REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ROEL PAQUIT SAYSON, *Petitioner,*	**CTA EB CRIM. NO. 025** *(CTA Crim. Case No.O-094)*
	Present:
-*versus*-	Del Rosario, PJ Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban JJ.
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: APR 01 201 9:00 a.m.

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DECISION

DEL ROSARIO, PJ:

This involves a Petition for Review filed pursuant to Rule 43 of the Rules of Civil Procedure seeking the nullification of the Decision[1] dated December 12, 2012 of the former Third Division of this Court which convicted accused-petitioner Roel Paquit Sayson 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, as well as its Resolution dated March 1, 2013 which denied accused-petitioner's motion for reconsideration of the assailed Decision, in the case entitled *"People of the Philippines vs. Roel Paquit Sayson, Trex Eve Auto Sales and Services A.S. Fortuna St., Bakilid Mandaue City, Cebu, CTA Crim. Case No. O-094".*

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[1] Penned by Associate Justice Lovell R. Bautista and concurred by Associate Justices Olga Palanca-Enriquez *(ret.)* and Amelia R. Cotangco-Manalastas.

THE FACTS

The record of the case disclosed that accused-petitioner, Roel Paquit Sayson, was charged before the Court in Division[2] of the crime 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), to which he pleaded "not guilty". After trial, the Court in Division rendered the assailed Decision on December 12, 2012 finding accused-petitioner guilty as charged, *viz.*:

> "**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 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).
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> **SO ORDERED**."

The Court in Division ruled that smuggling through fraudulent importation transpired in this case as the shipments of 3x40 container vans declared to contain "Used Truck Replacement Parts", actually contained fifteen (15) units of Kia Sportage and Hyundai Galloper; that accused-petitioner is the proprietor of Trex Eve Auto Sales and Services as admitted in his "Affidavit of Legal Disclaimer"; and that since the consignee of the imported articles as shown in all of the bill of ladings is Trex Eve Auto Sales and Services which under existing jurisprudence cannot be made personally liable for lack of juridical personality, ownership is vested with accused-petitioner being the proprietor, thus, accused-petitioner committed the crime of smuggling.

Accused-petitioner filed his Motion for Reconsideration and Supplemental Motion for Reconsideration on December 26, 2012 and January 15, 2013, respectively, questioning the aforesaid decision of the Court in Division. In his Motion for Reconsideration, accused-petitioner alleged that the "Affidavit of Legal Disclaimer" was not formally offered in evidence by the prosecution nor was admitted by the Court in Division; thus, it cannot be considered pursuant to Section 34, Rule 132 of the Rules of Court. While in his Supplemental Motion for Reconsideration, accused-petitioner alleged that the Court in Division has no exclusive original

[2] Originally raffled to the CTA First Division but subsequently transferred to Third Division pursuant to CTA Administrative Circular No. 01-2010, dated January 5, 2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals."

jurisdiction over the case as the amount involved is less than One Million Pesos, *i.e., domestic value of imported articles is merely ₱940,000 as stated in the Memorandum for the District Collector of Customs, Port of Cebu*, and the cargo manifest, bill of lading and the rests of all exhibits adduced by the prosecution, in support of the testimonies of the witnesses for the prosecution, are insufficient to convict him.

In the assailed Resolution dated March 1, 2013, the Court in Division denied the foregoing Motions for Reconsideration, the dispositive part of which reads:

> "**WHEREFORE**, premises considered, accused's 'Motion for Reconsideration,' and 'Supplemental Motion for Reconsideration,' are hereby **DENIED** for lack of merit."

The Court in Division ruled that the issue of jurisdiction had already been resolved in the Resolution promulgated on October 28, 2009; thus, it found no cogent reason to rule otherwise. Likewise, the Court in Division ruled that the allegation of insufficiency of evidence has been passed upon in the Court's Resolution dated October 19, 2011.

As regards accused-petitioner's objection to the Court in Division's appreciation of the "Affidavit of Legal Disclaimer" in the disposal of the case, the Court in Division ruled that evidence although not formally offered can be considered when the following requisites, as set forth in *People v. Saturnino Villanueva*,[3] have been satisfied, *viz*: *first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.* The Court in Division ruled that the second requisite was satisfied when the "Affidavit of Legal Disclaimer" was submitted in a "Manifestation and Motion" filed on August 27, 2008, and admitted in a Resolution promulgated on September 5, 2008. Nonetheless, the Court in Division sustained accused-petitioner's position that the prosecution failed to comply with the first requisite mentioned above.

Notwithstanding the foregoing, Court in Division found that the Complaint-Affidavit of Atty. Lyndon F. De Los Santos (Exhibit C) was sufficient to establish accused-petitioner's ownership of Trex Eve Auto Sales and Services, as the statement in his Affidavit was corroborated by his positive declaration made in open court on July 28, 2010. The Court in

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[3] G.R. No. 181829, September 1, 2010, 629 SCRA 720, citing People vs. Mate, 320 Phil 344 (1995), and Ramos vs. Dizon, G.R. No. 137247, August 7, 2006, 498 SCRA 17.

Division emphasized that the positive declarations of credible witness who testify on affirmative matters are given more weight than the denials of the accused. It further held that with the documentary evidence positively identifying Trex Eve Auto Sales and Services as consignee and no other, and with the testimonial evidence of Atty. Lyndon De Los Santos that accused-petitioner is the sole proprietor, the prosecution has established its case.

Not satisfied, accused-petitioner elevated his case before the Court *En Banc* by filing the Petition for Review on April 8, 2013.[4] Accused-petitioner prayed that the assailed Decision and Resolution of the Court in Division be reversed and set aside.

Respondent, People of the Philippines, was ordered to file a comment, not a motion to dismiss, within ten days from receipt of the resolution issued on May 15, 2013.[5] Respondent, through counsel, filed its Comment on August 6, 2013 via registered mail,[6] which is within the allowed period.[7]

The Petition for Review was given due course in the Resolution dated August 30, 2013.[8] In the same Resolution, the parties were ordered to submit their respective memoranda within thirty (30) days from receipt of the aforesaid Resolution.[9]

With the filing of accused-petitioner's Memorandum[10] on October 17, 2013 and respondent's Memorandum[11] on November 29, 2013, this case was deemed submitted for decision on January 3, 2014;[12] hence, the decision of the Court *En Banc*.

THE PARTIES' ARGUMENTS

ACCUSED-PETITIONER'S ARGUMENTS

Accused-petitioner argues that the Court in Division has no jurisdiction over the suit. He claims that in an undated Memorandum addressed to the District Collector of Customs of the Port of Cebu regarding

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[4] *Rollo*, pp. 94, 95-179.
[5] *Rollo*, pp. 181-182.
[6] *Rollo*, pp. 196-218.
[7] *Rollo*, pp. 187, 189-195.
[8] *Rollo*, pp. 223-224.
[9] *Id.*
[10] *Rollo*, pp. 229-249.
[11] *Rollo*, pp. 253-271.
[12] *Rollo*, pp. 285-286.

the Examination and Appraisal Report of Apprehended Motor Vehicles (Annex D of the petition for review), it was reported that the total wholesale domestic value of the imported articles is only Nine Hundred Forty Million Pesos (₱940,000,000.00); and that Notice of Auction Sale dated 23 July 2008 issued by the Bureau of Customs of the Port of Cebu (Annex E of the petition for review) likewise states that domestic value of the subject articles was appraised at ₱940,000,000.00; that those issuances emanated from the Bureau of Customs, the same government agency prosecuting this case; that by the latter's own mathematical assessment, the subject articles are valued at less than One Million Pesos (₱1,000,000.00), which necessarily means that the amount of taxes and duties due thereon are also under ₱1,000,000.00; thus, the jurisdiction over the subject matter of this suit vests not with the Court of Tax Appeals (CTA), but with the Regional Trial Court as mandated under the Rules.

Accused-petitioner asserts that Court in Division erred in taking cognizance of, and in centering its finding of guilt, on the Affidavit of Legal Disclaimer purportedly executed by accused-petitioner, since the said document was never offered in evidence by either party, much less admitted by the Court in Division. Moreover, he mentioned that when the Court in Division subsequently conceded to his argument that the document should not have been treated as evidence, a reversal should have necessarily followed since the said document is the lone piece of evidence cited by the Court in Division in proving that he is the sole proprietor of Trex Eve Auto Sales and Services.

Accused-petitioner contends that the Court in Division erroneously relied on the Complaint-Affidavit of Atty. Lyndon De Los Santos, whose testimony was based on an Application for Accreditation, a document which was excluded in evidence for respondent's failure to present the original thereof for comparison. According to accused-petitioner, the fact that the Application for Registration was attached as an exhibit to the Complaint-Affidavit of Atty. De Los Santos and was identified and discussed by the latter in open court cannot clothe the document with the cloak of admissibility since an inadmissible document does not become admissible by virtue of its attachment to an admitted document; otherwise, it would amount to a circumvention of the rules of evidence in that what cannot be done directly is in effect being permitted to be done indirectly.

Finally, accused-petitioner asserts that respondent was unable to prove beyond reasonable doubt that he was the real consignee of the imported goods. He insists that his name never appeared in any of the shipping documents, *i.e., bills of lading and inward foreign manifests*, as the consignee named therein is Trex Eve Auto Sales and Services and not him; om that respondent did not present a single witness to either identify him as the perpetrator of the crime or testify as to the precise degree of his participation based on personal knowledge; that respondent's witness, Atty. De Los Santos attempted to identify him based solely on his picture in an Application for Registration, which was held to be inadmissible by the Court; and that Atty. De Los Santos cannot be considered to have personal knowledge of the events that transpired since he himself admitted to not seeing accused-petitioner prepared the bills of lading and the inward foreign manifest, and he even conceded the possibility that someone other than accused-petitioner caused the preparation of those documents.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent counter-argues that the Court in Division properly exercised its exclusive original jurisdiction over CTA Criminal Case No. O-094. Accused-petitioner did not present any proof other than his bare allegations and speculations that the taxes due on the seized properties is below the jurisdictional threshold of one million pesos; that the Information alleged that the estimated taxes and duties involved amounted to ₱1,779,770.61, thus, jurisdiction is properly vested with the CTA as jurisdiction of a court is determined by the allegations in the complaint or information, and not by the evidence presented by the parties at the trial; and that accused-petitioner is estopped from questioning the jurisdiction of the Court in Division after presenting his evidence, and asking for affirmative relief.

Respondent asserts that accused-petitioner is the sole proprietor of Trex Eve Auto Sales and Services as the Affidavit of Legal Disclaimer executed by accused-petitioner proves that he is the proprietor thereof. Contrary to accused-petitioner's position that the Affidavit of Legal Disclaimer should not be considered by the Court in Division, respondent argues that said affidavit can be treated as a judicial admission pursuant to Rule 129 of the Rules of Court as it was submitted in a Manifestation and Motion filed on August 27, 2008, and admitted by the Court in Division in a Resolution promulgated on September 5, 2008; thus, the affidavit and its contents became part of the court's records, and need not be proved by the prosecution.

Respondent avers that the Court in Division correctly relied on the complaint-affidavit and testimony of Atty. Lyndon De Los Santos in finding that accused-petitioner is the proprietor of Trex Eve Auto Sales and Services. In response to accused-petitioner's contention that the court should not have relied on the complaint-affidavit and testimony of Atty. De los Santos since those were based on an excluded evidence, *i.e., the*

Application for Accreditation, respondent states that accused-petitioner deliberately omitted the fact that aside from the excluded Application for Accreditation, there were other pieces of evidence from which Atty. De los Santos based his complaint-affidavit and testimony, *i.e., DTI Registration of Trex Eve Auto Sales and Services and approved application for accreditation of the Customs Accreditation Secretariat (CAS) allegedly stated in the compliant-affidavit; and the alleged original copy of the recommendation for approval by the Customs Accreditation Secretariat (CAS) on the application of Trex Eve Auto Sales and Services marked as Exhibit F, which documentary evidence was admitted by the Court in Division.*[13]

Respondent posits that Atty. De los Santos has personal knowledge that Trex Eve Auto Sales and Services is a sole proprietorship, and accused-petitioner is the sole proprietor thereof since being a member of the Run After the Smugglers (RATS) Program of the Bureau of Customs, Atty. De los Santos is presumed to have done his official functions regularly; thus, his complaint-affidavit and testimony deserve full faith and credit as these were based from his complete investigation on the subject unlawful importation.

Respondent maintains that accused-petitioner was proven guilty of smuggling through fraudulent importation and that his conviction should be upheld. Respondent debunks accused-petitioner's contention that he did not participate in the preparation of the bills of lading in view of the presumption provided in Section 1203 of the TCCP that imported articles are held to be the property of the person to whom the same are consigned, which presumption was allegedly not rebutted by accused-petitioner.

Finally, respondent belittled accused-petitioner's reliance on *Transglobe International, Inc. vs. Court of Appeals*, which states that misdeclarations in the manifest and rider cannot be ascribed to the consignee, since accordingly it is not on all fours with the present case as the alleged subject matter thereof is the forfeiture of properties, and not about the issue on criminal liability.

ISSUES

The issues to be resolved in the present case are the following:

1. Whether the Court in Division properly exercised jurisdiction over CTA Criminal Case No. O-094;

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[13] *Rollo,* p. 262.

2. Whether the Court in Division erred in finding that accused-petitioner is the proprietor of Trex Eve Auto Sales and Services; and,

3. Whether the Court in Division erred in finding accused-petitioner guilty beyond reasonable doubt of smuggling through fraudulent importation.

THE RULING OF THE COURT *EN BANC*

The Court in Division properly assumed and exercised jurisdiction over CTA Criminal Case No. O-094

Section 7(b) of Republic Act (RA) No. 1125[14], as amended by RA 9282[15] delineates the jurisdiction of courts anent all criminal offenses arising from violations of the National Internal Revenue Code or the TCCP and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs. Pertinent portion of the aforesaid provision of the law provides:

> "SEC. 7. Jurisdiction. – The CTA shall exercise:
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> (b) Jurisdiction over cases involving criminal offenses as herein provided:
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> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the

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[14] An Act Creating the Court of Tax Appeals.
[15] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

> filing of such civil action separately from the criminal action will be recognized.
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> (2) Exclusive appellate jurisdiction in criminal offenses:
>
> (a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.
>
> (b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction."

Section 3(b), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, also provides:

> "RULE 4
> JURISDICTION OF THE COURT
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> Sec. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
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> (1) **Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; and
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> (2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed;"*(Emphasis supplied)*

From the foregoing, it is clear that the Court in Division has exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or the TCCP and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more.

The Third Amended Information filed by the prosecution before the Court in Division on August 27, 2009 charges accused-petitioner for violation of Section 3601, in relation to Section 2530 paragraphs f, l(3), (4), and (5) of the TCCP, allegedly committed 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 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 **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)**, which were found to have been prohibited importation under Section 3 of Executive Order No. 156 and relevant customs laws, rules and regulations.
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> CONTRARY TO LAW." *(Emphasis supplied)*

The foregoing allegations clearly show that the taxes and duties purportedly involved in the unlawful importation is ₱1,779,770.61, which amount is clearly within the exclusive original jurisdiction of the CTA.

The allegation of accused-petitioner that the subject articles is valued at less than ₱1,000,000.00 by the Bureau of Customs' own mathematical assessment, which accordingly would mean that the amount of taxes and duties due thereon are also under ₱1,000,000.00, would not divest the CTA of its jurisdiction to hear the case.

Foremost, jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information,[16] and not by the result of the

[16] Treñas v. People of the Philippines, G. R. No. 195002, January 25, 2012; Rogelio M. Esteban vs. Sandiganbayan and The People of the Philippines, G.R. Nos. 146646-49, March 11, 2005.

evidence presented at the trial.[17] Inasmuch as the accused-petitioner was charged of an offense arising under the TCCP and considering further that the amount of taxes and duties involved in this case, as alleged in the information, is above one million pesos, the Court in Division aptly took cognizance of the case and correctly exercised jurisdiction thereon.

It is undisputed fact that unlawful importation was committed by Trex Eve Auto Sales and Services, being the consignee of the imported articles

Smuggling is an offense defined and punished under Section 3601 of the TCCP, which provides:

> "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 <u>smuggling</u>** and shall be punished with:
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> 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;
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> 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;
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> 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.
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> 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

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[17] People of the Philippine Islands v. Co Hiok, G.R. No. 43154, November 7, 1935, citing U. S. v. Mallari and Cueson, 24 Phil., 366.

> the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos.
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> 5. 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 to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.
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> 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.
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> When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section." *(Emphasis supplied)*

Under the afore-quoted provision, smuggling 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 facilitates the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[18]

The Court in Division correctly observed the commission of unlawful importation/smuggling 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, when in truth and in fact, the shipments contained units of Sportage and Gallope; and that the consignee of the imported articles, as indicated in the bills of lading, is Trex Eve Auto Sales and Services,[19] which fact was even confirmed by the witness for the accused-petitioner, Ms. Jocelyn Mallari, in her direct testimony in open court;[20] thus, the imported articles are the property of Trex Eve Auto Sales and Services, being the person to whom the same are consigned pursuant to

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[18] Francisco vs. People, G.R. No. 177430, July 14, 2009; Jardeleza vs. People, G.R. No. 165265, February 6, 2006.
[19] *Rollo*, p. 134.
[20] Transcript of Stenographic Notes, February 22, 2012, p. 31.

Section 1203 of the TCCP.[21] Further, the Court in Division logically concluded that Trex Eve Auto Sales and Services, being a sole proprietorship, cannot be made personally liable for smuggling due to lack of juridical personality and that it is the owner/proprietor of such enterprise which could be held responsible. This is due to the fact that a sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise.[22]

Accused-petitioner is the proprietor of Trex Eve Auto Sales and Services

Records disclose that the Affidavit of Legal Disclaimer executed by accused-petitioner was submitted as an attachment to the prosecution's Manifestation and Motion filed before the Court in Division on August 27, 2008, and admitted by the Court in Division in its Resolution dated September 5, 2008. In said Affidavit of Legal Disclaimer, accused-petitioner clearly admitted that he is the sole proprietor of Trex Eve.

Considering that accused-petitioner did not do anything when the Court in Division, in its Resolution dated September 5, 2008, admitted certain documents, including his Affidavit of Legal Disclaimer, to the records of the case, his Affidavit of Legal Disclaimer can be considered by the Court *En Banc* as evidence against accused-petitioner pursuant to Section 32, Rule 130 of the Rules of Court.[23] While he remained silent, the Court *En Banc* cannot disregard the evidentiary weight of the Affidavit of Legal Disclaimer as it is a notarized document. Deeply embedded in our jurisprudence is the rule that notarial documents celebrated with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character and to overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than

[21] TITLE IV. Ascertainment, Collection and Recovery of Import Duty
PART 1. Importation in General
SECTION 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 indorsed 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 a wreck at sea, along a coast or in any area of the Philippine may be regarded as the consignees.

[22] Ejercito vs M.R. Vargas Construction, G.R. No. 172595, April 10, 2008.

[23] Sec. 32. Admission by silence. – An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

merely preponderant evidence.[24] In **Gliceria Carandang-Collantes, et al. vs. Felix Capuno, et al.,**[25] the Supreme Court reiterated that:

> "Thus, in Lucio Palanca Chilianchin vs. Eusebio Coquinco, 84 Phil. 714, the Supreme Court held:
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> > A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present *strong, complete, and conclusive proof* of its falsity or nullity on account of some flaw or defect provided against by law."

The failure to offer in evidence the Affidavit of Legal Disclaimer is not at all fatal to the prosecution. Parenthetically, said Affidavit of Legal Disclaimer was offered before the Bureau of Customs and, necessarily, it formed part of the records of the case. Its existence was in fact confirmed by Capt. Alfonso C. Abbariao, District Commander of the Port of Cebu, in his 1st Indorsement dated March 12, 2008.[26] Being part of the records of the Bureau of Customs, the same can be considered by the Court in Division in the assailed Decision. In **Commissioner of Customs v. Court of Tax Appeals,**[27] the Supreme Court clarified that documents offered during the hearing conducted by the Bureau of Customs form part of the records of the case, which the court can properly consider, *viz.*:

> "*Third.* Private respondent next contends that the Court erred in relying on the documents contained in the records of the proceedings before the Collector of Customs to establish fraud on its part. It is contended that these were not marked, identified and offered as evidence during the proceedings at the CTA as required by Rule 132, §34.
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> The contention also has no merit. **The documents and transcript of stenographic notes in question were formally offered during the hearings conducted by the Collector of Customs, throughout which private respondent was represented by present counsel. <u>As such, they form part of the records of the case which this Court can properly consider</u>.**" *(Emphasis and undescoring supplied)*

Finally, the Court in Division correctly relied on Exhibit "C" (the Complaint-Affidavit of Atty. Lyndon F. De los Santos), as well as the

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[24] Pan Pacific Industrial Sales Co., Inc. vs, Court of Appeals, et al., G.R. No. 125283, February 10, 2006, *citing* R.J. Francisco, Evidence Rules of Court In the Philippines Rules, 128-34, (3rd ed., p. 517 citing Mendezona v. Philippine Sugar Estates Development Co., 41 Phil. 475.
[25] G.R. No. L-55373, July 25, 1983.
[26] CTA Criminal Case No. O-094, Docket, p. 89.
[27] G.R. No. 132929, July 3, 2000.

testimony of Atty. Lyndon F. De los Santos during the July 28, 2010 hearing, linking accused-petitioner as the owner of Trex Eve Auto Sales and Services.[28] As aptly ruled by the Court in Division, positive declarations of credible witness who testify on affirmative matters are given more weight than the denials of the accused.[29]

All told, as the records of the case indubitably show that Trex Eve Auto Sales and Services, a sole proprietorship, is the consignee of the imported articles and that accused-petitioner is the proprietor of Trex Eve Auto Sales and Services, the Court *En Banc* sees no cogent reason to disturb the conclusion of the Court in Division finding accused-petitioner guilty beyond reasonable doubt of the crime of smuggling.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The December 12, 2012 Decision and March 1, 2013 Resolution of the former Third Division of this Court are **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[28] *Rollo*, p. 144.
[29] People v. Restituto Pabalan y Calilong, G.R. No. 115350, September 30, 1996.

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice