REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CTA CRIM. CASE NO. O-273

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

ANTONIO M. TALAUE,
LEANDRO ANTONIO M. TALAUE,
HANNAH AILEEN LIM FERNANDEZ,
ANALYN G. FERNANDEZ,
ANGEL T. DERAY, JR. and
MEYNARDO B. BANAYO,
Accused.

Promulgated:

JUN 14 2017
1:38 p.m.

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DECISION

RINGPIS-LIBAN, J.

Accused Antonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, Angel T. Deray, Jr. and Meynardo B. Banayo were charged of Violation of Section 3601 in relation to Section 101 (k) of the Tariff and Customs Code of the Philippines (TCCP), as amended, and in relation to Bureau of Food and Drugs (BFAD) Administrative Order No. 37 dated June 8, 1979, allegedly committed as follows:

> "That on or about the period of March 22, 2008 to April 1, 2008 and within the jurisdiction of the Honorable Court, the above-named accused ANTONIO M. TALAUE, LEANDRO

ANTONIO M. TALAUE, HANNAH AILEEN LIM FERNANDEZ, ANALYN FERNANDEZ, ANGEL T. DERAY, JR. and MEYNARDO B. BANAYO, in conspiracy with one another did then and there, willfully, unlawfully and feloniously import/bring into the Philippines, a total of 28,055 bags of wheat flour consigned to Rubills International Inc. (Rubills) for the account of Fil House Enterprises (Fil Haus), from China, covered by Warehousing Entry Nos. W-8720, W-8696, W-8707, W-8693, W-8725, and W-8731, valued approximately at Nine Million Two Hundred Ninety-Five Thousand Seven Hundred Eighty–Four Pesos & 80/100 (P9,295,784.80), with corresponding duties and taxes of One Million Seventy Seven Thousand Two Hundred Ninety-Two Pesos & 45/100 (P1,077,292.45), the subject shipments having been imported without a Certificate of a Product Registration from Bureau of Food and Drugs (BFAD), to the damage and prejudice of the Philippine government."

CONTRARY TO LAW.

On June 1, 2012, the First Division of this Court issued a Resolution[1] ordering the issuance of warrants of arrest of accused Antonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, Angel T. Deray, Jr. and Meynardo B. Banayo.

On June 25, 2012, the Court issued the Warrant of Arrest[2] for all the accused.

On July 13, 2012, accused Antonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, and Angel T. Deray, Jr. voluntarily appeared before the Court and submitted themselves to the jurisdiction of the Court by posting a surety bond in the amount of P120,000.000 each, for their provisional liberty. They also executed a waiver of appearance.[3]

Meynardo B. Banayo remained at large. On August 2, 2012, the Court ordered the issuance of Alias Warrant of Arrest for him.[4]

The arraignment for the accused who posted surety bond was set on August 22, 2012. This was reset to October 3, 2012 because the prosecution and all the accused failed to appear on the original date.[5]

[1] Docket, CTA Case No. O-273, pp. 334-335.
[2] Docket, pp. 336-337.
[3] Docket, pp. 340, 373, 407, 441, 476.
[4] Docket, p. 521.
[5] Resolution dated August 24, 2012, Docket, pp. 529-530.

During the arraignment on October 3, 2012, accused Antonio M. Talaue, Analyn G. Fernandez and Angel T. Deray, Jr., with assistance of their counsel de parte, Atty. Randy Bareng, pleaded "Not Guilty" of the crime charged.[6] The arraignment of Leandro Antonio M. Talaue and Hannah Aileen Lim Fernandez who were not present allegedly for medical reasons, was reset to November 14, 2012. They were ordered by the Court to submit their respective medical certificates.

During the arraignment on November 14, 2012, the counsel for the prosecution failed to appear. Accused Hannah Aileen Lim Fernandez was present but accused Leandro Antonio M. Talaue was not present. Atty. Bareng manifested that the accused Leandro Antonio M. Talaue failed to appear because he suffered from epigastric pain.[7] Hence, the arraignment for the accused was reset to December 5, 2012.

On December 5, 2012, accused Hannah Aileen Lim Fernandez with the assistance of her counsel, Atty. Randy Bareng, entered a plea of "Not Guilty" of the crime charged. Atty. Bareng manifested that accused Leandro Antonio M. Talaue still failed to appear because his grandmother died on December 2, 2012. The Court denied accused Leandro Antonio M. Talaue's excuse for not attending the hearing set for his arraignment. The bond posted for his provisional liberty was forfeited in favor of the government, thereafter, the Court ordered the issuance of warrant of arrest for accused Leandro Antonio M. Talaue.[8] The arraignment of Leandro Antonio M. Talaue was reset to January 16, 2013.

On December 20, 2012, accused Leandro Antonio M. Talaue through his counsel, filed a "Motion for Reconsideration"[9] stating that "he failed to appear the arraignment on December 5, 2012 because his grandmother passed away; and that in the province where he is the incumbent mayor, his relatives and constituents expect him to be with the bereaved family from the interment until the 9th day thereof." The motion was set for hearing on January 16, 2013.

On January 16, 2013, a hearing was held for the 1) arraignment of Leandro Antonio M. Talaue; 2) pre-trial of the other accused; and 3) hearing on the "Motion for Reconsideration" of Leandro Antonio M. Talaue. Since Leandro Antonio M. Talaue was absent, the Court denied the Motion for Reconsideration. The arraignment was then set on February 20, 2012. Accused Antonio M. Talaue failed to appear for the pre-trial conference. However, the pre-trial conference proceeded for accused Hannah Aileen Lim Fernandez, Analyn G. Fernandez and Angel T. Deray, Jr.[10]

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6 Resolution dated October 12, 2012, Docket, pp. 556-557.
7 Resolution dated November 14, 2012, Docket, pp- 562-563.
8 Resolution dated December 5, 2012, Docket, pp. 582-583.
9 Docket, pp. 589-591.
10 Resolution dated January 13, 2102, Docket, pp. 608-609.

Consequently, the Court issued a Bench Warrant of Arrest for accused Antonio M. Talaue and Leandro Antonio M. Talaue.[11]

On February 13, 2013, accused Antonio M. Talaue and Leandro Antonio M. Talaue filed a "Motion to Lift Bench Warrant of Arrest."[12]

During the hearing on February 20, 2102 on the Motion to Lift Bench Warrant filed on February 13, 2013, counsel for all the accused manifested the presence of accused Leandro Antonio M. Talaue and Antonio M. Talaue. Both accused submitted their persons to the jurisdiction of the Court and prayed the lifting and setting aside of the bench warrant issued against them. There being no objection interposed by the' prosecution, the motion was granted. Thereafter, the Court proceeded with the arraignment of Leandro Antonio M. Talaue, who entered a plea of "Not Guilty" of the crime charged.

During the Pre-Trial Conference on March 13, 2013 for accused Leandro Antonio M. Talaue and Antonio M. Talaue, the defense adopted the stipulations agreed upon during the Pre-Trial Conference held on January 16, 2013 for accused Hannah Aileen Lim Fernandez, Analyn G. Fernandez and Angel T. Deray, Jr. The parties manifested that they will no longer file a Joint Stipulation of Facts and Issues.[13]

On April 23, 2013, the Court issued a Pre-Trial Order.[14] The case was then transferred to the Third Division, pursuant to CTA Administrative Circular No. 01-2013, "Reorganizing the Three (3) Divisions of the Court of Tax Appeals."

Trial thereafter ensued. To prove their case, the plaintiff presented three (3) witnesses, namely, Atty. Tristan Armando III F. Langcay, Ms. Delia V. Morala and Mr. Ronald Martin A. Velasco.

On August 11, 2014, plaintiff filed its "Formal Offer of Evidence (With Prayer for Allowance of Secondary Evidence pursuant to Rule 130, Section 5 of the Rules of Court).[15] On August 26, 2014, accused through their counsel, Atty. Bareng, filed "Comment to Prosecution's Formal Offer of Documentary Exhibits with Objection to Motion."[16]

On September 5, 2014, Atty. Domingo B. Leguiab filed a "Formal Entry of Appearance"[17] for accused Antonio M. Talaue, Leandro Antonio M. Talaue and Hannah Aileen Lim Fernandez.

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[11] Docket, pp. 610-611.
[12] Docket, pp. 612-613.
[13] Docket, pp. 626-627.
[14] Docket, pp. 650-658.
[15] Docket, pp. 898-968.
[16] Docket, pp. 933-935.
[17] Docket, p. 946.

On September 9, 2014, accused Antonio M. Talaue, Leandro Antonio M. Talaue and Hannah Aileen Lim Fernandez filed a "Comment to Prosecution's Formal Offer of Evidence with Objection to the Admission of All Exhibits."[18]

In the Resolution[19] dated September 30, 2014, the Court admitted Exhibits "A" and "B" but denied Exhibits "M","N","O","P" "Q","R","U", "V","W","Y","II" and "JJ" for failure of the plaintiff to present the originals for comparison. In the same Resolution, the Court ordered the setting of Commissioner's hearing for the permanent marking of Exhibits "C","D","E","F","G","H","I","J","K","L","X","Z","AA","BB","CC","DD", "EE" and "FF."

On October 14, 2014, plaintiff filed a "Supplemental Formal Offer of Evidence."[20] On December 9, 2014, all the accused through their respective counsels, filed a "Comment to Prosecution's Supplemental Formal Offer of Evidence."[21] By way of reply, the plaintiff filed a "Consolidated Comment."[22]

In the Resolution[23] dated January 22, 2015, the Court denied admission of Exhibits "C","D","E","F","G","H","I","J","K","L","X","Z","AA","BB", "CC","DD","EE" and "FF" for failure of the prosecution to present the originals for comparison.

On March 6, 2015, accused through their respective counsels filed their respective Motions for Leave of Court to File Demurrer to Evidence.[24]

In the March 11, 2015 Resolution,[25] the Court granted the Motion for Leave of Court to File Demurrer to Evidence of all the accused.

On April 7, 2015, accused, through their respective counsels, file their respective Demurrer to Evidence.[26]

On May 14, 2015, the plaintiff filed its "Consolidated Comment/Opposition to the Demurrer to Evidence filed by the Accused."[27]

On July 13, 2015, the plaintiff filed a "Tender of Excluded Evidence" which the Court noted in the Order dated July 22, 2015.[28]

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[18] Docket, pp. 952-955.
[19] Docket, pp. 961-962.
[20] Docket, pp. 973-982.
[21] Docket, pp. 989-996.
[22] Docket, pp. 998-999.
[23] Docket, pp. 1001-1003.
[24] Docket, pp. 1106-1109.
[25] Docket, pp. 1011-1012.
[26] Docket, pp. 1013-1022, 1040-1043.
[27] Docket, pp. 1048-1052.
[28] Docket, pp. 1062-1064.

On July 22, 2015, the Court issued a Resolution denying the Demurrer to Evidence filed by all the accused.[29]

On the other hand, the defense presented accused Antonio M. Talaue who testified on September 2, 2015. However, his testimony was stricken off the records because his presentation as a witness was reset twice due to non-appearance and for failure to submit his Judicial Affidavit.[30]

On February 15, 2016, Atty. Maria Elena Go Francisco filed an "Entry of Appearance"[31] as lead counsel for all the accused in the case, with Atty. Domingo B. Lenguib and Atty. Randy P. Bareng as co-counsels. In the Minute Resolution dated February 16, 2016,[32] the Court noted the "Entry of Appearance." On the same day, accused Antonio M. Talaue, through his counsel, filed a "Motion for Reconsideration"[33] praying that the Court reconsider its order on December 5, 2015, reinstate his previous testimony, allow the submission of his Judicial Affidavit in lieu of oral direct testimony, set anew the continuation of his testimony and suspend the period for the submission by the parties of their memoranda until after the completion of the presentation of the defense evidence.

On February 19, 2016,[34] the Court ordered the plaintiff to file Comment on the Motion for Reconsideration. However, the plaintiff failed to file Comment as per Records Verification Report of this Court dated April 7, 2016.

Meanwhile, on February 17, 2016, the plaintiff filed a "Motion to Admit Memorandum" with attached Memorandum.

In the Resolution dated April 18, 2016,[35] the Court admitted plaintiff's "Motion to Admit Memorandum" and granted accused's Motion for Reconsideration. Hence, the Court set the continuation of the direct testimony of accused Antonio M. Talaue on June 15, 2016 at 1:30 o'clock in the afternoon.

When the case was called for trial on June 15, 2016, only the counsel for the people, Asst. State Prosecutor Florencio D. Dela Cruz, appeared. Despite due notice, accused Antonio M. Talaue and the three (3) defense lawyers failed to appear. Hence, the Court ordered that the bond posted by accused Antonio M. Talaue for his provisional liberty is cancelled and declared forfeited in favor of the government, and a warrant of arrest be issued against said accused.[36]

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29 Docket, pp.1066-1075.
30 Docket, pp. 1135-1136.
31 Docket, pp. 1143-1145.
32 Docket, p. 1155.
33 Docket, pp. 1146-1151.
34 Docket, p. 1180.
35 Docket, pp.1187-1189.
36 Order dated June 15, 2016, Docket, pp. 1193-1194.

On June 22, 2016, the Court issued a Warrant of Arrest[37] against accused Antonio M. Talaue.

In the Order dated June 15, 2016,[38] the Court deemed this case submitted for decision.

FACTS OF THE CASE

The facts as culled from the records are as follows:

Plaintiff's first witness, *Atty. Tristan Armando III F. Langcay*, Deputy Collector for Operations of the Port of Manila, testified that he was previously a member of the Run After the Smugglers (RATS) group of the Legal Service and headed the Prosecution and Litigation Division of the Bureau of Customs (BOC); that he conducted the investigation of alleged smuggling of wheat flour; that from March 22, 2008 to April 1, 2008, a total of 28,055 bags of wheat flour consigned to Rubills International Inc. (Rubills) for the account of Fil House Enterprises (Fil Haus) arrived at the South Harbor, Manila from China; that according to the Warehousing Entry, Packing List, and the bills of lading, the consignee was Rubills for the account of Fil Haus, the customs broker was Shore Philippines, Inc. (Shore), represented by Meynardo B. Banayo and the Warehouse Entry was signed by Angel T. Deray, Jr. who acted in behalf of Rubills; that he was not familiar with the signatures of Meynardo B. Banayo and Angel T. Deray, Jr.; that on April 2 to 4, 2008, Alert Orders were issued against the subject shipments with Entry Nos. W-8720, W-8696, W-8707, W-8693, W-8725 and W-8731; that the subject shipments were spot-checked by the officers-on-case who found that the shipments yielded absolutely unmarked sacks of flour; that the entries were not properly endorsed by the Philippine Chamber of Commerce and Industry (PCCI) Secretariat considering that the ICE reports attached to the entries were not issued by the PCCI Secretariat; that the subject shipments were not covered by Certificate of Product Registration from BFAD; that on April 14, 2008, a Warrant of Seizure and Detention (WSD) was issued by Horacio Suansing, District Collector of POM against the subject shipments upon recommendation of the officers on case for violation of Section 101(k) of theTCCP; that the subject shipments of wheat flour were undervalued considering that they were declared at $220 per metric tons instead of the VRIS value of $297 per metric tons, and that the subject shipments were likewise underweight per bag since the subject shipments were declared at less than 25 kgs. per bag; that after the investigation, he filed the Complaint-Affidavit[39] dated April 15, 2008 with the Department of Justice (DOJ), with the approval of then BOC Commissioner Napoleon L. Morales;[40] that in the Complaint-Affidavit, the following persons were impleaded as respondents, namely, Francisco Billones, Angel T. Deray, Jr., Mary Lucille

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[37] Docket, pp. 1195-1196.
[38] Docket, pp. 1193-1194.
[39] Exhibit "B", Docket, pp. 914-928.
[40] Exhibit "A", Docket, pp. 909-913.

Billones, Susana dela Cruz Go, Anacleto Sanchez, Robert C. Amposta, Oscar Torres, Maria Catapang Jumento, Rosalio Teves, Leonard Dela Pas, Hannah Aileen Lim [F]ernandez, Meynardo B. Banayo. Accused Antonio M. Talaue, Leandro Antonio M. Talaue and Analyn G. Fernandez were not impleaded; that he learned about the involvement of the Talaues and Analyn G. Fernandez when the latter participated in the seizure proceedings claiming ownership over the imported wheat; that he executed a Supplemental Complaint Affidavit dated May 29, 2008; that in the Resolution[41] of the DOJ dated June 28, 2011, the complaint against Francisco Billones, Mary Lucille Billones, Susana dela Cruz Go, Anacleto Sanchez, Robert C. Amposta, Oscar Torres, Maria Catapang Jumento, Rosalio Teves, Leonard Dela Pas was dismissed for the reason that no act of fraudulent importation was attributable to them; that accused Angel T. Deray, Jr. was charged as Director and representative of importer Rubills, Hannah Aileen Lim- Fernandez was charged as the owner and Proprietress of Fil Haus, Meynardo B. Banayo was charged as the Licensed Customs Broker, Leandro Antonio M. Talaue and Analyn G. Fernandez were charged as the General Manager and Corporate Secretary, respectively, of Rubills. Antonio M. Talaue was impleaded because he actively participated in the seizure proceedings before the Port of Manila Law Division.

Atty. Langcay further testified that the BFAD Product Registration is required under existing law or regulation; that this product registration from BFAD has long been required by BOC for importation of food products like wheat flour since it involves public interest which must be protected; that as regards the subject shipment, he was not certain whether a final examination of the shipment was conducted by the Warehousing Assessment Division because the shipment was seized before it was released; that after the seizure, the Talaues filed a Motion for Reconsideration of the seizure order which was eventually denied by the Collector of Customs. The denial was later challenged by the Talaues in their Petition for Review before this Court. The case was eventually dismissed by the Court because of failure to exhaust administrative remedies; that there were two (2) importers in this case, i.e. the immediate importer and the end importer; that Rubills is the immediate importer, which imported the subject shipment for the end importer, Fil Haus; that his Supplemental Complaint Affidavit which merely added the three other accused no longer needed the approval and endorsement of the Commissioner of Customs because he had filed before several Supplemental Complaint Affidavits without the additional endorsement from the Commissioner.

Plaintiff's second witness, *Delia V. Morala*, Customs Operations Officer with the position of Principal Customs Operation of the Warehousing Assessment Division of the Port of Manila, Bureau of Customs, testified that among her duties were to make appraisal of imported goods and compute their corresponding duties and taxes; that pursuant to the request of the RATS group of the BOC, she computed the approximate dutiable value and the corresponding duties and taxes of the shipment subject of this case; that she

[41] Docket, pp. 8-20. (The Court observed that the DOJ Resolution is merely a photocopy.)

executed an affidavit stating that based on her assessment, the declared duties and taxes on the shipment were much less than the actual duties and taxes on the subject shipment; that her assessment based on the declaration in the six (6) warehousing entries was only the approximate values rounded off to two decimal places; that she executed the Discrepancy Report Form which contains the computation of the dutiable value of the subject shipment; that she was able to identify only the photocopies of the Discrepancy Report Form because the original copy of the same was with the RATS Group; that she was directed by then Commissioner of Customs to assist the RATS group in making the assessment; that she did not conduct physical examination of the subject shipment and made her computation based on the documents forwarded to her by the RATS group, particularly the import entry, packing list, bill of lading and the report of CIIS, who conducted the physical examination and inspection of the subject shipment in the presence of the Customs Examiner; that the discrepancy report she prepared was not entered at the back of the warehousing entry because only the Assessment Division can make notations at the back of the warehousing entry; that the essence of her computation was to assist the officers in their findings in the discrepancy of duties and taxes.

Plaintiff's third witness, *Martin A. Velasco*, Account Officer of the Public Private Bonded Warehouse Division of the BOC testified that the originals or certified true copies of the documents listed in the *Subpoena Duces Tecum* issued to him were not in his possession nor in his office; that his office retained only photocopies of the documents pertaining to this case; that he is certain that the photocopies of the documents presented by the plaintiff were those processed by his office because his initials appeared therein; that the official repository of the originals of the subject documents is the Warehousing and Documents and Records Division of the BOC.

ISSUE

Whether or not accused ntonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, Angel T. Deray, Jr. are guilty beyond reasonable doubt for violation of Section 3601 in relation to Section 101(k) of the TCCP, as amended, in relation to BFAD Administrative Order No. 37, dated June 8, 1979.

APPLICABLE LAWS

Section 3601 of the TCCP, as amended, provides:

> **"Sec. 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 smuggling and shall be punished with:

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;
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;
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 not exceed one hundred fifty thousand pesos;
4. A fine 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 the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos;
5. The penalty of prison may or 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.

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.

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."

Section 101(k) of the TCCP, as amended by P.D. No. 1464, provides:

"SEC. 101. *Prohibited Importations.*

"The importation into the Philippines of the following articles is prohibited:

(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law.
(b) Written or printed articles in any form containing any matter advocating or inciting treason, or rebellion, or insurrection, sedition or subversion against the Government of the Philippines, or forcible resistance to any law of the Philippines, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines.
(c) Written or printed articles, negatives or cinematographic film, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immortal character.
(d) Articles, instruments or drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or give directly or indirectly information where, how or by whom unlawful abortion is produced.
(e) Roullette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other articles when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof.
(f) Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof, and lists of drawings therein.
(g) Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof, the stamps, brands or marks or which do not indicate the actual fineness of quality of said metals or alloys.

(h) Any adulterated or misbranded articles of food or any adulterated or misbranded drug in violation of the provisions of the "Foods and Drugs Act."

(i) Marijuana, opium, pipes, coca leaves, heroin or any narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactures salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medical purposes only.

(j) Opium pipes and parts thereof, of whatever material.

(k) **All other articles and parts thereof, the importation of which prohibited by law or rules and regulations issued by competent authority.** (Emphasis supplied)

Also relevant to the resolution of the case is Administrative Order No. 37, Series of 1979. Sections 1 and 2 thereof states:

SECTION 1. Any person desiring to import or export food and food products shall file an application for the registration of each and every food items to be imported or exported with the Food and Drug Administration, stating therein the following:

a) the name, address, and citizenship of the exporter/importer;
b) the class of food or food products to be imported or exported;
c) full list of all the ingredients used as component of the finished product;
d) technical specification of ingredients used;
e) description of finished product;
f) three labels or specimens of proposed label and other labeling material such as insert and brochures, if any:
g) two market or commercial presentation of the product;
h) sufficient samples for laboratory analysis, if necessary.

SECTION 2. A Certificate of Product Registration (CPR) shall be issued by the Food and Drug Administration after it has been carefully examined and evaluated that the food and food products sought to be registered are neither misbranded nor adulterated, and after payment of the sum of P25.00 for every item registered.

With regard to the persons liable, **Article 31 of the Corporation Code of the Philippines** provides:

> Section 31. *Liability of directors, trustees or officers.* - Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

RULING OF THE COURT

Based on the allegations in the Information, the plaintiff must prove that all the accused are the responsible officers of the corporation, and in conspiracy with one other, either unlawfully imported or brought into the Philippines, knowing that the imported article were brought without a Certificate of Product Registration, to the damage and prejudice of the Philippine government.

Accused are the responsible officers of the corporation

A corporation is an artificial entity created by operation of law. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[42] The penal liability for violation of the provisions under the TCCP is pinned upon the responsible officers of the corporation, who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. Corporations can act only through its officers.

It appears in the Referral for Preliminary Investigation and in the complaint affidavit of Atty. Langcay that accused Angel T. Deray, Jr. was

[42] Philippine National Bank vs. Hydro Resources Contractors Corporation, G.R. No. 167530, March 13, 2013.

charged as Director and representative of Rubills, Hannah Aileen Lim-Fernandez as the owner and Proprietress of Fil Haus, Leandro Antonio M. Talaue as the General Manager of Rubills. As regards Antonio M. Talaue, he was impleaded because according to Atty. Langcay, he actively participated in the seizure proceedings before the Port of Manila Law Division, and Analyn G. Fernandez was charged as the Corporate Secretary of Rubills.

In the case at bar, the plaintiff did not present the Articles of Incorporation, By Laws, or General Information Sheets of Rubills, Fil Haus and Shore. However, during the January 16, 2013 and March 13, 2013 Pre-Trial Conference, all the accused admitted that they are the corporate officers of the involved corporations.

Admissions and stipulations made during the Preliminary Conference or Pre-trial Conference which are reduced into writing and signed by the parties and their counsels are judicial admissions pursuant to Section 4, Rule 129 of the Rules of Court.[43]

The Pre-trial Order dated April 23, 2013 provides:

"II. The parties admitted during the Pre-trial Conference the following:

A. Facts:

1. Accused Antonio M. Talaue and Leandro Antonio M. Talaue are the President and General Manager of Shore Philippines, Inc. (Shore), respectively; Hannah Aileen Lim Fernandez (Proprietress/Owner of Fil Haus) and Analyn G. Fernandez are the Corporate Secretary and Executive Secretary of Shore, respectively, Angel T. Deray, Jr. is the Director for Operation of Rubills; and Meynardo B. Banayo is a licensed customs broker;
2. One of the bases of the indictment is the Articles of Incorporation of Rubills International, Inc., Fil Haus Enterprises, and Shore Philippines, Inc.
3. The corporations involved have other corporate officers and stockholders aside from the accused;
4. Accused Antonio M. Talaue and Leandro Antonio M. Talaue are the same persons charged and arraigned in the subject Information;
5. The Court has jurisdiction over the case;

[43] *Judicial Admissions.*- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

6. Accused Leandro Antonio M. Talaue, representing Rubills and Fil Haus filed on April 24, 2008 a Motion for Reconsideration on the forfeiture proceedings in Seizure Identification No. 2008-063; and
7. Accused Leandro Antonio M. Talaue, representing Rubills and Fil Haus, filed on May 6, 2008 a Petition for Review against Customs Commissioner Napoleon L. Morales et al., raffled to the Second Division [now CTA EB. No. 471]."

This Pre-trial Order was signed by Atty. Randy P. Bareng, with the conformity of all the accused. Hence, accused Antonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, Angel T. Deray, Jr. are bound by their admissions that they are the corporate officers of the corporations involved in this case.

Allegation of Conspiracy as a means of committing violations of Section 3601 in relation to Section 101(k) of the TCCP and Administrative Order No. 37 must be duly proven

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. It may be proved by direct or circumstantial evidence.

Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime, or by exerting moral ascendancy over the other co-conspirators. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.[44]

To prove their case, the prosecution presented in evidence the testimonies of Atty. Langcay, Delia V. Morala and Martin A. Velasco, and the

[44] People vs. Amodia, 602 Phil. 889 (2009), cited in the case of Mark Renald Marasigan y de Guzman vs. Reginald Fuentes Alias "Regie," et al. G.R. No. 201310, January 11, 2016.

documentary exhibits identified by the witnesses during their direct examinations. The Court admitted in evidence the documentary Exhibits "A" and "B" but denied all the other documentary exhibits formally offered for failure of the plaintiff to present the original documents for comparison. Under the rules, when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[45] Hence, the Court cannot consider in the resolution of the case the photocopies of bills of lading, alert orders and discrepancy report forms.

From the totality of the evidence presented, the prosecution was not able to prove conspiracy in this case. While it is true that in the testimony of Atty. Langcay, he identified the bills of lading, showing the names of the involved corporations in this case, the Court cannot, however consider the bills of lading as evidence of participation of all the accused in committing the crime charged. There is no proof either in the testimonial or in the documentary evidence presented by the plaintiff showing the accused, as conspirators, had performed some overt act, direct or indirect contribution to the execution of the crime charged.

To repeat, there is no proof that there was a conscious design attributable to all accused as to their participation in the importation of the subject shipment with knowledge that the said shipment containing 28,055 bags of wheat flour was imported without the requisite Certificate of Product Registration. While the name of Rubills, Fil Haus, Angel T. Deray, Jr. and Meynardo B. Banayo appear in the bill of lading, this document is not proof of conspiracy. It cannot be inferred from the bills of lading that all the accused participated in the importation of the subject shipments.

Proof of failure to secure
BFAD Certification

Administrative Order No. 37 dated June 8, 1979, was issued in compliance with the provisions of Republic Act No. 3720, as amended,[46] was issued to further stress that food intended to be imported or exported shall neither be adulterated nor misbranded and to safeguard the quality and safety of Philippine importable and exportable products.

All the accused were charged of importation of wheat flour without a Certificate of Product Registration from BFAD.

The general rule is that if a criminal charge is predicated on a negative allegation, or a negative averment is an essential element of a crime, the

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[45] Section 3, Rule 130 of the Rules of Court.
[46] "An Act to Ensure the Safety and Purity of Foods and Cosmetics Act, and the Purity, Safety, Efficacy and Quality of Drugs and Devices Being Made Available to the Public, Vesting the Bureau of Food and Drugs with Authority to Administer and enforce the Laws Pertaining Thereto, and for Other Purposes." (Amended by Executive Order Nos. 851, 119 and 175).

prosecution has the burden to prove the charge.[47] In this case, aside from the testimony of Atty. Langcay, the prosecution did not present any certification from BFAD concerning the absence of BFAD certification of the subject shipments.

Atty. Langcay testified as follows:

ATTY. BARENG
Q The subject importation, Mr. Witness was with *(sic)* without the necessary certificate of product registration from Bureau of Food and Drugs, what is your basis in alleging that shipment of wheat flour should have this product registration from BFAD?

ATTY. LANGCAY
A It has been the practice and even the requirement of the Bureau of Customs that with respect with the wheat flour and other food products, you should have come with the product registration coming from the BFAD, considering the public interest being protected.

JUSTICE BAUTISTA
So, you should first have an approval from the BFAD?

ATTY. LANGCAY
That is correct, Your Honors.

ATTY. BARENG
Q Aside from that practice, what is the basis of that practice, do you know?

ATTY. LANGCAY
A That is required by BFAD by the Office of the BFAD because the Bureau of Customs is not only implementing that provision of the Tariff and Customs Code, it also includes other allied laws relative to imported goods.

ATTY. BARENG
Q Would you be specific on what is the law violated?

ATTY. LANGCAY
A That is a requirement by BFAD.
ATTY. BARENG
Q What law requires?

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[47] People of the Philippines vs. Ferdinand Cercado y Mozada, G.R. No. 144494, July 28, 2002, citing People vs. Manalo,230 SCRA 309 (1994).

ATTY. LANGCAY

A At the moment, I am not ready to specify what law or specific rules of the BFAD is violated. Probably, I could make a research on that, Sir.

JUSTICE LIBAN

But you know for a certain that there was such a requirement?

ATTY. LANGCAY

Yes, Your Honors.

ATTY. BARENG

Q Mr. Witness, in your complaint, you said that the requirement is supposed to be .... with the Administrative Order No. 37, would that be correct to state that?

ATTY. LANGCAY

A I cannot recall what is that memorandum order no. 37, sir.

ATTY. BARENG

Q Mr. Witness, wheat flour, the same with the other kinds of flour such as mais and cereals?

ATTY. LANGCAY

A Again, I am not competent to deal with that, considering that I am just a lawyer of the legal service of the Bureau of Customs.

JUSTICE VICTORINO

What you are saying is that wheat is certainly different from corn or from rice?

ATTY. LANGCAY

A As per wheat if they are uniformly classified for the imposition of the requirement of BFAD Registration.

JUSTICE VICTORINO

He said that there is a registration before importation of wheat flour that is supposed to be the requirement of BFAD.

ATTY. BARENG

We submit, Your Honors.

Q Are you saying also, Mr. Witness that the requirement or the practice of BFAD registration as you have said from the Bureau of Customs would refer to all kinds of flour not only wheat?

ATTY. LANGCAY

A I am not specifically competent or knowledgeable on what other items other than the wheat flour is the registry requirement of product registration required. Considering that I am only the lawyer who collated these evidence and on the basis of these evidence collated whether or not there was a violation of the TCCP or other customs' laws. In our evaluation we have determined that there was a violation of TCCP, thereby we caused the filing of this case with the Department of Justice and then eventually this was filed with this Court, Your Honors.[48]

The burden of proof lies with the prosecution to prove that there is unlawful importation of 28,055 bags of wheat flour and that such unlawful importation is known to all accused. The evidence of the prosecution failed to satisfactorily prove the negative allegation in the Information that accused did not possess the required Certificate of Product Registration. The absence of such certificate or legal authority to import the subject shipment is an essential ingredient of the offense charged against the accused, which the prosecution failed to establish.

CONCLUSION

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[49]

While it is true that none of the accused controverted the evidence presented by plaintiff, the evidence of plaintiff cannot however be a basis of conviction of all the accused because the "available evidence" before the Court failed to establish the guilt beyond reasonable doubt of all the accused in this case.

In fine, there is reasonable doubt as to the guilt of accused Antonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, and Angel T. Deray, Jr. Where there is reasonable doubt, an accused must be acquitted even though his innocence may not have been fully

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[48] Cross Examination, TSN dated September 4, 2013, Docket, pp. 771-774.

[49] People of the Philippines vs. Nenita B. Hu, G.R. No. 182232, October 6, 2008 citing People vs. Corpuz, 459 Phil 100.

established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[50]

WHEREFORE, premises considered, accused **Antonio M. Talaue, Leandro Antonio M. Talaue, Hannah Aileen Lim Fernandez, Analyn G. Fernandez, and Angel T. Deray, Jr.** are hereby **ACQUITTED** of the crime charged.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[50] Violeta Balihadad vs. People, G.R. No. 185195, March 17, 2010, citing, [Monteverde vs. People, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.]

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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