REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

SHINE RAPADAS MONTES and
ARNEL S. ASUNCION,
Accused.

CTA Crim. Case No. O-633

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
JAN 2 3 2018
10:40 a.m.

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RESOLUTION

For resolution are the following:

1. Prosecution's **Comment with Manifestation**,[1] filed on December 11, 2017, with accused Arnel S. Asuncion's **Opposition (to the Comment with Manifestation dated December 11, 2017)**[2] which was filed on December 19, 2017; and

2. Accused Arnel S. Asuncion's **Motion for Leave to File Demurrer to Evidence**[3] with attached **Demurrer to Evidence**[4] dated December 4, 2017, filed on December 4, 2017, with **prosecution's Comment/Opposition (To the Demurrer to Evidence dated 4 December 2017)**[5] filed on December11, 2017.

Prosecution's Comment with Manifestation

On December 11, 2017, prosecution filed its Comment with Manifestation seeking for the partial reconsideration of this Court's resolution which denied several of plaintiff's

[1] Docket, Volume II, CTA Crim. Case No. O-633, pp. 546-548.
[2] *Id.* at 564-568.
[3] *Id.* at 513-514.
[4] *Id.* at 515-544.
[5] *Id.* at 558-562.

exhibits. The pertinent portion of the assailed November 28, 2017 Resolution[6] states:

> On the other hand, the Court DENIES the admission of the following exhibits:
>
> xxx xxx
>
> 2. Exhibits "P-4 to P-4-1", "P-6", and "P-17 to P-17-4", for failure to submit the duly marked documents. (*Emphasis removed*)

In its comment with manifestation, prosecution proffers the following explanations to support its prayer that the denied exhibits be admitted:

> ... Upon review of the said documentary evidence, these documents were marked in the Preliminary Conference as indicated in the Pre-trial Order promulgated by this Honorable Court last 2 August 2017. Furthermore, Exhibits "P-4 to P-4-1" and "P-6" were presented during trial and identified by MS. NONIE V. GONZALES in her Judicial Affidavit dated 24 August 2017. For Exhibits "P-4 to P-4-1", the same were identified in the answer of Witness Gonzales to question number nineteen (19) while with regard to Exhibit "P-6", the same was identified in her answer to question number twenty (20). As regards Exhibits "P-17 to P-17-4", the same were also presented during trial and identified by Atty. GEMINI P. SALVACION in his Judicial Affidavit dated 30 August 2017, more particularly in his answers to questions number nineteen (19) and twenty (20). However, the subject documents after identification in open court and with no objection for its admissibility from the Counsel for the Accused were not handed to the Clerk of Court present during these trial dates for marking. It is my honest belief that because the same were already previously marked in the preliminary conference, there was no need to present it again for marking to the Clerk of Court.

The comment with manifestation is denied.

A perusal of the Pre-Trial Order[7] dated August 2, 2017 will show that the abovementioned exhibits were presented for marking. However, it was admitted by the prosecution in the

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[6] Docket, Vol. II, pp. 510-511.
[7] *Id.*, Vol. I, pp. 259-265.

said pleading that said exhibits "were not handed to the Clerk of Court present during these trial dates for marking" and they believe that since said exhibits were previously marked in the preliminary conference there is no need to present the same for marking to the Clerk of Court.

It is absurd for the prosecution to claim that said exhibits were marked and yet there was an admission that the same were not handed to the Clerk of Court for marking. A closer look at the attached exhibits in the said comment with manifestation prove that the same were unmarked because of the absence of any notation from the Clerk of Court.

The absence of markings in the said exhibits was the result of the negligence of the prosecution to hand over the same to the Clerk of Court. The prosecution should be aware that it is not the responsibility of this Court to remind them that their exhibits are not properly in order. They should be careful and observe prudently the norms in presenting their exhibits. Thus, the manifestation must fall.

<u>Motion for Leave to File Demurrer to Evidence and Demurrer to Evidence on December 4, 2017</u>

On November 28, 2017, the Court resolved prosecution's *Formal Offer of Evidence*.[8] On December 4, 2017, Accused Arnel S. Asuncion filed the instant motion for leave to file Demurrer to Evidence and the Demurrer to Evidence dated December 4, 2017. On the other hand, the prosecution filed its comment/opposition on December 11, 2017.

The motion for leave to file Demurrer to Evidence is granted.

Now, we resolve the Demurrer to Evidence.

Accused Arnel S. Asuncion filed his Demurrer to Evidence praying that the instant case be dismissed for insufficiency of evidence and be acquitted for the crime being charged against him.

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[8] Docket, Vol. II, pp. 412-433.

In CTA Crim. Case No. O-633, accused Shine Rapadas Montes and Arnel S. Asuncion are accused of violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP), as amended, allegedly committed as follows:

> That on or about January 2, 2014, at the Port of Manila, and within the jurisdiction of this Honorable Court, the said accused Shine Rapadas Montes and Arnel S. Asuncion, in their capacity as proprietress and customs broker of Thunder Birds Trading, respectively, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully, and fraudulently make an entry of imported articles by means of a false and fraudulent Import Entry & Internal Revenue Declaration No. C-1502-14 which misdeclared the shipment as 66 packages of steel sheets, 21 packages of clamp, 10 packages of flexible tubing and 25 packages of hinges supported by a false and spurious packing list and commercial invoice, when in truth and in fact, the shipment consisted of 122 packages of cold rolled steel sheets valued at P10,926,150.67 and subject to unpaid Customs duties and taxes in the principal amount of P1,235,416.00 exclusive of charges and penalties, with evident intent to defraud the government of legitimate taxes accruing to it from the imported articles, to its damage and prejudice.
>
> CONTRARY TO LAW.

On April 6, 2017, the Court ordered the issuance of warrants of arrest for accused Shine Rapadas Montes and Arnel S. Asuncion.[9]

Accused Asuncion posted his cash bail bond with this Court under Official Receipt No. 4113995T[10] while accused Montes did not and currently, is still at-large.[11] The Court set accused Asuncion's arraignment on June 5, 2017.[12] Accused Asuncion filed a motion to defer arraignment[13] on May 29, 2017. However, said motion was denied, hence, the

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[9] Docket, Vol. I, Resolution dated April 6, 2017, pp. 65-67.
[10] *Id.*, Vol. I, p. 71.
[11] *Id.*, Vol. I, Alias Warrant of Arrest, p. 116.
[12] *Id.*, Vo. I, Resolution dated May 5, 2017. p. 69.
[13] *Id.*, Vol. I, Motion to Defer Arraignment, pp. 86-96.

arraignment proceeded and accused Asuncion pleaded "NOT GUILTY".[14]

The case proceeded to preliminary conference and pre-trial. The Pre-Trial Order as regards accused Asuncion was issued on August 2, 2017.[15]

During trial, the prosecution presented the following witnesses: (1) Alexander P. Ong; (2) Reymundo Baes; (3) Jennifer De Perio; (4) Agnes Valencia; (5) Antonio Cornelio C. Solano; (6) Nomie Gonzales; and (7) Atty. Gemini Salvacion.

On November 28, 2017, the Court admitted the documentary exhibits formally offered by the prosecution, with the exception of several exhibits.

On December 19, 2017, accused Asuncion filed his Motion for Leave to File Demurrer to Evidence with attached Demurrer to Evidence. Upon notice, prosecution filed its Comment/Opposition (To the Demurrer to Evidence dated 4 December 2017 on December 11, 2017.

In the Demurrer to Evidence, accused Asuncion cites the following reasons: (1) The prosecution failed to establish conspiracy between Shine Rapadas Montes and Arnel S. Asuncion; (2) The prosecution failed to establish that Accused Asuncion willfully, unlawfully, and fraudulently misdeclared the shipment as 66 packages of steel sheets, 21 packages of clamp, 10 packages of flexible tubing and 225 packages of hinges supported by a false and spurious packing list and commercial invoice; (3) There were no findings that the commercial invoice and packing list were false or fraudulent; (4) Accused made a faithful declaration in the Import Entry with the contents found in the packing list and commercial invoice; (5) The prosecution failed to establish that the accused knowingly declared the wrong entries; (6) Accused does not know the actual goods packed in the container vans; (7) The original Import Entry No. 1502-14 was not presented by the prosecution; (8) The Single Administrative Document (SAD) was not admitted into evidence; (9) Accused only certified that the declarations he made were to the best of his knowledge; (10) The prosecution failed to establish the actual weight of the shipment; 11) The prosecution failed to establish the correct

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[14] *Id.*, Vol. I, Order dated June 5, 2017, pp. 99-100.
[15] Docket, Vol. I, pp. 259-265.es

computation of the correct duties and taxes of the shipment; and (12) The prosecution failed to establish the intent of the accused to defraud the government of legitimate taxes.

In its Comment, the prosecution argues that: (1) Accused Asuncion is the one who filed the import entry by lodging in the electronic to mobile computer system of the Bureau of Customs and making the necessary declarations therein making him criminally liable under Section 3602 of TCCP; (2) Accused Asuncion's preparation and signing of the Import Entry, which he certified under oath that the declaration made therein such as the description, weight, value of the shipment and all other information are true and correct, indicates that he has actual knowledge of the contents of the shipments; (3) after physical examination of the subject shipment which turned out to be different from what was declared in the Import Entry is evidence of misdeclaration, misdescription, and underevaluation of articles under Section 2503 of TCCP and since accused having handled and processed the importation and having prepared the import entry upon arrival of the shipment, he cannot deny involvement in said criminal act, hence, must be liable under Section 3602 of TCCP together with importer Shine Rapadas Montes; (4) the commercial invoice and packing list used for the subject shipment were false and fraudulent as cited in the Decision of the Collector of the Port of Manila dated 10 June 2017; and (5) Accused Asuncion is liable for his indispensable participation in the processing of the Import Entry Declaration by signing in the Import Entry and SAD because without said signature the eventual release would not have materialized.

The documentary and object evidence presented by the prosecution are as follows:[16]

Exhibit	Description
P-1	Referral for Preliminary Investigation dated April 14, 2014
P-2 to P-2-9	Complaint-affidavit of dated April 14, 2014 of Alexander P. Ong, Reymundo B. Baes and Armando Sacramento, all of the CIIS, Bureau of Customs

[16] Docket, Formal Offer of Evidence, pp. 412-433.

P-3 to P-3-1	Copy of Import Entry and Internal Revenue Declaration Form with Import Entry No. C-1502-14.
P-4 to P-4-1	Computer print-out of E2M Single Administrative Document with Import Entry No. C-1502-14
P-6	Computer Print-out of e2m manifest Waybill under B/L Reference No. MCC421981
P-8	Commercial Invoice No. WSL11641
P-9	Packing List
P-10	Alert Order No. A/IG/20140109-103 dated 09 January 2014
P-11	Examination Report
P-12 to P-12-1	Memorandum dated January 28, 2014 of Officers-on-Case Alexander P. Ong, Reymundo B. Baes, and Armando Sacramento which is an Officers-on-Case Report regarding the shipment of 12x20' Container Vans said to contain (STC) steel sheets; clamps; flexible tubings; and hinges but found to contain Steel Sheets covered by Bill of Lading No. MCC421981 filed under Entry No. C-1504-14, consigned to THUNDER BIRDS TRADING;
P-13	Warrant of Seizure and Detention (WSD) with Seizure Identification No. 2014-041 dated February 11, 2014 bearing the caption "Republic of the Philippines versus shipment of 12x12' container van numbers MSKU4319481; MRKU9262896; PONU0557054; MRKU7448520; MRKU7079762; MSKU7722490; MRKU6715052; MRKU8373468; MSKU5464904; WFHU1226922; MRKU7530731; and MSKU2244362 STC: 122 packages Steel Sheets and others which arrived on January 02, 2014 from China onboard S/S MCC Maura V1334 with Registry No.MSK0001 under B/L No. MCC421981 covered by Entry No. C-1502-14" with Thunder Birds Trading as Claimant
P-15	2nd Idorsement dated March 26, 2014 to then Deputy Commissioner Edita Z. Tan from Mr. Arnulfo B. Gambayan, then Acting Director, Import Assessment Service (IAS), AOCG
P-16	Antonio Cornelio C. Solano's Computation of the duties and taxes and other costs of the shipment with the following description:

	Consignee: Thunder Birds Trading Entry No.: C-1502-14 S.I. No. 2014-041 Item as found: Steel Sheet, Cold Rolled (as per examiner report) Weight as found: 318 kg. (as per examiner report) Value as found US$0.73/kg. based on C-504, Showing the dutiable value (DV) as TEN MILLION NINE HUNDRED TWENTY SIX THOUSAND ONE HUNDRED FIFTY PESOS & 67/100 PESOS (Php10,926,150.67) and taxes in the amount of ONE MILLION TWO HUNDRED THIRTY FIVE THOUSAND FOUR HUNDRED SIXTEEN PESOS (1,235,416.00)
P-16-1 to P-16-2	BOC Import Entry & Internal Revenue Declaration with Number C-504-14
P-16-3	Value Reference as Per Memorandum of the Commissioner
P-16-4	Single Administrative Document with Import Entry No. C-750-2014P12
P-16-5	VRIS-OCOM Reference Value No. 04-2014
P-17 to P-17-4	Decision dated June 10, 2015 signed approved by the then District Collector of the Port of Manila, BGen. Mario A. Mendoza AFP (Ret) MNSA
P-18	Judicial Affidavit of Alexander Ong dated August 04, 2017
P-18-1	Name and Signature of Alexander Ong
P-19	Judicial Affidavit of Reymundo Baes dated August 04, 2017
P-19-1	Name and Signature of Reymundo Baes
P-20	CPRS/Client Profile Information of Shine Rapadas Montes
P-21	CPRS/Client Profile Informations of Arnel S. Asuncion
P-22	Special Power of Attorney (SPA) dated April 14, 2014 signed and executed by the consignee of Thunder Birds Trading, Ms. Shine Montes, in favor of Normite Medina
P23	Arrival Notice dated January 2, 2014 with Bill of Lading Number MCC421981

However, Exhibits P-3 to P-3-1, P-8, P-9, P-10, P-13, and P-23 were not admitted for failure of the prosecution to present the originals for comparison while Exhibits P-4 to P-4-

1, P-6, and P-17 to P-17-4 were also not admitted for failure to submit the duly marked documents.[17]

Upon evaluation of the foregoing, the Court GRANTS the Demurrer to Evidence upon finding that the charges filed against the accused Arnel S. Asuncion were not adequately proven.

As shown in the Information, the following are the allegations made by the Plaintiff, to wit:

1. That Accused Asuncion as the customs broker of Thunder Birds Trading, conspired, confederated, mutually helped each other with Accused Shine Rapadas Montes, as the proprietress of said business entity, made a fraudulent entry in Import Entry & Internal Revenue Declaration (IEIRD) No. C-1502-14;

2. The fraudulent entry was made by misdeclaring the shipment as 66 packages of steel sheets, 21 packages of clamp, 10 packages of flexible tubing and 25 packages of hinges through the use of a false and spurious packing list and commercial invoice;

3. The actual shipment was consisted of 122 packages of cold rolled steel sheets;

4. The value of the 122 packages of cold rolled steel sheets amounts to P10,926,150.67 and subject to Customs duties and taxes in the principal amount of P1,235,416.00 exclusive of charges and penalties; and

5. The intent of both the accused is to defraud the government of legitimate taxes accruing from the said imported articles.

In criminal case, the quantum of evidence required in order for conviction is proof beyond reasonable doubt which does not mean such degree of proof as, excluding possibility of error produces absolute certainty. Moral certainty only is

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[17] *Supra.*, Note 6.

required, or that degree of proof which produces conviction in an unprejudiced mind.[18]

Such moral certainty refers to a degree where the "conscience must be satisfied that on the accused could be laid the responsibility for the offense charged: that not only did he perpetrate the act, but that it amounted to a crime. The strongest suspicion must not be permitted to sway judgment, if a reasonable doubt exists, that doubt must be resolved in favor of the accused and he must be acquitted."[19]

In the instant case, the prosecution failed to prove that Accused Asuncion indeed conspired with Accused Montes. There was no evidence that would show Accused Montes propose something and accepted by Accused Asuncion nor any evidence that may indicate singleness of action that will manifest conspiracy. More so, they even failed to establish his actual participation in the alleged offense.

In the Judicial Affidavit of Alexander Ong,[20] one of the complainant from the Bureau of Customs (BOC), asserted the fact that Accused Asuncion was merely the broker without elaborating how the latter conspired with Accused Montes to perpetuate such offense, to wit:

> Q27: What was the declaration indicated which is the content of Container Van Nos. MSKU4319481; MRKU9262896; PONU0557054; MRKU7448520; MRKU7079762; MSKU7722490; MRKU6715052; MRKU8373468; MSKU5464904; WFHU1226922; MRKU7530731; and, MSKU2244362 of Thunder Birds Trading in the said documents?
>
> A: In the import entry, the declaration was 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges; in computer print-out of E2M Manifest Waybill under Bill of Lading Reference No. MCC421981, it was indicated as Steel sheets; in Commercial Invoice No. WSL11641, it was indicated as 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges; and, in Packing List No. WSL11641, it was indicated as 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges.

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[18] Section 2, Rule 133, Rules of Court.
[19] *People of the Philippines v. Domingo Casinillo*, G.R. No. 97441, September 11, 1992.
[20] Docket, Vol. I, Exhibit P-18, pp. 266-280.

Q28: Who is the customs broker who processed the import entry of the instant shipment?

A: The broker is Arnel S. Asuncion

Q29: How do you know?

A: The name "Arnel S. Asuncion" is indicated in Import Entry with No. C-1502-14, and he signed above the printed name "Arnel S. Asuncion"

Q30: What is the relevance of the appearance of the name and signature of Accused Customs Broker Arnel S. Asuncion in Import Entry No. C-1502-14?

A: It shows that he certified to the truthfulness and correctness of the contents and supporting documents of the Import Entry No. C-1502-14 and he prepared, processed, filed and signed the same knowing it to be imported contrary to law.

On the other hand, during the cross examination of Mr. Ong, he testified the following:[21]

ATTY. JONGKO: Would you know of the broker is the employee of the consignee or employee of Thunderbirds Trading or Shine Rapadas Montes, would you know?

WITNESS: Since Shine Rapadas Montes is the importer, she got the services of Mr. Arnel S. Asuncion who is the broker, for Mr. Arnel S. Asuncion to facilitate the release of her cargos.

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ATTY. JONGKO: So isn't it true that the broker's participation is to first of all fill-up, sign and lodge the import entry to the Bureau of Customs (BOC) as well as perform other incidental functions thereto in representation of the consignee or the importer?

WITNESS: Yes.

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ATTY. JONGKO: So would you agree with me that the broker declare the exact type of goods, the quantity and the total amount in the import entry as appearing in the invoice?

WITNESS: Yes, Sir.

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[21] Transcript of Stenographic Notes, Hearing dated August 9, 2017, pp. 8-27.

ATTY. JONGKO: Ok. And this shipper is the one who pack the goods before it was exported to the Philippines, correct?

WITNESS: Yes, sir.

ATTY. JONGKO: Do you have any evidence to establish that Mr. Asuncion caused or assisted in the packing of the goods prior to the exportation to the Philippines?

WITNESS: No.

ATTY. JONGKO: Do you have any evidence or knowledge to show that Mr. Asuncion is an employee or agent of the said shipper?

WITNESS: No.

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ATTY. JONGKO: That based on your knowledge, Mr. Asuncion did not have any participation in the packing of the goods in the containers mentioned in the instant case prior or at the country of origin before it is transported to the Philippines?

WITNESS: Yes.

The testimony of Mr. Ong proves that the participation of Accused Asuncion in the said transaction which, on his own account, is merely to facilitate the release of the cargos.

As to the veracity of the allegation of Mr. Ong that Accused Asuncion certified the truthfulness and correctness of the contents and supporting documents of the Import Entry No. C-1502-14, such assertion cannot be determined considering that Exhibits P-3 to P-3-1, P-6, P-8, and P-9 which are the Copies of IEIRD Form with Import Entry No. C-1502-14, Computer Print-out of E2M Manifest Waybill under B/L Reference No. MCC421981, Commercial Invoice No. WSL11641, and Packing List, respectively, were not admitted as evidence. These are the documents being testified and identified by Mr. Ong. Thus, there is no basis to prove that Accused Asuncion made such act.

The tenor of the testimony of Mr. Reymundo Baes, also one of the complainant, is similar to that of Mr. Ong in his Judicial Affidavit[22] that the participation of Accused Asuncion in the said transaction is merely as a broker, to wit:

[22] Docket, Vol. I, Exhibit P-19, pp. 302-316.

Q27: What was the declaration indicated which is the content of Container Van Nos. MSKU4319481; MRKU9262896; PONU0557054; MRKU7448520; MRKU7079762; MSKU7722490; MRKU6715052; MRKU8373468; MSKU5464904; WFHU1226922; MRKU7530731; and, MSKU2244362 of Thunder Birds Trading in the said documents?

A: In the import entry, the declaration was 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges; in computer print-out of E2M Manifest Waybill under Bill of Lading Reference No. MCC421981, it was indicated as Steel sheets; in Commercial Invoice No. WSL11641, it was indicated as 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges; and, in Packing List No. WSL11641, it was indicated as 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges.

Q28: Who is the customs broker who processed the import entry of the instant shipment?

A: The broker is Arnel S. Asuncion

Q29: How do you know?

A: The name "Arnel S. Asuncion" is indicated in Import Entry with No. C-1502-14, and he signed above the printed name "Arnel S. Asuncion"

Q30: What is the relevance of the appearance of the name and signature of Accused Customs Broker Arnel S. Asuncion in Import Entry No. C-1502-14?

A: It shows that he certified to the truthfulness and correctness of the contents and supporting documents of the Import Entry No. C-1502-14 and he prepared, processed, filed and signed the same knowing it to be imported contrary to law.

Furthermore, as gleaned from the transcript of stenographic notes (TSN), the following cross-examination by the counsel of the accused further corroborates: [23]

ATTY. JONGKO: Do you have any evidence to establish any act that Mr. Asuncion participated in any other manner other than being the broker of Thunderbirds Trading? Do you have any knowledge whether Mr. Asuncion acted in any way other that being the broker of Thunderbirds Trading?

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[23] Transcript of Stenographic Notes, Hearing dated August 9, 2017, pp. 44-47.

WITNESS: None.

ATTY. JONGKO: And since this contains an identical declaration of Alexander Ong, did the broker declare the exact item description, quantity, net weight, and total value of the goods based on the packing list, commercial invoice in the import entry?

WITNESS: What is the question, sir?

ATTY. JONGKO: Correct me if I am wrong, that the broker declared in the import entry the exact items, quantity, total weight in the import entry as appearing in the packing list, commercial invoice as well as other commercial documents?

WITNESS: Yes, sir.

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ATTY. JONGKO: Is Mr. Asuncion authorized to enter the Bureau of Customs (BOC) and tampered with the containers without consent of the Bureau of Customs (BOC)?

WITNESS: No, sir.

Such participation of Accused Asuncion as the customs broker as well as his declaration on the basis of the shipping documents were corroborated by Ms. Jennifer De Perio, the Examiner of BOC who made the inspection of said shipment, in her judicial affidavit[24], to wit:

Q14: What was the declaration indicated which is the content of Container Van Nos. MSKU4319481; MRKU9262896; PONU0557054; MRKU7448520; MRKU7079762; MSKU7722490; MRKU6715052; MRKU8373468; MSKU5464904; WFHU1226922; MRKU7530731; and, MSKU2244362 of Thunder Birds Trading in the said documents?

A: In the import entry, the declaration was 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges; in computer print-out of E2M Manifest Waybill under Bill of Lading Reference No. MCC421981, it was indicated as Steel sheets; in Commercial Invoice No. WSL11641, it was indicated 66 packages of steel sheets, 21 packages of clamps, 10 packages of flexible tubings and 25 packages hinges; and, in Packing List No. WSL11641, it was indicated as 66 packages of steel sheets, 21

[24] Docket, Vol. I, pp. 344-353.

packages of clamps, 10 packages of flexible tubings and 25 packages hinges.

Q15: Who is the customs broker who processed the import entry of the instant shipment?

A: The broker is Arnel S. Asuncion

Q16: How do you know?

A: The name "Arnel S. Asuncion" is indicated in Import Entry with No. C-1502-14, and he signed above the printed name "Arnel S. Asuncion"

Q17: What is the relevance of the appearance of the name and signature of Accused Customs Broker Arnel S. Asuncion in Import Entry No. C-1502-14?

A: It shows that he certified to the truthfulness and correctness of the contents and supporting documents of the Import Entry No. C-1502-14 and he prepared, processed, filed and signed the same knowing it to be imported contrary to law.

The foregoing was further strengthened by the testimony of Ms. De Perio during the period of cross-examination as shown below: [25]

ATTY. JONGKO: In your years in the Bureau of Customs, who is the owner of the shipment in relation to the instant case?

MS. DE PERIO: I guess, Shine Rapadas Montes.

ATTY. JONGKO: Shine Rapadas Montes. So isn't it true that a broker's participation or Arnel S. Asuncion is merely the broker who filled-up, signed and lodged the import entry with the Bureau of Customs

MS. DE PERIO: Yes.

ATTY. JONGKO: Do you have any knowledge that Mr. Arnel S. Asuncion did any other acts other than to fill-up, sign and lodged the import entry?

MS. DE PERIO: Yes.

ATTY. JONGKO: Where you able to examine the import entry, invoice, packing list and other supporting documents of the instant case?

MS. DE PERIO: Yes, sir.

ATTY. JONGKO: And customarily, isn't it that the commercial shipping documents are the basis for the declaration in the import entry?

[25] Transcript of Stenographic Notes, Hearing dated August 16, 2017, pp. 6-23.

MS. DE PERIO: Yes, sir.

ATTY. JONGKO: Isn't it true that the import entry will not go through the system if there is a discrepancy between the commercial shipping documents and the declaration made?

MS. DE PERIO: Yes, sir.

ATTY. JONGKO: Yes. So in Question No. 14, you said that the broker declared 66 packages of steel sheets, 21 packages of clamps, 21 packages of flexible tubings and 25 packages of hinges, correct?

MS. DE PERIO: Yes, Sir.

ATTY. JONGKO: And these are the same items, weight and value that can be seen in the commercial invoice and packing list, correct?

MS. DE PERIO: Yes, correct.

ATTY. JONGKO: So there is no discrepancy between what the Customs or what Mr. Arnel S. Asuncion declared in the import entry as compared to the... in comparison with the shipping documents and the invoice, correct?

MS. DE PERIO: Yes, Sir.

ATTY. JONGKO: No discrepancy?

MS. DE PERIO: Yes.

ATTY. JONGKO: Ms. Witness, who is the shipper in the instant case?

MS. DE PERIO: Sun Top Enterprise.

ATTY. JONGKO: So are they the one who caused the packing of the goods in the container vans prior to the exportation to the Philippines?

MS. DE PERIO: I guess so.

ATTY. JONGKO: Do you have any knowledge whether Mr. Arnel S. Asuncion caused the packing or assisted in the packing of the goods prior to the exportation to the Philippines?

MS. DE PERIO: No, sir.

ATTY. JONGKO: Do you have any evidence or knowledge whether Mr. Arnel S. Asuncion is an agent/employee of the shipper?

MS. DE PERIO: No.

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ATTY. JONGKO: Can any person simply go into the Bureau of Customs without any business therein?

MS. DE PERIO: No.

ATTY. JONGKO: So when the container arrived in the Philippines, was it under the direct control and supervision of the Bureau of Customs, meaning they have... meaning the containers will not be released, will not be opened without the consent or approval of the Bureau of Customs or its representatives, correct?

MS. DE PERIO: Yes, sir.

ATTY. JONGKO: Are you aware whether the said container was located, was positioned in a guarded facility in the Port Area?

MS. DE PERIO: Yes, sir.

ATTY. JONGKO: Can any person simply go into this guarded facility?

MS. DE PERIO: No.

ATTY. JONGKO: Is Mr. Asuncion authorized to go into this guarded facility?

MS. DE PERIO: No.

ATTY. JONGKO: You said you conducted a 100% examination, does this mean that you have to physically open the containers?

MS. DE PERIO: Yes.

ATTY. JONGKO: And it was mentioned that there is a shipping seal?

MS. DE PERIO: Yes.

ATTY. JONGKO: Who placed the shipping seal in the container?

MS. DE PERIO: The shipper.

ATTY. JONGKO: The shipper. And when you opened this, do you have to destroy this shipping seal or cut it open?

MS. DE PERIO: Yes.

ATTY. JONGKO: When you examined this, is the shipping seal still intact?

MS. DE PERIO: Yes.

ATTY. JONGKO: So you could say that the container was not opened after it was exported in the country of origin and upon arrival to the Philippines?

MS. DE PERIO: Yes, sir.

ATTY. JONGKO: So if the broker had no participation in the packing of the goods and no opportunity to inspect or tamper with the container vans, then he has no absolutely no knowledge of what is the actual contents of the container, correct?

MS. DE PERIO: Yes.

ATTY. JONGKO: And his only basis will be the shipping documents such as the packing list and invoice supplied to him by the shipper, correct?

MS. DE PERIO: Yes.

ATTY. JONGKO: Okay. Correct me if I am wrong, but a Customers Broker only certifies that the information contained in all pages of this import entry declaration and the documents submitted are the best of his knowledge that it is true and correct, correct?

MS. DE PERIO: Correct?

ATTY. JONGKO: As stated in Box 50 of the import entry?

MS. DE PERIO: Yes.

The facts and circumstances proven during the trial, based on the testimony of prosecution's own witnesses, reveal that the participation of Accused Asuncion started only upon the arrival of the said cargos and, being a customs broker, his services were secured for the purpose of facilitating the release of such shipment. Also, the basic duties of a customs broker as found in Section 6 of Republic Act No. 9280 otherwise known as the Customs Brokers Act of 2004 include, *inter alia,* the preparation of customs requisite document for imports and exports, declaration of customs duties and taxes, preparation signing, filing, lodging and processing of import and export entries.

Also, the fact that the Copy of IEIRD Form with Import Entry No. C-1502-14, Computer Print-out of E2M Manifest Waybill under B/L Reference No. MCC421981, Commercial Invoice No. WSL11641, and Packing List were not admitted into evidence, this Court has no basis to determine the nature of declaration made by Accused Asuncion as to the content of the container vans.

However, based on the testimony of Ms. Jennifer De Perio as shown in the above excerpts from the TSN during the hearing held on August 16, 2017, the declaration made or information provided by Accused Asuncion in the import entry are based only to the best of his knowledge. It means that his knowledge as to the content of the container van is defined by the information contained in the shipping documents as provided by the supposed importer, i.e., commercial invoice, packing list and the like.

Further, based on the testimony of prosecution's witnesses, the information entered by Accused Asuncion is the same as the information found in the invoice and packing list. Thus, the allegation of misdeclaration that would constitute the cime of willful intent to defraud the government of rightful taxes has no basis.

It is presumed that an unlawful act was done with an unlawful intent.[26] However, in order that intent may be presumed to be unlawful, the overt act must also be unlawful as ruled by the Supreme Court in the case of *Norma A. Abdula v. People of the Philippines*,[27] to wit:

> For sure, the procedural rule relied upon does not apply at all to this case. Indeed, clear it is from its very language that the disputable presumption of the existence of unlawful or criminal intent presupposes the commission of an **unlawful act**...
>
> xxx xxx
>
> The Sandiganbayan's improper reliance on Sec. 5(b) of Rule 131 does not save the day for the prosecution's deficiency in proving the existence of criminal intent nor could it ever tilt the scale from the constitutional presumption of innocence to that of guilt. In the absence of criminal intent, this Court has no basis to affirm appellant's conviction.
>
>> x x x. This calls to mind the oft-repeated maxim *`Actus non facit reum, nisi mens sit rea,'* which expounds a basic principle in criminal law that a crime is not committed if the mind of the person performing the act complained of be innocent. Thus, to constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent. It is true that a presumption of criminal intent may arise from proof of the commission of a criminal act; and the general rule is that if it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention and that it is for the accused to rebut this presumption. But it

[26] Section 3(b), Rule 131, Rules of Court.
[27] G.R. No. 150129, April 06, 2005.

> must be borne in mind that the act from which such presumption springs must be a criminal act In the case at bar, the act is not criminal. Neither can it be categorized as *malum prohibitum*, the mere commission of which makes the doer criminally liable even if he acted without evil intent.
> (*Underline ours*)

Applying the abovementioned ruling in the instant case, in order for Accused Asuncion to be presumed to have the alleged intent to defraud the government of legitimate taxes accruing from the said imported articles, the prosecution should first prove that the act of entering the information in the import entry on the basis of the accompanying shipping documents is unlawful or said accused had prior knowledge that the content of said container vans are different from the information embodied in said shipping documents. However, the prosecution failed on this aspect.

Given the foregoing, the Court GRANTS accused Arnel S. Asuncion's Demurrer to Evidence.

WHEREFORE, premises considered, the Court resolves as follows:

1. Prosecution's Comment with Manifestation, filed on December 11, 2017, is hereby **DENIED**.

2. Accused Arnel S. Asuncions's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Crim. Case Nos. O-633 is hereby **DISMISSSED** with respect to Arnel S. Asuncion.

   Consequently, accused Arnel S. Asuncion is **ACQUITTED** on reasonable doubt.

   It appearing that the Court has not acquired jurisdiction over the remaining accused, Shine Rapadas Montes, and in order that this case may not remain pending in the Court's docket for an indefinite period of time, the abovementioned cases are hereby **ARCHIVED**, without prejudice to its revival immediately upon the apprehension of accused Shine Rapadas Montes.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice