REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NO. O-887** For: Violation of Section 1401(e) of Republic Act No. 10863 (Customs Modernization and Tariff Act) Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
VERNADETH LUCERO GABRIEL, Accused.	Promulgated: APR 16 2024 10:41 AM

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DECISION

RINGPIS-LIBAN, J.:

The Case

Accused Vernadeth Lucero Gabriel is charged before this Court for violation of Section 1401(e) of Republic Act ("R.A.") No. 10863 or the Customs Modernization and Tariff Act ("CMTA").

Accused is the proprietor of Oroeightyeight Marketing, a single proprietorship duly registered with the Bureau of Customs ("BOC") as importer.[1]

On May 18, 2021, an Information[2] was filed against accused, which reads:

[1] Docket, Minutes of Preliminary Conference, Stipulation of Facts, pp. 93-94.
[2] *Id.*, pp. 5-8.

> "That on or about the 17th day of September 2019, and on dates prior thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Vernadeth Lucero Gabriel, conspiring and confederating with John Does and Jane Does, whose true identities and whereabouts are still unknown, and all of them mutually helping and aiding one another, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there willfully, unlawfully and knowingly participate in and facilitate the importation, transportation, concealment, and possession of dutiable eight hundred forty-five (845) boxes of Marvels cigarettes, with dutiable value of [Php]7,669,057.76 and an aggregate amount of customs duties, taxes and fees of Php16,573,671.00, contained in Container Van No. TCNU4089028, but which were declared in Formal Entry No. C-125535-19 and in a manifest waybill in relation to Bill of Lading No. 350910127282 as tissue papers, smoke alarm parts, smoke detectors and accessories, said accused knowing the same to have been imported contrary to law, to the damage and prejudice of the Philippine Government.
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> Contrary to law."

On June 09, 2021, a Resolution[3] was issued directing plaintiff to submit the original or certified true copy of the Referral/Approval Letter of the Commissioner of Customs within five (5) days from receipt. In the meantime, the determination of probable cause for the issuance of warrant of arrest against the accused was held in abeyance.

On June 21, 2021, plaintiff filed a Compliance[4] submitting the original Referral/Approval Letter of the Commissioner of Customs, which the Court noted in a Resolution[5] dated July 05, 2021. In the same Resolution, the Court ordered the issuance of a warrant of arrest for accused, and fixed the bail bond for her provisional liberty at one hundred twenty thousand pesos (Php120,000.00).

On July 07, 2021, the Warrant of Arrest[6] for accused was issued.

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3 *Id.*, pp. 50-52.
4 *Id.*, pp. 53-56.
5 *Id.*, pp. 58-60.
6 *Id.*, p. 61.

On October 04, 2021, the served Warrant of Arrest was returned to the Court, the accused having been arrested and detained at the custodial facility of the Manila Police District Jose Abad Santos Police Station (PS7).[7]

On November 17, 2021, a Resolution[8] was issued:

1) Noting the return of the Warrant of Arrest;

2) Ordering the issuance of a Commitment Order for the commitment of the person of the accused to the Manila City Jail to be held as detention prisoner under this case, until futher orders from the Court; and

3) Setting the arraignment on December 06, 2021 at 9:00 a.m.

On December 06, 2021, through videoconference, accused was arraigned and with the assistance of her counsel *de parte*, entered a plea of "Not Guilty" to the crime charged.[9]

The Preliminary Conference was held on December 13, 2021.[10]

The Pre-trial Conference[11] was then held on March 28, 2022, after three (3) resettings.[12]

In the Pre-Trial Order[13] dated April 13, 2022, the parties stipulated on the following facts, to wit:

"A. Stipulated Facts

1. That the accused, VERNADETH LUCERO GABRIEL, is the same person charged in the Information.

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7 *Id.*, pp. 63-68.
8 *Id.*, pp. 71-76.
9 *Id.*, pp. 82-83.
10 *Id.*, pp. 88-95.
11 *Id.*, p. 106.
12 *Id.*, pp. 101, 102 and 104.
13 *Id.*, pp. 109-115.

2. That this Honorable Court of Tax Appeals (CTA) has jurisdiction over the case.

3. That Oroeightyeight Marketing, a single proprietorship company, is duly registered with the Bureau of Customs as an importer.

4. That accused Vernadeth L. Gabriel is its duly registered proprietor with the Bureau of Customs.

5. That the picture and signature of the accused in the List of Principal Officers is her authentic picture and signature on file with the Bureau of Customs."

Meanwhile on April 25, 2022, a Resolution[14] was issued approving the surety bond posted by accused for her provisional liberty.

Trial ensued and, to prove its case, plaintiff presented five (5) witnesses, namely: Noemi O. Mendoza, Arsenia C. Ilagan, Atty. Justin Roman S. Geli, and Karl S. Cortes. They testified as follows:

1) Noemi O. Mendoza testified[15] that she is a Customs Operations Officer ("COO") III in the BOC. She conducted an examination of a shipment declared in Formal Entry No. C-125535-19[16] and in a manifest waybill in relation to Bill of Lading No. 350910127282[17], which was consigned to Oroeightyeight Marketing located at RM232-C Regina Building, Escolta St., Binondo, Manila.

Her investigation was prompted by the arrival of a shipment of 1x40 Container bearing no. TCNU4089028[18], with attached Packing List[19] and Commercial Invoice[20] said to contain tissue paper, smoke alarm parts, smoke detector and accessories. The shipment arrived on September 17, 2019 at the Port of Manila on board vessel "Cape Ferrol" from Vietnam.

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[14] *Id.*, p. 158.
[15] *Id.*, Complaint-Affidavit COO II Noemi Mendoza (Exhibits "P-1" to "P-1-F") and Order of hearing dated May 04, 2022, pp. 214-219 and 159.
[16] *Id.*, Single Administrative Document/Import Entry (Exhibits "P-4" to "P-4-G") (Exhibit "A-1"), pp. 223-224.
[17] *Id.*, Exhibits "P-3" and "P-3-A", p. 222.
[18] *Id.*, Exhibits "P-14" and "P-14-A", p. 234.
[19] *Id.*, Exhibits "P-8" to "P-8-B", p. 228.
[20] *Id.*, Exhibits "P-9" to "P-9-B", p. 229.

Based on a derogatory information, Customs Intelligence and Investigation Service ("CIIS"), Port of Manila Supervisor Atty. Justin Roman S. Geli, requested the Office of District Collector, Port of Manila, Arsenia C. Ilagan on September 27, 2019 for the issuance of an Alert Order to conduct one hundred percent (100%) physical examination over the shipment to check the actual contents of the container.[21]

Then on October 02, 2019, Alert Order No. A/POM/20191002-00092[22] was issued by District Collector Ilagan against the shipment.

Thereafter, a physical examination was conducted where it was revealed that instead of one hundred fifty (150) cartons of tissue paper and four hundred eighty (480) cartons of smoke alarm parts, smoke detector and accessories, the shipment contained eight hundred forty-five (845) boxes (50 reams/box) of Marvel cigarettes and forty (40) pieces plastic packages (12 roll/package) of Dai Thang bathroom tissue.[23] As found, there was misdeclaration of the actual contents of the goods, the correct dutiable value amounting to Php7,669,057.76 and aggregate customs duties, taxes and fees amounting to Php16,573,671.00.[24]

Thus, on October 09, 2019, as the assigned customs examiner, COO II Mendoza recommended to District Collector Ilagan the issuance of a Warrant of Seizure and Detention ("WSD") against the entire shipment for violation of Section 1400 in relation to Section 1113 of the CMTA.[25]

On October 16, 2019, District Collector Ilagan issued a WSD[26] against the entire shipment.

Thereafter, COO II Mendoza recommended the filing of a criminal complaint with the Department of Justice (DOJ) against the accused, being the

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[21] *Id.*, Memorandum/Request for Issuance of Alert Order dated September 27, 2019 (Exhibits "P-10" and "P-10-A"), p. 230.

[22] *Id.*, Exhibit "P-11" to Exhibit "P-11-B", p. 231.

[23] *Id.*, Alert Order Report Form for Alert Order No. A/POM/20191002-00092 (Exhibits "P-12" to "P-12-C"), Examination Report dated October 04, 2019 (Exhibits "P-13" to "P-13-F"), Photograph of Container No. TCNU4089028 (Exhibits "P-14" and "P-14-A"), Photograph of a carton containing Marvels cigarettes (Exhibits "P-15", "P-15-A", "P-16", "P-16-A", "P-19" and "P-19-A"), and Photograph of the Dai Thang Bathroom Tissues (Exhibits "P-17", "P-17-A", "P-18" and "P-18-A"), pp. 232-239.

[24] *Id.*, Memorandum dated October 31, 2019 regarding the Request for Computation of Duties and Taxes dated October 21, 2019 (Exhibits "P-20" and "P-20-A") and Import Assessment Service Valuation of Import Entry No. C-125535/Detailed Computation (Exhibits "P-21" to "P-21-B"), pp. 240-241.

[25] *Id.*, Disposition Form dated October 09, 2019 (Exhibits "P-23" to "P-23-H), pp. 243-245.

[26] *Id.*, Exhibits "P-24" to Exhibit "P-24-A", p. 246.

proprietor[27] of Oroeightyeight Marketing for violation of Section 1401 in relation to Sections 1400, 117, 1113(i), (l), 117 and 412 of the CMTA for knowingly, intentionally and fraudently misdeclaring the shipment for the purpose of evading the payment of correct duties and taxes due to the government. She executed a Complaint-Affidavit[28] for this purpose.

On cross examination[29], COO II Mendoza testified that the Import Entry[30] was prepared by the broker Teodora Lacerna Braceros who signed it, and was based on the commercial invoice, the packing list and bill of lading. She also testified that the Import Entry was signed by the Attorney-in-Fact of Oroeightyeight Marketing but had no knowledge whether it was accused who signed as the Attorney-in-Fact.

2) Arsenia C. Ilagan testified[31] that she is currently the District Collector in BOC Port of San Fernando, La Union and from September to October 2019 has been the District Collector in BOC Port of Manila. As head of the entire Collection District, her office was tasked to ensure that the duties, taxes, fees, charges, penalties and fines accruing to the government were collected. Her office was also in charge of supervising all import and export shipments processed in the Port of Manila.

She came across the subject importation when her office received a request[32] from CIIS Port of Manila Supervisor Atty. Justin Roman S. Geli, for the issuance of an Alert Order against the shipment consigned to Oroeightyeight Marketing covered by Bill of Lading No. 350910127282[33].

Based on such request and to further verify the derogatory information received about the shipment consigned to Oroeightyeight Marketing, she issued Alert Order No. A/POM/20191002-00092[34].

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[27] *Id.*, Client Profile Information of Oroeightyeight Marketing (Exhibits "P-5" to Exhibit "P-5-B") (Exhibit "A-2"), List of Principal Officers of Oroeightyeight Marketing (Exhibits "P-6" to Exhibit "P-6-D") (Exhibit "A-3"), and List of Responsible Officers of Oroeightyeight Marketing (Exhibits "P-7" to Exhibit "P-7-E") (Exhibit "A-4"), pp. 225-227.

[28] *Id.*, Complaint-Affidavit COO II Noemi Mendoza (Exhibits "P-1" to "P-1-F"), pp. 214-219.

[29] *Id.*, Order of hearing dated May 04, 2022, p. 159.

[30] *Id.*, Single Administrative Document/Import Entry (Exhibits "P-4" to "P-4-G") (Exhibit "A-1"), pp. 223-224.

[31] *Id.*, Judicial Affidavit of District Collector Arsenia C. Ilagan (Exhibits "P-25" and "P-25-A") and Order of hearing dated May 23, 2022, pp. 162-170 and 196.

[32] *Id.*, Memorandum/Request for Issuance of Alert Order dated September 27, 2019 (Exhibits "P-10" and "P-10-A"), p. 230.

[33] *Id.*, Exhibits "P-3" and "P-3-A", p. 222.

[34] *Id.*, Exhibits "P-11" to "P-11-B", p. 231.

She then ordered COO III Noemi O. Mendoza of the Formal Entry Division Port of Manila *via* a Memorandum[35] to determine if the said shipment has been released. She also ordered her to conduct one hundred percent (100%) examination of the alerted shipment and to submit an Alert Order Report relative to the subject shipment.

Subsequently, COO III Mendoza complied and submitted an Alert Order Report Form[36] and Disposition Form[37]. The report stated that the actual contents of the shipment were undeclared eight hundred forty-five (845) boxes of Marvels cigarettes and forty (40) pieces of plastic packages containing Dai Thang bathroom tissue papers. It was also recommended that a WSD be issued against the entire shipment due to the disparity of the actual goods found from the declared goods.

District Collector Ilagan agreed with the recommendation of CO III Mendoza and issued the WSD[38] against the shipment consigned to Oroeightyeight Marketing on October 16, 2019.

3) Atty. Justin Roman S. Geli testified[39] that he is currently the Field Station Chief of the CIIS Port of Subic and from September to October 2019 has been the Supervisor of the CIIS Port of Manila. In his previous position, his basic duties included supervision and management of the day-to-day activities of the CIIS Port of Manila.

He was familiar with the shipment consigned to Oroeightyeight Marketing covered by Bill of Lading No. 350910127282[40] because his office received an information that it contained undeclared cigarettes and other items.

Upon receiving such information, he made a request, through a Memorandum[41], to District Collector Arsenia C. Ilagan for the issuance of an Alert Order. The purpose for the Alert Order is to verify the information they received and so that a one hundred percent (100%) physical examination be conducted of the contents of the subject shipment.

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[35] *Id.*, Memorandum/Examination of Alerted Shipment dated September 30, 2019 (Exhibits "P-22" and "P-22-A"), p. 242.

[36] *Id.*, Exhibits "P-12" to "P-12-C", p. 262.

[37] *Id.*, Exhibits "P-23" to "P-23-H, pp. 243-245.

[38] *Id.*, Exhibits "P-24" to "P-24-A", p. 246.

[39] *Id.*, Judicial Affidavit of Atty. Justin Roman S. Geli (Exhibits "P-26" and "P-26-A") and Order of hearing dated May 23, 2022, pp. 179-184 and 196.

[40] *Id.*, Exhibits "P-3" and "P-3-A", p. 222.

[41] *Id.*, Memorandum/Request for Issuance of Alert Order dated September 27, 2019 (Exhibits "P-10" and "P-10-A"), p. 230.

District Collector Ilagan then issued the requested Alert Order[42].

4) Karl S. Cortes testified[43] that he is currently the Acting Chief of the Assessment Division of the BOC Port of Clark and from September to October 2019 has been the Valuation and Classification Officer, assigned at the Valuation and Classification Division, Imports Assessment Service, BOC. As a Valuation and Classification Officer, he was responsible for the evaluation and classification being requested by other offices of the BOC. He also did valuation, classification and computation of settlement and redemption request from other offices of the BOC. He likewise replied to communication queries through letter and email pertaining to the valuation function of the BOC.

He came across with the shipment consigned to Oroeightyeight Marketing, which arrived on September 17, 2019 in the Port of Manila, and was processed under Entry No. C-125535-19, when his office received a request from the Legal Service and the Bureau's Action Team Against Smugglers ("BATAS") for the computation of duties and taxes related to the said shipment. The request was made through a Memorandum dated October 21, 2019.[44]

His office then acted on the said request and assigned him to assess and compute the duties and taxes in connection with the subject importation. After assessment and computation, he was able to calculate that the shipment consigned to Oroeightyeight Marketing has a dutiable value of Php7,669,057.76 and an aggregate amount of customs duties, taxes and fees of Php16,573,671.00. He made a tabular report regarding his assessment and computation of the goods/items in the shipment.[45] His tabular report was thereafter submitted to the Legal Service and BATAS *via* a Memorandum[46] dated October 31, 2019.

The plaintiff filed its Formal Offer of Evidence[47] on May 31, 2022, while accused filed his Comment/Objection (Re: Prosecution's Formal Offer of Documentary Evidence)[48] on June 08, 2022. In the Resolution[49] dated June 21, 2022, this Court admitted all the evidence for the plaintiff.

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42 *Id.*, Exhibits "P-11" to "P-11-B", p. 231.
43 *Id.*, Judicial Affidavit of Karl S. Cortes (Exhibits "P-27" and "P-27-A") and Order of hearing dated May 23, 2022, pp. 188-193 and 196.
44 *Id.*, Import Assessment Service Valuation of Import Entry No. C-125535/Detailed Computation (Exhibits "P-21" to "P-21-B"), p. 230.
45 *Id.*, Memorandum/Request for Issuance of Alert Order dated September 27, 2019 (Exhibits "P-10" and "P-10-A"), p. 241.
46 *Id.*, Exhibits "P-20" and "P-20-A", p. 240.
47 *Id.*, pp. 198-213.
48 *Id.*, pp. 268-272.
49 *Id.*, pp. 274-275.

Pursuant to CTA Administrative Circular No. 01-2022, dated June 21, 2022, the case was transferred to the Third Division of this Court.[50]

Meanwhile, accused filed her Motion for Leave to File Demurrer to Evidence[51] on July 05, 2022 *via* registered mail. On August 18, 2022, a Resolution[52] was issued ordering plaintiff to file its comment on the motion. Consequently, the plaintiff filed its Opposition (to the Motion for Leave to File Demurrer to Evidence)[53] on September 16, 2022.

On February 15, 2022, the Motion for Leave to File Demurrer to Evidence was granted in a Resolution[54].

On March 09, 2023, accused filed her Demurrer to Evidence[55] to which the plaintiff filed its Comment/Opposition (to the Demurrer to Evidence of accused Vernadeth Lucero Gabriel)[56] on March 17, 2023. In the Resolution[57] dated May 26, 2023, this Court denied the Demurrer to Evidence for lack of merit.

On June 19, 2023, this case was transferred to the Second Division.[58]

On June 20, 2023, accused filed a Motion for Reconsideration[59], to which the plaintiff filed its Comment/Opposition (to the Motion for Reconsideration of accused Vernadeth Lucero Gabriel)[60] on July 17, 2023. Accused thereafter filed a Reply (Comment/Opposition)[61] on July 28, 2023. On October 25, 2023 the Court issued a Resolution[62] denyng accused's Motion for Reconsideration.

After several resettings, the initial presentation of evidence for the accused was set to January 18, 2024 at 1:30 p.m. N

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50 *Id.*, Order dated June 29, 2022, p. 276.
51 *Id.*, pp. 283-285.
52 *Id.*, pp. 281-282.
53 *Id.*, pp. 286-290.
54 *Id.*, pp. 297-300.
55 *Id.*, pp. 302-310.
56 *Id.*, pp. 313-319.
57 *Id.*, pp. 321-327.
58 *Id.*, p. 330.
59 *Id.*, pp. 331-336.
60 *Id.*, pp. 339-342.
61 *Id.*, pp. 345-348.
62 *Id.*, pp. 352-357.

Accused, Vernadeth Lucero Gabriel, was presented as sole witness for the defense. She testified[63] that she is the accused in the instant case and she was charged for violation of Section 1401(e) of the CTA, alleging that she knowingly participated in the importation of eight hundred forty-five (845) boxes of Marvels cigarettes. She declared that she was not aware of the said importation transaction covered by a Single Administrative Document/Import Entry[64] and other supporting documents such as a Bill of Lading[65], Packing List[66] and Commercial Invoice[67].

She did not know who made the entries in the subject import entry, and the signature[68] therein was not her signature. Instead, her authentic signature for the importations by Oroeightyeight Marketing is the signature appearing in the List of Principal Officers of Oroeightyeight Marketing[69] and List of Responsible Officers of Oroeightyeight Marketing[70].

She did not authorize anyone for the transaction covered by the said importation. She also do not know a broker in the name of Teodora Lacerna Braceros. Lastly, she did not appear before any notary public to swear for the Import Entry covering the said importation.

On cross-examination, she testified that she is the sole proprietor of Oroeightyeight Marketing and that the latter is an accredited importer with the BOC. She filed an application for accreditation with the BOC on October 2018, and the principal place of business of of Oroeightyeight Marketing was in Room 232, Regina Building, Escolta. However, the business stopped operating sometime in September 2019 when a case was filed against them. She was accompanied by her business partner, Blademir Ventura, when she filed for application as importer with the BOC. She was not aware of the instant case until after the filing of the DOJ with this Court. Lastly, she denied that the signature appearing in the Import Entry was hers stating that she always signs on the import entries before she releases them.

On clarificatory questions from the Court, she testified that Oroeightyeight Marketing is a consignee of shipments from abroad, specifically household goods. Although Oroeightyeight Marketing was indicated as the consignee in the subject importation, they never dealt with imported cigarette

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63 *Id.*, Judicial Affidavit (of Vernadeth Lucero Gabriel) (Exhibit "A-5") and Order of hearing dated January 18, 2024, pp. 359-362 and 369-370.
64 *Id.*, Exhibits "P-4" to "P-4-G", Exhibit "A-1", pp. 223-224.
65 *Id.*, Bill of Lading No. 350910127282 (Exhibits "P-3" and "P-3-A"), p. 222.
66 *Id.*, Exhibits "P-8" to "P-8-B", p. 228.
67 *Id.*, Exhibits "P-9" to "P-9-B", p. 229.
68 *Id.*, Exhibit "P-4-B", Exhibit "A-1", p. 223.
69 *Id.*, Exhibits "P-6" to Exhibit "P-6-D", Exhibit "A-3", p. 226.
70 *Id.*, Exhibits "P-7" to Exhibit "P-7-E", Exhibit "A-4", p. 227.

products. Oroeightyeight Marketing had three (3) personnel – an encoder, the authorized signatory and the one handling the operations. The encoder was the one who had access to the account of Oroeightyeight Marketing with the BOC, in particular the username and password for online transactions with the BOC. She on the other hand was the authorized signatory, while her partner, Blademir Ventura, handled the operations.

During the hearing, the defense orally offered the exhibits for the accused, and considering that the prosecution did not interpose any objection thereto, all the documentary evidence were admitted. Also, with the manifestation of the plaintiff that it will not present rebuttal evidence, the case was considred terminated and accused was considered to have rested her case. The case was also submitted for decision.[71]

The Issue

This Court is confronted with a single issue:[72]

> "Whether or not the accused is guilty beyond reasonable doubt of Violation of Section 1401 (e) of Republic Act No. 10863 (Customs Modernization and Tariff Act)."

The Ruling of the Court

Accused is charged before this Court for her alleged violation of Section 1401(e) of the CMTA[73], which reads:

> "**SEC. 1401.** *Unlawful Importation or Exportation.* - Any person who shall fraudulently import or export or bring into or outside of the Philippines any goods, or assist in so doing, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such goods after importation, or shall commit technical smuggling as defined in this Act shall be penalized by:
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> xxx xxx xxx

[71] *Id.,* Order of hearing dated January 18, 2024, pp. 369-370.
[72] *Id.,* Pre-Trial Order, Statement of the Issue, p. 110.
[73] Unless otherwise stated, the provisions shall refer to Republic Act No. 10863 or the Customs Modernization and Tariff Act.

> (e) Imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years, or a fine of not less than one million five hundred thousand pesos ([Php]1,500,000.00) but not more than fifteen million pesos ([Php]15,000,000.00), or both, if the appraised value of the goods unlawfully imported, to be determined in the manner prescribed under this Act, including duties and taxes, exceeds five million pesos ([Php]5.000,000.00) but not more than fifty million pesos ([Php]50,000,000.00);
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> xxx"

Based on the above, unlawful importation is committed by any person who: (a) fraudulently imports or brings into the Philippines any good; (b) assists in fraudulently importing any good; (c) receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of such good after importation; or (d) commits technical smuggling.

Essentially, the act being punished under the said provision is smuggling, which includes outright smuggling and technical smuggling.

Smuggling is defined under Section 102(nn) as "the **fraudulent act of importing any goods into the Philippines**, or the act of assisting in receiving, concealing, buying, selling, disposing or transporting such goods, with full knowledge that the same has been fraudulently imported, or the fraudulent exportation of goods. Goods referred to under this definition shall be known as smuggled goods[.]"[74]

Outright smuggling and technical smuggling, on the other hand, is defined under Sections 102(ff) and (pp), respectively, to wit:

> "**SEC. 102.** *Definition of Terms.* - As used in this Act:
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> xxx xxx xxx
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> (ff) Outright Smuggling refers to an act of importing goods into the country without complete customs prescribed importation documents, or without being cleared by customs or other

[74] *Emphasis supplied.*

regulatory government agencies, for the purpose of evading payment of prescribed taxes, duties and other government charges;

xxx xxx xxx

(pp) Technical Smuggling refers to the **act of importing goods** into the country **by means of fraudulent**, falsified or **erroneous declaration of the goods** to its nature, land, quality, quantity or weight, **for the purpose of reducing** or avoiding **payment of prescribed taxes**, duties and other charges[.]"[75]

In alleging the violation of the foregoing legal provision, the Information against the accused specified that she –

"xxx **conspiring and confederating with John Does and Jane Does**, whose true identities and whereabouts are still unknown, **and all of them mutually helping and aiding one another**, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there **willfully**, unlawfully and knowingly **participate in and facilitate the importation, transportation, concealment, and possession** of dutiable eight hundred forty-five (845) boxes **of Marvels cigarettes**, with dutiable value of [Php]7,669,057.76 and an aggregate amount of customs duties, taxes and fees of Php16,573,671.00, contained in Container Van No. TCNU4089028, but **which were declared** in Formal Entry No. C-125535-19 and in a manifest waybill in relation to Bill of Lading No. 350910127282 **as tissue papers, smoke alarm parts, smoke detectors and accessories, said accused knowing the same to have been imported contrary to law**, to the damage and prejudice of the Philippine Government."[76]

The importation of Marvels cigarettes is not among the prohibited importations provided under Section 118[77], nor is it a restricted importation

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[75] *Emphasis supplied.*

[76] *Emphasis supplied.*

[77] SEC. 118. Prohibited Importation and Exportation. – The importation and exportation of the following goods are prohibited:

(a) Written or printed goods in any form containing any matter advocating or inciting treason, rebellion, insurrection, sedition against the government of the Philippines, or forcible resistance to any law of the Philippines, or written or printed goods containing any threat to take the life of, or inflict bodily harm up on any person in the Philippines;

(b) Goods, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises, describes or gives direct or indirect information where, how or by whom unlawful abortion is committed;

under Section 119[78]. Rather, the subject importation is a regulated importation under Section 117, which provides as follows:

> "**SEC. 117.** *Regulated Importation and Exportation.* – Goods which are subject to regulation **shall be imported** or exported **only after securing the necessary goods declaration or export declaration**, clearances, licenses, and any other requirements, **prior to importation** or exportation. In case of importation, submission of requirements after arrival of the goods but prior to release from customs custody shall be allowed but only in cases provided for by governing laws or regulations."[79]

The act imputed against the accused - participation in the importation of Marvels cigarettes which were declared as tissue papers, smoke alarm parts, smoke detectors and accessories - falls under technical smuggling punished under Section 1401 and defined under Section 102(pp).

(c) Written or printed goods, negatives or cinematographic films, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character;
(d) Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys;
(e) Any adulterated or misbranded food or goods for human consumption or any adulterated or misbranded drug in violation of relevant laws and regulations;
(f) Infringing goods as defined under the Intellectual Property Code and related laws; and
(g) All otter goods or parts thereof which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

[78] SEC. 119. Restricted Importation and Exportation. – Except when authorized by law or regulation, the importation and exportation of the following restricted goods are prohibited:
(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, or parts thereof;
(b) Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other goods when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof; (c) Lottery and sweepstakes tickets, except advertisements thereof and lists of drawings therein;
(d) Marijuana, opium, poppies, coca leaves, heroin or other narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactured 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 medicinal purposes;
(e) Opium pipes or parts thereof, of whatever material; and
(f) Any other goods whose importation and exportation are restricted.
The restriction to import or export the above stated goods shall include the restriction on their transit.

[79] *Emphasis supplied.*

In technical smuggling, the goods pass through the BOC, but the processing and clearing procedures are attended by fraudulent acts in order to evade the payment of correct taxes, duties, and other charges.[80]

The elements to be established by the plaintiff to convict the accused of the crime charged are, specifically:

1) there must be an entry of imported goods;

2) the entry was made by means of fraudulent, falsified or erroneous declaration of the goods; and

3) there must be intent to reduce or avoid payment of taxes and duties.

Undisputedly, the Single Administrative Document/Import Entry No. C-125535-19[81] (*i.e.,* custom document) was filed to the BOC. And the imported goods passed through the customs authorities, the shipment consigned to OroeightyEight Marketing bearing no. TCNU4089028[82], having arrived on September 17, 2019 at the Port of Manila on board vessel "Cape Ferrol" from Vietnam.

Thus, the first element of entry of imported goods was satisfied with.

We now examine the second and third elements of the crime.

Plaintiff was not able to prove, both through documentary and testimonial evidence, that there was a discrepancy between the declaration made and the actual contents of the shipment.

In establishing that there was fraudulent or falsified declaration in the importation documents, the prosecution presented the Bill of Lading[83], Packing List[84], and Commercial Invoice[85], all declaring that the shipment consigned to Oroeightyeight Marketing contained 150 cartons of tissue paper and 480 cartons of smoke alarm parts, smoke detector, and accessories, while upon physical

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80 *Bureau of Customs v. The Honorable Agnes VST Devanadera, Et. Al.,* G.R. No. 193253, September 08, 2015.
81 Docket, Exhibits "P-4" to "P-4-G"; Exhibit "A-1", pp. 223-224.
82 *Id.,* Exhibits "P-14" and "P-14-A", p. 234.
83 *Id.,* Bill of Lading No. 350910127282 (Exhibits "P-3" and "P-3-A"), p. 222.
84 *Id.,* Exhibits "P-8" to "P-8-B", p. 228.
85 *Id.,* Exhibits "P-9" to "P-9-B", p. 229.

inspection, pursuant to Alert Order No. A/POM/20191002-00092 and Examination Report, dated October 4, 2019, it was discovered that the shipment actually contained 845 boxes (50 reams/box) of Marvel cigarettes and 40 pieces plastic packages (12 roll/package) of Dai Thang bathroom tissue.[86]

A perusal of the foregoing pieces of evidence shows that, based on the Bill of Lading and Packing List, the shipment is contained in **Container No. TCNU4089028**. Said container is likewise the subject of Alert Order No. A/POM/20191002-00092 and was reported to be inspected per the Examination Report dated October 4, 2019. In support of the Examination Report, photographs of the container inspected, the Marvel cigarettes, and the Dai Thang bathroom tissues were likewise submitted.

However, the photograph of the container inspected shows that it bears **Container No. WHSU5570445**, which is different from the declared Container No. TCNU4089028, per the Bill of Lading and Packing List. Plaintiff's witness did not explain the apparent discrepancy.

This inconsistency significantly casts doubts as to the conduct of physical inspection taken, where the Container No. WHSU5570445 actually inspected may pertain to a different import entry declaration and not the subject importation herein. As such, the goods actually found in a different container cannot be attributed as a fraudulent or false declaration of the goods imported in this case. The evidence presented by the prosecution failed to establish the proper tracing of goods from the import declaration documents to the actual physical inspection thereof so as to prove the alleged commission of fraudulent or false declaration in the first place.

Assuming without conceding that plaintiff was able to prove that there was fraudulent or falsified declaration in the importation documents, the plaintiff also failed to prove that accused is the author of the crime. Since the charge constitutes a supposed fraudulent or falsified declaration in the importation documents, there must be proof of the accused's effort in the execution or preparation of the Single Administrative Document/Import Entry.

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual

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[86] *Id.*, Alert Order Report Form for Alert Order No. A/POM/20191002-00092 (Exhibits "P-12" to "P-12-C"), Examination Report dated October 04, 2019 (Exhibits "P-13" to "P-13-F"), Photograph of Container No. TCNU4089028 (Exhibits "P-14" and "P-14-A"), Photograph of a carton containing Marvels cigarettes (Exhibits "P-15", "P-15-A", "P-16", "P-16-A", "P-19" and "P-19-A"), and Photograph of the Dai Thang Bathroom Tissues (Exhibits "P-17", "P-17-A", "P-18" and "P-18-A"), pp. 232-239.

commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity.[87]

The plaintiff presented the Single Administrative Document/Import Entry No. C-125535-19[88]. In the said document, the consignee indicated was Oroeightyeight Marketing. However, the name of the accused was nowhere to be found therein.

Plaintiff's witness, COO II Mendoza, admitted during her cross-examination[89] that she had no knowledge whether it was accused who signed as the Attorney-in-Fact in the space provided for Oroeightyeight Marketing in the Import Entry. Petinent portions of the Transcript of Stenographic Notes during the hearing on May 04, 2022 are reproduced hereunder:

*"**CROSS-EXAMINATION BY ATTY. ALQUIN B. MANGUERA***

xxx xxx xxx

ATTY. MANGUERA:
Q. And there is a signature appearing above the printed name, Forough [*sic*] 88 Marketing, **are you aware of who is that person who signed on behalf of Forough [*sic*] 88 Marketing?**

MS. MENDOZA:
A. **No, sir.**

xxx xxx xxx

ATTY. MANGUERA:
Q. Since it was prepared by the Attorney-in-Fact, **do you have any document supporting that the person signing this document is the Attorney-in-Fact of Forough [*sic*] 88 Marketing?**

MS. MENDOZA:
A. **None, sir.**

87 *People of the Philippines v. PO1 Dennis Jess Esteban Lumikid*, G.R. No. 242695, June 23, 2020 *citing People of the Philippines v. Jenny Tumambing y Tamayo*, G.R. No. 191261, March 02, 2011.
88 Docket, Exhibits "P-4" to "P-4-G"; Exhibit "A-1", pp. 223-224.
89 *Id.*, Order of hearing dated May 04, 2022, p. 159.

xxx xxx xxx

JUSTICE CASTANEDA:
They have stipulated. Say you are admitting that it was not signed by the accused, the Import Entry declaration.

PROSEC. SUAREZ:
Objection, Your Honors.

JUSTICE CASTANEDA:
Yes, do you know?

MS. MENDOZA:
A. No, sir.

JUSTICE CASTANEDA:
She does not know. Please express your answer.

MS. MENDOZA:
A. No, sir."[90] (TSN dated May 04, 2022, pp. 12-14)

The plaintiff did not present other evidence, testimonial or otherwise, pointing to the accused as having signed the Import Entry declaration. Thus, plaintiff failed to show the accused's participation in the preparation of the Import Entry or her conformity with its contents.

Accused firmly disavowed her participation in the importation and the filing of the Single Administrative Document/Import Entry. In her Judicial Affidavit[91], she was adamant that she had no knowledge of the subject importation, and that the signature in the Import Entry was not hers:

"Q2. In this Criminal Case No. 0-887, you were charged for Violation of Section 1401 (3) of Republic Act No. 10863 (Customs Modernization and Tariff Act) which the Information, among others, alleged that sometime in the 17th of September 2019, you did and there willfully, unlawfully and knowingly participate in and facilitate the importation, transportation, concealment and possession of 845 boxes of Marvels cigarettes, with dutiable value of P7,669,057.76 and an aggregate amount of customs duties, taxes and fees of Php16,573,671.00 contained in Container Van No. TCNU4089028 declared under Formal Entry No.

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[90] *Emphasis supplied.*
[91] Docket, Exhibit "A-5", pp. 359-362.

C-125535-19 (Exhibit 'A-1' also 'P-4') and in manifest waybill in relation to Bill of Lading No. 350910127282 as tissue papers, smoke alarm parts, smoke detectors and accessories, what can you say to that Madam accused?

A2. I am not aware of, and I do not know that importation transaction covered by Single Administrative Document/Import Entry ('P-4'), and the other relevant and supporting documents like the Bill of Lading ('P-3'), Packing List ('P-8'), Commercial Invoice ('P-9'), sir.

Q3. In Exhibit 'A-1' which is also 'P-4' which is the Single Administrative Document/Import Entry No. C-125535-19, there were entries therein, do you know who made those entries in that document?
A3. No sir.

Q4. There is a signature appearing above the word Oroeightyeight Marketing bracketed as Exhibit 'P-4- B', do you know whose signature is that?
A4. No, sir.

Q5. Is that your signature?
A5. No, sir.

Q6. What is your authentic signature for the importations by Oroeightyeight Marketing?
A6. That signature appearing in the List of Principal and Responsible Officers marked as Exhibits 'A-3' also 'P-6', 'P-6-C'; 'A-4' also 'P-7', 'P-7-C'. They are my authentic signatures for the importations.

Q7. Did you authorize anyone for this transaction covered by that Single Administrative Document/ Import Entry (Exhibit 'P-4') to transact for and in behalf of Oroeightyeight Marketing?
A7. None, or no one, sir.

Q8. Do you know of a certain broker in the name of Teodora Lacerna Braceros?
A8. No, sir.

Q9. Did you authorize her for this transaction?
A9. No, sir.

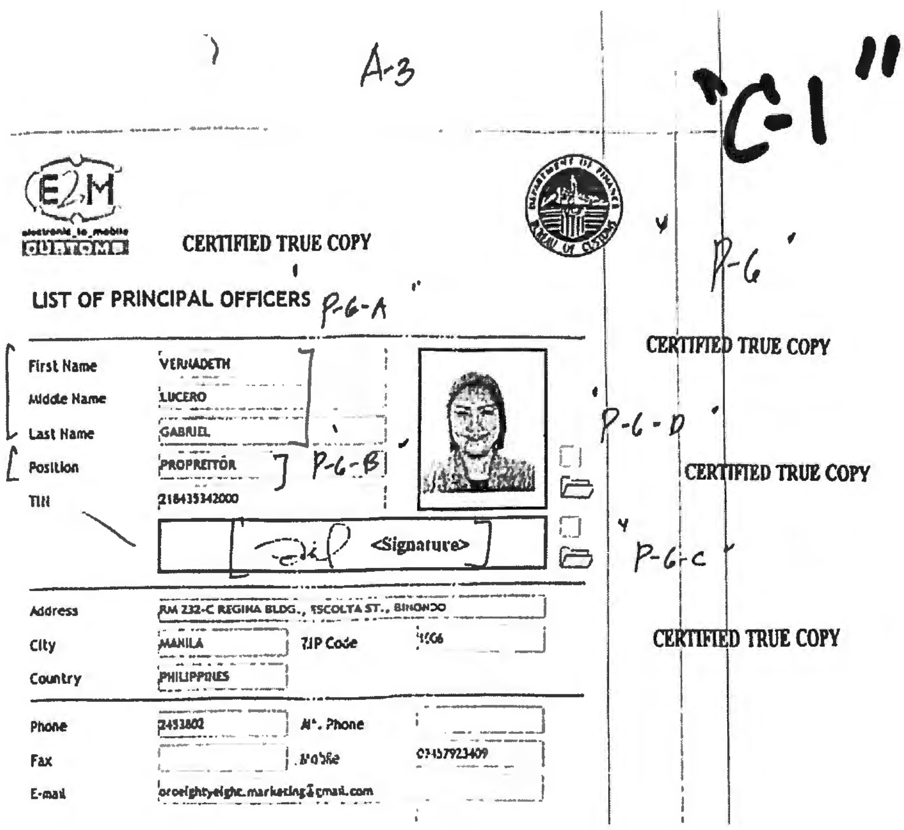
Q10. Did you appear before any Notary Public to swear for that document Single Administrative Document/ Import Entry (Exhibit 'P-4')?

A10. No, sir."

She did not waver during cross-examination and clarificatory questions from the Court.[92]

An examination of the List of Principal Officers of Oroeightyeight Marketing[93] and List of Responsible Officers of Oroeightyeight Marketing[94], common exhibits of the parties, shows that the signature therein and the signature in the Import Entry declaration are totally different.

Accused's authentic signature with the BOC is found in Exhibits "P-6-C" (Exhibit "A-3") and "P-7-C" (Exhibit "A-4") below:



A-3

"C-1"

electronic to mobile CUSTOMS

CERTIFIED TRUE COPY

LIST OF PRINCIPAL OFFICERS "P-6-A"

First Name	VERNADETH
Middle Name	LUCERO
Last Name	GABRIEL
Position	PROPREITOR
TIN	218435342000
	<Signature>
Address	RM 232-C REGINA BLDG., ESCOLTA ST., BINONDO
City	MANILA
Country	PHILIPPINES
Phone	2453802
Fax	
E-mail	oroeightyeight.marketing@gmail.com

"P-6-B"

"P-6"

CERTIFIED TRUE COPY

"P-6-D"

CERTIFIED TRUE COPY

"P-6-C"

CERTIFIED TRUE COPY

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92 *Id.*, Order of hearing dated January 18, 2024, pp. 369-370.

93 *Id.*, Exhibits "P-6" to Exhibit "P-6-D", Exhibit "A-3", p. 226.

94 *Id.*, Exhibits "P-7" to Exhibit "P-7-E", Exhibit "A-4", p. 227.

"A-4"

"C-2"

P-7

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

LIST OF RESPONSIBLE OFFICERS

First Name	VERLIADETH
Middle Name	LUCERO
Last Name	GABRIEL
Position	PROPREITOR
TIN	218435342000

P-7-A

P-7-B

P-7-D

CERTIFIED TRUE COPY

<Signature>

P-7-C

CERTIFIED TRUE COPY

Area of Responsibility	OPERATION

P-7-E

CERTIFIED TRUE COPY

Address	RM 232-C REGINA BLDG., ESCOLTA ST., BINONDO		
City	MANILA	ZIP Code	1006
Country	PHILIPPINES		
Phone	2453802	Alt. Phone	
Fax		Mobile	09457923409
E-mail	oroeightyeight.marketing@gmail.com		

Whereas, Exhibit "P-4-B" (Exhibit "A-1") shows a different signature in the space provided for the Importer in the Import Entry declaration:

"A-1"

09/24/2019 "P-4"

"ANNEX B"

SINGLE ADMINISTRATIVE DOCUMENT

1 DECLARATION: 4 | 4

Office Code: P02A

Port of Manila

Manifest No: TSL0060-19

Customs reference no.: C-125535

Date: 09/23/2019 19:17:00

2 Exporter /Supplier Address: QUOC DAT CO LTD ZONE 8 HAI HOA WARD MONG CAI CITY QUANG NINH

3 Page: 1 | 6

5 Items: 2

6 Tot Pack: 630

7 Reference Number: N4ZB1900052

8 Importer/Consignee, Address — TIN 218435342000: OROEIGHTYEIGHT MARKETING RM 232-C REGINA BLDG., ESCOLTA ST., BINONDO MANILA 1006 PHILIPPINES

P-4-A

9 CRF No

10 XX

11 XX

12 Tot FVO: 1,040.68

13 T Rel

14 Broker/Attorney-In Fact, Address — TIN 140178632000: TEODORA LACERNA BRACEROS 3180 POOK REAL STREET QUIRINO AVENUE TAMBO PARANAQUE CITY1701 PHILIPPINES

15 Country of Export: VIET NAM

15 C.E. Code: VN

16 Country of Origin: VIET NAM

17

18 Vessel/Aircraft: CAPE FERROL

Registry No: TSL0060-19

19 Ct: 0

20 Terms Of Delivery: FOB

21 Local Carrier (If Any)

22 F. Cur: USD

Total Customs Value: 22,034.00

23 Exch Rate: 52.260

24 Thru Bank: 2

25: 09/15/2019

26: XX

27 Transhipment Port

28 Financial and Banking Data — Bank Code: 998

Terms of Payment: 01-Basic

Bank Name: PCHC

Branch: NA

Bank Ref No.: 010080502-0034915

29 Port Of Destination: P02A-Port of Manila

30 Location Of Goods: S01

31 Packages and Desc. Of Goods — Marks and Numbers - Containers No(s) - Number and Kind

Marks & Nos: AS ADDRESSED 1X40

No. Of Packages: 150

Number and Kind: CT-CARTON

Containers No(s): TCNU4089028

- Toilet paper

TISSUE PAPER

1X8

TN -

NUS - 1 39

32 Item No: 1

33 HS Code: 48181000000

Rate: 10.00

Tariff Spec

34 C.O. Code: VN

35 Item Gross Wgt: 350.00 Kg(s)

36 Pref

37 Procedure: 4000 | 000

Item Net Weight: 300.00 Kg(s)

39 Quota: NNNNN

40a AWB/BL: 350910127282

40b Previous Doc No

44 Add. Info Doc / Prod. Cert & Aut — OTHerEV: 1 INS&FRT: 0.000 Fine: 0.00

675 + 496 + 0 + 17 - 199

Prev Doc Reference

Invoice No: N.A

Dump Bond

41 Suppl. Units: 0.00

42 Item Customs Value (F.C.): 474.00

43 V.M.: 1

45 Adjustment: 1.00

46 Dutiable Value (PHP): 25,951.27

47 Calculation of Taxes

Type	Tax Base	Rate	Amount	MP
CUD	25,951.27	10%	2,595.00	1
VAT	28,930.49	12%	3,920.00	1
	Total		6,515.00	

48 Prepaid Account No

49 Identification of Warehouse

47b ACCOUNTING DETAILS

Mode Of Payment: CASH

Assessment Number

Receipt Number

Guarantee

Total Fees: 1,602.00

Total Assessment: 151,610.00

125535

Date

Date

Date

50 We hereby certify that the information contained in all pages of this Declaration and the documents submitted are to the best of our knowledge and belief true and correct.

TEODORA LACERNA BRACEROS — Broker

OROEIGHTYEIGHT MARKETING — Importer/Attorney-In-Fact

Subscribed and sworn to before me

ATTY. ROGELIO ... NOTARY PUBLIC — Administering Officer / Notary Public

51 AUTHORIZATION

Date — Print name — Position

52 Control at Office Destination

Date — Print name — Position

P-4-B

P-4-C

CARGO DATA EXCHANGE CENTER, INC.

Additionally, the Information alleges that the accused conspired with other people in committing the fraudulent importation. The plaintiff appears to connect accused to the crime charged as a co-conspirator, all the conspirators mutually helping and aiding one another.

In conspiracy, the act of one is the act of all.[95] Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. Considering the far-reaching consequences of criminal conspiracy, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[96]

The Information did not identify the other alleged co-conspirators, just indicating them as "John Does and Jane Does, whose true identities and whereabouts are still unknown". The Court has no idea who are these other conspirators and the actions they did to demonstrate their alleged common criminal design. Clearly, the plaintiff failed to prove their theory of conspiracy.

From the foregoing, We find that both the second and the third elements of the crime charged are missing in the case at bar.

CONCLUSION

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his or her guilt is shown beyond reasonable doubt, he or she must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.[97]

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the Information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[98]

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95 *People of the Philippines v. Carlo Diega y Zapico*, G.R. No. 255389, September 14, 2021.
96 *Id.*
97 *Boac, et al. v. People of the Philippines*, G.R. No. 180597, November 07, 2008 *citing People of the Philippines v. Ganguso*, G.R. No. 115430, November 23, 1995.
98 *Leonila Batulanon v. People of the Philippines*, G.R. No. 139857, September 16, 2006.

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.[99]

After careful consideration of the testimonial and documentary evidence presented by both parties, the Court finds that the plaintiff failed to prove that there was a violation of Section 1401(e) of R.A. No. 10863 or the CMTA, creating reasonable doubt as to the accused's guilt. Accordingly, the Court finds that the plaintiff failed to discharge the burden to prove all the essential elements of the crime attributed to accused. Accused should be acquitted of the offense charged.

WHEREFORE, premises considered, accused **VERNADETH LUCERO GABRIEL** is hereby **ACQUITTED** of the offense charged against her in Criminal Case No. O-887, for failure of the plaintiff to prove her guilt beyond reasonable doubt. The surety bail bond of the accused is hereby **CANCELLED** upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[99] *People of the Philippines v. Nenita B. Hu*, G.R. No. 182232, October 06, 2008 *citing People of the Philippines v. Corpuz*, G.R. No. 148198, October 01, 2003.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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