CTA Form No. 8 (For DCC)

23-000165-0062

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1050

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

VICTOR GAW SY,
Accused.

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASST. STATE PROS. MONICA T. LIWAG
Department of Justice
Padre Faura Street, Ermita, Manila

ATTY. CATHERINE ROSE R. TORTOLES
ATTY. JAMAICA KAY S. DELA CRUZ
ATTY. ROBERTO G. DAMIAN, JR.
Bureau of Internal Revevenue
Prosecution Division, Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
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VICTOR GAW SY
14 Int. A. Santiago Street
Brgy. Sipac-Almacen, Navotas City

TUGADI LAW OFFICE
No. 66 Daffodil Street, ESLA Urban Homes
Sto. Domingo, Cainta, Rizal 1900

GREETINGS:

You are hereby notified by these presents that on **July 10, 2025**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 11, 2025**.

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM. CASE NO. **O-1050**
	For: Violation of Section 263 of the National Internal Revenue Code (NIRC) of 1997, as amended
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
VICTOR GAW SY, Accused.	Promulgated: JUL 10 2025 9:05AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is plaintiff People of the Philippines' (**plaintiff**'s) "Motion for Reconsideration (To the Decision promulgated on January 15, 2025)"[1] (**MR**) filed on 30 January 2025, with accused Victor Gaw Sy's (**accused**'s) "Comment and Opposition (to the Motion for Reconsideration dated January 30, 2025)"[2] (**Comment**) filed on 17 February 2025.

In the MR, plaintiff prays for the Court to set aside its Decision promulgated on 15 January 2025[3] (**assailed Decision**) which acquitted accused from the imposition of charges under Section 263[4] of the

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1 Division Docket, Volume II, pp. 640-668.

2 Id., pp. 704-709.

3 Id., pp. 595-639.

4 **SEC. 263.** *Unlawful Possession or Removal of Articles Subject to Excise Tax Without Payment of the Tax.* - Any person who owns and/or is found in possession of imported articles subject to excise tax, the tax on which has not been paid in accordance with law, or any person who owns and/or is

National Internal Revenue Code (**NIRC**) of 1997, as amended. Plaintiff also prays that accused be held civilly liable for the payment of excise taxes, contrary to the Court's declaration that he has no civil liability due to the absence of competent evidence on which the same may be based.

Moreover, plaintiff maintains that the search at the checkpoint was valid and reasonable. Probable cause arose from accused's disregard of the checkpoint, specifically when he deliberately ignored to slow down even though the police officers' hand-signaled him to do so. It was only when he was pursued that he slowed down. Reiterating the Court's disquisition in the Resolution of 09 July 2024[5] which denied accused's Demurrer to Evidence[6], plaintiff avers that accused's disregard of the checkpoint is the probable cause that initiated the extensive search of the Foton van. Contrary to the Court's finding, the disregard of the checkpoint is not a mere traffic violation. Although no criminal case for the commission of Article 151[7] of the Revised Penal Code (**RPC**) was filed and that accused's driver's license was confiscated, these do not necessarily mean that what transpired is a mere traffic violation.

Plaintiff also contends that in accordance with the case of *Virgilio Evardo y Lopena v. People of the Philippines*[8] (**Lopena**), there are other independent suspicious circumstances to justify the finding of probable cause in the instant case. For one, this Court should consider the photographs taken of the Foton van which showed the numerous stacked boxes inside. The same was confirmed based on the examination of Rodelio M. Gutierrez (**Gutierrez**) which declared that the boxes had the marking of the cigarettes "Two Moon". Moreover, plaintiff asserts that there were previous apprehensions (of the illegal cigarettes) in the past which added to the existence of probable cause.

As to the inconsistencies in the testimonies, plaintiff explains that these should not damage the integrity of the prosecution's evidence. Although there is a discrepancy on the existence of the apparent marking "Two Moons" on the boxes, the same did not erase the presence of the numerous stacked boxes inside the Foton van.

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found in possession of imported tax-exempt articles other than those to whom they are legally issued shall be punished[.]

5 Division Docket, Volume I, pp. 504-512.

6 Id., pp. 442-463.

7 ART. 151. *Resistance and disobedience to a person in authority or the agents of such person.*

8 G.R. No. 234317, 10 May 2021.

Plaintiff further points out that accused himself admitted to carrying the boxes of cigarettes in exchange for a consideration of ₱10,000.00. Thus, being in possession of the said items, accused is undoubtedly guilty for the commission of Section 263 of the NIRC of 1997, as amended.

Plaintiff also claims that it had sufficiently established a *prima facie* case against accused, thus the burden of evidence effectively shifted to the latter. Plaintiff adds that it had submitted sufficient preponderant evidence to establish the commission of the tax offense. As accused failed to rebut or contradict them, he should be held civilly liable for the payment of the excise taxes on the said cigarettes.

Lastly, even assuming that accused's acquittal is sustained, plaintiff insists that the same does not carry with it the extinguishment of the civil liability considering that it arose from a different source of obligation. Hence, as there exists cigarettes with unpaid taxes, accused should still be liable to pay the taxes thereon.

On the other hand, in the Comment, accused declares that the arguments in the MR are a mere rehash of the issues already addressed by this Court in the assailed Decision. Nonetheless, he asserts that the MR violated accused's constitutional right against double jeopardy.

Moreover, accused argues that he is not civilly liable for the payment of excise taxes. He avers that plaintiff knew the identity of the true owner of the cigarettes and the Foton van (named as Andy Co a.k.a. Shi Shanbang), however, they did not attempt to pursue or investigate him. Finally, it was established that accused is only the driver of the Foton van. Apart from that, plaintiff did not establish that he was aware of the contents of the van, let alone that taxes thereon had not been paid. Thus, the MR should be denied for lack of merit.

We resolve.

After an examination of the parties' arguments, We do not find any novel issue or matter that will warrant the modification of the assailed Decision.

In the *En Banc* resolution of *Antonio Lejano v. People of the Philippines*[9], the Supreme Court clarified that although motion for reconsiderations are allowed in judgment of acquittal, the same may only be invoked if the ground relied upon is the court's grave abuse of discretion amounting to lack of jurisdiction, or when there is a mistrial. The relevant parts state –

> ...
>
> [A]s a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy. The Constitution provides in Section 21, Article III, that:
>
> **Section 21. No person shall be twice put in jeopardy of punishment for the same offense. — . . .**
>
> To reconsider a judgment of acquittal places the accused twice in jeopardy of being punished for the crime of which he has already been absolved. There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight.
>
> As the Court said in *People of the Philippines v. Sandiganbayan*:
>
> > **[A]t the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The provision therefore guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the government to a single criminal proceeding to vindicate its very vital interest in the enforcement of criminal laws.**
>
> Of course, on occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its

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9 G.R. No. 176389, 18 January 2011; Citations omitted, italics and emphasis in the original text and supplied.

> discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of *certiorari* under Rule 65.
>
> Here, although complainant Vizconde invoked the exceptions, he has been unable to bring his pleas for reconsideration under such exceptions. For instance, he avers that the Court "must ensure that due process is afforded to all parties and there is no grave abuse of discretion in the treatment of witnesses and the evidence." But he has not specified the violations of due process or acts constituting grave abuse of discretion that the Court supposedly committed. His claim that "the highly questionable and suspicious evidence for the defense taints with serious doubts the validity of the decision" is, without more, a mere conclusion drawn from personal perception.
>
> Complainant Vizconde cites the decision in *Galman v. Sandiganbayan* as authority that the Court can set aside the acquittal of the accused in the present case. But the government proved in *Galman* that the prosecution was deprived of due process since the judgment of acquittal in that case was "dictated, coerced and scripted." It was a sham trial. Here, however, Vizconde does not allege that the Court held a sham review of the decision of the CA. He has made out no case that the Court held a phony deliberation in this case such that the seven Justices who voted to acquit the accused, the four who dissented, and the four who inhibited themselves did not really go through the process.
>
> Ultimately, **what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, et al.'s conviction. The judgment acquitting Webb, et al. is final and can no longer be disturbed.**
>
> ...

Based on the foregoing, when the grounds of the MR consist of the review and re-evaluation of the evidence, the same is constitutionally prohibited since it violates the finality-of-acquittal doctrine. However, if the grounds impute grave abuse of discretion on the Court's part, then the same may prosper.

Applying the above, an examination of the plaintiff's MR calls for the Court's re-examination and re-evaluation of the existence of the probable cause that allegedly permitted the police officers to conduct an extensive search of the Foton van during the checkpoint. Apart from being addressed in the assailed Decision, this MR should be denied for being constitutionally infirm.

As to plaintiff's argument that accused remains civilly liable for the excise taxes subject of the criminal case, despite his acquittal, the same has been judiciously passed upon by the assailed Decision, to wit:

> ...
>
> In this case, plaintiff computed the deficiency excise tax based on the number of the seized cigarettes as follows –
>
> > ...
> >
> > The applicable provision of the NIRC of 1997, as amended, is as follows:
> >
> > > SEC. 145. Cigars and Cigarettes. -
> > >
> > > B) Cigarettes Packed by Hand. - There shall be levied, assessed and collected on cigarettes packed by hand an excise tax based on the following schedules:
> > >
> > > xxx
> > >
> > > Effective on July 1, 2018 until December 31, 2019, Thirty-five pesos (Php35.00) per pack;
> > >
> > > xxx
> >
> > From the foregoing, the deficiency excise tax for the seized imported cigarettes is computed as follows:
> >
> > | | |
> > |---|---|
> > | Number of reams | 5,000 |
> > | Packs per ream | x 10 |
> > | Number of packs | 50,000 |
> > | Rate/pack | x Php35 |
> > | Deficiency Excise Tax, exclusive of increments: | Php1,750,000.00 |
> >
> > As to the charge for violation of Section 258 of the NIRC of 1997, as amended, the same should be dismissed, absent of any evidence showing that respondents are engaged in any business involving the seized articles.
>
> However, as settled above, any evidence obtained in violation of the accused's right against unreasonable searches and seizures shall be **inadmissible for any purpose in any proceeding**. Hence,

> without any competent evidence, the deficiency excise tax liability cannot be properly ascertained as well.[10]
>
> ...

Assuming *arguendo* that the subject cigarettes may be considered for purposes of computing the excise tax due, We are not left unguided. Section 131 of the NIRC of 1997, as amended, unequivocally provides who shall be liable to pay excise taxes on imported articles, to wit:[11]

> ...
>
> **SEC. 131.** *Payment of Excise Taxes on Imported Articles.* –
>
> (A) Persons Liable. - Excise taxes on imported articles **shall be paid by the <u>owner</u> or <u>importer</u> to the Custom Officers**, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entitles, the **<u>purchasers or recipients</u> shall be considered the importers thereof**, and shall be liable for the duty and internal revenue tax due on such importation.
>
> ...

A reading of the foregoing provision reveals that the obligation to pay excise taxes on imported articles falls upon the statutory taxpayer, which may be the owner, importer, or possessor, provided the latter is a transferee of tax-free articles.

Here, it was established that accused was a mere driver of the vehicle where the untaxed articles were found, to wit:[12]

> ...
>
> JUSTICE DAVID
>
> And the Accused was only the driver?

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10 Citations omitted and emphasis supplied.
11 Emphasis and underscoring supplied.
12 TSN dated 22 November 2023, pp. 48 and 51; Emphasis supplied.

MR. GUTIERREZ

Yes, your Honors.

...

JUSTICE DAVID

Okay.

But you know that **the Accused is not the owner of these boxes of cigarettes?**

MR. GUTIERREZ

Yes, your Honors.

JUSTICE DAVID

Did you ever try to reach out to the owner of these boxes of cigarettes?

MR. GUTIERREZ

No, your Honors.

...

Moreover, since the articles involved are not tax-free, possession cannot be used as basis for the imposition of excise taxes. But even conceding for argument's sake that possession may be deemed sufficient to warrant such imposition, as aptly held in the assailed Decision, accused cannot be deemed in possession of the untaxed articles (*i.e.*, cigarettes) at the time of their discovery, absent any showing that he had knowledge of the contents of the boxes or that these contained cigarettes with unpaid excise taxes.

It must be noted that unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.[13] The provision is clear and unambiguous that the excise tax obligation rests upon the owner or the importer of the excisable articles. Since the records of the case do not sufficiently establish that accused qualifies as the statutory

13 *Petron Corporation v. Commissioner of Internal Revenue*, G.R. No. 255961, 20 March 2023.

taxpayer responsible for the payment of the assessed excise taxes, the same may not be demanded from him.

WHEREFORE, premises considered, plaintiff People of the Philippines' "Motion for Reconsideration (To the Decision promulgated on January 15, 2025)" filed on 30 January 2025 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice