**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

**PEOPLE OF THE PHILIPPINES,**
Plaintiff,

**- versus -**

**JEFFREY TAN KING, ALICIA O. FERNANDEZ,**
876 Apacible St., Ermita, Manila
**ANTHONY JOEY S. TAN,**
868 Tayuman St., Tondo, Manila
**REYNALDO V. CESA,**
179 Liwanag St., Amaya, Tanza, Cavite
**EDGARDO V. MARTINEZ,**
69 Pagasa St., Bo. San Jose, Caloocan City
**ROGER PERMEJO,**
11-B Estrella St., F.B. Harrison, Pasay City
Accused.

**CTA Crim. Case No. O-133**
**I.S. No. 2006-705**

**For: Violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines and R.A. No. 7103**

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**KINGSON INTERNATIONAL TRADING CORPORATION,**
Petitioner,

**-versus-**

**HON. COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS AND THE DISTRICT COLLECTOR OF CUSTOMS, PORT OF MANILA,**
Respondents.

**CTA Case No. 7819**

***Members:***

**DEL ROSARIO,** P.J., Chairperson,
**UY,** and
**MINDARO-GRULLA,** JJ.

**Promulgated:**

SEP 20 2017 ; 9:45 a.m.

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# DECISION

***UY, J.:***

Before this Court are the consolidated cases of CTA Criminal Case No. O-133, entitled, *"People of the Philippines, Plaintiff, vs. Jeffrey Tan King, Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, Edgardo V. Martinez, and Roger Permejo, Accused,"* and CTA Case No. 7819, entitled *"Kingson International Trading Corporation, Petitioner, vs. Hon. Commissioner of Customs, Bureau of Customs and the District Collector of Customs, Port of Manila."*

## ***CTA Criminal Case No. O-133***

Accused Jeffrey King, Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, Edgardo V. Martinez, and Roger Permejo are charged before this Court for violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP) and Republic Act (R.A.) No. 7103, under the Information[1] dated March 25, 2009, the accusatory portion of which reads:

> "That on or about the period 06 May 2006 to 21 July 2006, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, with intent to defraud the government, did then and there knowingly, willfully, unlawfully, and feloniously import, misdeclare, misclassify and undervalue shipment said to contain 2,406 bundles of round steel bars, valued at Eighty Nine Million Seven Hundred Thirty Seven Thousand One Hundred Twenty Seven Pesos (Php89,737,127.00) but actually found as reinforced/deformed steel bars, through the use of falsified/spurious shipping documents to evade payment of correct and appropriate duties and taxes due thereon in the aggregate amount of Fifteen Million Eight Hundred Seventy Thousand Four Hundred Thirty Eight Pesos (Php15,870,438.00) to the damage and prejudice of the government.
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> **CONTRARY TO LAW.**"

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[1] Information filed on March 30, 2009; Criminal Docket, Vol. I, pp. 1 to 3.

After a careful examination of the Information and supporting documents, this Court found the existence of probable cause for the issuance of a warrant of arrest against all the accused.[2] Thus, the Court issued a Warrant of Arrest on April 15, 2009.

Accused Jeffrey King posted the required bail bond for his provisional liberty by way of cash bond in the amount of ₱120,000.00 on April 30, 2009.[3] On May 5, 2009,[4] accused Roger Permejo, posted a cash bond in the amount of ₱120,000.00

In the Resolution[5] dated May 12, 2009, this Court granted the "Urgent Motion to Reduce Bail with Manifestation" filed by accused Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez on April 30, 2009[6]. Thus said accused posted their respective cash bond in the reduced amount of ₱80,000.00 on June 1, 2009.[7]

Upon arraignment, accused Jeffrey King,[8] Alicia O. Fernandez,[9] Reynaldo V. Cesa,[10] Anthony Joey S. Tan,[11] Edgardo V. Martinez,[12] and Roger Permejo,[13] assisted by Atty. Augusto P. Jimenez, Jr., each entered a plea of "NOT GUILTY" to the offense charged.

The Preliminary Conferences were held on July 6, 2009,[14] July 27, 2009,[15] August 17, 2009,[16] September 28, 2009,[17] and February 24, 2010,[18] while Pre-Trial was conducted and terminated on March 1, 2010.[19]

As stated in the Pre-Trial Order[20] dated March 8, 2010, the parties stipulated on the following facts and issues, to wit:

"II. Statement of Facts

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[2] Resolution dated April 8, 2009; Criminal Docket, Vol. I, pp. 235 to 239.
[3] Criminal Docket, Vol. I, pp. 242 to 244; Resolution dated April 30, 2009, Criminal Docket, Vol. I, p. 248.
[4] Criminal Docket, Vol. I, pp. 253 to 255; Resolution dated May 5, 2009, Docket, Vol. I, p. 256.
[5] Criminal Docket, Vol. I, pp. 287 to 288.
[6] Criminal Docket, Vol. I, pp. 250 to 251.
[7] Criminal Docket, Vol. I, pp. 293 to 297, 303 to 305, 308 to 312, 315 to 319, and 321; Resolution dated June 1, 2009, Criminal Docket, Vol. I, pp. 290 to 291.
[8] Certificate of Arraignment dated June 15, 2009, Criminal Docket, Vol. I, p. 339.
[9] Certificate of Arraignment dated June 15, 2009, Criminal Docket, Vol. I, p. 340.
[10] Certificate of Arraignment dated June 15, 2009, Criminal Docket, Vol. I, p. 341.
[11] Certificate of Arraignment dated June 15, 2009, Criminal Docket, Vol. I, p. 342.
[12] Certificate of Arraignment dated June 15, 2009, Criminal Docket, Vol. I, p. 343.
[13] Certificate of Arraignment dated June 15, 2009, Criminal Docket, Vol. I, p. 344.
[14] Criminal Docket, Vol. II, pp. 350 to 351.
[15] Criminal Docket, Vol. II, pp. 382 to 384.
[16] Criminal Docket, Vol. II, pp. 441 to 443.
[17] Criminal Docket, Vol. II, pp. 457 to 459.
[18] Criminal Docket, Vol. II, pp. 562 to 576.
[19] Criminal Docket, Vol. II, p. 577.
[20] Criminal Docket, Vol. II, pp. 578 to 599.

A. *Admitted*

1. The identity of all accused, as named in the Information are admitted.

2. The jurisdiction of this Court to try the case is admitted.

3. That the case was originally dismissed by the Department of Justice as per Resolution dated August 15, 2007 signed by State Prosecutor Ma. Emilia L. Victorio, as approved by Pedrito L. Rances, Asst. Chief State Prosecutor and approved by Chief State Prosecutor Jovencito R. Zuño.

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III. Issues to be Resolved

A. Factual Issues

1. Whether or not accused, in conspiracy with each other, knowingly, willfully and unlawfully and feloniously misdeclared, misclassified and undervalued the shipment in the import entry.

2. Whether or not the copies of the documents submitted by accused to the BOC to support the declaration in the import entry were falsified and/or spurious.

3. Whether or not Jeffrey King is the president of Kingson.

B. Legal Issues

1. Whether or not accused Jeffrey King, Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, Edgardo V. Martinez and Roger Permejo are criminally liable for violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines in relation to RA 7103."

***<u>CTA Case No. 7819</u>***

Petitioner Kingson International Trading Corporation ("Kingson," for brevity) is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, represented herein by its Director, Edgardo V. Martinez, pursuant to a Secretary's Certificate/Board Resolution executed by its Corporate Secretary Ms. Alicia O. Fernandez, with address at 876 Apacible cor. L. Guinto St., Ermita, Manila.[21]

Respondents Commissioner of Customs (COC), Bureau of Customs (BOC), and the District Collector of Customs, Port of Manila, may be served with summons at the BOC, Port Area, Manila.[22]

On May 6, 2006, a shipment of 2,406 steel products on board the vessel S/S "Rich Ocean" with Registry No. PSI-001 arrived at the Port of Manila from the People's Republic of China.[23]

While the import entry was being processed at the Formal Entry Division (FED) of the BOC, the assigned customs examiner readjusted the declared customs value of subject shipment and imposed the additional duties and taxes in the amount of ₱544,264.00; hence, the total duties and taxes paid by petitioner amounted to ₱5,795,304.00.[24]

Before the shipment could be released from customs' custody, agents of the Customs Intelligence and Investigation Service (CIIS) received instruction to proceed to Pier 9 to verify the alleged derogatory information that there was a huge discrepancy between the actual value of the subject shipment and the declared customs value as appearing on the import entry.[25]

On May 11, 2006, the officer-on-case issued a memorandum to the CIIS Director stating that: "perusal of the entry reveals that the shipment was declared as 2,406 bundles round bars with the rate of 1%; however, it turns out that shipment were consist (sic) of rebars and carries a rate of 7%. Likewise, it was noted that the value utilized was only \$0.26/kg, but should be \$0.48/kg."[26]

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[21] Par. 1.1, Petition for Review, Civil Docket, p. 1.
[22] Par. 1.2, Petition for Review, Civil Docket, pp. 1 to 2.
[23] Par. 1, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 199.
[24] Par. 2, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 199 to 200.
[25] Par. 3, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 200.
[26] Par. 4, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 200.

Accordingly, the Director of the CIIS recommended the issuance of a Warrant of Seizure and Detention (WSD) against the entire shipment for alleged violation of Section 2503 of the TCCP in relation to Section 2503 thereof.[27]

On May 12, 2006, the District Collector, Port of Manila issued a WSD against the entire shipment, docketed as Seizure Identification No. 2006-747, with a directive to seize the articles.[28]

On May 24, 2006, Jeffrey N. Co filed a motion for intervention through his counsel, Atty. Armando S. Padilla. Movant averred that he is the owner of 1,000 tons of steel shipment subject of the aforesaid seizure proceedings as allegedly evidenced by a memorandum of agreement to sell executed by and between petitioner and the same movant.[29]

On May 24, 2006, said movant manifested that seven hundred (700) bundles of the seized steel bars had already been delivered to his warehouse; hence, the same should be excluded from the coverage of the WSD order.[30]

On June 14, 2006, petitioner Kingson filed a motion to quash/recall the WSD averring that there is no probable cause for its issuance. Petitioner Kingson cited the alleged failure of the officer-on-case to state the tariff classification of subject shipment and the failure to cite the specific subsection of Section 2530 of the TCCP allegedly violated. Further, petitioner Kingson advanced that if there were a misclassification, the same does not merit seizure of the shipment and that misclassification is not included in the violations cited under Section 2503 of the TCCP.[31]

During the hearing on the seizure case, the government prosecutor requested for a chemical analysis of the seized articles to be conducted by the MIRDC and that the results thereof be submitted to the Tariff Commission for proper classification of the seized articles.[32]

On July 20, 2006, District Collector Horacio P. Suansing, Jr.

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[27] Par. 5, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 200.
[28] Par. 6, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 200.
[29] Par. 7, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 200 to 201.
[30] Par. 8, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 201.
[31] Par. 9, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 201.
[32] Par. 10, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 201.

sent a letter to Dr. Agustin M. Fudolig, Chief, Analysis and Testing Division of the MIRDC, requesting assistance on the product testing and analysis for the purpose of determining the chemical composition of the aforesaid seized metal products as well as the proper tariff classification and rate of duty.[33]

On August 1, 2006, the Office of the District Collector received a letter dated July 28, 2006, allegedly coming from the Officer-in-Charge (OIC) of the MIRDC purportedly containing the chemical analysis report on the samples taken from the seized articles. However, Dr. Rio Pagtalunan, OIC of the MIRDC wrote a letter to the BOC stating that the certificate of chemical analysis on subject metal product which was attached in the aforesaid letter dated July 28, 2006 are not authentic and were not issued by the MIRDC.[34]

On February 12, 2007, Chairman Edgardo Abon of the Tariff Commission requested for samples of the seized articles aside from the chemical analysis report furnished them.[35]

During the hearing on February 13, 2007 on the seizure case, the government prosecutor manifested in open court that he had informal discussion with petitioner Kingson's counsel who signified that he will not object to the result of the chemical analysis submitted by the MIRDC. Petitioner Kingson confirmed the manifestation of the government prosecutor and manifested that the previous chemical analysis and the subsequent report furnished by the MIRDC were not requested by petitioner.[36]

In the course of the trial, the government prosecutor manifested that they sought the assistance of the Philippine Embassy in Beijing and that on November 29, 2006, the Philippine Embassy in Beijing wrote China's General Administration of Customs, International Cooperation Department in Beijing Note Verbale No. S-36-0 to obtain certified true copies of the counterpart export documents used by the Chinese exporter.[37]

On December 13, 2006, the General Administration of Customs, the People's Republic of China sent a response letter to the Philippine Embassy's request for investigative assistance relative to

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[33] Par. 11, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 201 to 202.
[34] Par. 12, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 202.
[35] Par. 13, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 202.
[36] Par. 14, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 202.
[37] Par. 15, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 202 to 203.

the aforesaid shipment of metal product coming from China.[38]

Meanwhile, on April 19, 2007, Atty. Nick Earle L. Hortillas, Chief Law Division of the BOC, received a letter dated April 18, 2007 from Acting Commissioner Marilou P. Mendoza of the Tariff Commission informing him that subject articles are classified in subheading 7213.10.10 (if in coils) or under subheading 7214.20.00 (if not in coils), both subheadings are with MFN rate of duty of 7% ad valorem and CEPT rate of duty of 3% ad valorem.[39]

Thus, on October 10, 2007, respondent District Collector issued his assailed Order, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, it is hereby ordered and decreed the 2,406 pieces of steel products be FORFEITED in favor of the government to be disposed in the manner provided for by law.
>
> Let copies of this Decision be furnished all parties and offices concerned for their information and guidance.
>
> SO ORDERED."[40]

On October 24, 2007, petitioner Kingson appealed the aforesaid Decision dated October 10, 2007 to respondent COC.[41] Two (2) days later, or on October 26, 2007, the government prosecutor filed a motion to correct typographical error in the Decision dated October 10, 2007 of the District Collector, Port of Manila to amend the decision to read, "2,406 Bundles of Steel Products" instead of "2,406 pieces of steel products."[42]

On November 21, 2007, the Legal Service of the BOC issued an order requiring petitioner Kingson to file comment on the motion to correct typographical error. On February 18, 2008, petitioner filed its comment interposing no objection to the said motion.[43]

Thereafter, respondent COC issued his assailed Decision, the dispositive portion of which reads:

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[38] Par. 16, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 203.
[39] Par. 17, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 203.
[40] Par. 18, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 203.
[41] Par. 19, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 203.
[42] Par. 20, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 203 to 204.
[43] Par. 21, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 204.

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"WHEREFORE, premises considered, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the subject importations be FORFEITED in favor of the government for violation of Section 2530 paragraph (f) and (l-3,4,5) of the Tariff and Customs Code of the Philippines, as amended to be disposed of in the manner provided by existing customs laws, rules and regulations pertinent thereto.

Let copies of this Order be furnished all parties and offices concerned for their information and guidance.

SO ORDERED."[44]

On August 7, 2008, petitioner filed the instant "Petition for Review"[45] before this Court, to which respondents filed their "Answer"[46] on October 6, 2008.

Thereafter, petitioner filed a "Motion to Release Imported Articles or Goods Under Bond"[47] on October 10, 2008, while respondents filed their "Opposition"[48] on November 3, 2008, and petitioner filed its "Comment or Rejoinder to Opposition"[49] thereto.

In the Resolution[50] dated February 6, 2009, this Court denied the subject motion for lack of merit.

During the pre-trial conference held on December 4, 2008, the parties' counsels agreed to submit their Joint Stipulation of Facts & Issues within thirty (30) days. On February 2, 2009, the parties filed their "Joint Stipulation of Facts and Issues,"[51] which was approved by this Court in the Resolution[52] dated February 9, 2009. Thus pre-trial was deemed terminated.

On February 23, 2009, petitioner Kingson filed its "Motion for Reconsideration and for Correction,"[53] to which respondents filed

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[44] Par. 22, Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 204.
[45] Civil Docket, pp. 1 to 23.
[46] Civil Docket, pp. 70 to 97.
[47] Civil Docket, pp. 119 to 125.
[48] Civil Docket, pp. 173 to 180.
[49] Civil Docket, pp. 183 to 188.
[50] Civil Docket, pp. 232 to 235.
[51] Civil Docket, pp. 199 to 206.
[52] Civil Docket, p. 238.
[53] Civil Docket, pp. 239 to 248.

their "Comment"[54] on March 9, 2009. In the Resolution[55] dated April 20, 2009, this Court denied petitioner's Motion for Reconsideration for lack of merit, but granted the Motion for Correction.

During trial, petitioner presented three (3) witnesses, namely: 1) Roger M. Permejo, 2) Louella D. Quevedo, and 3) Rogelio Caamic. They testified as follows:

**Roger M. Permejo** testified that he is a duly licensed customs broker accredited by the BOC. He entered and declared petitioner Kingson's shipment of 2,406 bundles of Steel Products (SCM 440 Round Bar) in an entry with Serial No. 71224124 Entry No. C-37597 series of 2006 by faithfully copying the description, weight, measurement, quantity and value of said steel products as indicated in the covering bill of lading, invoice, packing list and sales contract between petitioner and its supplier which documents were given or submitted to him by petitioner. In accordance with customs laws, he entered, declared and pre-computed the customs duties and value added taxes of this particular shipment belonging to petitioner in accordance with the covering commercial invoice and sales contract price at US$0.23/kg as its transaction value for customs valuation purposes. He assisted the petitioner in paying for the pre-computed customs duties and taxes in the total amount of ₱5,251,040.00 at the Philippine National Bank, Port Area Branch on May 5, 2006. He also processed and followed up the customs entry of petitioner with the assessment and cash division of the BOC, Port of Manila, as well as the payment of additional customs duties and taxes in the amount of ₱544,264.00 as assessed by the customs appraiser. The subject cargo has already accumulated rust and is in a deteriorating state as of January 26, 2009.[56]

On cross-examination, he testified that his services do not include communication with foreign suppliers and his only concern is the documents. He prepared the IEIRD based on the documents given to him by the petitioner.[57]

**Louella D. Quevado** testified that she is the official custodian of all records of seizure and forfeiture cases at the Law Division, Port of Manila. In the regular and normal course of her official functions, she took possession and custody of all papers, pleadings, documents, transcript of stenographic notes, notices, orders and

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[54] Civil Docket, pp. 254 to 259.
[55] Civil Docket, pp. 261 to 262.
[56] Judicial Affidavit of Roger M. Permejo, Exhibit "N" and "28," Civil Docket, pp. 207 to 221.
[57] TSN dated May 25, 2009, pp. 6 to 16.

decision in the case entitled, "Republic of the Philippines versus shipment of 2,406 Bundles Steel Products (SCM 440 Round Bar) which arrived from China on board ex S/S 'Rich Ocean V. 603,' Bill of Lading No. STOO1 covered by Entry No. C-37597" docketed as S.I. No. 2006-747 with Kingson as claimant. She was familiar with all the papers, documents, pleadings, notices, orders, transcript of stenographic notes and decision in the case as she put the paginations in the case folders and was duly empowered and authorized to certify these papers, documents, pleadings, notices, order and decision.[58]

**Roger Caamic** testified that he is the customs operation officer who examined and appraised petitioner's shipment consisting of 2,406 bundles of Steel Products (SCM 440 Round Bar). He examined or inspected the shipment and appraised it in accordance with the applicable customs laws, rules, regulations, procedures and practices, and in the regular and normal course of the performance of his duties in accordance with the transaction value system. The entered value of the shipment was 0.23/kg but in accordance with the established practice and procedure in the absence of value information at the time of his appraisal, he upgraded or made an upward adjustment of the entered value by 11.5% or at US$0.26/kg. He is tasked make a classification of the shipment of steel products (SCM 440 Round Bar) and approved the entered tariff classification at H.S. 7228.60.00 at 1% ad valorem.[59]

On cross-examination, he testified that he has sufficient knowledge on steel products that are coming into the Philippines in order to perform his job. In fact, he has had training on steel products so he could effectively perform his job. There are instances where he could not classify the steel products that are imported into the country. Upon examination, he confirmed that the products were SCM 440 round bars by merely looking at the steel. He did not request for laboratory examinations for the purpose of trade facilitation. He cannot identify if the bars are re-bars or round bars, because to him, it's the same. He stated that the documents submitted were authentic, but he is not privy to the contract between petitioner and the exporter from China. Finally, he answered that he would not have known whether the documents were fake or not.[60]

On September 14, 2009, petitioner filed its "Formal Offer of Evidence",[61] to which respondents filed their "Comment (On

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[58] Judicial Affidavit of Louella D. Quevedo, Exhibit "O," Civil Docket, pp. 371 to 376.
[59] Judicial Affidavit of Rogelio C. Caamic, Exhibit "P" and "29," Civil Docket, pp. 283 to 289.
[60] TSN dated August 24, 2009, pp. 12 to 46.
[61] Civil Docket, pp. 294 to 299.

Petitioner's Formal Offer of Evidence)"[62] on October 26, 2009. In a Resolution[63] dated November 16, 2009, this Court resolved to admit Exhibits "A" to "F-1," "J" to "N," and "P."

Petitioner filed a "Motion for Reconsideration and To Admit"[64] on December 1, 2009, which was granted by this Court in a Resolution[65] dated December 9, 2009.

***Consolidated Cases***

On May 31, 2010, CTA Crim. Case No. O-133 and CTA Case No. 7819 were consolidated by this Court considering that under Section 11 of Rule 9 of the Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA), the civil action is deemed instituted in the criminal action, and considering further that counsels for both parties interposed no objections thereto.[66]

On August 15, 2012, respondents in CTA Case No. 7819 filed a "Manifestation and Motion,"[67] which was noted by the Court in the Resolution[68] dated August 31, 2012. In the said pleading, the Office of the Solicitor General stated that they will be adopting all the documentary evidence that the prosecution will offer in CTA Crim. Case No. O-133.

To establish the culpability of all the accused in CTA Crim. Case No. O-133, the prosecution presented thirteen (13) witnesses, namely: Marissa V. Curay, Welsie P. Lopez, Camilo Jolejole, Sambitore Lucman II, Edgar Alpaño, Teodoro Sagaral, Bernardo Evangelista, William Rañaga, Roberto Malinao Cola, Assistant Secretary Jaime Victor B. Ledda, Wellington Yang Tong, Atty. Jenny Puno Diokno, and Rio S. Pagtalunan.

As stated in the Resolution[69] dated August 14, 2013, the testimony of the witnesses established the following facts, to wit:

> "Sometime in April or May of 2006, Mr. Wellington

[62] Civil Docket, pp. 355 to 360.
[63] Civil Docket, pp. 362 to 363.
[64] Civil Docket, pp. 367 to 370.
[65] Civil Docket, p. 379
[66] Criminal Docket, Vol. II, pp. 628 to 629.
[67] Criminal Docket, Vol. IV, pp. 2327 to 2332.
[68] Criminal Docket, Vol. IV, p. 2334.
[69] Criminal Docket, Vol. VI, pp. 3482 to 3503.

Yang Tong, President of the Philippine Iron Steel Institute (PISI), received information regarding an arrival of an alleged importation of 3,000 to 4,000 smuggled steel bars from China in the Port of Manila.[70] Upon confirmation of the said information with Mr. William Rañaga, the Industry Commodity Expert assigned in the Bureau of Customs, he wrote a letter to Commissioner Napoleon Morales of the Bureau of Customs (BOC) informing the latter of a confirmed importation of steel bars, declared price, the absence of the Import Commodity Clearance from the Bureau of Product Standards (BPS) from the Department of Trade and Industry (DTI), and that part of the subject shipment were already released from the Port without the necessary clearances.[71]

On May 10, 2006, Director Jarius Paguntalan of CIIS showed Mr. Teodoro Sagaral, Supervisor of CIIS, the letter from PISI regarding the shipment of round bars imported from China and consigned to Kingson International Trading Corporation.[72] Mr. Sagaral immediately directed Mr. Sambitore Lucman II to proceed to the Assessment Division to find out whether an entry filed was declared as round bars and consigned to Kingson.[73] He similarly directed Mr. Edgar Alapaño to proceed to Pier 9 to verify the same information.[74] Mr. Lucman confirmed an Import Entry filed and declared as round bars consigned to Kingson.[75] Similarly, Mr. Alpaño confirmed that there was a shipment coming from China that was consigned with Kingson.[76] Thereafter, Mr. Sagaral directed the issuance of the Alert Order against said shipment. After the office discovered that part of the shipment was already released, a Mission Order was issued in order to track down the released shipment.[77]

Mr. Sagaral forwarded the Initial Report dated May 11, 2006 prepared by the officers on case recommending the issuance of a Warrant of Seizure and Detention (WSD) against the subject shipment to the Director of CIIS. On the same day, he personally went to Pier 9 to verify the shipment that was consigned to Kingson and

[70] Criminal Docket, Vol. IV, pp. 2180 to 2181, TSN of Hearing dated February 13, 2012, pp. 25 to 26.
[71] TSN of Hearing dated February 13, 2012, pp. 26-35; Criminal Docket, Vol. IV, pp. 2181 to 2190.
[72] TSN of Hearing dated September 6, 2010, pp. 15-16; Criminal Docket, Vol. III, pp. 1343-1344.
[73] Id. at 17; Criminal Docket, Vol. III, p. 1345.
[74] Id. at 18; Criminal Docket, Vol. III, p. 1346.
[75] Id.
[76] Id. at 21; Criminal Docket, Vol. III, p. 1349.
[77] Id. at 25; Criminal Docket, Vol. III, p. 1353.

noticed that the subject shipment were actually deformed steel bars.[78] On May 12, 2006, an approved WSD was received by the office.

However, before the WSD was served, the office tasked another group of agents to verify and coordinate with the Asian Terminals, Inc. (ATI) if there was actual release of the subject shipment.[79] In the course of the said verification, a truck driver was pinpointed as the one who delivered said shipment to Imus Cavite.[80] Thereafter, the team proceeded to Potential Warehouse in Imus Cavite to serve the WSD. The team introduced themselves and stated the purpose of their search to Mr. Rene Martin (Martin), the warehouseman, which prompted the latter to call Mr. Jeffrey Co, the warehouse owner. Mr. Camilo Jolejole testified that he was able to talk to Mr. Jeffrey Co and was allowed to enter the warehouse.[81] The team was able to confirm the existence of the re-bars subject of the WSD inside the warehouse. Thereafter, the team escorted the trucks loaded with the reinforced bars from Potential Industrial Sales in Cavite to the Bureau of Customs, Port of Manila.[82]

Assistant Secretary Jaime Victor B. Ledda, then Minister of Consul General of the Philippine Embassy in Beijing, China, testified that he received communications from the Philippine Bureau of Customs and representatives of the Federation of Philippine Industries which sought their assistance relative to the seizure case of Kingson International Trading Corporation.[83] He testified that he wrote a Note Verbale to the People's Republic of China, General Administration of Customs, and brought to their attention a concern raised by the Bureau of Customs on importation of steel products and furnished them copies of the documents provided by the Bureau of Customs in connection with the instant importation of steel products.[84]

In response to the Note Verbale, the People's Republic of China acceded to the request and provided

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[78] Id. at 39; Criminal Docket, Vol. III, p. 1367.
[79] TSN of Hearing dated June 28, 2010, p. 93; Criminal Docket, Vol. II, p. 780.
[80] Id. at 93-94; Criminal Docket, Vol. II, pp. 790-791.
[81] Id. at 100; Criminal Docket, Vol. II, p. 797.
[82] TSN of Hearing dated July 12, 2010, p. 60; Criminal Docket, Vol. III, p. 1177.
[83] TSN of Hearing dated January 16, 2012, p. 7.
[84] Id. at 69-70.

the attached documents to the Note Verbale.[85] Thereafter, these documents were sent to the Philippine Bureau of Customs. He identified the Certifications he prepared in his capacity as a Consul General of the Philippine Embassy in Beijing pursuant to a request of the Bureau of Customs for a Certification of documents that the Embassy received from General Administration of Customs of China.[86]

Mr. Bernardo M. Evangelista, a Special Agent assigned at the Run After The Smugglers (RATS) Group of the Bureau of Customs, identified all accused in open court.[87] He testified that during the hearing of the Seizure Identification No. 2006-747 in the Law Division of the Bureau of Customs involving Kingson, Mr. Jeffrey Co, through his counsel, filed a Motion for Intervention.[88] He identified a Memorandum of Agreement to Sell dated April 7, 2006 between Kingson International Trading Corporation as represented by its President Jeffrey King and Jeffrey N. Co and photocopy of Chinabank checks attached to the said motion.[89] He alleged that on the Motion for Intervention, Mr. Jeffrey Co is claiming that he was the legal owner and a valid owner of the 1,000 metric tons of steel products included in the Kingson shipment.[90]

Atty. Jenny Puno Diokno, a Hearing Officer in the Law Division, Port of Manila, Bureau of Customs,[91] testified that sometime in 2006, she was assigned to handle the seizure case filed against Kingson International Trading Corporation for its shipment of steel bars.[92] Said shipment was subjected to seizure by the District Collector for alleged violation of 2503 of TCCP which involves misclassification, undervaluation and misdeclaration of subject shipment.[93] She added that in the course of the hearing in the seizure case, Mr. Jeffrey Co filed a Motion for Intervention on the ground that he entered into a Memorandum of Agreement to Sell with consignee Kingson International Trading.[94] In the said Memorandum of Agreement to Sell attached to the Motion

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[85] Id. at 34-35.
[86] Id. at 46.
[87] TSN of Hearing dated November 15, 2010, pp. 26-32; Criminal Docket, Vol. III, pp. 1568 to 1574.
[88] Id., at 34; Criminal Docket, Vol. III, p. 1576.
[89] Id., at 36 to 37; Criminal Docket, Vol. III, pp. 1578 to 1579.
[90] TSN of Hearing dated January 10, 2011, p. 20; Criminal Docket, Vol. III, p. 1617.
[91] TSN of Hearing dated June 11, 2012, p. 9.
[92] Id., at 12.
[93] Id.
[94] Id., at 20 to 21.

for Intervention filed with the Law Division, the parties therein were accused Jeffrey King as President of the Kingson and Mr. Jeffrey Co.[95] The Memorandum of Agreement to Sell pertains to the shipment of 1000 tons of steel which Mr. Jeffrey Co paid Kingson.[96] To support the motion filed by Mr. Jeffrey Co, he attached a Manager's Check issued to Kingson.[97] She further testified that the District Collector of Port of Manila rendered a decision forfeiting the entire shipment consigned to Kingson which involved 2,406 bundles of steel products.[98]

Mr. Rio Pagtalunan, the Chief Science Research Specialist of (MIRDC),[99] was then the Officer-in-charge of the Analysis and Testing Division in June 2006.[100] He identified the Certificates dated July 10, 2006 and November 13, 2006 issued by the MIRDC regarding the laboratory analysis and examination of sample steel bars imported by Kingson.[101] He further read the letter dated September 4, 2006 addressed to Mr. Horacio P. Suansing, Jr., District Collector of the Bureau of Customs Manila informing the latter that the letter dated July 28, 2006 and Certificate of Chemical Analysis issued by MIRDC is not authentic and was never issued by the said office.[102]

Ms. Marissa V. Curay, the Customs Examiner in the Formal Entry Division, Port of Manila, of the Bureau of Customs,[103] is tasked to examine and classify imported cargos that are coming into the country and determine the correct duties and taxes to be paid.[104] She testified that sometime in May to July 2006, a member of the "Run After The Smugglers" (RATS) group approached her and asked for a re-computation of the steel bars imported by Kingson International Trading Corporation (Kingson) in order to determine the difference in value based on the computation as reflected at the back of the Formal Entry Declaration.[105] She further testified that she computed

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[95] Id., at 21 to 22.
[96] Id., at 22.
[97] Id., at 23.
[98] Id., at 25.
[99] Id., at 48.
[100] Id., at 58.
[101] Id., at 59-67.
[102] Id., at 101.
[103] TSN of Hearing dated April 19, 2010, p. 9.
[104] Id., at 10.
[105] Id., at 12 to 14.

the total amount of Php15,870,438.00 of customs duties and value-added taxes (VAT) based on the photocopy of the Formal Entry Declaration and the given value of $0.48 per kilo of steel bars written in a scratch paper, both supplied to her by the RATS group.[106]

Mr. William Rañaga, an Industry Technology Technical Expert for Federation of Philippine Industries, Inc. assigned in the Bureau of Customs,[107] testified that he was asked to accompany the personnel of the CIIS in the conduct of their physical examination of the subject shipment.[108] Upon actual physical examination and measurement using a *venier calliper* of the subject shipment, he found out that the bundles of steel bars are 10mm and 12mm re-bars or deformed bars.[109] He reported to Mr. Sagaral that the subject shipment is actually deformed bars and not SCM440 round bars as declared in the Import Entry.[110] He further stated that a deformed bar should have been classified under 7214 because under 7214-20, it contains indentation, ribs, groups or other deformations produced during the rolling process and twisted, and has a tariff duty of seven percent (7%).[111] The tariff heading of SCM 440 under the TCCP is classified under 7228 which is alloy steel bars or alloyed bars[112] with one percent (1%) tariff rate.[113]

Mr. Rañaga further testified that the reference value at that time for reformed bars was around US$420 per metric ton FDB.[114] But the declared value in the Import Entry was only around US$230 per metric ton.[115] The reference value was based on Metal Bulletin which is a periodical, international known periodicals issued and used as a reference by the Bureau of Customs and the recent importations allowed that time, when he was doing the processing or monitoring, the raw materials was already around US$410 per metric ton. Considering that it is already a finished product, it should have been higher than the raw material.[116]

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[106] Id., at 12 to 21.
[107] TSN of Hearing dated July 4, 2011, p. 8; Criminal Docket, Vol. IV, p. 1954.
[108] Id., at 70 to 71; Criminal Docket, Vol. IV, pp. 2016 to 2017.
[109] Id., at 73; Criminal Docket, Vol. IV, p. 2019.
[110] Id., at 74; Criminal Docket, Vol. IV, p. 2020.
[111] Id., at 79 to 80; Criminal Docket, Vol. IV, pp. 2025 to 2026.
[112] Id., at 113; Criminal Docket, Vol. IV, p. 2059.
[113] Id., at 114; Criminal Docket, Vol. IV, p. 2060.
[114] Id., at 81; Criminal Docket, Vol. IV, p. 2027.
[115] Id., at 82; Criminal Docket, Vol. IV, p. 2028.
[116] Id., at 83 to 84; Criminal Docket, Vol. IV, p. 2029 to 2030.

> Mr. Wellington Yang Tong further confirmed that during the ocular inspection of the subject shipment in the Bureau of Customs, he personally saw the deformed bars or construction bars and not SCM 440 round bars as claimed in the Import Entry.[117] He further testified that SCM 440 is a particular and peculiar and a unique designation by the Japanese Industrial Standard, JIS. It contains alloys which are very expensive and their price differs from rebar at least 50% more.[118] At the time of the subject shipment, the price of SCM 440 would have been close to $900 per ton contrary to the declared $230 per ton.[119] He added that the declared value of $230 is below scrap price considering that finished raw products usually commands higher price than the raw materials, the scrap price of which at the time of shipment was around $280 and the price of billets was around $415-$450."[120]

Upon completion of the oral testimonies of the foregoing witnesses, the prosecution in CTA Crim. Case No. O-133 filed its "Formal Offer of Evidence"[121] on August 31, 2012, proffering Exhibits "A" to "HHHHH." Meanwhile, the respondents in CTA Case No. 7819 filed their "Formal Offer of Evidence"[122] through registered mail on August 31, 2012, a copy of which was received by this Court on September 5, 2012.

In the Resolution[123] dated November 21, 2012, this Court admitted Prosecution Exhibits "A" to "E3," "G" to "J," "N" to "V," "BBB" to "BBB-2," "EEE," "EEE-1," "EEE-3," "EEE-9," "FFF-1," "FFF-2," "FFF-2-a," "GGG," "GGG-1," "HHH," "HHH-1," "III-1," "KKK," "LLL," "MMM," "NNN," "OOO" to "OOO-3-a," "PPP" to "SSS-8," "TTT-1" to "TTT-12," "TTT-15," "TTT-16," "TTT-18" to "TTT-20," "TTT-22" to "TTT-25," "TTT-27"to "TTT-42," "TTT-44," "UUU" to "UUU-4," "UUU-7" to "UUU-9," "VVV" to "VVV-2-b," "WWW" to "ZZZ-2," "AAAA" to "GGGG," "HHHH-1, "HHHH-2," "JJJJ" to "LLLL-2," "NNNN" to "NNNN-11," "NNNN-13" to "NNNN-36," "OOOO" to "RRRR-1," "TTTT" to "TTTT-2," "XXXX" to "ZZZZ," "AAAAA" to "CCCCC-3," and "EEEEE."[124]

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[117] TSN of Hearing dated February 13, 2012; p. 65; Criminal Docket, Vol. IV, p. 2220.
[118] Id., at 66; Criminal Docket, Vol. IV, p. 2221.
[119] Id., at 76; Criminal Docket, Vol. IV, p. 2231.
[120] Id., at 80; Criminal Docket, Vol. IV, p. 2235.
[121] Criminal Docket, Vol. IV, pp. 2335 to 2423.
[122] Criminal Docket, Vol. V, pp. 2827 to 2868.
[123] Criminal Docket, Vol. VI, pp. 3327 to 3337.
[124] Respondents' Exhibits "1" to "5-c," "7" to "10," "14" to "22," "54" to "54-b," "57," "57-a," "57-c," "57-i," "58-a," "58-b," "58-b-1," "59," "59-a," "60," "60-a," "61-a," "63," "64," "65," "66," "67" to "67-c-1," "68" to 71-h," "72-a" to "71-l," "72-o," "72-p," "72-r" to "72-t," "72-v" to "72-y," "72-aa" to "72-pp," "72-rr," "73" to "73-d," "73-g" to "73-i," "74" to "74-b-2," "75" to "78-b," "79" to "85," "86-a," "86-b,"

On November 22, 2012, respondents in CTA. Case No. 7819 filed a "Manifestation and Motion,"[125] praying that the exhibits formally offered by respondent in the Formal Offer of Evidence dated August 30, 2012 be admitted.

Meanwhile, all the six (6) above-named accused filed a "Motion for Leave of Court to File Demurrer to Evidence"[126] on November 28, 2012, to which the prosecution filed its "Opposition to File Demurrer to Evidence"[127] on December 11, 2012. In the Resolution[128] dated December 12, 2012, the Court granted said motion for leave of court to file their Demurrer to Evidence.

On December 27, 2012, accused filed their "Demurrer to Evidence (With Leave of Court),"[129] to which the prosecution filed its "Opposition/Comments (To the Demurrer to Evidence)"[130] on February 21, 2013. Thereafter, accused filed their "Reply to Opposition/Comments"[131] on April 1, 2013, and accused's "Demurrer to Evidence (With Leave of Court)" was submitted for decision on May 17, 2013.[132]

In the Resolution[133] dated August 14, 2013, this Court denied the Demurrer to Evidence for lack of merit.

On September 18, 2013, the accused filed their "Motion for Reconsideration."[134] The prosecution filed its "Comment/Opposition to Motion for Reconsideration"[135] on October 16, 2013, as well as a "Supplement to Comments/Opposition to Motion for Reconsideration (dated September 16, 2013)"[136] filed on October 17, 2013. Thereafter, accused filed their "Reply to Comments/Opposition and to Supplement to Comments/Opposition"[137] on November 4, 2013, while the prosecution filed its "Rejoinder to Reply"[138] on November 15, 2013.

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"88" to "90-b," "92" to "92-k," "92-m" to "92-jj," "93" to "96-a," "98" to "98-b," "101" to "103," "104" to "106-c," and "108."
[125] Criminal Docket, Vol. VI, pp. 3338 to 3346.
[126] Criminal Docket, Vol. VI, pp. 3347 to 3353.
[127] Criminal Docket, Vol.VI, pp. 3356 to 3357.
[128] Criminal Docket, Vol. VI, p. 3355.
[129] Criminal Docket, Vol. VI, pp. 3358 to 3369.
[130] Criminal Docket, Vol. VI, pp. 3422 to 3453.
[131] Criminal Docket, Vol. VI, pp. 3464 to 3472.
[132] Criminal Docket, Vol. VI, p. 3479.
[133] Criminal Docket, Vol. VI, pp. 3482 to 3503.
[134] Criminal Docket, Vol. VI, pp. 3504 to 3512.
[135] Criminal Docket, Vol. VI, pp. 3521 to 3523.
[136] Criminal Docket, Vol. VI, pp. 3525 to 3532.
[137] Criminal Docket, Vol. VI, pp. 3542 to 3548.
[138] Criminal Docket, Vol. VI, pp. 3557 to 3559.

In the Resolution[139] dated January 24, 2014, this Court denied the Motion for Reconsideration filed by the accused for lack of merit.

Pursuant to the Resolution[140] dated January 29, 2014, counsel for the accused and petitioner Kingson filed a "Joint Manifestation/Compliance"[141] on February 10, 2014, stating the following: 1) petitioner will present rebuttal evidence and would also adopt the evidence to be presented by the defense; 2) the defense is adopting the testimonies of Rogelio Caamic, who testified on August 24, 2009, and Roger Permejo, who testified on April 27, 2009 and May 25, 2009; and 3) the documentary exhibits identified by Rogelio Caamic and Roger Permejo are likewise adopted.

On February 26, 2014, defense counsel presented Roger Permejo, whose testimonies on April 27, 2009 and May 25, 2009 were adopted *in toto* as his direct testimony for the defense.[142]

During his cross-examination, Roger Permejo testified that he is a licensed customs broker for almost 19 years. He finished the course with the Customs Administration at PMI, and took up the subjects Tariffs 1 to 6 in college. He is familiar with the provisions of the TCCP because that was his favorite subject. He confirms that he is familiar with the tariff headings and classification of steels, as well as Tariff Headings 72.13; 7213.1010; 72.28; and 728.6000.

Permejo also testified that petitioner Kingson was a client for brokerage services for almost 2-3 years, for the release of imported goods including steel, but he does not have any Contract of Service with Kingson. He holds office in is his house in Cavite and not in Kingson. Finally, Permejo stated that he does not know if there are clearances required for the importation of steel by Kingson. Kingson gave all the documents necessary to be filed with the BOC and his computation was based on 1% and not 7%. He also identified the photos taken by him while the steel bars were in the custody of the BOC marked as Exhibits M to M-11, inclusive.[143]

On March 17, 2014, petitioner Kingson in CTA Case No. 7819 filed a "Motion to Admit (Attached Motion to Adopt)"[144] with attached "Motion to Adopt."[145] Respondents in CTA Case No. 7819 filed their

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[139] Criminal Docket, Vol. VI, pp. 3575 to 3576.
[140] Criminal Docket, Vol. VI, pp. 3583 to 3584.
[141] Criminal Docket, Vol. VI, pp. 3585 to 3587.
[142] Criminal Docket, Vol. VI, pp. 3616 to 3617.
[143] TSN dated February 26, 2014, pp. 35 to 63.
[144] Criminal Docket, Vol. VI, pp. 3624 to 3627.
[145] Criminal Docket, Vol. VI, pp. 3628 to 3632.

"Comment"[146] on April 22, 2014. In the Resolution[147] dated May 30, 2014, petitioner's Motion to Adopt was granted, and was allowed to formally offer additional evidence in chief at a time coinciding with the filing of the Formal Offer of Evidence of all the accused in CTA Crim. Case No. O-133.

To counter the prosecution's evidence, accused presented two (2) additional witnesses, namely: 1) Roger Caamic; and 2) Alicia O. Fernandez.

On additional cross-examination, Roger Caamic testified that he has been connected with the BOC for almost 20 years, and is assigned at the Port of Manila since 2002. He graduated with a degree of Bachelor of Science in Customs Administration, but did not take the Board Examination for Customs Brokers.

Roger Caamic said he is familiar with the importation of steel bars by Kingson. He used the transaction value method in the computation of taxes and duties on the importation of steel bars by Kingson. The transaction value is that declared by the importer or broker. This value is stated in the documents appended to the Import Entry Declaration (Exh. A/Exh. 1), such as the Bill of Lading (Exh. E/Exh. 5), Commercial Invoice (Exh. B/Exh. 2), Packing List (Exh. C/Exh. 3) and Sales Contract (Exh. D/Exh. 4).

Despite the absence of any Consular Certification, Caamic said he gave credence to the documents marked as Exhibits A to E in the computation of taxes and duties on the importation of steel products by Kingson. He did not ask for any explanation from the Customs Broker of Kingson, Roger Permejo, why the documents were not accompanied by any Consular Certification. He also said that he did not inform his superiors, but he submitted the documents without the Consular Certification.

Allegedly, when he physically examined the goods in the presence of Kingson's customs broker, Roger Permejo, the goods were not enclosed in a container van. He saw round bars not reinforced steel bars. As customs examiner, it was his first time to examine shipments of round bars. He did not submit a sample for laboratory analysis and he has not been administratively charged or placed under preventive suspension in connection with this case.

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[146] Criminal Docket, Vol. VI, pp. 3652 to 3658.
[147] Criminal Docket, Vol. VI, pp. 3676 to 3678.

From Station 9, Caamic allegedly proceeded to Pier 9 to physically examine the shipment of Kingson. It took him less than an hour to examine them. It took him 5-10 minutes to travel from Station 9 to Pier 9. From Pier 9, it took him 10-20 minutes to conduct the physical examination. He was not accompanied by the Enforcement and Security Services (ESS); and CIIS. It is not a standard operating procedure to be accompanied by the ESS and CIIS. They accompany the examiner only if requested. Caamic further said that he is not familiar with Customs Memorandum Nos. 18-96; 19-96 A and 18B-96, regarding the procedure in the conduct of examination of imported articles.

According to Caamic, he relied on the description of the goods in the Commercial Invoice (Exh. B) as round bars, but not the chemical composition of the item during the inspection. He also stated that he did not comply with the provisions of Sec. 1403 of the TCCP, which provides that "when the nature of the article permits to submit a sample of the same for laboratory analysis for proper appraisal, classification and/or admission [of] articles [into] the Philippines.[148]

On clarificatory questions raised by Presiding Justice Roman G. Del Rosario, Roger Caamic replied that: when he conducted the examination, he was with the BOC for almost 7 years; at the time he examined the goods, the round bars and deformed reinforced bars were described as both round bars; he did not research or conduct a study as to the difference of these two goods; the round bars are round in appearance; and he did not bother to see if these are rough or smooth.[149]

**Alicia O. Fernandez** testified that: she is a stockholder and director of petitioner Kingson, together with Anthony Joey Tan, Reynaldo V. Cesa, and Edgardo V. Martinez; Kingson is engaged in the business of trading regarding steel products and other items as may be ordered by their clients; Roger Permejo is the customs broker of petitioner Kingson, while Jeffrey King acted as the representative of Kingson with respect to the transaction regarding the purchase of steel products by Jeffrey Co; and Jeffrey King is not a stockholder or director of petitioner Kingson.

That sometime in April of 2006, Jeffrey Co ordered steel products with the size of SCM 440 10mm and 12. Since they have

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[148] TSN dated October 15, 2014, pp. 15 to 46.
[149] TSN dated October 15, 2014, pp. 47 to 52.

already ordered steel products from Tianjin Mei Jia Hua Trade Co., Ltd., a company in China, she placed the order of steel products of Jeffrey Co, through a facsimile transmission. Thereafter, Tianjin, the shipper, sent to Kingson, via courier, the documents relative to the said shipment of steel products. She then gave the documents to Roger Permejo, who would attend to the release of the shipments of the steel products with the BOC. When they received the commercial documents, they have not yet seen the actual steel products shipped by Tianjin. The corresponding IEIRD was prepared by Roger Permejo, based on the documents sent by Tianjin. She informed Roger Permejo about the pre-assessment of taxes in the amount of ₱5,251,040.00 that would be paid as shown in the Import Entry.

Further, Alicia Fernandez said that when the shipment arrived, it was examined and assessed by Roger Caamic, the assigned and official examiner of the BOC, and after examining and assessing the same, there was a revision of charges and Kingson paid an additional amount of ₱544,264.00. Roger Permejo also paid for the arrastre charges to Asian Terminal Cargos and wharfage charges to the Philippine Ports Authority. After the shipment was examined and assessed by the BOC and the assessed taxes were paid by Kingson, gate passes were issued so that the steel product shipments can be released from the BOC.

The charge against them is false and baseless because she and Roger Permejo relied in good faith and honesty in the correctness of the documents sent by the shipper, which became the basis for the preparation of the Import Entry. As for Jeffrey King, he is not a stockholder, director or President of Kingson, and merely acted as a representative of Kingson, as evidenced by the Addendum to the Memorandum of Agreement to Sell. Moreover, it was an honest error or mistake when Jeffrey King was designated as President in the Memorandum of Agreement to Sell as well as in the Receipt of the China Bank check.[150]

On cross-examination, she testified that the commercial documents were sent by the shipper. She identified her signature and the signature of Roger Permejo in Exhibit 1, which was signed under oath. The Invoice was not certified by a consular officer of the Philippines. She did not ask her broker, Roger Permejo, why the Invoice was not certified by a consular officer of the Philippines.

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[150] Exhibit "30" for the accused in CTA Crim. Case No. O-133; Exhibit "AA" for the petitioner in CTA Case No. 7819; Criminal Docket, Vol. VI, pp. 3732 to 3739.

The IEIRD was prepared by Roger Permejo. After reading the said document and upon presentation of the commercial documents, she signed the IEIRD in her capacity as Operations Manager of Kingson, together with Roger Permejo. She is also its Corporate Secretary.

As the Operations Manager of Kingson, she manages the delivery of goods from the different clients after the delivery by the broker, Roger Permejo. She personally placed the orders of round bars to Tianjin through fax.

She also testified that Jeffrey King is not the President of Kingson. There was an honest error in the statement that Jeffrey King was designated as President in the Memorandum of Agreement to Sell dated May 2, 2012, as well as in the receipt of the China Bank check. The corporate officers of Kingson are Alicia Fernandez, Edgardo Martinez, Reynaldo Cesa (President) and Joey S. Tan. Because of this error, they sought the advice of Atty. Jimenez, and then the corporate officers met and resolved to issue an Addendum of Memorandum of Agreement to Sell to rectify that Jeffrey King is not the President of Kingson.

The case filed against her and the other accused were dismissed by the Department of Justice as per Resolution dated August 15, 2007 (Exh. 25). She is aware that the Resolution was reconsidered which led to the filing of this case.

On re-direct examination, she testified that the Addendum to Memorandum to Sell issued by Kingson is marked as Exh. 19 with sub-markings, showing the corrections made to the original Memorandum to Sell. On re-cross examination, she confirmed that it took several days before the Memorandum to Sell was corrected.[151]

Kingson, as petitioner in CTA Case No. 7819, filed its "Formal Offer (of Rebuttal Evidence),"[152] on April 24, 2015 as well as an "Amended Formal Offer (of Additional Evidence in Chief)"[153] on May 25, 2015.

For its part, accused filed their "Motion to Admit Formal Offer of Exhibits/Evidence with Request for Re-Marking/Marking,"[154] with

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[151] TSN dated March 18, 2015, pp. 18 to 55.
[152] Criminal Docket, Vol. VI, pp. 3834 to 3839.
[153] Criminal Docket, Vol. VI, pp. 3872 to 3878.
[154] Criminal Docket, Vol. VI, pp. 3892 to 3895

attached "Formal Offer of Evidence/Exhibits with Request for RE-Marking/Marking"[155] on June 15, 2015.

Respondents in CTA Case No. 7819 filed their "Comment"[156] on June 15, 2015, while the prosecution in CTA Crim. Case No. O-133 filed its "Comment/Opposition (Re: Accused Formal Offer of Rebuttal Evidence dated April 20, 2015)"[157] on November 5, 2015.

In the Resolution dated June 10, 2016,[158] the Court admitted Exhibits "Q," "R," "S," "T," "U," "U-1," "V," "V-1," "V-2," "W," " X," "Y," "Z," "Z-1," "AA," and "BB," for the petitioner in CTA Case No. 7819. While in CTA Crim. Case No. O-133, this Court admitted Exhibits "1," "1-a," "1-b," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12 with sub-markings," "13," "13-a," "13-b," "13-d," "14," "15 to 15-e," "16," "16-a," "16-b," "16-c," "17 to 17-h," "18," "19 and 19-a," "20," "21," "22 with sub-markings," "24 with sub-markings," "25," "26," "26-A," "27," "28 with sub-markings," "29 with sub-markings," and "30 with sub-markings" for the prosecution.

On July 1, 2016, accused filed a "Motion to Rule/Admit Exhibits 16-d to 16-g and 31,"[159] to which the prosecution filed its "Comment/ Opposition (Re: Motion to Rule/Admit Exhibits 16-d to 16-g and 31)"[160] on July 14, 2016. In the Resolution[161] dated August 10, 2016, this Court resolved to admit Exhibits "16-d to 16-g," and "31-d," however, "31," "31-a," "31-b," and "31-c" are still denied admission for failure to present their originals for comparison.

Petitioner Kingson filed its "Memorandum"[162] on August 25, 2016, while respondents posted their "Memorandum"[163] on August 22, 2016 in CTA Case No. 7819.

With the filing of the "Memorandum for the Accused"[164] on September 13, 2016, and Records Verification[165] dated October 7, 2016, stating that the plaintiff (People of the Philippines) failed to file its memorandum, despite notice in CTA Crim. Case No. O-133, the instant consolidated cases were submitted for decision on October

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155 Criminal Docket, Vol. VI, pp. 3896 to 3907.
156 Criminal Docket, Vol. VI, pp. 4012 to 4015.
157 Criminal Docket, Vol. VI, pp. 4072 to 4077.
158 Criminal Docket, Vol. VI, pp. 4098 to 4100.
159 Criminal Docket, Vol. VI, pp. 4101 to 4103.
160 Criminal Docket, Vol. VII, pp. 4115 to 4116.
161 Criminal Docket, Vol. VII, pp. 4124 to 4128.
162 Criminal Docket, Vol. VII, pp. 4129 to 4148.
163 Criminal Docket, Vol. VII, pp. 4149 to 4168.
164 Criminal Docket, Vol. VII, pp. 4178 to 4207.
165 Criminal Docket, Vol. VII, p. 4208.

26, 2016.[166]

Hence, this Decision.

**THE ISSUES**

**CTA Crim. Case No. O-133**

"III. Issues to be Resolved

A. Factual Issues

1. Whether or not accused, in conspiracy with each other, knowingly, willfully and unlawfully and feloniously misdeclared, misclassified and undervalued the shipment in the import entry.

2. Whether or not the copies of the documents submitted by accused to the BOC to support the declaration in the import entry were falsified and/or spurious.

3. Whether or not Jeffrey King is the president of Kingson.

B. Legal Issues

1. Whether or not accused Jeffrey King, Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, Edgardo V. Martinez and Roger Permejo are criminally liable for violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines in relation to RA 7103."[167]

**CTA Case No. 7819**

"I.

WHETHER THE INVOICE AND OTHER COMMERCIAL DOCUMENTS SUBMITTED BY PETITIONER TO THE BOC FOR THE PURPOSE OF COMPUTING THE CORRECT DUTIES AND TAXES ARE FALSE.

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[166] Criminal Docket, Vol. VII, pp. 4215 to 4216.
[167] Pre-Trial Order dated March 8, 2010; Criminal Docket, Vol. II, pp. 578 to 599, 580.

II.
WHETHER THERE IS AN UNDERVALUATION OF SUBJECT SHIPMENT WARRANTING THE FORFEITURE THEREOF PURSUANT TO THE TARIFF AND CUSTOMS CODE.

III.
WHETHER THERE IS A MISDECLARATION OF THE CLASSIFICATION OF SUBJECT SHIPMENT WARRANTING THE FORFEITURE THEREOF PURSUANT TO THE TARIFF AND CUSTOMS CODE."[168]

***The Parties' Arguments:***

**CTA Crim. Case No. O-133:**

***Accused's Arguments***

The accused argue that the evidence presented by the prosecution miserably failed to prove the allegations in the Information, and would definitely not meet the quantum of evidence required in a criminal proceeding, which is proof beyond reasonable doubt.

A close scrutiny of the totality of the evidence presented by the prosecution would show that no evidence was ever presented showing any individual actions on the part of each of the accused amounting to a willful, unlawful, and felonious action of importation, misdeclaration, misclassification and undervaluing the shipment said to contain 2,406 bundles of round steel bars. The most that the prosecution was able to show was that the Import Entry (Exhibit A, Exhibit 1) was signed by accused Roger Permejo and Alicia Fernandez, nothing more, nothing less. But as even admitted by the prosecution witnesses, the signing of the designated broker and the representative of the consignee in an Import Entry is regular and normal standard procedure.

The prosecution's evidence failed to show that the shipping documents were spurious or falsified, and no evidence was presented on any individual actuations on the part of each of the accused that the said shipping documents were prepared by them, but what was unraveled was that the shipping documents came from the shipper - Tianjin Mei Jia Hua Trade Co. Ltd. In a desperate effort

[168] Joint Stipulation of Facts and Issues, Civil Docket, pp. 199 to 206, 204 to 205.

to question the shipping documents, the prosecution presented documentary evidence coming from China, but a perusal of the said documents presented would show that the consignee therein is not Kingson International, but Solid Sea Products HK.

The Information alleges that the accused conspired and confederated with each other. But the prosecution miserably failed to prove conspiracy, which is incumbent upon the prosecution to establish also with proof beyond reasonable doubt.

The shipment was not containerized, which shows that there was no intention to misdeclare. The products were open to the naked eye and proves that the steel products were duly examined by the official examiner Roger Caamic. Moreover, the examination was approved by Arthur Sevilla and further approved by Prudencio Macaranas, showing that the shipment underwent the regular and normal process of examination and assessment.

Roger M. Permejo, as the customs broker of Kingson, has the legal right to rely on the invoice, packing list, bill of lading and Inward Foreign manifest in making his declarations in the import entry. Moreover, accused Roger M. Permejo, as customs broker, is not required to go beyond the documents presented to him in filing the entry.

The evidence presented by the prosecution did not meet the quantum of evidence required in a criminal proceeding to pierce the presumption of innocence accorded to the accused. Thus, all of the accused should be acquitted.

## <u>CTA Case No. 7819:</u>

### ***Petitioner's Arguments***

Petitioner Kingson contends that it complied with customs laws, rules and regulations in lodging and filing the IEIRD[169] for the subject importation of Steel Products from China. It attached the following documents to the customs import entry required by the BOC, to wit: Commercial Invoice No. 00007020 dated April 24, 2006,[170] Packing List,[171] Sales Contract No. 06YJ/2-102 dated April 20, 2006,[172] all

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[169] Exhibit "E."
[170] Exhibit "A."
[171] Exhibit "B."
[172] Exhibit "D."

coming from the foreign supplier/seller/shipper Tianjin Mai Jia Hua Trade Co Ltd. with address at Rm. 401 3A Site Yinlang Bldg., 149 Weijin St., Heping District, Tianjin, China; and bill of lading No. ST 001 with endorsement from Philhua Shipping.[173] These commercial documents are entirely prepared by and provided to petitioner by its supplier/seller/shipper from China.

Petitioner likewise argues that it declared and entered in the Import Entry its cargo on the basis of the authentic commercial invoice and other commercial documents provided by its foreign supplier/exporter/shipper. The data and information contained in these commercial and shipping documents, particularly its declared customs value, was merely copied and restated in the Import Entry.

According to petitioner, it did not falsely misrepresent the correct, true and lawful transaction value of the shipment of Steel Products at US$692,254.00 or US$230.00/metric ton as adjusted upwards or upgraded to US$782,548.00 or US$260.00/metric ton by the customs operation officer charged pursuant to Section 1403 of the TCCP to examine, appraise and assess the dutiable value for customs purposes and compute duties and taxes legally due the government from this importation.[174]

The invoice value at US$230.00/metric ton or the total amount of US$692,254.00 indicated in Invoice No. 00007020 dated April 24, 2006 issued by Tianjin Mei Jia Hua Trade Co. Ltd. is the correct and lawful transaction value in accordance with the provisions of R.A. No. 9135 which adopted the WTO Valuation System by authority of Section 18 of R.A. No. 9135, and Customs Administration Order No. 5-2001 (CAO 5-2001) as amended by Customs Administrative Order No. 4-2004 (CAO 4-2004).[175]

The value claimed by respondents in the amount of US$1,281,271.86 or US$425.70/metric ton as the alleged true customs value is only a reference value. As such, it cannot be a substitute for the transaction value, for the following reasons:

a) It is based on alleged counterpart export documents[176] with Solid Sea Products with address at Rm. 5 2/F Blk. A Hong Way Garden 8 New Market Street, Wan, Hongkong, as importer, a company or firm different from petitioner Kingson International Trading Corp.

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[173] Exhibit "C."
[174] Exhibits "N" and "P."
[175] Exhibits "K" and "L."
[176] Exhibits "VVV-2," "XXX-4," "YYY-2," and "ZZZ-4."

b) The Purchase Order or Sales Contract Order of petitioner from its supplier is clearly indicated in the covering Sales Contract was 06JY/2-102 while that of Solid Sea Products carried or showed a distinct and different No. 06JY/2-042.[177]

c) The reference value at US$425.70/metric ton based on the alleged counterpart export documents, as claimed by respondents, is a departure from the value at US$480.00/metric ton utilized by RATS and witness Marissa Curay in the determination of the difference in customs duties and taxes, which was made the basis for the seizure and forfeiture of the subject shipment of Steel Products. In any case, this reference value at US$480.00/metric ton cannot legally be utilized in the appraisal and assessment of the dutiable value for customs purposes as the same was for "personal consumption" purposes only.[178]

d) The reference values shown by respondents at US$425.70 metric ton and/or US$480.00/metric ton cannot be used as substitute value for customs valuation purposes. Section III-A of CAO 4-2004 provides as follows:

   a. A-reference value as risk management tool – "published or established value, or any other value reference from whatever source, cannot be used as substitute value for customs valuation"[179]

e) The transaction value of the subject importation of Steel Products of petitioner is evidenced or shown in the commercial invoice No. 00007020 dated April 24, 2006. Therefore, there was no intentional undervaluation in Violation of Section 3602 in relation to Section 2503 of the TCCP, as amended.

Petitioner Kingson likewise contends that the description of the imported steel products in this case appearing in its import entry and all other shipping documents indubitably showed "Steel Products" (SCM 440 Round Bar).[180] Respondents' exhibits[181] showed the same description, "Steel Products," but with sizes 10mmx6m and 12mmx6m. These respondents' exhibits were the claimed counterpart export documents covering petitioner's shipment which it disputed for the following reasons:

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[177] Exhibit "VVV-2."
[178] TSN dated April 19, 2010, pp. 12, 21 to 22, 25, 36 to 37, and 53.
[179] Exhibit "L."
[180] Exhibits "A," "B," "C," "D," and "E."
[181] Exhibits "VVV-2," "XXX-2," "YYY-2," and "ZZZ-4."

a) The counterpart export documents do not describe the Steel Products as "deformed bar" or "concrete reinforcing bar" or "re-bars" as claimed by respondents.

b) Petitioner's documents and the respondents' counterpart export documents both showed or carried same general description "Steel Products" only.

The Customs Operation Officer and his superior charged with the duty to examine, appraise and assess all lawful customs duties and taxes from petitioner's subject shipment confirmed and affirmed its entered and declared tariff classification at Tariff Heading or Harmonized System Heading No. 7228.60.00 with ad valorem rate of duty.[182]

The entered and declared tariff classification of petitioner's subject shipment was also sustained or agreed upon by respondents' expert witness and admitted that there were no description appearing in Tariff Heading 7213.10-10 or 7214.20-00 of articles described by respondents as "deformed bar" or "concrete reinforcing bar" or "re-bars" and that these general descriptions are just commercial or trade term and not tariff term, which is the first consideration in the classification of goods under the TCCP.[183]

Therefore, there is allegedly no misdeclaration of the classification of the subject shipment by petitioner on the basis of the commercial and shipping documents prepared and provided to it by its foreign suppliers/shipper/seller.

***Respondents' Counter-arguments***

Respondents counter that the importation of the subject shipment was effected through false declaration and fake commercial invoices. Under paragraph 1 (3) and (4) of Section 2530 of the TCCP, as amended, any article or item, the importation of which is effected on the strength of false declaration or false invoice or other documents executed by the owner or importer shall be forfeited in favor of the government.

In this case, the importation of the subject shipment was effected through false declaration and fake commercial documents for the purpose of evading the payment of the correct duties and taxes.

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[182] Exhibits "N" and "P."
[183] TSN dated July 7, 2011, pp. 79, 82-94, 155; Section 103, TCCP, as amended.

Notably, the counterpart export documents provided by the Chinese Government and the commercial documents submitted by petitioner in support of the Import Entry it filed relating to the said shipment reveal that they refer to the same shipment of 2,406 bundles of steel products. The export documents provided by the government of China, the country of origin of the subject shipment, confirmed that bundles of steel products were shipped on board the vessel "Rich Ocean" under Bill of Lading No. ST001 from Xingang, China to South Harbor, Manila under Sales Contract dated April 5, 2006 from Tianjin Mel Jia Hua Trade Company, Ltd.

The Bill of Lading Number tallies with what petitioner declared in its import declaration. The total weight of the shipment as confirmed by China is 3,009.80 metric tons, which matches with the import declaration and import documents of petitioner.

While the packing list, contract and invoice provided by the government of China showed the description of the shipment as "Steel Products 10mmx6, and 12mmx6m," this description were altered and changed to "SCM 440 Round Bars" by petitioner Kingson in the Import Entry precisely to secure a lower rate of duty of 1% instead of 7%.[184]

Parenthetically, the total selling price or consideration of the shipment as appearing in the packing list, contract and invoice provided by the government China was purposely altered from US$1,281,271.86 to US$692,254.00 to likewise reduce the amount of duty that petitioner should have paid for subject shipment.

Plainly, the importation of subject shipment was effected through false declaration and fake commercial documents in gross violation of Section 2530, paragraph I (3 and 4) of the TCCP, as amended. The submission of such false or fictitious documents was obviously designed to justify its intentional undervaluation and misdeclaration of the same shipment.

The shipment consisting of 2,406 bundles of steel products was misdeclared and grossly undervalued; hence, respondent COC correctly forfeited the shipment pursuant to the TCCP, as amended.

In addition, Section 2503 of the TCCP, as amended, categorically provides that any misdeclared or underdeclared

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[184] Exhibit 88.

imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the government.

As already shown, the shipment consisting of 2,406 steel products was intentionally undervalued and misdeclared to evade payment of the correct duties and taxes. Thus, the Collector of Customs and the COC correctly seized and forfeited the subject shipment in favor of the government in accordance with Sections 2503 and 2530, paragraph I (3 and 4), of the TCCP, as amended.

More importantly, petitioner Kingson intentionally misdeclared the classification of subject shipment, through its authorized customs broker, as falling under Tariff Classification at heading No. 7228.60 at 1% rate of duty because the actual classification of the same shipment based on the chemical analysis of the same steel product shows that it falls under TH7214.2000 at 7% rate of duty.

Indeed, in her letter dated April 18, 2007, the Acting Commissioner of the Tariff Commission opined that the subject articles are classified in sub-heading 7213.10.10 (if in coils) or under sub-heading 7214.20.00 (if not in coils), both sub-headings are with MFN rate of duty of 7% and CEPT rate of duty of 3% *ad valorem.*

Factual findings of administrative agencies are generally respected and even accorded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.

It is significant to note the petitioner has not presented any evidence to contravene the findings of the Tariff Commission relative to the proper classification of the same shipment. It likewise failed to present any evidence to belie the counterpart export commercial documents provided by China relating to the said importation.

In sum, respondent COC correctly forfeited subject shipment for violation of Sections 2503 and 2530 of the TCCP, as amended.

## THE COURT'S RULING

<u>**CTA Crim. Case No. O-133**</u>

To reiterate, all of the accused are charged before this Court for a violation of Section 3602, in relation to Section 2503 of the TCCP and R.A. No. 7103, the pertinent provisions of which read:

**"Tariff and Customs Code of the Philippines (Republic Act No. 1937, as amended.)**

**Section 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.*** - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided,* That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: *Provided, further,* That any misdeclared or undeclared imported articles/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.

**Section 3602. *Various Fraudulent Practices Against Customs Revenue.*** - Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.

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**Iron and Steel Industry Act**
**(Republic Act No. 7103)**

**Section 5.** ***Certified Enterprises*** — The Board of Investments (hereinafter referred to as the "BOI") in consultation with other government agencies shall certify as eligible for incentives under this Act enterprises that meet the following conditions:

x x x x

(b) Manufacturing Activity. — The enterprise shall engage in:

(1) Production of primary steel products in the form of refined iron ore, ingots, slabs, blooms, and billets; or intermediate steel products such as plates, hot-rolled or cold-rolled coils, or sheets, or their equivalents; or

(2) Manufacture or processing of products or provision of infrastructure such as roads, auxiliary facilities, such as ports and harbors; and, industrial services, primarily for the direct use of enterprises engaged in the activities referred to in (1) above; or

(3) Refinement or treatment of by-products or waste-products predominantly of the enterprises in (1) above;

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x x x x

**Section 10.** ***Penalties for Smuggling.*** — Upon the operation of the smelting plants, the following penalties shall be imposed upon any person who shall smuggle, fraudulently import or bring goods into the Philippines that constitute the intermediate or final product of the manufacturing activity described in Section 5 (b) of this Act, such as pig iron and steel, whether in the form of ingots, slabs, blooms, billets, bars, rods, wires, coils, strips, plates, sheets or otherwise, and whether in raw form or galvanized, painted, treated, recast, rolled, finished or processed by any other means, or who shall receive, conceal, buy or in a manner facilitate the transportation, concealment, or sale after importation of such products:

x x x x

(c) A fine of not less than Three hundred thousand pesos (P300,000.00) and imprisonment of not less than twelve (12) years and one (1) day or more than twenty-four (24) years, if the appraised landed value, determined as aforesaid, including duties and taxes, of the article unlawfully imported exceeds One hundred and fifty thousand pesos (P150,000.00).

If the offense is committed by a juridical entity, its president and/or other officials responsible therefore shall be subject to the penalty prescribed above. If the offender, or the president/official in cases where the offense was committed by the juridical entity, is an alien, he shall be deported without further proceedings in addition to the penalty herein prescribed and shall, if naturalized, be automatically denaturalized from the date his sentence becomes final."

Section 3602 enumerates the various prohibited fraudulent practices, like the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties. The following specific acts are punishable under Section 3602:

1. Making or attempting to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, or paper;
2. Making or attempting to make any entry of imported or exported article by means of any false statement, written or verbal;
3. Making or attempting to make any entry of imported or exported article by means of any false or fraudulent practice whatsoever;
4. Knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof;
5. Knowingly effects any entry of goods, wares or merchandise upon a false classification as to quality or value;
6. Knowingly effects any entry of goods, wares or merchandise by the payment of less than the amount legally due;
7. Knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise;
8. Knowingly and willfully makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon.[185]

In this case, accused are charged with the willful importation, misdeclaration, misclassification and undervaluation of the shipment through the use of falsified/spurious shipping documents to evade payment of correct and appropriate duties and taxes.

Thus, the elements that ought to be established under the first form of fraudulent practice under Section 3602 of the TCCP are the following: (1) there must be an entry of imported or exported articles; (2) the entry was made by means of any false or fraudulent invoice, declaration, affidavit, letter, or paper; and (3) there must be intent to avoid payment of taxes.[186]

***There was an entry of imported articles.***

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[185] *Alvin Mercado vs. People of the Philippines,* G.R. No. 167510, July 8, 2015.
[186] Id.

Anent the first element, it is relevant to clarify that the term "*entry*" as used in the TCCP is susceptible of any of the following three meanings, to wit: (1) the documents filed at the Customs house; or (2) the submission and acceptance of the documents; or (3) the procedure of passing goods through the Customs house.[187]

In this case, it is not disputed that there was an actual import entry filed before the BOC. In fact, the accused formally offered the following documents: (a) IEIRD;[188] (b) Commercial Invoice;[189] (c) Packing List;[190] (d) Sales Contract;[191] and (e) Bill of Lading.[192] Thus, the first element of the alleged offense, requiring the existence of an import entry, is present in this case.

***The entry was made by means of any false or fraudulent shipping documents, and there is intent to avoid the payment of taxes and duties.***

As for the second and third elements, it is clear that the Import Entry was based on false and fraudulent shipping documents, and there is intent to avoid the payment of taxes and duties.

In this case, the prosecution presented the following counterpart export documents from the General Administration of Customs of the People's Republic of China, which were secured by the BOC, through the assistance of the Philippine Embassy in Beijing, China, namely: (a) Invoice;[193] (b) Customs Clearance Bill;[194] (c) Packing List;[195] and (d) Sales Contract.[196]

A review of the foregoing documents *vis-à-vis* the Import Entry[197] and other supporting documents[198] filed by Kingson shows that it contains identical details, such as the Bill of Lading No., the name of the vessel, the shipper's name, the transport details, as well as the total weight of the cargo. However, there are glaring

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[187] Id.
[188] Exhibit "1" to "1-a."
[189] Exhibit "2."
[190] Exhibit "3."
[191] Exhibit "4."
[192] Exhibit "5."
[193] Exhibits "YYY" to "YYY-2."
[194] Exhibits "AAAA" to "AAAA-2."
[195] Exhibits "ZZZ" and "ZZZ-2."
[196] Exhibits "XXX" to "XXX-2."
[197] Exhibits "A" to "A-4."
[198] Invoice (Exhibit "B"); Packing List (Exhibit "C"); Sales Contract (Exhibit "D" to "D-1"); and Bill of Lading No. ST001 (Exhibits "E" to "E-3").

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discrepancies with regard to the consignee's name, the description of the imported shipment and the value of the imported articles, to wit:

| **Description** | **Import Entry & Internal Revenue Declaration and attached documents filed with the Bureau of Customs** | **Courterpart Export Documents provided by the General Administration of Customs of the People's Republic of China, as certified by the Philippine Embassy in Beijing, China** |
|---|---|---|
| | | |
| **Bill of Lading No.** | **B/L No. ST001** [Import Entry and Bill of Lading] | **ST 001** [Customs Clearance Bill] |
| | | |
| **Name of Vessel** | **RICH OCEAN** [Import Entry and Bill of Lading] | **RICH OCEAN** [Customs Clearance Bill] |
| | | |
| **Shipper's Name** | **Tianjin Mei Hua Trade Co., Ltd.** [Import Entry, Packing List, and Bill of Lading] | **Tianjin Mei Hua Trade Co., Ltd.** [Sales Contract, Invoice, Packing List and Customs Clearance Bill] |
| | | |
| **Consignee** | **Kingson International Trading Corporation** [Import Entry, Invoice, Packing List, Sales Contract, and Bill of Lading] | **Solid Sea Products H.K.** [Sales Contract, Invoice, and Packing List] |
| | | |
| **Transport Details** | **From Xingang, China to Manila, Philippines** [Import Entry, Packing List, and Bill of Lading] | **From Xingang, China to Manila, Philippines** [Sales Contract, Invoice, Packing List and Customs Clearance Bill] |
| | | |
| **Total Weight of Cargo** | **3,009,800 kilograms** [Import Entry, Packing List, and Bill of Lading] | **3,009,800 kilograms** [Sales Contract, Invoice, Packing List and Customs Clearance Bill] |
| | | |
| **Description of the Imported Shipment** | **2,406 Bundles of STEEL PRODUCTS (SCM 440 ROUND BAR)** [Import Entry, Invoice, Packing List and Bill of Lading] | **1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles.** [Packing List] |
| | | |
| **Value of Shipment** | **US$692,254.00** [Import Entry, Invoice, and Sales Contract] | **US$1,281,271.86** [Sales Contract, Invoice, Customs Clearance Bill] |

When confronted by two sets of documents, more credence is given to that acquired from official sources, and duly authenticated by the respective authorities from both the foreign and local government.

In contrast to the documents presented by the prosecution, the accused failed to present any evidence to prove the authenticity of the documents appended to the Import Entry, aside from their bare assertions that these documents came from their foreign supplier. If it were true, that the documents they filed before the BOC were authentic, and came directly from Tianjin Mei Hua Trade Co., Ltd, accused should have secured a certification from the said supplier, attesting that it made a mistake in the initial documents sent to Kingson. This is especially true, considering that accused Alicia O. Fernandez herself testified that they have already had previous transactions with Tianjin Mei Hua Trade Co., Ltd.[199]

The failure of accused to rebut the official and authenticated documents presented by the prosecution belies their claim of good faith in their reliance on the documents allegedly sent by their foreign supplier. They should have presented evidence to support their claim.[200]

In addition, this Court notes that in the Memorandum of Agreement to Sell dated April 7, 2006,[201] as well as the receipt dated May 9, 2006,[202] the Agreement does ***not*** involve "Steel Products (SCM 440 Round Bar)." Instead, the coverage of the said Memorandum are: *"(a) 700.00 Metric Tons or 200,000 pieces, more or less of Grade 230 (Structural Grade) 10mm/3.5 kilos more or less at Php91.66/piece; and (b) 300.00 Metric Tons or 60,000 pieces, more or less of Grade 230 (Structural Grade) 12mm/5.0 kilos more or less at Php132.13/piece."*[203] This further bolsters the fact that the subject shipment definitely involves the importation of 10mmx6m and 12mmx6m bars, contrary to the claim of the accused that the shipment was supposed to contain SCM 440 Round Bars.

Undoubtedly, there is a clear case of willful misdeclaration, misclassification and undervaluation of the subject shipment of steel bars on the part of the accused.

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[199] Exhibit "30" for the accused, Exhibit "AA" for the petitioner, Criminal Docket, Vol. VI, pp. 3732 to 3739, p. 3734.
[200] *Angel O. Rodriguez vs. Court of Appeals,* G.R. No. 115218, September 18, 1995.
[201] Exhibits "OOO" to "OOO-1-a."
[202] Exhibit "OOO-2" to "OOO-2-a."
[203] Exhibit "OOO" and "OOO-2."

Corollary thereto, Section 2503 provides that an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of the TCCP. Moreover, any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of the TCCP.

In this case, the prosecution has sufficiently established that there was an undervaluation in the amount declared in the Import Entry (US$692,254.00) by more than 30% of the actual value based on the amount stated in the counterpart documents (US$1,281,271.86) presented by the prosecution. This, in turn, constitutes *prima facie* evidence of fraud penalized under Section 2503 of the TCCP.

When a *prima facie* case is established against the accused, they assume a definite burden. It becomes incumbent upon them to adduce evidence to meet and nullify, if not overthrow, the *prima facie* case against them. This is due to the shift in the burden of evidence, and not of the burden of proof. The burden of proof remains throughout the trial with the party upon whom it is imposed-the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial.[204]

***Culpability of accused Roger M. Permejo, Alicia O. Fernandez, Reynaldo V. Cesa, Anthony Joey S. Tan, Edgardo V. Martinez, and Jeffrey King.***

Accused **Roger M. Permejo** and **Alicia O. Fernandez**, as the signatories of the Import Entry, in their respective capacities as the Customs Broker and the Importer/Attorney-in-Fact, respectively, declared under oath that the information contained therein and the documents submitted are to the best of their knowledge and belief true and correct.

On the basis of the counterpart export documents procured by

[204] *People of the Philippines vs. Reynan Santiago y Castillo,* G.R. Nos. 137542-43, January 20, 2004.

the BOC and duly authenticated by the respective government officials of the Philippines and the People's Republic of China, it is clear that there was a misdeclaration and misclassification with respect to the total value and description of the subject shipment.

For her part, accused **Alicia O. Fernandez** does not offer any plausible explanation for the discrepancies, apart from her bare assertion that she relied in good faith on the documents appended to the Import Entry, further claiming that the same came directly from the foreign supplier. However, as previously discussed, she did not present any evidence to justify the discrepancies between the two sets of documents.

A further review of the records of the case shows that accused Alicia O. Fernandez readily admitted that they have already had previous transactions with Tianjin Mei Hua Trade Co., Ltd. That being the case, she could have easily secured a certification from the said supplier that the documents it originally transmitted to Kingson was erroneous. However, this she failed to do.

It bears stressing that Section 1301 of the TCCP imposes a definite burden on the part of the persons authorized by law to make the Import Entry, when it states that the statements under oath contained therein, constitutes *prima facie* evidence of knowledge and consent of the *importer* of violations against applicable provisions of the Code when the importation is found to be unlawful.

As applied to this case, there is *prima facie* evidence of knowledge and consent to the falsities appearing in the Import Entry on the part of accused Alicia O. Fernandez, and it is up to the accused to prove and explain the absence of such knowledge and consent. A perusal of the records, however, would show that it is bereft of any evidence to support her negative assertions. Thus, this Court finds that the prosecution has proven the guilt of accused Alicia O. Fernandez beyond reasonable doubt of the crime charged against her.

As for accused **Roger M. Permejo,** a licensed Customs Broker, he is mandated by law to sign the IEIRD, under oath, *based* on the covering documents submitted by the importers.[205] He is, however, *not* required to go beyond the documents presented to him in filing an entry on the basis of such documents.[206]

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[205] Section 27, Article IV, R.A. No. 9280, as amended by R.A. No. 9853.
[206] *Erwin C. Remigio vs. Sandiganbayan,* G.R. No. 145422-23, January 18, 2002.

In this case, Roger M. Permejo testified that prior to the preparation and filing of the IEIRD, he requested Kingson to submit to him the original shipping and commercial documents such as the original Bill of Lading, invoice, packing list, sales contract, and other relevant documents.[207] Thereafter, he faithfully copied and merely restated the data and information found in the covering invoice, packing list and bill of lading as to the description, quantity, marks and numbers, gross and net weight, measurement and value of this particular importation.[208]

Roger M. Permejo further testified that his services do not include communication with foreign suppliers and his only concern was the documents. Thus, he prepared the Import Entry based on the documents given to him by the petitioner.[209] He likewise stated that he depended solely on the face of the document and did not verify whether the information contained therein were truthful. In fact, he had no personal knowledge as far as the transactions between the petitioner and supplier is concerned, as he is not privy thereto.[210]

In contrast thereto, the prosecution presented no evidence or testimony to show that accused Roger M. Permejo had actual knowledge that the documents it appended to the Import Entry was falsified, or that he had been complicit to or in conspiracy with the other accused.

Without a showing that accused Roger Permejo had knowledge that the documents presented to him by the importer were false, and in the absence of proof that he was in conspiracy with the other accused, reasonable doubt exists as to his guilt, and he cannot be held criminally liable for the crime charged against him.

With respect to accused **Reynaldo V. Cesa**, **Anthony Joey S. Tan**, and **Edgardo V. Martinez**, this Court takes into consideration the General Information Sheet[211] submitted by Kingson before the Securities and Exchange Commission. The said document states that accused Reynaldo V. Cesa is the President, Anthony Joey S. Tan is the Vice-President, Edgardo V. Martinez is the Treasurer, while Alicia O. Fernandez is the Corporate Secretary of the said corporation.

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[207] Judicial Affidavit of Roger M. Permejo, Exhibit "N" and "28," Civil Docket, pp. 207 to 221, at 210.
[208] Judicial Affidavit of Roger M. Permejo, Exhibit "N" and "28," Civil Docket, pp. 207 to 221, at 212.
[209] TSN dated May 25, 2009, pp. 8 to 11.
[210] TSN dated May 25, 2009, pp. 11 to 14.
[211] Exhibits "PPP" and "15."

Moreover, they are likewise listed as incorporators in the Amended Articles of Incorporation,[212] board members,[213] stockholders in the By-Laws,[214] and corporate officers[215] of the corporation.

In addition, the Importer's Accreditation Profile[216] and Application for Registration[217] submitted by Kingson before the BOC, states that accused Reynaldo V. Cesa is the President; Edgardo V. Martinez is the Director, and Alicia O. Fernandez is the Import/Export Manager of the said corporation.

While it is true that Kingson has a separate and distinct personality from its directors and corporate officers, as a corporate entity, Kingson can only execute its corporate powers through its board of directors and responsible officers.

Accused Cesa, Tan, Martinez and Fernandez, by virtue of their respective offices and by the very nature of their functions, must necessarily have knowledge of the transactions entered into by Kingson in the ordinary course of its business operations.

*Alfredo Ching v. Secretary of Justice*,[218] delineates the liability of corporate officers if the crime is committed by a corporation:

> "If the crime is committed by a corporation or other juridical entity, **the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor.** A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.
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> A crime is the doing of that which the penal code

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[212] Exhibit "QQQ."
[213] Exhibits "FFF-1" and "14."
[214] Exhibits "RRR" and "17."
[215] Exhibit "FFF-2."
[216] Exhibits "FFF-1" and "14."
[217] Exhibit "FFF-2."
[218] G.R. No. 164317, February 6, 2006.

forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. **Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.**

The principle applies whether or not the crime requires the consciousness of wrongdoing. **It applies to those corporate agents who themselves commit the crime and to those, <u>who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act</u>**. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact." (Boldfacing and underscoring supplied)

In *Republic Gas Corporation, et al. vs. Petron Corporation, et al.*,[219] the Supreme Court expounded on the criminal liability of corporate officers who knowingly and intentionally caused a corporation to commit a crime, *viz.*:

"Petitioners, being corporate officers and/or directors, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime. Veritably, the CA appropriately pointed out that petitioners, **<u>being in</u>**

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[219] G.R. No. 194062, June 17, 2013.

> **direct control and supervision in the management and conduct of the affairs of the corporation, must have known or are aware that the corporation is engaged in the act of refilling LPG cylinders bearing the marks of the respondents without authority or consent from the latter which, under the circumstances, could probably constitute the crimes of trademark infringement and unfair competition. The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime**. Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. **A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor**." (Boldfacing supplied)

While the prosecution may not have presented direct evidence linking responsible corporate officers for the crime committed by the corporation, the facts showing: (1) the undeniable commission of the crime; (2) the potential benefit of the fruits of the crime to the corporation; and, (3) the absence of evidence where the responsible officers REPUDIATED the unlawful acts already committed, or at the very least conducted an appropriate investigation against accused Fernandez, ALL TOGETHER constitute circumstantial evidence confirming that the responsible corporate officers assented to the corporation's unlawful acts or were guilty of gross negligence in directing its corporate affairs.

In *Kyle Anthony Zabala vs. People of the Philippines*,[220] the Supreme Court elucidated on the sufficiency of circumstantial evidence to convict an accused, *viz.*:

> "It is a settled rule that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This is but a recognition of the reality that in certain instances, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence. In *Bacolod v. People*, this Court had the occasion to say:

[220] G.R. No. 210760, January 26, 2015.

> The lack or absence of direct evidence does not necessarily mean that the guilt of the accused cannot be proved by evidence other than direct evidence. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt, because circumstantial evidence, if sufficient, can supplant the absence of direct evidence. The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence. Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."

The Rules of Court itself recognizes that circumstantial evidence is sufficient for conviction, under certain circumstances:

> Sec. 4. Circumstantial evidence, when sufficient. – Circumstantial evidence is sufficient for conviction if:
>
> (1) There is more than one circumstance;
>
> (2) The facts from which the inferences are derived are proven;
>
> (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

Moreover, in *Lozano v. People*, this Court clarified the application of the circumstantial evidence rule:

> To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime."

It may not be amiss to point out, as testified by accused Fernandez, that when the defect in the Memorandum of Agreement to Sell between Kingson and Jeffrey N. Co, *i.e., Jeffrey King was*

NO

*erroneously referred to as President of Kingson*, the corporate officers of Kingson, composed of accused Fernandez, Cesa, Tan and Martinez had a meeting to rectify the same. Thus, an Addendum of Memorandum of Agreement to Sell was executed to rectify the error and accordingly reflect that Jeffrey King is not the President of Kingson.

From the foregoing, it is evident that accused Cesa, Tan, Martinez and Fernandez undoubtedly knew of the importation of steel from China. Despite their knowledge of the transaction, they failed to perform acts, such as directing their customs broker, to ensure that the importation is made in accordance with law. Needless to say, the amount involved in this case is too substantial for the said accused - responsible corporate officers of Kingson - to be unaware of and feign ignorance of its business undertaking.

In fine, accused Cesa, Tan, Martinez and Fernandez, are the responsible corporate officers of Kingson who exercise direct control and supervision in the management and conduct of Kingson's affairs and who, by virtue of their respective positions, may not be considered as unaware that Kingson would misdeclare, misclassify and undervalue its shipment of steel bars in violation of Section 3602, in relation to Section 2503, of the TCCP. As responsible corporate officers, they are criminally liable for the crime either by assenting to the commission thereof by Kingson or by being grossly negligent in directing Kingson's affairs.

Thus, accused Reynaldo V. Cesa, Anthony Joey S. Tan, and Edgardo V. Martinez, together with accused Alicia O. Fernandez, are guilty beyond reasonable doubt of the crime charged against them.

With regard to the participation of accused **Jeffrey King**, the prosecution presented the Memorandum of Agreement to Sell dated April 7, 2006,[221] as well as the receipt dated May 9, 2006,[222] executed by Jeffrey Co and Kingson, as represented by its President, accused Jeffrey King.

To rebut the foregoing document, the accused presented an Addendum to the Memorandum of Agreement to Sell dated May 2, 2006.[223]

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[221] Exhibits "OOO" to "OOO-1-a."
[222] Exhibit "OOO-2" to "OOO-2-a."
[223] Exhibits "19" to "19-a," Criminal Docket, Vol. II, pp. 498 to 499.

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A perusal of the foregoing documents, however, only prove that Jeffrey King had knowledge that Kingson entered into a transaction with Jeffrey Co, involving: *"(a) 700.00 Metric Tons or 200,000 pieces, more or less of Grade 230 (Structural Grade) 10mm/3.5 kilos more or less at Php91.66/piece; and (b) 300.00 Metric Tons or 60,000 pieces, more or less of Grade 230 (Structural Grade) 12mm/5.0 kilos more or less at Php132.13/piece."*[224] However, there is no proof of his participation, knowledge, or any other act to show that he conspired with the other accused, in facilitating the importation of the subject shipment through filing of a fraudulent Import Entry and the use of spurious supporting documents.

Thus, for failure of the prosecution to prove the participation of accused Jeffrey King in the crime charged, reasonable doubt exists as to his guilt. Hence, this Court is left with no recourse but to acquit accused Jeffrey King.

***Imposable penalty and fine under Section 3602, in relation to Section 3601 of the Tariff and Customs Code of the Philippines.***

Under Section 3602, in relation to Section 3601 of the TCCP, the imposable penalty would depend on the appraised value of the unlawfully imported article, including duties and taxes. In this case, the amount underdeclared by the accused in the Import Entry is US$692,254.00, in stark contrast to the amount stated in the counterpart documents, which is US$1,281,271.86.

Thus, the imposable penalty in this case is a fine of not less than Eight Thousand Pesos (₱8,000) nor more than Ten Thousand (₱10,000) and imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years, since the appraised value, including duties and taxes, of the article unlawfully imported exceeds One Hundred Fifty Pesos (₱150,000).

There being no indication that the accused is disqualified from the scope of the Indeterminate Sentence Law, the same shall apply. Therefore, the imposable penalty shall not exceed the maximum fixed by law, which is twelve (12) years, and the minimum penalty, shall not be less than eight (8) years and one (1) day, the minimum prescribed

[224] Exhibit "OOO" and "OOO-2."

by the law violated.

***CTA Case No. 7819***

In the civil case, the sole issue to be resolved is whether or not the forfeiture of the subject shipment is warranted, based on the circumstances of this case.

Section 2530 of the TCCP state:

> Section 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subjected to forfeiture:
>
> x x x x
>
> (l.) Any article sought to be imported or exported:
>
> x x x x
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> x x x x."

In relation thereto, Section 2535 of the TCCP provides that in all proceedings taken for the seizure and forfeiture of any articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the *claimant.*

As earlier discussed, apart from the bare allegations of the customs broker and its corporate officers, petitioner Kingson failed to present any evidence to convince this Court that the documents it submitted came directly from its foreign supplier.

Between the documents appended to petitioner Kingson's Import Entry and the authenticated documents from the People's

Republic of China, more credence is given to the latter. In the absence of any other evidence to prove an honest mistake or good faith on the part of petitioner Kingson, there can be no other conclusion, except that the subject shipment was imported into the country through the use of false and spurious documents.

This being the case, the subject shipment, which was imported on the strength of false documents, was appropriately seized and forfeited in favor of the government, pursuant to Section 2530, paragraph (l) (3) and (4) of the TCCP, as amended.

**WHEREFORE**, in light of the foregoing, accused **Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez,** however, are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 3602, in relation to Section 2503 of the TCCP. They are hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, to ten (10) years, as maximum, for violating Section 3602, in relation to Section 2503 of the TCCP; and are **ORDERED** to each pay a fine of Eight Thousand Pesos (₱8,000.00) for violating Section 3602, in relation to Section 2503 of the TCCP.

As regards accused **Jeffrey King and Roger M. Permejo**, they are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

Furthermore, pursuant to Section 2530, paragraphs (l) (3) and (4) of the Tariff and Customs Code of the Philippines, as amended, the subject shipment of 1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products subject of these consolidated criminal and civil cases are hereby **FORFEITED** in favor of the government to be disposed of in the manner prescribed by law.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Chairperson
Presiding Justice