REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

LIZA R. MAGAWAY,
(# 2701 B West Tower,
Phil. Stock Exchange Center, Ortigas, Pasig City)
PAUL C.T. CO,
(#8 Castillo St., Corinthian Garden, Quezon City)
ESTHER P. MAGLEO,
(No. 4 Ecoville Town Houses, Metropolitan Ave., Makati City)
EDWIN AGUSTIN, AND
(#2401 East Tower, Phil. Stock Exchange Center, Ortigas, Pasig City)
VICTOR PIAMONTE,
(#310 Mercantile Insurance Bldg., Gen. Luna cor. Beaterio Streets, Intramuros, Manila)
Accused.

CTA CRIM. CASE O- 063
(I.S. No. 2007-436)

For: Violation of Sec. 3601
Tariff & Customs Code
of the Philippines

Members:

Acosta, Chairman,
Bautista, and
Casanova, *JJ.*

Promulgated:

NOV 19 2007; 3:00 pm

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RESOLUTION

The State charges Liza R. Magaway, Paul C.T. Co, Esther P. Magleo, Edwin Agustin, and Victor Piamonte for **violation of Section 3601 of the Tariff and Customs Code** in an Information alleging the following:

"That on or about November 6, 2006 at the Sub-Port Mariveles Bataan and within the jurisdiction of the Honorable Court, the above-named accused LIZA R. MAGAWAY, PAUL C.T. CO, ESTHER P. MAGLEO, EDWIN AGUSTIN AND VICTOR PIAMONTE, confederating, mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously facilitate the importation of 6,865.531MT- Kerosene covered by BL No. MT-2044 which arrived on November 3, 2006 at the Sub-Port of Mariveles, Bataan on Board M/T 'Kirana Dwitya' under Voyage No. 37/06 and that the total taxable value amounted to PHP310,202,991.92 and the customs duties and taxes due for the said shipments amounted to PHP47,762,595.00; that no certificate of payment was issued by the Bureau of Customs and the said customs duties and taxes due have not been paid; that respondents mutually and feloniously, fraudulently import, bring into the Philippines, assist in doing so, facilitate the transportation, concealment of the subject shipments to the damage and prejudice of the Philippine government.'

CONTRARY TO LAW."

Attached to the Information are:

(1) Resolution of State Prosecutor Lourdes R. Zapanta dated August 8, 2007, with the recommending approval of Pedrito L. Rances, Assistant Chief State Prosecutor and approval of Jovencito R. Zuño, Chief State Prosecutor, regarding the filing of an Information against the above-named accused;

(2) Referral for Preliminary Investigation by Commissioner Napoleon L. Morales of the Complaint-Affidavit of Atty. Erwin Mendoza;

(3) The above-mentioned Complaint-Affidavit of Atty. Erwin Mendoza, member of the Run After The Smugglers Program (RATS- Program) of the Bureau of Customs, who investigated the alleged unlawful importation of oil valued at approximately PHP496,433,149.90 in violation of Section 3601, in relation to Section 2530 (f) and 1 (5) of the Tariff and Customs Code with the following Annexes:

"A" and "A-1" Computation of Duties and Taxes for Bills of Lading 2043 and 2044, respectively;
"B" Inward Foreign Manifest for Bills of Lading 2043 and 2044
"C" Import Entry Internal Revenue Declaration (IERD) which Oilink filed for the shipment of gas oil under Bill of Lading 2045;
"D" Inward Foreign Manifest for Bill of Lading 2045;
"E" Stowage and Discharging Plan;
"F" Certification dated April 16, 2006 issued by Crisostomo V. Mates, Jr. Acting Chief Piers Inspections Unit, Port of Manila, stating that the shipment of Kerosene covered by Bills of Lading 2043 and 2044, consigned to Oilink International Corp. was discharged from M/T "Kirana Dwitya" at the Port of Mariveles on November 6, 2006; and
"G" and "G-1" Affidavit and Certification dated May 18, 2007 and April 20, 2007, respectively both issued by Bienvenido Datinggaling, Jr., stating that no import entry has been filed for Bills of Lading 2043 and 2044 said to contain Kerosene consigned to Oilink International Corp.

(4) Memorandum for Atty. Rogel Gatchalian, Chief-RATS Group, Thru Atty. Adelina S.E. Molina, Ditrict Collector, MICP, by Rogelio J. Sio, Acting Examiner and noted by Diogenes A. Cenita and Lorna G. Apolinar dated July 5, 2007, anent the request for computation of taxes and duties due from the kerosene shipment consigned to Oilink International;

(5) Joint Counter-Affidavit of Paul Co, Liza Magaway and Esther Magleo, stating that Oilink International Corp. is not the owner of the shipment of kerosene alleged to have been unlawfully imported and thus, with no obligation to pay for the taxes and duties due thereon, or to file the appropriate import entry. The affiants likewise aver that the complainant Bureau of Customs failed to state with particularity their participation with respect to the acts complained of. Attached thereto is the following Annexes:

"1" and "2" Tanker Bill of Lading B/L Nos. ML 2043 and 2044 showing the Cebu Pacific Air, Inc. consignee of the shipment of Kerosene on board M/T/ Kirana Dwitya on November 3, 2006 to be delivered to the port of Bataan, Philippines;

"3" and "8" Amendment to the Inward Manifest of Bills of Lading ML 2043 and 2044, respectively, showing among others, Cebu Pacific Air, Inc, as consignee, with approval of Atty. Arnel Alcaraz, Deputy Collector for Operations, Port of Manila;

"4" and "9" Certification by Jardine Shipping Services that Bills of Lading 2043 and 2044, respectively, should show Cebu Pacific Air, Inc. as consignee, issued for the processing and release of the cargo to the said consignee;

"5" and "10" Memorandum for the District Collector, Port of Manila dated November 24, 2006 for the District Collector of the Port of Manila recommending the approval of the request to correct/amend the inward foreign manifest under Bills of Lading ML-2043 and ML-2044, respectively, for the shipment of kerosene submitted by Atty. Jenny Puno-Diokno, Customs Operations Officer III concurred to by Atty. Nicky Earle L. Hortillas, Chief, law Division;

"6" and "11" 1st Indorsement by Horacio P. Suansing dated November 28, 2006 forwarding to the Office of the Commissioner for approval/clearance of the request for the amendment of the said inward foreign manifest to reflect the correct cargo, shipper, notify party and consignee's name under B/L 2043 and 2044, respectively;

"7" and "12" 2nd Indorsement dated November 28, 2006 by Special Assistant to the

Commissioner Atty. Felipe A. Bartolome, approving the above-mentioned request for amendment, subject only to a 100% examination of the shipment conducted in the presence of a representative of the Commissioner;

"13" and "14" Import Entry & Internal Revenue Declaration (IEIRD) on Bills of Lading 2043 and 2044 of importer/consignee Cebu Pacific Air, Inc.;

(6) Counter-Affidavit of Atty. Edwin C. Agustin, corporate-secretary of Oilink International averring that his functions are limited and defined by the By-Laws of the said corporation and that he is merely a ministerial officer with no authority to act for the it;

(7) Counter-Affidavit of Victor D. Piamonte stating that as by shown the Amendment to the Inward Manifest on Bills of Lading 2043 and 2044, the consignee of the two shipments is Cebu Pacific Air, Inc. not Oilink International Corporation. Attached thereto are the said amendments marked as Annexes "1" "1-A" to "1-M" on Bill of Lading 2043 and Annexes "2" "2-A" to "2-N" on Bill of Lading 2044.

The Court is tasked to evaluate the Information, as well as, the supporting documents/evidence filed by the State Prosecutor to determine if there is probable cause to go on with the prosecution of the case, as provided under Section 6(a) Rule 112 of the Rules of Court[1] and Rule 9 of the Revised Rules of the Court of Tax Appeals[2].

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[1] *"**Sec. 6. When warrant of arrest may issue**. – (a) By the Regional Trial Court.- Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant of arrest issued by a judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the **issue must be resolved by the court within thirty (30) days from filing of the complaint or information.**"*

[2] *"SEC.4. Warrant of arrest.- Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The division may immediately*

This complaint for unlawful importation is anchored on the supposed non-payment of taxes and duties for the shipment of kerosene allegedly consigned to Oilink International, which arrived at the port of Bataan on Board M/T "Kirana Dwitya" on November 6, 2006. Magaway, Co, Magleo, Agustin are being charged as officers of Oilink International, while Piamonte, is being charged as the licensed Customs Broker, who facilitated and processed the import entry for the subject shipment.

After a judicious review of the allegations and documents attached to the Information, the Court finds that the evidence on record clearly failed to establish probable cause.

Records show that the shipment in question is actually owned by Cebu Pacific Air, Inc. and not Oilink International as being depicted by the prosecutors. Tanker Bill of Lading B/L Nos. 2043 and 2044[3] plainly show Cebu Pacific Air Inc. consignee of the shipment of kerosene on board M/T Kirana Dwitya on November 3, 2006. And the authenticity of these Bills of Lading was not questioned by the prosecutors, nor by the complainant Bureau of Customs.

The Bureau of Customs merely hinges its accusation on the Inward Manifest showing Oilink International consignee of the shipments in question. However, that this was merely an error is made evident by the fact that this Inward Manifest was amended to show the consignee as Cebu Pacific Air. More importantly, this amendment went through the proper channels within the Bureau

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dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. ***In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, ex parte, within five days from notice."***

[3] *Annexes "1" and "2" Joint Counter-Affidavit of Paul Co, Liza Magaway and Esther Magleo*

of Customs, and was in fact duly approved by 2nd Indorsement of Atty. Felipe Bartolome, Special Assistant to the Commissioner dated November 28, 2006.[4]

Further, Jardine Shipping Services, the shipping agent issued a Certification attesting to the fact that Bills of Lading 2043 and 2044 should indeed show Cebu Pacific Air, Inc. the consignee and notify party. The said certification was in fact issued to Cebu Pacific Air, Inc. for the processing and release of the cargo.

In this regard, the Tariff and Customs Code provides:

> Section 1203. *Owner of Imported Articles.* – All articles Imported into the Philippines shall be held to be the property of the person to whom the same are consigned: and the holder of a bill of lading duly endorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned articles and the salvors of articles saved from wreck at sea, along a coast or in any area of the Philippines may be regarded as the consignees.

Clearly, there is no smuggling or tax evasion committed by Oilink International to speak of. Not being the owner of the goods, the accused-officers of Oilink International is correct in saying that the company has no duty to pay for the taxes and duties for the shipment of kerosene covered by Bills of Lading 2043 and 2044. This obligation rests on Cebu Pacific Air, Inc. as owner/consignee of the said shipment. In addition, records disclose that Cebu Pacific Air, Inc. indeed filed the necessary Import Entry & Internal Revenue Declarations for these shipments.[5]

In sum, Tanker Bills of Lading 2043 and 2044[6], the Amendment to the Inward Manifest for these Bills of Lading[7], the Indorsements within the Bureau

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[4] *Annexes "5" to "7", and "10" to "12" for Bills of Lading 2043 and 2044, ibid.*
[5] *Annexes "13" and "14", ibid.*
[6] *Annexes "1" and "2", ibid.*

of Customs recommending for approval and actually approving the said amendment[8], the Import Entry and Internal Revenue Declaration filed by Cebu Pacific Air for this shipment[9], together with the Authority to Release Imported Goods, issued to Cebu Pacific[10], all reveal that it is indeed Cebu Pacific Air, Inc. which owns the shipment allegedly unlawfully imported.

Moreover, on the responsibility of corporate officers, the Tariff and Customs Code only provides under Section 1305 that the **declaration of the import entry** shall be signed by the corporation's **manager, or by a licensed customs broker**, duly authorized to act for either of them. While there is no specific provision in the Tariff and Customs Code regarding the penal liability of the officers of the corporation, doctrinally however, a corporation is a legal entity distinct and separate from the members and stockholders who compose it. And it is only when the corporate fiction is used as a means of perpetrating a fraud, evading an existing obligation, circumventing a statute, achieving or perfecting a monopoly or, in generally perpetrating a crime, that the veil will be lifted to expose the individuals composing it.[11]

With specific regard to corporate officers, the general rule is that the officer cannot be held personally liable with the corporation, whether civilly or otherwise, for the consequences of his acts, if he acted for and in behalf of the corporation, within the scope of his authority and in good faith. In such cases, the officer's acts are properly attributed to the corporation. However, **if it is proven that the officer has used the corporate fiction to defraud a third party, or that he has acted negligently, maliciously or in bad faith, then the**

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[7] *Annexes "3" and "8", for Bills of Lading 2043 and 2044, respectively, ibid.*
[8] *Annexes "5" and "10", "6" and "11", "7" and 12", for Bills of Lading 2043 and 2044, ibid.*
[9] *Annexes "1-M" and "2-N" for Bills of Lading 2043 and 2044, respectively, Counter-Affidavit of Victor D. Piamonte*
[10] *Annex "1-J" and "2-I" for Bills of Lading 2043 and 2044, respectively, ibid.*
[11] *Vlason Enterprises Corp. vs. Court of Appeals, GR 121662-64, July 6, 1999, Yutivo Sons Hardware Co. vs. Court of Tax Appeals, 1 SCRA 160*

corporate veil shall be lifted and he shall be held personally liable for the particular corporate obligation involved.[12]

In this case the prosecution failed to show proof that the officers being criminally charged are responsible for the alleged violations of the Tariff and Customs Code. In the Complaint-Affidavit of Atty. Erwin Mendoza of the Run-After-Tax Evaders (RATS) Group, the participation of the accused in the subject smuggling was merely inferred as:

> "10.1 LIZA R. MAGAWAY, as President of Oilink definitely has a direct hand in the operation of the company and/or actively participated in the importation and subsequent non-declaration of shipments covered by Bills of Lading No. 2043 and 2044;
>
> 10.2 PAUL C.T. CO, as Chairman of Oilink, has a hand in the operation of aforesaid Corporation and/or participated/conspired or at least consented to the importation and subsequent non-declaration of shipments covered by Bills of Lading Nos. 2043 and 2044;
>
> 10.3 ESTHER P. MAGLEO, as Director of Oilink has knowledge and/or information or at least consented to the importation and subsequent non-declaration of subject shipments by his *(sic)* act of signing the Import Entry No. C106169-06 filed for only B/L NO. 2045 since it should have come to his attention that no Import Entry was filed for shipments covered by B/L Nos. 2043 and 2044;
>
> 10.3 *(sic)* EDWIN AGUSTIN, as Corporate Secretary of Oilink has knowledge and/or information to the importation of subject shipments and its subsequent non-declaration since he is fully aware of all the corporate transaction of aforesaid corporation;
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> 10.5 VICTOR PIAMONTE, being the Licensed Broker was the one who facilitated and processed the Import entry hence,

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[12] *Francisco vs. Mejia, GR 141617, August 14, 2001*

had knowledge or information on the alleged illegal shipment."

As can be readily observed, except Esther Magleo, the Director who signed the Import Entry on a portion of the subject shipment and Victor Piamonte, the Licensed Broker, who facilitated and processed the Import Entry on the alleged illegal shipment, the participation of the other accused on the subject illegal importation was not clearly stated or established. As correctly argued by accused[13] in their Joint Counter-Affidavit, the complainant Bureau of Customs is merely "banking on the simple expediency that, being corporate officers, Respondents are probably and allegedly guilty of the complained illegal acts".

It is true that revenue officers, in proper cases, may disregard the separate corporate entity where it serves as a shield for tax evasion[14], however, it is equally true that allegations of fraud, which is a serious charge, must be supported by clear and convincing evidence. And, where it is lacking, such allegations of fraud must be dismissed.[15]

Criminal liability attaches only to responsible officers of the corporation who actually perform the illegal act/s of the corporation. The existence of criminal liability for which the accused is made answerable must be clear and certain.[16] The failure of the prosecution to show with particularity the participation of accused Paul Co, Liza Magaway and Edwin Agustin in the criminal acts complained of is fatal. And by itself can be the basis of the dismissal of the Information against them. At any rate, as earlier discussed, records clearly show that there is no unlawful importation to speak of.

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[13] *Paul Co, Liza Magaway and EstherMagleo*
[14] *Commissioner of Internal Revenue vs. Norton Harrison Company, G.R. no. L-17618, August 31, 1964*
[15] *Commissioner of Internal Revenue vs. Javier, et. al., G.R. No. 78953, July 31, 1991; CIR vs. Yusay, et. al. G.R. No. L-19495, November 24, 1966; Collector of Internal Revenue vs. Benipayo, G.R. No. L-13656, January 31, 1962 (cited in Amkor/Anam Pilipinas Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5953, December 28, 2004).*
[16] *Sia vs. People, 121 SCRA 655*

In view of the foregoing, the instant case is hereby **DISMISSED** for lack of probable cause.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice