campos in his affidavit,[36] being a member of Run After The Smugglers (RATS) of the Bureau of Customs, when the containers stripped in his presence, he found the foregoing containers to contain vehicles such as Kia Sportage and Hyundai Galloper instead of the declared "Used Truck Replacement Parts." In the absence of proof to the

[34] Exhibits "I," "I-1," in relation to TSN dated October 6, 2010, pp. 15-32.
[35] Exhibits "J," " J-1," "J-2," "J-3," in relation to TSN dated April 6, 2011, pp.17-56.
[36] Exhibit"Q," pp. 399-400.

contrary, that official duty has been regularly performed,[37] it is presumed that Edward M. Campos has performed his duty in the regular course of business.

On the other hand, the Court finds the importation to be completed when the shipments of 3x40 container vans with Nos. WHLU 5013819, WHLU 5211650 and GATU 8496827, arrived at the Port of Cebu from Korea on board vessel S/S Maas Trader.

From the foregoing, there is no doubt that smuggling of the first type was committed when the shipments of 3x40 container vans, with Nos. WHLU 5013819, WHLU 5211650 and GATU 8496827, arrived at the Port of Cebu from Korea on board vessel S/S Maas Trader, with declared cargo: Used Truck Replacement Parts,[38] when in truth and in fact, it contained units of Sportage and Gallope. And this fact was never contested by accused. The accused even acknowledged such shipments in his affidavit dated March 11, 2008,[39] to quote:

> AFFIDAVIT OF LEGAL DISCLAIMER
>
> I, ROEL P. SAYSON, of legal age, Filipino citizen with postal address at Canduman, Mandaue City after having been duly sworn in accordance with law, hereby depose and say:
>
> 1. That I am the sole proprietor of Trex Eve Auto with business address at A.S. Fortuna St., Bakilid Mandaue City;
>
> xxx xxx xxx
>
> 3. **Recently, Trex Eve Auto was informed it was the consignee of 3x40 foot container vans containing wrongly declared items which arrived from Korea on February 7,**

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[37] Rule 131, Sec. 3 (m), 1997 Rules of Procedure.
[38] Exhibits "I," " I-1," in relation to TSN dated October 6, 2010, pp. 9-28.
[39] *Records*, p. 100.

> **2008 aboard the vessel Mass Trader and had been seized by the Bureau of Customs, Port of Cebu for violation of the Tariff and Customs Code of the Philippines. (Boldfacing Supplied).**

Accused committed the crime of Smuggling

The Court now proceeds to the issue of whether or not the accused committed the crime of smuggling.

Accused claims that he is not guilty of the offense, as charged for the following reasons:

First, he is not the named consignee in the Bill of Lading, but Trex Eve Auto Sales and Services;

Second, there is no evidence to show that he is the owner/proprietor of Trex Eve Auto Sales and Services; and

Third, he did not prepare the Bill of Lading, therefore any misdeclaration cannot be attributed to him.

The Court finds no merit in accused's contentions.

Section 1203 of the Tariff and Customs Code of the Philippines ("TCCP"), defines the owner of the imported articles, as follows:

> Sec. 1203. *Owner of Imported Articles.* - All articles imported into the Philippines shall be held to be the **property of the person to whom the same are consigned**: and the holder of a bill of lading duly endorsed by the consignee therein named, or, if consigned to order, by the consignor; shall be deemed the consignee thereof. The underwriters of abandoned articles and the salvors of articles saved from wreck at sea, along a coast or in any area of the Philippines may be regarded as the consignees. (**Boldfacing Supplied**).

Based on the foregoing provisions, the owner of the imported articles is the consignee. In the instant case, all of the Bill of Ladings[40] provide that the consignee is Trex Eve Auto Sales and Services, therefore the owner of the imported articles.

Nevertheless, a further review of the records[41] reveals that Trex Eve Auto Sales and Services is a sole proprietorship. A sole proprietorship is neither a natural person, nor a juridical person.[42]

In the case of *Mangila v. Court of Appeals*,[43] the Supreme Court has described sole proprietorship as not having a juridical personality separate and distinct from its owner, to wit:

> x x x In fact, there is no law authorizing sole proprietorships to file a suit in court.
>
> **A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.** (**Boldfacing Supplied**).

Even in the case of *Fernandez v. Aniñon*,[44] the Supreme Court ruled that the sole proprietorship lacks juridical personality, therefore it is the owner/proprietor who is personally liable for all the debts and obligations of the business, to wit:

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[40] Exhibits: "N-1,""O-1," "P-1," records, pp. 396-398.
[41] Exhibits: "F," records, p. 386.
[42] Navarro v. Escobido, G.R. No. 153788, Nov. 27, 2009, 606 SCRA 2, citing Article 40 and 44 of the Civil Code.
[43] Excellent Quality Apparel, Inc. v. Win Multi Rich Builders, Inc., represented by its President, Wilson G. Chua, G.R. No. 175048, Feb. 10, 2009, 578 SCRA 272, citing Mangila v. Court of Appeals, 435 Phil. 870, 886; 387 SCRA 162, 177 (2002).
[44] G.R. No. 138967, April 24, 2007, 522 SCRA 1.

In an individual proprietorship, the owner has unlimited personal liability for all the debts and obligations of the business. As sole proprietor of Agencia Cebuana, from whose employment the petitioners were unlawfully removed, Marguerite Lhuillier is the party against whom the Court's final and executory Decision in G.R. No. 105892 is enforceable. Put differently, Marguerite Lhuillier is *personally liable* under the same Decision. Garnishment and levy over her property are proper in the dispensation of justice.

Be that as it may, we do not find, however, any contumacious act to have been committed by both the public and private respondents, either individually or collectively. As it were, there was never an attempt on their part to subvert or hold at bay the final implementation of the executory Decision of the Court in the main case. Quite the contrary, recognizing the executory character of this Court's Decision in question, respondent Labor Arbiter Nicasio Aniñon issued a writ of execution for its implementation. For their part, the private respondents did not actually or maliciously resist the writ thus issued. What they opposed was the garnishment of the bank accounts allegedly jointly owned by respondent Marguerite Lhuillier and two others, not the writ of execution itself. We hold, however, that such accounts, even if joint as claimed by the private respondents, are subject to garnishment. It is in the nature of joint accounts that anyone of the depositors has access to the entire funds therein. If, afterwards, there should be squabbling amongst the supposed joint depositors as to the share of each, they can sort it out amongst themselves.

We reiterate for the purpose of clarity that private respondent Marguerite Lhuillier is personally liable under this Court's Decision in dispute. Her co-respondent **Agencia Cebuana is a sole proprietorship without a juridical personality of its own.** But while the position taken by the public and private respondents that the judgment in question is not enforceable against respondent Marguerite Lhuillier, but solely against Agencia Cebuana is wrong, they are not liable for contempt." (**Boldfacing Supplied**).

Therefore, it is clear that Trex Eve Auto Sales and Services being a sole proprietorship cannot be made personally liable for lack of juridical personality. Nevertheless, from the forgoing, the owner/proprietor of such enterprise can be made personally liable for all debts and obligations.

The Court now proceeds to determine the owner of Trex Eve Auto Sales and Services.

Accused claims that he is a mere salaried employee of Trex Eve Auto Sales and Services.[45]

After a careful and judicious review of the records, the Court finds that ownership is vested with the accused. A review of the records reveals that in accused's "Affidavit of Legal Disclaimer,"[46] accused categorically admitted that he is the sole proprietor of Trex Eve Auto Sales and Services. With this sworn statement, accused provided basis to link him and the named consignee, Trex Eve Auto Sales and Services.

Pursuant to Section 26, Rule 130 of the Revised Rules of Court,[47] admission by a party can be given in evidence against him. Hence, by accused's own admission, proof beyond reasonable doubt has been established that accused is the consignee of the imported articles being the owner of the business enterprise, Trex Eve Auto Sales and Services.

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[45] Entry of Appearance with Urgent Motion to Reduce, Bail, par. 4. *records*, p. 152.
[46] *Records*, p. 90.
[47] *Sec. 26. Admission of a party*.- The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

Furthermore, ownership cannot be contested by accused on the ground that he never participated in the preparation of the Bill of Lading, therefore any misdeclarations in the said document cannot be attributed to him.

It must be stressed that Section 1203 of the TCCP provides that "all imported articles shall be the property of the person to whom it is consigned: xxx." From the foregoing, it is clear that the law created a presumption of ownership. That ownership is vested with the consignee. Whether or not accused participated in the preparation of the Bill of Lading is immaterial in the instant case to disprove ownership. For the law created a presumption of ownership in the named consignee even if the consignee did not participate in the preparation of the Bill of Lading. Therefore, it was imperative for accused to disprove ownership of the said articles by showing proof to the contrary. But, this he failed to do. Accused failed to present any document that he is not the owner/proprietor of Trex Eve Auto Sales and Services, neither did he present any evidence to disprove that Trex Eve Auto Sales and Services is not the consignee. Hence, in the absence of evidence showing the contrary, accused failed to overcome the burden of proof that he is not the owner of the said articles.

Thus, finding accused guilty of Violation of Section 3601, in relation to Section 2530, paragraphs f, l(3), (4), and (5) of the Tariff and Customs Code of the Philippines ("TCCP"), We now determine the proper imposition of penalties.

Prescribed penalty for Violation of Section 3601, in relation to Section 2530, paragraphs f, l(3), (4), and (5) of the Tariff and Customs Code of the Philippines ("TCCP").

Pursuant to Section 3601(4), of the TCCP, if the appraised value, including the duties and taxes, of the article illegally imported exceeds one hundred fifty thousand pesos, the person liable shall be punished with a fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years. In the instant case, the domestic value of the subject importation is *ONE MILLION SEVEN HUNDRED SEVENTY NINE THOUSAND SEVEN HUNDRED SEVENTY PESOS AND SIXTY ONE CENTAVOS (Php1,779,770.61)*.

Pursuant to the Indeterminate Sentence Law, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same.[48]

Accordingly, applying the foregoing provisions of law, since the domestic value of the subject importation is *One Million Seven Hundred Seventy Nine Thousand Seven Hundred Seventy Pesos and Sixty One Centavos (Php1,779,770.61)*, accused is sentenced to suffer the penalty of imprisonment of not less than eight (8) years and one (1) day, but not more than twelve (12) years and to pay a fine of eight thousand pesos (Php8,000).

WHEREFORE, premises considered, the Court finds the accused, **ROEL PAQUIT SAYSON**, **GUILTY BEYOND REASONABLE DOUBT** of the crime of Violation of Section 3601, in relation to Section 2530, paragraphs f, l(3), (4), and (5) of the

[48] Rene Francisco v. People of the Philippines, G.R. No. 177430, G.R. No. 178935, July 14, 2009, 592 SCRA 675, citing Section 1, Act No. 4103, as amended.

Tariff and Customs Code of the Philippines, and is hereby **SENTENCED** to suffer an indeterminate penalty of not less than eight years and one day, nor more than twelve years imprisonment, and **TO PAY** a fine in the amount of eight thousand pesos (Php8,000.00).

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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, 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.

ERNESTO D. ACOSTA
Presiding Justice