REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

CRISTINA DELA CRUZ GARCIA,
Accused.

CTA CRIM. CASE NO. O-863

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
FEB 23 2024
11:00 a.m.

x - x

RESOLUTION

For resolution is the **Demurrer to Evidence**, filed by accused Cristina Dela Cruz Garcia on 2 October 2023, praying for the Court to dismiss the case herein for insufficiency of evidence. The prosecution did not file its Comment per the Court's Records Verification Report, dated 16 October 2023.

Antecedents

On 2 February 2021, the prosecution filed before the Court an Information[1] indicting Cristina Dela Cruz Garcia for violation of ***Section 1401, in relation to Section 1400, of the Customs Modernization and Tariff Act ("CMTA")*** to wit:

> "That on or about November 9, 2019, at the port of Manila and within the jurisdiction of this Honorable Court, the above-named accused, owner and proprietress of Benhur International Trading, did then and there willfully, unlawfully and fraudulently import, bring into and receive 3x40' container vans bearing Container Van Nos. TGHU6828962, BMOU5016980 and EGSU9086953 STC: containing aluminum square tubes with an estimated dutiable value of Eight Million Five Hundred Twenty One Thousand Seven Hundred Eighty Three Pesos and Twenty Centavos (Php8,521,783.20), and duties and taxes in the amount of One Million Nine Hundred Eighty Four Thousand Two Hundred Nine Pesos

[1] Docket, p. 5 to 6.

> (Php1,984,209.00), covered by Bill of Lading No. EGLV149905083431, by declaring in the manifest way bill that the imported goods are bags of square tubes, to the damage and prejudice of the government, in the amount of One Million Nine Hundred Eighty Four Thousand Two Hundred Nine Pesos (Php1,984,209.00).
>
> CONTRARY TO LAW."

On 11 February 2021, finding existence of probable cause, the Court resolved to issue a warrant of arrest against the accused.[2]

Thereafter, in the Resolution dated 3 March 2021,[3] in view of the detention of the accused at the Criminal Investigation and Detention Group ("CIDG") of the Philippine National Police ("PNP") at Camp BGen. Rafael T. Crame, Quezon City,[4] and the Court's approval of the bail bond amounting to ₱120,000.00 posted by the accused on 3 March 2021,[5] the Court lifted and set aside the Warrant of Arrest and ordered the release of the accused.[6]

On 10 November 2021, the accused filed a Motion for Leave to File Motion for Reinvestigation with the attached Motion for Reinvestigation.[7] The Motion for Leave was granted in a Resolution, dated 6 December 2021.[8] Meanwhile, the prosecution failed to file its comment to the Motion for Reinvestigation.[9] In the Resolution dated 3 August 2022,[10] the Court denied the accused's Motion for Reinvestigation.

The arraignment and pre-trial conference was initially set on 24 March 2021,[11] but was reset[12] and held on 15 March 2023,[13] where the accused pleaded **NOT GUILTY** to the criminal charge against her.[14] The Pre-Trial Brief (For the Plaintiff) and the Accused's Pre-Trial Brief were separately filed on 15 March 2023.[15]

The Preliminary Conference was thereafter held on 16 March 2023.[16]

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[2] Resolution dated 11 February 2021, Docket, pp.40 to 43.
[3] Docket, pp. 56 to 57.
[4] Certificate of Detention dated 03 March 2021, Docket, p. 49.
[5] Official Receipt No. 8982133 dated 03 March 2021, Docket, p. 64.
[6] Release Order dated 03 March 2021, Docket, p. 71.
[7] Docket, pp. 76 to 82.
[8] Docket, pp. 89 to 90.
[9] Court's Records Verification Report dated 15 March 2022, Docket, p. 91.
[10] Docket, pp. 103 to 107.
[11] Resolution dated 03 March 2021, Docket, pp. 56 to 57.
[12] Resolution dated 26 January 2023, Docket, p. 109.
[13] Minutes of Arraignment and Pre-Trial Conference held on, and Order dated, 15 March 2023, Docket, pp. 110 and 115 to 116, respectively.
[14] Certificate of Arraignment dated 15 March 2023, Docket, p. 113.
[15] Docket, pp. 117 to 125.
[16] Minutes of Preliminary Conference dated 16 March 2023, Docket, pp. 126 to 130.

On 13 July 2023, the Court issued the Pre-Trial Order and thereby deemed the pre-trial terminated.

Trial ensued with the prosecution presenting its testimonial and documentary evidence through its lone witness Ms. Monique R. Yusi[17] and offering Exhibits "P-2", "P-3-1", "P-3-2", and "P-3-3", which were admitted in open court, there being no objection from the accused.[18]

Upon motion of the accused, which was granted in open court, the instant Demurrer to Evidence was filed on 2 October 2023 without the prosecution posting its comment despite notice. Hence, this Resolution.

Evidence presented by the prosecution

The prosecution presented its lone witness Ms. Yusi, who is the Customs Operations Officer I ("COO I"), assigned as an evaluator with the Accounts Management Office ("AMO") of the Bureau of Customs ("BOC") in the Port of Manila.

She explained that the AMO accredits importers and brokers with the BOC and manages and updates the information of said accredited importers and customs brokers. Accordingly, the AMO also has designated personnel who conduct on-site inspections and seek the help of the enforcement personnel of the BOC in the conduct of examinations.

As the COO I with the AMO, she evaluates the documents of those applying to be accredited as importers and brokers of the BOC and recommends the applications' approval or rejection based on their compliance with the requirements. She is also the designated officer of AMO who certifies E2M generated documents, specifically Client Profile Registrations ("CPR"), upon request.

Pursuant to her duties, she testified on the accreditation/registration of Benhur International Trading ("Benhur") with the BOC and that the accused is its principal officer based on the CPR Systems ("CPRS"), as demonstrated in the print outs from the CPRS of the BOC e2m system, as follows:

Exhibit No.	Description
P-3-1	E2M Client Profile Information
P-3-2	Signature of Monique R. Yusi
P-3-3	E2M List of Responsible Officer

17 Judicial Affidavit of Monique R. Yusi dated 09 June 2023.
18 Minutes of hearing held on, and Order dated, 12 September 2023.

Allegations of the Accused

The accused alleges that the prosecution failed to adduce sufficient evidence of guilt such as would shift the burden of proof. She is being charged with alleged violation of ***Section 1401, in relation to Section 1400, of the CMTA***, particularly the alleged misdeclaration of bags of square tubes when the goods which were actually shipped were aluminum square tubes.

The accused asserts that the testimony offered by the prosecution does not deserve consideration as a basis to determine her guilt. The testimony was merely confined as to who the proprietor of Benhur was but never mentioned any fact relating to the alleged fraudulent importation that led to the filing of the Information.

The accused asserts that no other evidence was presented that the accused committed any fraud by misdeclaration or violated any of the provisions of ***CMTA***. During the hearing, the witness admitted that she neither knew nor met the accused. Thus, she has no personal knowledge regarding the alleged importation that led to the filing of the instant case.

The Ruling of the Court

Pursuant to ***Section 23, Rule 119 of the Rules of Court***, a demurrer to evidence may be filed in criminal cases, as follows:

> "Section 23. *Demurrer to evidence*. - **After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence** (1) on its own initiative after giving the prosecution the opportunity to be heard or **(2) upon demurrer to evidence filed by the accused with or without leave of court**." (*Emphases ours*)

The rule allows the accused to move for the dismissal of the case against them, after the prosecution has presented its evidence, on the ground of insufficiency of evidence.

In ***Ricketts vs. Sandiganbayan-Fourth Division***,[19] the Supreme Court defined a demurrer to evidence as "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue." The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain

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[19] G.R. No. 236897 (Notice), 18 November 2021, citing *Go-Yu vs. Yu*, G.R. No. 230443, 3 April 2019.

whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.

Simply stated, a demurrer to evidence authorizes a judgment on the merits of the case without the accused having to submit evidence on their part, as they would ordinarily have to do, if the prosecution's evidence shows that it is not entitled to the relief sought.[20]

Here, the accused is indicted for violation of ***Section 1401, in relation to Section 1400, of the CMTA***, which provides as follows:

> "SECTION 1401. *Unlawful Importation or Exportation.* — Any person who shall **fraudulently import** or export or bring into or outside of the Philippines **any goods**, or assist in so doing, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such goods after importation, or shall commit technical smuggling as defined in this Act shall be penalized by:
>
> (a) Imprisonment of not less than thirty (30) days and one (1) day but not more than six (6) months, or a fine of not less than twenty-five thousand pesos (P25,000.00) but not more than seventy-five thousand pesos (P75,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, of the goods unlawfully imported does not exceed two hundred fifty thousand pesos (P250,000.00);
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> (b) Imprisonment of not less than six (6) months and one (1) day but not more than one (1) year, or a fine of not less than seventy-five thousand pesos (P75,000.00) but not more than one hundred fifty thousand pesos (P150,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds two hundred fifty thousand pesos (P250,000.00) but not more than five hundred thousand pesos (P500,000.00);
>
> (c) Imprisonment of not less than one (1) year and one (1) day but not more than three (3) years, or a fine of not less than one hundred fifty thousand pesos (P150,000.00) but not more than three hundred thousand pesos (P300,000.00) or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds five hundred thousand pesos (P500,000.00) but not more than one million pesos (P1,000,000.00);
>
> (d) Imprisonment of not less than three (3) years and one (1) day but not more than six (6) years, or a fine of not less than three hundred thousand pesos (P300,000.00) but not more than one million five hundred thousand pesos (P1,500,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds one million pesos (P1,000,000.00) but not more than five million pesos (P5,000,000.00);

[20] *Zambales vs. Zambales*, G.R. No. 216878, 03 April 2019, citing *Oropesa vs. Oropesa*, G.R. No. 184528, 25 April 2012.

(e) Imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years, or a fine of not less than one million five hundred thousand pesos (P1,500,000.00) but not more than fifteen million pesos (P15,000,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds five million pesos (P5,000,000.00) but not more than fifty million pesos (P50,000,000.00);

(f) Imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years, or a fine of not less than fifteen million pesos (P15,000,000.00) but not more than fifty million pesos (P50,000,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds fifty million pesos (P50,000,000.00) but not more than two hundred million pesos (P200,000,000.00);

(g) If the appraised value of the goods unlawfully imported to be determined in the manner prescribed under this Act, including duties and taxes, exceeds two hundred million pesos (P200,000,000.00) or if the aggregate amount of the appraised value of the goods which are the subject of unlawful importation committed in more than one instance, including duties and taxes, exceeds two hundred million pesos (P200,000,000.00), the same shall be deemed as a heinous crime and shall be punishable with a penalty of reclusion perpetua and a fine of not less than fifty million pesos (P50,000,000.00);and

(h) The penalty of prision mayor shall be imposed when the crime of serious physical injuries shall have been committed, and the penalty of reclusion perpetua shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

xxx xxx xxx"

(Emphases and underscoring, Ours.)

"SECTION 1400. *Misdeclaration, Misclassification, Undervaluation in Goods Declaration.* — **Misdeclaration** as to quantity, quality, description, weight, or measurement of the goods, or **misclassification** through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.

There is **undervaluation** when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value. When the undervaluation is established without the need to go through the formal dispute settlement process provided for in this Act, a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty is less than ten percent (10%), or the declared value is rejected as a result of an official ruling or decision under the customs dispute settlement process involving difficult or highly technical question relating to the application of customs valuation rules.

A discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a *prima facie* evidence of fraud.

When the misdeclaration, misclassification or undervaluation is <u>intentional or fraudulent</u>, such as when a false or altered document is submitted or when false statements or information are knowingly made, a surcharge shall be imposed equivalent to five hundred percent (500%) of the duty and tax due and that the goods shall be subject to seizure regardless of the amount of the discrepancy **without prejudice to the application of fines or penalties provided under Section 1401 of this Act against the importer** and other person or persons who willfully participated in the fraudulent act."
(Emphases and underscoring, Ours.)

Section 1400 of the CMTA provides for three (3) acts which may be penalized:

1. Misdeclaration as to quantity, quality, description, weight, or measurement of the goods;

2. Misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared;

3. Undervaluation when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value.

However, the last paragraph of ***Section 1400*** provides that when the misdeclaration, misclassification, or undervaluation is intentional or fraudulent, the same may also be imposed with the fines or penalties provided under ***Section 1401*** against the importer and other person or persons who willfully participated in the fraudulent act.

Section 1401 of the CMTA, on the other hand, provides for the punishment of imprisonment or fines, or both, which may be imposed for unlawful importation of goods, the duration and amount of which is dependent on the appraised value, including duties and taxes, of the goods imported.

From the foregoing, the commission of misdeclaration, misclassification or undervaluation under ***Section 1400 of the CMTA*** is not criminal *per se*. The operative word which makes the act criminal is the presence of fraudulent intent to commit the same, thereby falling within the ambit of ***Section 1401*** thereof.

Thus, in order for a crime to be committed in violation of ***Section 1401, in relation to Section 1400, of the CMTA***, the following elements must concur:

1. There must be misdeclaration, misclassification or undervaluation of the goods imported as provided under ***Section 1400 of the CMTA***; and

2. That the misdeclaration, misclassification or undervaluation is intentional and fraudulent.

The prosecution failed to adduce sufficient evidence to convict accused Garcia – the prosecution failed to prove any misdeclaration, misclassification or undervaluation of the goods imported.

The information, to recall, alleges that the accused committed fraudulent misdeclaration as to the description of the goods imported, wherein the goods actually imported are aluminum square tubes, while the declaration in the waybill is bags of square tubes, *viz*.:

> "That on or about November 9, 2019, at the port of Manila and within the jurisdiction of this Honorable Court, the above-named accused, owner and proprietress of Benhur International Trading, did then and there willfully, unlawfully and **fraudulently import**, bring into and receive 3x40' **container vans** bearing Container Van Nos. TGHU6828962, BMOU5016980 and EGSU9086953 STC: **containing aluminum square tubes** with an estimated dutiable value of Eight Million Five Hundred Twenty One Thousand Seven Hundred Eighty Three Pesos and Twenty Centavos (Php8,521,783.20), and duties and taxes in the amount of One Million Nine Hundred Eighty Four Thousand Two Hundred Nine Pesos (Php1,984,209.00), covered by Bill of Lading No. EGLV149905083431, **by declaring in the manifest way bill that the imported goods are bags of square tubes**, to the damage and prejudice of the government, in the

amount of One Million Nine Hundred Eighty Four Thousand Two Hundred Nine Pesos (Php1,984,209.00)."
(Emphases, Ours.)

In proving the commission of fraudulent misdeclaration in violation of ***Section 1401, in relation to Section 1400, of the CMTA***, the prosecution presented in evidence the testimony of Ms. Yusi, a COO I with the AMO of the BOC Port of Manila, and the following documents:

Exhibit No.	Description
P-3-1	E2M Client Profile Information
P-3-2	Signature of Monique R. Yusi
P-3-3	E2M List of Responsible Officer

The foregoing evidence establishes that the accused is the principal officer of Benhur International Trading ("Benhur"), which is an accredited/registered importer with the BOC.

Notably, aside from establishing the identity of the accused, there is no evidence presented to show that an act of misdeclaration was committed or that the accused is the one who committed the same. Again, all that the evidence of the prosecution points to is that accused is the principal officer of Benhur and that Benhur is an accredited/registered importer with the BOC, as correctly pointed out by accused.

Not only was there a complete lack of evidence to prove misdeclaration on the part of accused, neither was there any evidence to prove that any such misdeclaration was fraudulent. Clearly, then, the elements of the crime charged, as outlined above, were never established.

In every criminal conviction, the prosecution is required to prove the following beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.[21]

Here, all that the prosecution established is the identity of the accused, without establishing either that fraudulent misdeclaration was indeed committed or that accused is in any way connected to said offense.

The *onus probandi* in establishing the guilt of an accused for a criminal offense lies with the prosecution. The burden must be discharged by it on the strength of its own evidence and not on the weakness of the evidence for the defense or lack of it. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the

[21] *Franco vs. People*, G.R. No. 191185, 01 February 2016.

conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence.[22] Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.[23]

Indeed, the prosecution is fatally remiss in discharging its burden to prove, first and foremost, the fact of commission of the crime charged herein, *i.e.* fraudulent misdeclaration. There being no showing that a crime was committed in the first place, the present criminal case against the accused must be dismissed.

WHEREFORE, premises considered, the ***Demurrer to Evidence***, filed by the accused on 02 October 2023, is hereby **GRANTED.**

Accordingly, CTA Criminal Case No. O-863 is **DISMISSED** on the ground of insufficiency of evidence.

The cash bond of Cristina Dela Cruz Garcia is **CANCELLED** and ordered **RELEASED** to her upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[22] *People vs. Villanueva*, G.R. No. 131773, 13 February 2002.
[23] *Macayan, Jr. vs. People*, G.R. No. 175842, 18 March 2015.