REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-922 & O-923**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
DANILO DE QUINTOS CALUGAY, *Accused.*	Promulgated: JUL 26 2024 9:10 a.m.

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RESOLUTION

Under consideration is accused's *Revised* Motion for Leave to File Demurrer to Evidence and Admit the Attached [Revised] Demurrer to Evidence filed on May 13, 2024, seeking for the dismissal of CTA Crim. Case Nos. O-922 and O-923 with prejudice.

FACTS

On June 16, 2022, the prosecution filed the following:

First. An *Original* Information against Danilo De Quintos Calugay, indicting him for violation of Section 265(c) of the 1997 National Internal Revenue Code (NIRC), as amended, docketed as CTA Crim. Case No. O-922, initially raffled before the First Division of the Court. The accusatory portion thereof is as follows:

> That on or about the 28th day of November 2018, in the Municipality of Bugallon, Province of Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, being the owner of a cigarette manufacturing facility[,] and engaging in the manufacture [of] local cigarettes, without any license to do so, did then and there knowingly, willfully[,] and

> unlawfully have in his possession[,] Eight Million Six Hundred Twenty Thousand (8,620,000) pieces of counterfeit internal revenue stamps, without paying the excise tax thereon in the amount of Three Hundred One Million and Seven Hundred Thousand (Php301,700,000.00) Pesos, exclusive of penalties, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.[1]

Second. An Information against Danilo De Quintos Calugay, charging him for violation of Section 263 of the NIRC, as amended, docketed as CTA Crim. Case No. O-923, initially raffled before the Second Division of the Court. Said offense was allegedly committed as follows:

> That on or about the 28th day of November 2018, in the Municipality of Bugallon, Province of Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, being the owner of a cigarette manufacturing facility[,] and engaging in the manufacture [of] local cigarettes, without any license to do so, did then and there knowingly, willfully[,] and unlawfully have in his possession[,] Two Hundred Forty-Seven Thousand Five Hundred Seventy (247,570) packs of locally manufactured cigarettes bearing counterfeit internal revenue stamps, without paying the excise tax thereon in the amount of Eight Million Six Hundred Sixty-Four Thousand Nine Hundred and Fifty ([₱]8,664,950.00) Pesos, exclusive of penalties, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.[2]

Third. A Motion for Consolidation and Joint Trial, praying that CTA Crim. Case No. O-923 be consolidated and jointly tried with CTA Crim. Case No. O-922.[3]

By Amended Resolution dated July 20, 2022, the Second Division of the Court in CTA Crim. Case No. O-923: (1) found probable cause against accused; (2) directed the issuance of warrant of arrest against him; (3) fixed the amount of bail for his provisional liberty at ₱24,000.00; and (4) granted the prosecution's Motion for Consolidation and Joint Trial. Accordingly, CTA Crim. Case No. O-923 was consolidated to CTA Crim. Case No. O-922, the latter case, bearing the

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1 Docket (CTA Crim. Case No. O-922), pp. 5-8.
2 Docket (CTA Crim. Case No. O-923), pp. 7-10.
3 *Id.* at pp. 5-6.

lowest docket number, subject to the conformity of the First Division of the Court.[4]

In the Resolution dated August 18, 2022, the First Division of the Court in CTA Crim. Case No. O-922, noted the following: (1) the Original Information does not state that the unpaid tax is exclusive of charges and penalties; and (2) the amount of basic excise tax due per Department of Justice (DOJ) Resolution and Original Information are different, *i.e.*, ₱310,364,950.00 vis-à-vis ₱301,700,000.00, respectively. In view thereof, the prosecution was directed to amend the Original Information, addressing the noted deficiencies. Pending proper amendment, the prosecution's motion for consolidation was held in abeyance.[5]

In its *Ex-Parte* Motion to Admit Attached Amended Information, filed on September 6, 2022, the prosecution: (1) clarified that the amount of ₱301,700,000.00, corresponding to excise tax stated in the Original Information, was arrived at, by multiplying the quantity of counterfeit stamps (8,620,000 pieces), with the stamp rate per Revenue Memorandum Order (RMO) No. 17-2012 (₱35/stamp); and (2) appended an Amended Information for CTA Crim. Case No. O-922, charging accused for violation of Section 265(c) of the NIRC, as amended, allegedly committed as follows:

> That on or about the 28th day of November 2018, in the Municipality of Bugallon, Province of Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, being the owner of a cigarette manufacturing facility[,] and engaging in the manufacture [of] local cigarettes, without any license to do so, did then and there knowingly, willfully[,] and unlawfully have in his possession[,] Eight Million Six Hundred Twenty Thousand (8,620,000) pieces of counterfeit internal revenue stamps, without paying the basic excise tax thereon in the amount of Three Hundred One Million and Seven Hundred Thousand (Php301,700,000.00) Pesos, exclusive of charges and penalties, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.[6]

Under Resolution dated September 30, 2022, the First Division of the Court in CTA Crim. Case No. O-922: (1) found probable cause against accused; (2) directed the issuance of warrant of arrest against

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4 *Id.* at pp. 246-250.
5 Docket (CTA Crim. Case No. O-922), pp. 252-253.
6 *Id.* at pp. 257-260.

him; (3) fixed the amount of bail for his provisional liberty at ₱48,000.00; and (4) conformed with the consolidation of CTA Crim. Case No. O-923, with CTA Crim. Case No. O-922.[7]

Warrants of arrest were then issued against accused in CTA Crim. Case Nos. O-922[8] and O-923.[9]

Through Resolution dated September 23, 2022 in CTA Crim. Case No. O-923[10] and Resolution dated December 28, 2022 in CTA Crim. Case No. O-922,[11] the Court confirmed that accused posted his bail in cash in said cases.

On February 8, 2023, accused's arraignment was held, whereby he: (1) waived the reading of the Amended Information in CTA Crim. Case No. O-922 and Information in CTA Crim. Case No. O-923; and (2) pleaded *not guilty* on the tax offenses charged therein.[12]

On March 29, 2023, pre-trial was held. There, the parties jointly agreed on the issues to be resolved in these cases, along with their admissions in each other's pre-trial briefs, followed by the scheduled presentation of their respective evidence, among others.[13]

On May 24, 2023, a Pre-Trial Order was issued for these consolidated cases.[14]

Under Resolution dated May 31, 2023, these consolidated cases were transferred from the First Division, to the Third Division of the Court.[15]

Trial followed.

The prosecution presented Revenue Officers: (1) Angelito P. Burgos; (2) Norman O. Felipe; (3) Ronnel Victor M. Ruiz; and (4)

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7 *Id.* at pp. 262-264.
8 *Id.* at pp. 265-266, 301-302, 331-332, and 339-340.
9 Docket (CTA Crim. Case No. O-923), pp. 283-284.
10 *Id.* at p. 290.
11 Docket (CTA Crim. Case No. O-922), pp. 345-346.
12 Certificate of Arraignment with Waiver of the Reading of Information. *Id.* at p. 364.
13 Order dated March 29, 2023. *Id.* at pp. 510-511-A.
14 *Id.* at pp. 573-588.
15 Docket (CTA Crim. Case No. O-922 – Vol. 2), p. 592.

Jackeline S. Valle (Valle) as witnesses. Further, Valle's testimony was momentarily dispensed with since her testimony is proper as rebuttal evidence; precisely, the prosecution reserved her presentation for said purpose.[16]

Angelito B. Burgos (Burgos)[17] is employed with the Bureau of Internal Revenue (BIR) since 1989. Presently, he holds the position of Assistant Chief/Revenue Officer assigned at the Regional Investigation Division, Revenue Region No. 4 City of San Fernando, Pampanga. Among his duties and responsibilities is the investigation of tax offenses, review of memorandum reports of investigators, and recommend cases for prosecution.

Burgos testified that the BIR received two (2) sets of confidential information on the operations of an illegal cigarette factory, located in Bugallon, Pangasinan. He discussed the credibility of said information with the Head of the BIR Strike Team.

On November 28, 2018, Deputy Commissioner for Internal Operations Group Arnel SD Guballa (DC Guballa) issued Mission Order (MO) No. MS0201400018092, directing the BIR Strike Team to: (1) monitor sales and/or place of business mentioned therein, and put the same under observation or surveillance for violation of bookkeeping rules and regulations, and non-issuance of sales invoices or receipts; (2) apprehend violators of revenue laws and regulations on activities stated in the MO; (3) confiscate and forfeit untaxed cigarette products; (4) enter any house, building or place where excisable articles are produced or kept, or are believed upon reasonable grounds to be produced or kept, necessary to examine, discover, or seize the same; (5) seize articles wherein excise taxes thereon remained unpaid, and also for violation of any penal law, rule or regulation administered by the BIR; (6) conduct inventory-taking of all products subject to excise tax, and check compliance on affixture of internal revenue stamps in accordance with Revenue Regulations (RR) No. 7-2014; (7) verify the authenticity of said stamps; and (8) secure any document/accounting record related to unregistered and untaxed business.

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16 See Order dated October 25, 2023. *Id.* at pp. 619-621.

17 Judicial Affidavit of Angelito B. Burgos dated March 24, 2023 (Exhibits "P-18" and "P-18-a"). Docket (CTA Crim. Case No. O-922 - Vol. 1), pp. 471-482. Identified during the hearing held on October 25, 2023, *supra* note 16.

On even date, the BIR Strike Team, armed with said MO, went to Pangasinan for the implementation thereof. In doing so, they tapped assistance of police officers, barangay officials, and the National Bureau of Investigation (NBI).

At around 3:00 p.m. of November 28, 2018, NBI operatives went inside the establishment to determine safety. An hour after, said operatives notified the BIR Strike Team, who, then, went inside the warehouse factory and constructively serve the MO to barangay officials.

After entering the warehouse factory, the BIR Strike Team then conducted random testing of master cases found in the warehouse using the taggant reader. Examination disclosed that the cigarette samples were fake/counterfeit products because said reader confirmed said finding. Moreover, the cigarette samples have identical serial numbers. In view thereof, they confiscated the cigarette-making and cigarette-packing machines, articles subject to excise tax, and fake tax stamps inside the factory.

The BIR Strike Team conducted inventory-taking of such cigarette-making and cigarette-packing machines, articles subject to excise tax, and fake tax stamps. This was followed by confiscation of said fake stamps, and the cigarette packs bearing fake stamps. Additionally, photographs of the inventoried and confiscated items were as well taken by them.

Afterwards, the BIR Strike Team padlocked, and the NBI operatives guarded and secured, the warehouse factory, until the seized materials were pulled-out from the premises. The seized articles were thereafter transferred and temporarily stored for safekeeping, pending proper disposition at a Bureau of Customs (BOC)-accredited private professional warehouse, *i.e.*, DiGaMa Waste Management Services, located at Purok 1, Brgy. Matila, Porac, Pampanga.

Burgos explains that the establishment is an illicit and unlicensed cigarette manufacturing facility because accused is an unregistered manufacturer and/or dealer of cigarettes.

Burgos, too, states that APO Production Unit, Inc. (APUI) is a government entity, mandated to undertake the base printing of secured internal revenue stamps. The BIR requested, and APUI tested and confirmed, that the fake stamps submitted by the former to the latter, had negative overt and covert security features. Neither do the security pattern thereof match or originate from APUI's printing press.

Norman O. Felipe (Felipe)[18] is presently employed as BIR revenue officer, assigned at the Excise LT Field Operations Division since 2004. His primary duties and responsibilities include the investigation of tax offenses, as well as monitoring and supervision of business operations involving manufacture of excisable products.

Save for Burgos' declaration on: (1) the place where the seized articles were stored; (2) the raided establishment was an illicit and unlicensed cigarette manufacturing facility; and (3) the BIR's request for testing of fake stamps to APUI, along with the latter's test results and findings, Felipe mainly seconded Burgos' testimony.

Ronnel Victor M. Ruiz (Ruiz)[19] is the Chief Revenue Officer III since 2020, assigned at the BIR Project Management and Implementation Service. His primary duties and responsibilities include development and supervision of the overall reform program of the BIR, review of current practices of said bureau, to ensure that pertinent stakeholders have input on the reform process.

Ruiz re-affirmed Burgos and Felipe's testimonies with respect to the issuance and contents of the MO dated November 28, 2018. After the service and implementation of said MO, Ruiz added that he went to Pangasinan and obtained the following documents: (1) Original Certificate of Title of a lot located at Brgy. Portic, Bugallon, Pangasinan, where the name of Danilo Calugay, married to Marisa Calugay, appears as owner of the lot specified therein, issued by the Registry of Deeds; and (2) Declaration of Real Property of accused, issued by the Provincial Assessor's Office.

Capping up their testimonies, Burgos, Felipe, and Ruiz confirmed that they are among the individuals who signed the Joint

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18 Amended Judicial Affidavit of Norman O. Felipe dated October 17, 2023 (Exhibits "P-19" and "P-19-a"). *Id.* at pp. 599-608. Identified during the hearing held on October 25, 2023, *supra* note 16.

19 Judicial Affidavit of Ronnel Victor M. Ruiz dated March 24, 2023 (Exhibits "P-20" and "P-20-a") Docket (CTA Crim. Case No. O-922 – Vol. 1), pp. 501-508.

Complaint Affidavit (JCA) dated April 25, 2019, filed before the Department of Justice (DOJ) relative to these consolidated cases.

On November 9, 2023, the prosecution filed its Formal Offer of Evidence,[20] offering the following testimonies and documents for our consideration:

Exhibit	Description
P-1	Referral Letter dated April 25, 2019
P-2	Investigation Data Form April 25, 2019
P-3	Joint Complaint-Affidavit of Angelito B. Burgos, Norman Felipe, RommelC. Rosales, Virgilio De La Cruz, Emannuel Viardo Jr., Emilie L. Valencia, Gene M. Bragais, Benedicto Augusto M. Cruz, Anselmo Mojica Jr., Ronnel Victor C. Sison, Ted Teodulo R. Paragas Jr., Primer S. Sendaydiego, Efren Q. Macarage Jr., Helena R. Narvasa, Gileena Caesarie M. Pagarigan, Remedios C. Advincula Jr. dated April 25, 2019
P-4	BIR ITS Printout of the Accused
P-5	Mission Order No. MS0201400018092 dated November 28, 2018
P-5-a	Certificate of Inventory dated November 28, 2018
P-6	Photographs of cigarette-making and cigarette-packing machines, large quantities of articles subject to excise tax, fake tax stamps and raw materials inside the factory premises
P-7	Apprehension No. APS201600005823 dated November 28, 2018
P-8	List of Violations dated November 28, 2018
P-9	Memorandum issued by Large Taxpayer Service dated April 1, 2019
P-10	BIR Request Letter dated March 31, 2019
P-10-a	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-1 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-b	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-2 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-c	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-3 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-d	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-4 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-e	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-5 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.

[20] (CTA Crim. Case No. O-922 – Vol. 2), pp. 623-634.

P-10-f	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-6 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-11	APO Production Unit, Inc.'s test results of alleged fake 2nd generation tax stamps (Testing Period April 8-10, 2019)
P-11-a	Magnified images from suspected fake 2nd generation tax stamps
P-12	APO Production Unit, Inc.'s test results of alleged fake 1st generation tax stamps (Testing Period April 8-10, 2019)
P-12-a	Magnified images from suspected fake 1st generation tax stamps
P-13	Declaration of Real Property of Accused from Provincial Assessor's Office – Province of Pangasinan
P-14	Original Certificate of Title (OCT) of the Accused in Portic, Bugallon, Pangasinan dated August 13, 2012
P-18	Judicial Affidavit of Mr. Angelito B. Burgos dated March 24, 2023
P-18-a	Signature of Mr. Angelito B. Burgos
P-19	Amended Judicial Affidavit of Mr. Norman O. Felipe dated October 17, 2023.
P-19-a	Signature of Mr. Norman O. Felipe
P-20	Judicial Affidavit of Mr. Ronnel Victor M. Ruiz dated March 24, 2023
P-20-a	Signature of Mr. Ronnel Victor M. Ruiz

By Resolution dated January 18, 2024,[21] Exhibits **"P-1," "P-2," "P-3," "P-4," "P-5," "P-5-a," "P-6," "P-7," "P-8," "P-9," "P-10," "P-10-a," "P-10-b," "P-10-c," "P-10-d," "P-10-e," "P-10-f," "P-11," "P-11-a," "P-12," "P-12-a," "P-13," "P-14," "P-18," "P-18-a," "P-19," "P-19-a," "P-20,"** and **"P-20-a,"** were admitted as evidence for the prosecution. The latter rested its case.

On February 12, 2024, accused filed his *Original* Motion for Leave to File Demurrer to Evidence with attached Demurrer to Evidence dated February 8, 2024.[22]

On February 16, 2024, accused posted a Manifestation and Motion,[23] stating that "[he,] through his counsel made certain revisions on his Demurrer to Evidence which are necessary for the clear appreciation of the grounds and arguments made in support thereto, hence, the final Motion for Leave to File Demurrer to Evidence and Demurrer to Evidence is being sent today (February 13, 2024)[24] through personal service and/or electronic mail in lieu of the said motion [previously] sent through electronic mail on February 8, 2024," among others.

21 *Id.* at pp. 755-757.
22 *Id.* at pp. 758-816.
23 *Id.* at pp. 817-819.
24 The Manifestation and Motion was dated February 13, 2024. *Id.* at p. 818.

On February 19, 2024, the prosecution filed its Comment/Opposition [Re: Motion for Leave of Court to File Demurrer to Evidence filed on February [12], 2024].[25]

Under Minute Resolution dated March 12, 2024, accused's *Original* Motion for Leave to File Demurrer to Evidence with attached Demurrer to Evidence dated February 8, 2024 was submitted for resolution.[26]

In the Resolution[27] dated May 7, 2024, we held:

> By these observations, we **RESOLVE** to:
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> a. **NOTE** petitioner's Manifestation posted on February 16, 2024;
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> b. **DIRECT** accused to: (1) file four (4) **HARD COPIES** of his *revised* Motion for Leave to File Demurrer to Evidence and Admit the attached Demurrer to Evidence with the Court; and (2) **SERVE** a copy thereof to the prosecution, both within five (5) days from notice;
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> c. **HOLD IN ABEYANCE** the resolution of accused's motion to admit his *revised* Motion for Leave to File Demurrer to Evidence and Admit the attached Demurrer to Evidence, also posted on February 16, 2024, pending compliance with directive referred to in item "b." of this resolution;
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> d. **DIRECT** the prosecution to file its comment/opposition on accused's *revised* Motion for Leave to File Demurrer to Evidence and Admit the attached Demurrer to Evidence, within five (5) days from receipt thereof; and
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> e. **VACATE** the Minute Resolution dated March 12, 2024, submitting accused's *original* Motion for Leave to File Demurrer to Evidence and Admit the Attached Demurrer to Evidence, for resolution of the Court.
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> **SO ORDERED.**

On May 13, 2024, accused filed his *Revised* Motion for Leave to File Demurrer to Evidence with attached Demurrer to Evidence,[28] to

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25 *Id.* at pp. 822-830.
26 *Id.* at p. 834.
27 *Id.* at pp. 838-840.
28 *Id.* at pp. 841-901.

which the prosecution filed its Comment/Opposition[29] on June 3, 2024.

Under Minute Resolution[30] dated June 25, 2024, accused's *Revised* Motion for Leave to File Demurrer to Evidence with attached [Revised] Demurrer to Evidence was submitted for resolution.

ISSUE

Should CTA Crim. Case Nos. O-922 and O-923 be dismissed due to insufficiency of evidence?

ARGUMENTS

Accused maintains that the criminal charges hurled against him in these consolidated cases do not constitute an offense under Sections 265(c) and 263 of the NIRC, as amended.

Even if such criminal charges indeed constitute an offense under Sections 265(c) and 263 of the NIRC, as amended, accused contends that the seizure made by the government on the alleged fake internal revenue stamps and cigarettes, is violative of the person's right against unreasonable searches and seizures, guaranteed under Section 2, Article III of the 1987 Constitution. Specifically, the government's intrusion of, and seizure of such internal revenue stamps and cigarettes was anchored under the BIR's MO, and *not* a search warrant. On this account, the seized items covered by said MO deserve outright rejection.

Granting *arguendo* that the seized items may be considered in this proceeding, accused theorizes that the totality of evidence proffered by the prosecution fell short in proving the crimes charged in the Amended Information in CTA Crim. Case No. O-922 and Information in CTA Crim. Case No. O-923. For instance:

> *First.* He was not among the persons who were apprehended in the premises where the alleged counterfeit internal revenue stamps and cigarettes were found. Neither did he constructively possessed said stamps and cigarettes because the prosecution's

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29 *Id.* at pp. 903-917.

30 *Id.*, unpaginated.

> evidence failed to show that the factory in which the same were found, was owned, or controlled by him. Thus, the prosecution failed to prove beyond reasonable doubt that the alleged fake internal revenue stamp and cigarettes were possessed by him.
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> *Second.* He was accused of possession of 8,620,000 pieces of fake stamps for CTA Crim. Case No. O-922, 247,570 packs of locally manufactured cigarettes bearing internal revenue stamps in CTA Crim. Case No. O-923, for a total of 8,867,570 alleged fake stamps. Yet, the prosecution's evidence simply tested 30 stamps, per BIR Request Letter to APUI. Moreover, the APUI Certifications in reply thereto are hearsay evidence as the contents thereof were testified to by ROs, and not from a representative of APUI.
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> *Third.* The prosecution knew that he and his brother Liseldo De Quintos Calugay (Liseldo) are two different persons. Also, Liseldo is Dong Calugay, the one being imputed as the possessor of the alleged counterfeit stamps and cigarettes; hence, the prosecution did not prove beyond reasonable doubt that he was the author of the crimes charged in these consolidated cases.

On the other hand, the prosecution counters that the search and seizure conducted by state agents is valid, even without a judge's search warrant because: (1) it is permitted by Sections 15 and 171 of NIRC, as amended; and (2) the raid falls under permissible warrantless searches and seizures recognized by jurisprudence. With the validity of the evidence it obtained, the collective appreciation thereof would sustain a conviction of the offenses charged in CTA Crim. Case Nos. O-922 and O-923.

RULING

We dismiss CTA Crim. Case Nos. O-922 and O-923, albeit, for different reasons. Specifically, CTA Crim. Case No. O-922 for *insufficiency of evidence,* and CTA Crim. Case No. O-923 for *lack of jurisdiction.* Our corresponding justifications in reaching these conclusions are essayed below.

I. JURISDICTION

It is basic that jurisdiction over the subject matter in a criminal case is given only by law in the manner and form prescribed by law. It is determined by the statute in force at the time of the commencement of the action.[31] In this regard, Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
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> ...
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> b. Jurisdiction over cases involving criminal offenses as herein provided:
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> 1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, **exclusive of charges and penalties**, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. ...[32]

Section 3(b)(1), Rule 4[33] of the Revised Rules of the Court of Tax Appeals[34] clarified that the CTA in Division possesses exclusive original jurisdiction over tax criminal offenses, provided the following conditions concur: *first,* the offense charged pertain to, among others, violation of the NIRC, as amended; and *second,* the principal amount of taxes and fees claimed, *exclusive of charges and penalties* is at least ₱1,000,000.00. For this purpose, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.[35]

Here, the Amended Information in CTA Crim. Case No. O-922 averred: *first,* accused was charged for violation of Section 265(c) of the NIRC, as amended, *i.e.,* he allegedly possessed 247,570 packs of locally manufactured cigarettes bearing counterfeit internal revenue stamps;

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31 See *De Lima v. Guerrero, et al.,* G.R. No. 229781, October 10, 2017.

32 Boldfacing supplied.

33 SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

...

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code (now CMTA) and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; ...

34 A.M. No. 05-11-07-CTA.

35 See *David v. Marquez,* G.R. No. 209859, June 5, 2017, citing *Foz, Jr. v. People,* G.R. No. 167764, October 9, 2009.

and *second,* the corresponding basic excise tax thereon amounted to Three Hundred One Million and Seven Hundred Thousand Pesos (₱301,700,000.00), exclusive of charges and penalties.[36] These averments confer us with jurisdiction over CTA Crim. Case No. O-922.

However, the same is *not* true for CTA Crim. Case No. O-923. To be precise, the Information thereon alleged: *first,* accused was charged for violation of Section 263 of the NIRC, as amended, *i.e.,* he unlawfully possessed 247,570 packs of locally manufactured cigarettes bearing counterfeit internal revenue stamps; and *second,* the unpaid excise taxes thereon amounted to ₱8,664,950.00, exclusive of penalties.[37] In relation to the second allegation, it is not enough that said amount be exclusive of penalties. Rather, Section 7(b)(1) of RA No. 1125, as amended by RA No. 9282, commands that the taxes be exclusive of penalties *and* charges. With the prosecution's failure to specify that the unpaid taxes are exclusive of penalties *and* charges, the latter failed to show that we possess jurisdiction over CTA Crim. Case No. O-923; hence, said case should be dismissed outright.

Accordingly, our discussion on the merits of accused's *Revised* Motion for Leave to File Demurrer to Evidence and Admit the Attached [Revised] Demurrer to Evidence shall only cover CTA Crim. Case No. O-922.

II. Accused's *Revised* Motion for Leave to File Demurrer to Evidence and Admit the Attached [Revised] Demurrer to Evidence in CTA Crim. Case No. O-922

First-off, we grant accused's Revised Motion for Leave to File Demurrer to Evidence, and accordingly admit the [Revised] Demurrer to Evidence appended thereon.

Next, the merits.

People v. Hon. Sandiganbayan (Fourth Division), and Lauro L. Baja (Baja)[38] provided the concept, scope, and subject to be considered in resolving an accused's demurrer to evidence, in this wise:

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36 *Supra* note 6.

37 *Supra* note 2.

38 G.R. No. 233437, April 26, 2021, citing *People v. Sandiganbayan,* 426 Phil. 453 (2002). Boldfacing ours.

> Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. **Thus, in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt.** The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. ...

Prescinding from *Baja,* two (2) matters must be addressed, namely: *first,* competency of evidence; and *second,* sufficiency of evidence in relation to the indictment.

II.1 Competency of Evidence

Evidence is competent if it is not excluded by law or by the rules of court.[39] One of the instances wherein evidence is to be excluded is when there was transgression of the right against unreasonable searches and seizures, enshrined under Section 2, in relation to Section 3(2), Article III of the 1987 Constitution, stating as follows:

> **ARTICLE III**
> **BILL OF RIGHTS**
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> ...
>
> **Section 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> **Section 3.**
>
> ...
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

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39 See Section 3, Rule 128 of the Rules of Court, as amended; and *Sioland Development Corporation, as represented by CEO Elizabeth Sio v. Fair Distribution Center Corporation, represented by Esteban L. Alba, Jr.,* G.R. No. 199539, August 9, 2023.

People v. Aruta[40] explained that "[t]his constitutional guarantee is not a blanket prohibition against all searches and seizures as it operates only against 'unreasonable' searches and seizures. The plain import of the language of the Constitution, which in one sentence prohibits unreasonable searches and seizures and at the same time prescribes the requisites for a valid warrant, is that searches and seizures are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest."[41] *A fortiori*, searches and seizures made by state agents based on an invalidly issued search warrant, or worse, the absence of a search warrant, taints such search and seizure, along with the things they obtained, with invalidity.

Here, the authority of the BIR Strike Team, police officers, barangay officials, and NBI operatives in conducting the search and seizure of the establishment in Barangay Portic, Bugallon, Pangasinan,[42] in which they found the purported counterfeit cigarettes, fake internal revenue stamps affixed therein, cigarette making and packing machines,[43] were simply tethered to MO No. MSO201400018092 dated November 28, 2018, issued by DC Guballa.[44] No valid search warrant was issued by a judge, sanctioning said search and seizure; precisely, the evidence and things they obtained from said operation is illegal, for being offensive of the right against unreasonable searches and seizures under the Bill of Rights.

The prosecution maintains that Sections 15 and 171 of the NIRC, as amended, endows the Commissioner of Internal Revenue, or his duly authorized representatives, the power to permit the entry, examination, discovery, and seizure of taxable articles by any internal revenue officer, through the issuance of an MO; hence, the seizure made by them is valid.

We disagree.

Sections 15 and 171 of the NIRC, as amended, respectively read:

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40 G.R. No. 120915, April 3, 1998.

41 Also touched upon in *Zafe III, et al. v. People*, G.R. No. 226993, May 3, 2021.

42 Answer to Question No. 14, Judicial Affidavit of Angelito B. Burgos dated March 24, 2023 (Exhibits "P-18" and "P-18-a"). *Supra* note 17.

43 Answer to Question Nos. 15-18, Judicial Affidavit of Angelito B. Burgos dated March 24, 2023 (Exhibits "P-18" and "P-18-a"). *Supra* note 17.

44 Answer to Question Nos. 8-12, Judicial Affidavit of Angelito B. Burgos dated March 24, 2023 (Exhibits "P-18" and "P-18-a"). *Supra* note 17.

> **SEC. 15.** *Authority of Internal Revenue Officers to Make Arrests and Seizures.* - The Commissioner, the Deputy Commissioners, the Revenue Regional Directors, the Revenue District Officers and other internal revenue officers shall have authority to make arrests and seizures for the violation of any penal law, rule or regulation administered by the Bureau of Internal Revenue. Any person so arrested shall be forthwith brought before a court, there to be dealt with according to law.
>
> ...
>
> **SEC. 171.** *Authority of Internal Revenue Officer in Searching for and Testing Taxable Articles.* [4] - Any internal revenue officer may, in the discharge of his official duties, enter any house, building or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, test, discover or seize the same.
>
> ...

True, Sections 15 and 171 of the NIRC, as amended, empower the Commissioner of Internal Revenue, or his duly authorized representatives, to permit the entry, examination, discovery, and seizure of taxable articles by any internal revenue officer. Yet, said provisions cannot rinse the stain of illegality on the search and seizure done by the BIR Strike Team, police officers, barangay officials, and NBI operatives. Consider:

First. Salazar v. Hon. Achacoso, et al.[45] categorically decreed that "[u]nder Article III, Section 2, of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search." It was DC Guballa, and *not* a judge, who issued MO No. MSO201400018092 dated November 28, 2018, allowing the BIR Strike Team to: (1) seize articles wherein excise taxes thereon remained unpaid, and for violation of any penal law, among others; and (2) secure any document/accounting record related to unregistered and untaxed business; thus, the confiscation effected by said team and other law enforcement body is illicit. Sections 15 and 171 of the NIRC, as amended, *cannot* triumph over Section 2, Article III of the 1987 Constitution. *Manila Prince Hotel v. Government Service Insurance System, et al.*[46] is *apropos*:

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[45] G.R. No. 81510, March 14, 1990.
[46] G.R. No. 122156, February 3, 1997.

> We now resolve. A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as the *fundamental and paramount law of the nation.* It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. **Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect.** Thus, *since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract.*[47]

Second. The Board of Commissioners of the Bureau of Immigration v. Yuan Wenle (Wenle)[48] recently recognized the necessity of administrative warrants, which, generally, are writs directing or authorizing someone to do an act, issued by an administrative body.[49] MO No. MSO201400018092 dated November 28, 2018, issued by DC Guballa is an administrative warrant because it authorizes the BIR Strike Team to: (1) seize articles wherein excise taxes thereon remained unpaid, and for violation of any penal law, among others; and (2) secure any document/accounting record related to unregistered and untaxed business.[50] Before an administrative warrant may be accorded validity, *Wenle* spelled out the conditions therefor, all of which must be complied with:

> Hence, for **administrative warrants** to be **valid** and justified, ***all*** of the following conditions must be **present and** shall be **strictly complied with**, to wit:
>
> 1. The danger, harm, or evil sought to be prevented by the warrant must be imminent and must be greater than the damage or injury to be sustained by the one who shall be temporarily deprived of a right to liberty or property.
>
> 2. The warrant's resultant deprivation of a right or legitimate claim of entitlement must be temporary or provisional, aimed only at suppressing imminent danger, harm, or evil and such deprivation's

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47 Boldfacing ours. Italics supplied. Citations omitted.

48 G.R. No. 242957, February 28, 2023.

49 *Ibid.*

50 Exhibit "P-5." Docket (CTA Crim. Case No. O-922), pp. 394-395.

permanency must be strictly subjected to procedural due process requirements.

3. The issuing administrative authority must be empowered by law to perform specific implementing acts pursuant to well-defined regulatory purposes.

4. The issuing administrative authority must be necessarily authorized by law to pass upon and make final pronouncements on conflicting rights and obligations of contending parties, as well as to issue warrants or orders that are incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.

5. The issuance of an administrative warrant must be based on tangible proof of probable cause and must state a specific purpose or infraction allegedly committed with particular descriptions of the place to be searched and the persons or things to be seized.

6. The warrant issued must not pertain to a criminal offense or pursued as a precursor for the filing of criminal charges and any object seized pursuant to such writ shall not be admissible in evidence in any criminal proceeding.

7. The person temporarily deprived of a right or entitlement by an administrative warrant shall be formally charged within a reasonable time if no such period is provided by law and shall not be denied any access to a competent counsel of his or her own choice. Furthermore, in cases where a person is deprived of liberty by virtue of an administrative warrant, the adjudicative body which issued the warrant shall immediately submit a verified notice to the Regional Trial Court nearest to the detainee for purposes of issuing a judicial commitment order.

8. A violation of any item of these guidelines is a *prima facie* proof of usurpation of judicial functions, malfeasance, misfeasance, nonfeasance, or graft and corrupt practices on the part of responsible officers.

Tested against the benchmark forged by *Wenle,* MO No. MSO201400018092 dated November 28, 2018, issued by DC Guballa,[51] is still invalid.

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51 *Supra* note 50.

For one, there is no tangible proof of probable cause. To recall, the BIR received two sets of confidential information on the operation of an illegal cigarette factory located in Bugallon Pangasinan, among others.[52] Also, a letter-complaint from a confidential informant dated November 5, 2018 eventually led to DC Guballa's issuance of MO No. MSO201400018092 dated November 28, 2018.[53] Yet, neither the documentation pertaining to the two sets of confidential information, nor the confidential informant's letter-complaint dated November 5, 2018 exist in the records of these cases. *People v. Alabagan*[54] requires that the particular facts supporting probable cause determination be found on the case records:

> Ideally, compliance with the examination requirement is shown by the depositions and the transcript. In their absence, however, a warrant may still be upheld if there is ***evidence in the records*** that the requisite examination was made and probable cause was based thereon. ***There must be, in the records, particular facts and circumstances*** that were considered by the judge as sufficient to make an independent evaluation of the existence of probable cause to justify the issuance of the search warrant.

Therefore, it is safe to conclude that there was no tangible proof of probable cause for the issuance of MO No. MSO201400018092 dated November 28, 2018, by DC Guballa.

For another, the things to be seized were *not* described with particularity. Specifically, as early as November 5, 2018, the BIR and DC Guballa knew of the operations of an illegal cigarette factory.[55] DC Guballa's MO No. MSO201400018092 was issued on November 28, 2018. In the periods between these two events, Burgos confirmed they were conducting surveillance, and investigation for several acts violative of the NIRC, as amended:

Atty. Karaan:	Mr. Witness[,] considering that, may we know from you what was the result of your surveillances[,] prior to your conducting the actual operation on November 28?

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52 Par. 5, Joint Complaint Affidavit (JCA) dated April 25, 2019. Exhibit "P-3," *id.* at pp. 379-392.

53 Par. 6, JCA dated April 25, 2019. *Ibid.*

54 G.R. No. 244842, January 16, 2023, citing *Ogayon v. People,* 768 Phil. 272 (2015).

55 *Supra* note 52.

Witness Burgos:	We found out that subject [taxpayer] was not registered as a manufacturer of cigarette products.
Atty. Karaan:	Now[,] you conducted the surveillances on the basis of a mission order, is that correct?
Witness Burgos:	Prior, we conducted preliminary investigation[,] and then[,] upon determining that the subject [taxpayer] has several acts in violation of the NIRC[,] so a mission order was issued.[56]

Equipped with plethora of information regarding the alleged operation of an illegal cigarette manufacturing facility, and knowledge of the suppose acts violative of the NIRC, DC Guballa already had an idea what particular properties or things are needed to be seized, along with the possible criminal infractions committed under said law. DC Guballa failed to specifically mention these matters in MO No. MSO201400018092 dated November 28, 2018.[57] To make things shoddier, Item 5(b) and (f) thereof *generalized* the articles and properties to be seized:

> 5. OTHERS
>
> ...
>
> b. To make seizures of **any article** wherein excise taxes has not been paid and also for the violation of any penal law, rule or regulation administered by the Bureau of Internal Revenue;
>
> ...
>
> f. To secure **any document/accounting record** related to the unregistered and untaxed business.[58]

It means that DC Guballa's MO No. MSO201400018092 dated November 28, 2018 gave unfettered discretion on the part of the BIR Strike Team, police officers, barangay officials, and NBI operatives to confiscate the things or properties in the raid conducted by them—the very evil sought to be obviated by our Fundamental Law. This cannot be countenanced. At this juncture, *Dimal v. People*[59] held:

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56 Page 20, Transcript of Stenographic Notes of hearing held on October 25, 2023.
57 *Supra* note 50.
58 Boldfacing ours.
59 G.R. No. 216922, April 18, 2018. Boldfacing ours.

> Meanwhile, a search warrant may be said to particularly describe the things to be seized (1) when the description therein is as specific as the circumstances will ordinarily allow; or (2) when the description expresses a conclusion of fact — not of law by which the warrant officer may be guided in making the search and seizure; (3) and when the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued. **The purpose for this requirement is to limit the articles to be seized only to those particularly described in the search warrant in order to leave the officers of the law with no discretion regarding what items they shall seize, to the end that no unreasonable searches and seizures will be committed.**

Irrefragably, DC Guballa's MO No. MSO201400018092 dated November 28, 2018 fell short in particularly describing the things to be seized by the BIR Strike Team, police officers, barangay officials, and NBI operatives.

Moreover, the articles and things seized during the raid based on DC Guballa's MO No. MSO201400018092 dated November 28, 2018 were used as evidence in support of the filing of the JCA dated April 25, 2019, and consequently, in CTA Crim. Case Nos. O-922 and O-923. Said MO, too, sanctions seizure of articles for violation of any penal law, *inter alia.* These incidents signify that the search and seizure effected by state agents anchored on such MO, were designed as an anterior step, in the institution of the criminal charges against accused. Thus, the items and property seized based therefrom is *automatically* rendered inadmissible in these cases. The elucidation from *Wenle* is enlightening:

> On a related note, administrative issuances directing agents or enforcers to conduct inspections function essentially like warrants. As the familiar saying goes: "[I]f it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck." Whether coming from a judicial or administrative officer, an issuance amounts to some form of deprivation when it is adverse or detrimental to the rights or legitimate claims to entitlement of persons or entities. Not equating intrusive administrative issuances (*e.g.*, inspection orders) as warrants and treating them as valid warrantless intrusions will be more detrimental to libertarian rights. Stated differently, it would all the more be violative of the constitutional proscription against unreasonable searches and seizures if this Court should allow the existence of intrusive administrative arrest, seizure or inspection orders to be conducted sans probable cause. Such is the logic why this Court in *Acosta v. Ochoa,* even recognized, while taking guidance from American jurisprudence, that an administrative agency's power to conduct

> warrantless inspections so long as they are: (1) "large interests at stake;" and (2) *not* unreasonable and arbitrary. It was even held at one point that administrative inspections, duly authorized and reasonably limited by statute and regulation, are examples of inspections sanctioned by the State in the exercise of its police power that, as aforementioned, may be considered as among the instances of valid warrantless searches. In this case, however, the Court has harmonized all the guidelines and, instead of making slippery justifications to warrantless administrative intrusions, has now both classified all intrusive administrative actions as "warrants" and required all of them to follow the same procedure as judicial warrants which is to require the presence of probable cause. Doing so would be more in keeping with the Constitutional requirement of reasonableness, as well as of due process.
>
> A reasonable interpretation which is more in keeping with the "spirit" of the Constitution is to confine the requirement of warrant issuances by *judges* to *criminal cases* where evidence "beyond reasonable doubt" is needed for conviction where only regular courts may calibrate. To assuage the public against concerns of executive abuse, it was clarified in the earlier discussions that any **evidence obtained or seized by virtue of an administrative warrant that pertains to a criminal offense is automatically rendered inadmissible for being unreasonable.** Thus, the nature of allowable administrative warrants as outlined by this Court does not in any way flout the reasonableness requirement of search and seizure warrants in Sec. 2, Art. 3 of the Constitution.[60]

The prosecution nonetheless contends that the warrantless search and seizure done by the BIR Strike Team, police officers, barangay officials, and NBI operatives is legally permissible, invoking *People v. Court of First Instance of Rizal, Branch IX, Quezon City, presided by Hon. Ulpiano Sarmiento, et al. (Sarmiento),*[61] *Papa v. Mago (Mago),*[62] and *Salvador v. People (Salvador),*[63] as authorities.

The prosecution is clutching at straws.

Sarmiento, Mago, and *Salvador* indeed acknowledged that one of the instances wherein a search warrant may be dispensed with is customs searches. However, what sets CTA Crim. Case Nos. O-922 and O-923 apart from *Sarmiento, Mago,* and *Salvador* is that the search and seizure made by state agents were for alleged violations of the

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60 *Supra* note 48. Citations omitted. Boldfacing ours.
61 G.R. No. L-41686, November 17, 1980.
62 G.R. No. L-27360, February 28, 1968.
63 G.R. No. 146706, July 15, 2005.

NIRC, as amended, and *not* customs law. On this score, *Sarmiento, Mago,* and *Salvador* is not applicable here.

All said, the following pieces of evidence by the prosecution are inadmissible, and may *not* be considered in any proceeding, including these consolidated cases, for being obtained without a judicial search warrant, *viz.*:

Exhibit	Description
P-10-a	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-1 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-b	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-2 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-c	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-3 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-d	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-4 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-e	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-5 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.
P-10-f	Seized eight (8) [m]illion BIR Fake Stamps as Annex G-6 of JCA dated April 25, 2019 To prove the existence of spurious and counterfeit BIR fake stamps.

II.2 Sufficiency of the Evidence in Relation to the Indictment in CTA Crim. Case No. O-922

People v. Go, et al. (Go)[64] pronounced that sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight, or amount as will legally justify the judicial or official action demanded according to the circumstances. To be

64 G.R. No. 191015, August 6, 2014, citing *Gutib v. Court of Appeals,* G.R. No. 131209, August 13, 1999.

considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.

Following *Go,* was there sufficient evidence proving the commission of the crime charged in CTA Crim. Case No. O-922?

No.

Accused was charged in CTA Crim. Case No. O-922 for violation of Section 265(c) of the NIRC, as amended,[65] which reads:

> **SEC. 265. Offenses Relating to Stamps.** - Any person who commits any of the acts enumerated hereunder shall, upon conviction thereof, be punished by a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Fifty thousand pesos (P50,000.00) and imprisonment of not less than four (4) years but not more than eight (8) years:
>
> ...
>
> (c) Possessing false, counterfeit, restored or altered stamps, labels or tags or causing the commission of any such offense by another;[66]

For one to held criminally liable for Section 265(c) of the NIRC, as amended, the following elements must concur: *first,* a person is found in possession of stamps, labels or tags; and *second,* the stamps, labels or tags are false, counterfeit, restored or altered. This includes the commission of said offense by another.

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65 Section 265 of the NIRC, was amended by Republic Act (RA) No. 11346, entitled "An Act Increasing the Excise Tax on Tobacco Products, Imposing Excise Tax on Heated Tobacco Products and Vapor Products, Increasing the Penalties for Violations of Provisions on Articles Subject to Excise Tax, and Earmarking a Portion of the Total Excise Tax Collection from Sugar-Sweetened Beverages, Alcohol, Tobacco, Heated Tobacco and Vapor Products for Universal Health Care, Amending for this Purpose Sections 144, 145, 146, 147, 152, 164, 260, 262, 263, 265, 288, and 289, Repealing Section 288(B) and 288(C), and Creating New Sections 263-A, 265-B, and 288-A of the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, and for Other Purposes." The effectivity thereof is on January 1, 2020 (Section 20, RA No. 11346).

66 The charge in CTA Crim. Case No. O-922 states that the offense was allegedly committed by accused on or about November 28, 2018, which was prior to effectivity of RA No. 11346; hence, the previous Section 265(c) of the NIRC, as amended was used and quoted.

Adverting to our earlier discussion, the internal revenue stamps[67] secured by state agents on their November 28, 2018 raid, *sans* a search warrant from a judge, are excluded as evidence. Without evidence of the internal revenue stamps, there is nothing for accused to possess, let alone, be branded as false, counterfeit, restored or altered. For this reason, the remaining pieces of evidence by the prosecution cannot support the charge, much more, sustain a conviction in CTA Crim. Case No. O-922.

WHEREFORE, we **RESOLVE** to:

a. **DISMISS** CTA Crim. Case No. O-923, for lack of jurisdiction;

b. **GRANT** accused's Revised Motion for Leave to File Demurrer to Evidence, filed on May 13, 2024;

c. **ADMIT** accused's [Revised] Demurrer to Evidence;

d. **GRANT** accused's [Revised] Demurrer to Evidence in CTA Crim. Case No. O-922; and

e. **DISMISS** CTA Crim. Case No. O-922, for insufficiency of evidence.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

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67 Exhibits "P-10-a," "P-10-b," "P-10-c," "P-10-d," "P-10-e," and "P-10-f." The details thereof are tabled in page 24 of this resolution.