REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GEMMA AIDA BELARMA y TORREDA,
(Room 201 G.K. Chua Bldg., M.J. Cuenco Ave., Brgy. San Roque, Cebu City/F. Pacana St., Tisa Labangon, Cebu City),
- AT LARGE -
Accused.

CTA CRIMINAL CASE NO. O-438
For: Violation of Section 3601 in relation to Sections 101 and 2530 of the Tariff and Customs Code of the Philippines, as amended

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
APR 06 2015
11:41 a.m.

x- -x

RESOLUTION

For resolution is the prosecution's **Consolidated Motion for Reconsideration**, filed on March 10, 2015.

In the aforesaid motion, prosecution prays for the reversal or setting aside of the Court's Resolution dated February 20, 2015, wherein the Court dismissed the instant case and denied the issuance of a warrant of arrest against the accused.

In assailing the Court's Resolution, the prosecution argues that in determining the existence of probable cause for unlawful importation, the Court must first take into account the Import Entry Internal Revenue Declaration (IERD) filed before the Bureau of Customs (BOC) by the accused. According to the prosecution, the misdeclaration in the Import Entries were sufficient proof to establish probable cause that Gemma Aida Belarma y Torreda violated Section 3601 in relation to Section 101 paragraph (K), and in relation to Section 2503 and 2530 paragraph (f) of the Tariff and Customs Code.

Likewise, the prosecution also argues that the dismissal of the criminal complaint was solely based on the Memoranda and the Inventory and that the Court should have considered other pieces of evidence submitted by the prosecution that warranted the existence of probable cause and eventually, the issuance of the warrant of arrest.

The prosecution finally contends that lack of criminal intent is not a valid defense in violation of special law, like the Tariff and Customs Code of the Philippines (TCCP). Prosecution states that Section 3601 of the TCCP is a *malum prohibitum* which, if violated, does not require the element of intent in establishing probable cause. The mere fact that Melma Enterprise misdeclared the cargo in the IEIRD, a document required to be sworn to, allegedly showed that the accused violated the law and probable cause was properly established by the State Prosecutor.

The Court does not agree with the prosecution.

In determining the existence of probable cause for the issuance of a warrant of arrest, the Court did not solely rely on the Memorandum and the Inventory submitted by prosecution. Moreover, the Memorandum dated June 6, 2013 refers to the inventory of the alleged smuggled sacks of rice without any mention of the accused as the illegal importer of rice. Thus, based on records, this Court cannot ascertain whether the misdeclaration in the IEIRD was committed by the accused.

Also, the prosecution merely hinges its accusation on the complaint affidavit of Atty. Danilo M. Campos Jr., without submitting any evidence to support it.

It is worthy to note that this Court has considered all the allegations and has taken in to account the pieces of evidence submitted by the prosecution on February 4, 2015. After a judicious review, the Court finds that the evidence on record clearly failed to establish probable cause as already pronounced in the assailed Resolution.

Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended provides:

> SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. **The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause**. xxx. *(Emphasis supplied.)*

In the case of *De Los Santos-Dio v. Court of Appeals*[1], the Supreme Court held that:

> "In this regard, so as not to transgress the public prosecutor's authority, **it must be stressed that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.** On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence." (*Emphasis supplied.*)

Considering the discussion above, it is evident that the prosecution failed to establish a *prima facie* case against the accused to permit the issuance of a warrant of arrest. Therefore, the Court finds no cogent reason to reverse and set aside the Resolution dated February 20, 2015, dismissing the instant case without prejudice.

WHEREFORE, in view of the foregoing, the prosecution's **Consolidated Motion for Reconsideration** is hereby **DENIED** for lack of merit.

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[1] G.R. Nos. 178947 and 179079, June 26, 2013, 699 SCRA 614, 635.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice