REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**C.T.A. CRIM. CASE NO. O-106** (I.S. No. 2008-166) For: Violation of Section 3602, in relation to Sections 2503 and 2530, paragraphs f, l (3)(4)(5) and k, and Sections 101 and 1301, of the Tariff and Customs Code of the Philippines, in further relation to Memorandum Circular No. 08-08-2004A of the National Telecommunications Commission
- versus -	
JOSELITO BUATIS, BALTAZAR U. PULTA and HERMINIO APOLINARIO, Accused.	

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PEOPLE OF THE PHILIPPINES, Plaintiff,	**C.T.A. CRIM. CASE NO. O-107** (I.S. No. 2008-166) For: Violation of Section 3601, in relation to Sections 2503 and 2530, paragraphs f, l (3)(4)(5) and k, and Sections 101 and 1301 of the Tariff and Customs Code of the Philippines, in further relation to Memorandum Circular No. 08-08-2004A of the National Telecommunications Commission
- versus -	Members: **ACOSTA, Chairperson** **UY,** and **FABON-VICTORINO**, *JJ*
JOSELITO BUATIS, BALTAZAR U. PULTA and HERMINIO APOLINARIO, Accused.	Promulgated: FEB 02 2011 ; 3:09 pm

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RESOLUTION

FABON-VICTORINO, J.:

Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may, after the prosecution rests its case, dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court.[1]

Come now accused Joselito Buatis, Baltazar Pulta and Herminio Apolinario asking the Court, through a Demurrer To Evidence dated September 15, 2010, to dismiss the instant cases on the ground that the prosecution failed to present sufficient evidence to sustain conviction for their alleged violations of Sections 3601 and 3602 of the Tariff and Customs Code of the Philippines (TCCP).

The three accused claim that the evidence presented by the prosecution failed to prove that they are guilty of misdeclaration of shipment to avoid payment of correct taxes to the Government, punishable under Section 3601 of the TCCP. Neither was the prosecution able to adduce strong evidence that they falsified

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[1] People vs. Sandiganbayan, G.R. No. 140633, February 04, 2002.

Import Entry and Internal Revenue Declaration No. C-65166, to facilitate the entry of the misdeclared/undeclared goods into the country in violation of Section 3602 of the same Code.

To prove its theory, the prosecution presented an **illegible machine copy** of the purported falsified import entry which the Court denied admission for obvious reason. Such is fatal to the prosecution. In falsification cases, the original document said to have been falsified must be presented in court. Without the original of Import Entry and Internal Revenue Declaration No. C-65166, the machine copy of which was marked as Exhibit "E", their culpability for its falsification and misdeclaration of shipment in the said import entry cannot be ascertained.

And since Exhibit E was not admitted, the rest of the documents presented by the prosecution most particularly the Alert Order No. A/ES/20070620-111 and the Memorandum dated November 14, 2007, respectively marked as Exhibits I and J, are deemed irrelevant as they were based on the purported falsified import entry.

Moreover, the items enumerated in the Information do not appear in the alleged falsified import entry which does not even bear a number. It is therefore not remote that it refers to a different importation.

More importantly, none of the prosecution witnesses, namely, Pablo U. Gubao, Akil Ali Mundir, Roldan Reyes, and Louella Quevedo identified them as the perpetrators of the crimes charged. The documents they identified in court do not indicate their participation in the commission of the alleged infractions. Nothing in the declarations relates them to the consignee Golden Armour Enterprises.

Pablo Gubao merely identified the Inward Foreign Manifest (Exhibit "D"), which admittedly was prepared by the shipper or its agent and not by any of the accused.

Roldan Reyes identified the Memorandum (Exhibit J) that he prepared based on the examination of the subject shipment conducted by Akil Ali N. Mundir who in court only identified his Affidavit dated February 22, 2008 (Exhibit "A") and his computation report (Exhibit "B").

Finally, Louella Quevedo only identified the certified true copy of the Warrant of Seizure and Detention dated November 20, 2007

(Exhibit "K"), executed by the Port of Manila District Collector Horacio P. Suansing, which she issued as the Officer-in-Charge, Docket Section, Law Division of the Port of Manila. However, she admitted that she has no participation in the investigation that led to its issuance.

For failure of the prosecution to present sufficient evidence to prove their guilt beyond reasonable doubt of the crimes charged, the case against them should be dismissed.

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.[2] It is an instrument for the expeditious termination of an action thus abbreviating judicial proceedings. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[3] In criminal cases, the demurrer to evidence partakes of the nature of a motion to dismiss the case for

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[2] Casent Realty Development Corp. v. Philbanking Corporation, 533 SCRA 390.
[3] Rivera vs. People, G.R. NO. 163996, June 09, 2005; Heirs of Pedro Pasag v. Parocha 522 SCRA 410.

failure of the prosecution to prove the guilt of accused beyond reasonable doubt.[4]

A careful examination of the evidence presented by the prosecution during the trial on the merit indeed shows that the prosecution failed to discharge the burden of proving its case. No one among the witnesses it presented was able to establish the commission of the infractions by any of the three accused.

Prosecution witness Pablo Gabao, the Chief of the Bay Service Section of the Bureau of Customs (BOC) testified that his duties include assigning an inspector to ensure that the incoming vessel to dock at the Port of Manila will submit documents required by the BOC. One of such documents is an Inward Foreign Manifest declaring the shipment and the name of its consignee. In the instant cases, the Inward Foreign Manifest (Exhibit "D"), signed by the master of the vessel was submitted to their office. Indicated therein that the shipment contains "household wares and others" with Golden Armour Enterprises as consignee. However, he could no longer recall the Boarding Officer whom he assigned to inspect the vessel to verify the declaration in the Inward Foreign Manifest.

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[4] Salazar vs. People, G.R. No. 151931, September 23, 2003.

BOC Special Agent I Roldan M. Reyes, among whose duties include the prevention of smuggling, testified that pursuant to Alert Order No. A/ES/20070620-111 dated June 20, 2007 signed by Gen. Nestorio B. Gualberto (Exhibit "I"), he and BOC Examiner Akil Ali N. Mundir conducted an examination of a shipment for Golden Armour Enterprises on November 14, 2007, to determine any misdeclaration in the shipment. On the same day, he prepared a Memorandum (Exhibit "J"), indicating the discovered misdeclaration in the shipment. On cross examination, this witness however confessed that only Akil Ali N. Mundir actually conducted the inspection of the subject shipment and he only based his Memorandum on the result of such examination. In short, the content of his Memorandum was not of his own knowledge.

Not even his identification of Alert Order No. A/ES/20070620-111 dated June 20, 2007 (Exhibit I) could save the day for the prosecution. The said document merely instructed him, D.Dela Cruz, D. Nalus, H. Hicban (POM) to witness the examination to be conducted by the assigned customs examiner, which Reyes in fact did not follow.

Surpassingly strange is the declaration of acting BOC Operation Officer Akil Ali N. Mundir who allegedly conducted the examination of the subject shipment. His Affidavit dated February 22, 2008 marked as Exhibit "A" bears no details of his examination or any other information linking or naming the three accused as suspects in the alleged misdeclaration of shipment and fraudulent filing of import entry to avoid payment of correct taxes to the Government. It merely stated that upon request by the BOC Run After the Smugglers (RATS) Group, Mundir computed the approximate value and corresponding customs duties, taxes and penalties of the subject shipment covered by Bill of Lading No. SYSKPSAE7245946 consigned to Golden Armour Enterprises and declared under Import Entry No. C64166. Per his detailed computation (Exhibit "B"), the total cost of the shipment was Sixteen Million Three Hundred Seventy One Thousand Six Hundred Eighteen Pesos and Ninety Seven Centavos (Php 16,371,618.97), while the approximate customs duties amounted to Eight Million Two Hundred Twelve Thousand Eight Hundred Seven Pesos (Php8,212,807.00). Significantly, when asked to identify the Bill of Lading, Akil Ali N. Mundir manifested that he could not oblige with certainty as the document was unreadable (Exhibit "F").

The testimony of Administrative Aid IV at the Law Division of BOC and Officer-In-Charge of the Docket Section at the Port of Manila Louella Quevedo was hardly relevant in the indictment of the three accused. If at all, it merely indicated that she issued the certified copy of the Warrant of Seizure and Detention with Seizure Identification Number 2007-209 marked as Exhibit "K" signed by District Collector Horacio P. Suansing, Jr., by reason of her office. She made clear on cross examination that she did not participate in any manner in the investigation which led to the issuance of the Warrant of Seizure and Detention. In fine, she has no personal knowledge about the cases much more the identity of the three accused.

Significantly, the alleged falsified import entry which is the subject of inquiry in both cases and upon which the accusations against the three accused are anchored was denied admission in the Resolution dated September 01, 2010. Import Entry and Internal Revenue Declaration marked as Exhibit "E" together with the Online Business Registration of Golden Armour Enterprises marked as Exhibits "C" were not admitted in evidence for failure of the prosecution to present the originals of the said documents. The prosecution in fact yielded to the Court's ruling admitting that it could no longer locate the originals of the said documents.

Section 3, Rule 130 of the Rules of Court provides:

> SEC. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
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> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Clearly, when the subject of inquiry is the content of a document as in the instant cases, no evidence shall be admissible other than the original document itself. Although the best evidence rule admits of exceptions and there are instances where the presentation of secondary evidence is allowed, such is not obtaining in the cases at bar.

Note that in the instant cases, the charges consist of fraudulent filing of an import entry in violation of Sections 3601 to facilitate the entry of misdeclared imported items into the country which is punished under Section 3602 of the TCCP. Thus the subject of inquiry to determine the culpability of the three accused is the content of the alleged falsified import entry, the original of which is direly needed to render judgment for conviction.

The best evidence rule finds more rigid application in criminal cases as the life and liberty of the accused is at stake and arrayed against the prosecution is the presumption of innocence in favor of the accused, which can only be overturned by proof beyond reasonable doubt.

Indeed, there is nothing in the documentary evidence presented by the prosecution, nor in the testimony of the prosecution witnesses, which even remotely suggest that the three accused fraudulently assisted in the importation of any article contrary to law nor facilitated its transportation, knowing the same to have been imported contrary to law, nor that the accused made any misdeclaration to accomplish such act of importation.

Settled is the rule that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat*, i.e., he who asserts, not he who denies, must prove."[5] Obviously, the prosecution utterly failed to discharge this burden.

WHEREFORE, finding merit, the Demurrer To Evidence dated September 15, 2010, filed by accused Joselito Buatis, Baltazar U. Pulta and Herminio Apolinario praying for the dismissal of the cases filed against them is hereby **GRANTED**. Criminal Cases Nos. O-106 and O-107 are hereby **DISMISSED,** for insufficiency of evidence.

Accordingly, accused Joselito Buatis, Baltazar U. Pulta and Herminio Apolinario are hereby **ACQUITTED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

[5] People vs. Quijano, Sr., G.R. Nos. 144523-26, June 10, 2003.