Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SECRETARY OF THE DEPARTMENT OF JUSTICE LEILA DE LIMA and the BUREAU OF CUSTOMS, Petitioners, -versus- **JORLAN C. CABANES,** Respondent.	**G.R. No. 219295–96**
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SECRETARY OF THE DEPARTMENT OF JUSTICE LEILA DE LIMA and the BUREAU OF CUSTOMS, Petitioners, -versus- **DENNIS A. UY,** Respondent.	
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PEOPLE OF THE PHILIPPINES, Petitioner, -versus- **HON. GEORGE E. OMELIO, in**	**G.R. No. 229705** Present: LEONEN, *J., Chairperson,* HERNANDO, INTING, LOPEZ, J., and

his capacity as Presiding Judge of the Davao City Regional Trial Court, Branch 14, HON. LOIDA S. POSADAS-KAHULUGAN, in her capacity as Acting Presiding Judge of the Davao City Regional Trial Court, Branch 14, DENNIS ANG UY, JOHN DOES, AND/OR JANE DOES,

Respondents.

ROSARIO*, *JJ.*

Promulgated:
July 14, 2021
MisDCBatt

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DECISION

LEONEN, *J.*:

When probable cause is judicially determined by the trial court, questions on the propriety of the executive determination of probable cause becomes moot.[1] At that point, questions on the accused's guilt or innocence rests on the trial court's sound discretion.[2]

This Court resolves consolidated Petitions for Review on Certiorari filed by Secretary Leila M. De Lima, Bureau of Customs, and People of the Philippines (De Lima, et al.) with respect to charges filed against Jorlan C. Cabanes (Cabanes) and Dennis A. Uy (Uy) for violations of the Tariff and Customs Code.

In the first petition, Secretary De Lima and the Bureau of Customs assail the Decision and Resolution of the Court of Appeals-Manila which overturned the Justice Secretary's finding of probable cause to charge Cabanes and Uy for violation of the Tariff and Customs Code. The second petition filed by People of the Philippines assails the Decision and Resolution of the Court of Appeals-Cagayan De Oro which affirmed the trial court's dismissal of the charges against Cabanes and Uy.

Cabanes is a licensed customs broker. He assists in the preparation and processing of import and export entries and declaration of customs duties and taxes.[3]

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* Designated additional Member per Special Order No. 2833.

1 *Relampagos v. Sandiganbayan (Second Division)*, G.R. No. 235480, January 27, 2021, <https://sc.judiciary.gov.ph/18829/> 10 [Per J. Inting, Third Division].

2 *Marantan v. Department of Justice*, G.R. No. 206354, March 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65148> [Per J. Leonen, Third Division].

3 *Rollo* (G.R. No. 219295–96), p. 18.

Uy is the president and chief executive officer of Phoenix Petroleum Philippines (Phoenix), a domestic corporation importing refined petroleum products from Taiwan, Singapore, and Thailand.[4]

In 2011, the Bureau of Customs, through its Run After Smugglers Program, filed a Complaint against Cabanes and Uy, among others, for violations of the Tariff and Customs Code of the Philippines (Tariff and Customs Code).[5] The complaint alleged that from 2010 to 2011, Phoenix unlawfully and fraudulently imported petroleum products at the ports of Davao and Batangas with a total dutiable value of ₱5,990,212,832.72.[6]

The Bureau of Customs alleged the following: (1) from June to November 2010, Phoenix, on five occasions, made importations without import entries;[7] (2) from January to March 2011, ten (10) shipments were suspiciously released despite being deemed abandoned in favor of the government for failure of Phoenix to file an import entry within 30 days from discharge;[8] (3) from June 2010 to April 2011, Phoenix's shipments declared in 13 import entries lacked bills of lading, which raised doubt on the shipments' ownership but they were still released;[9] and (4) various shipments from June 2010 to April 2011 had no load port surveys.[10]

Uy and Cabanes denied the allegations and prayed for the dismissal of the complaint.[11]

They claimed that there were only three importations from June to November 2010 all covered by import entries.[12] Further, the Bureau of Custom's allegations were belied by its issuance of Statements of Settlement of Duties and Taxes to Phoenix. [13] They also alleged that the Statements of Settlement of Duties and Taxes evidenced the payment of duties and taxes and their issuance presupposes that import documents were processed.[14]

Moreover, Uy asserted that there was no basis for the claim that 10 shipments in January to March 2011 were deemed abandoned in favor of the

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4 Id.

5 Sections 3602, 3601, 2530 1 (1), (3), (4), and (5), 1801, 1802, 3604, 1203, 1501, 1502 of the Tariff and Customs Code in relation to Administrative Order No. 243-A (Amending Administrative Order No. 243 Entitled "Creating A System For The Bulk And Break Bulk Cargo Clearance Enhancement Program Of The Bureau Of Customs), Customs Administrative Order No. 3-2010 (Order supplementing Administrative Order No. 243-A), and Customs Memorandum Order No. 18-2010 (Procedure for the Bulk and Break Bulk Cargo Clearance Enhancement Program mandated under Administrative Order No. 243 as amended by AO 243-A).

6 *Rollo* (G.R. No. 219295–96), p. 18.

7 Id. at 19–20.

8 Id. at 20, 27.

9 Id. at 20.

10 Id.

11 Id. at 22, 33.

12 Id. at 23–24, 33.

13 Id. at 24, 33.

14 Id. at 24–25.

government.[15] He added that Phoenix filed its import entries within the period and the Single Administrative Documents presented by the Bureau of Customs do not show that Phoenix abandoned the shipments.[16] Cabanes claimed that he never received any notice of abandonment proceedings from the Bureau of Customs.[17]

They maintained that the 13 import entries in June 2010 to April 2011 have their corresponding bills of lading.[18] Uy pointed out that some of the Single Administrative Documents attached by the Bureau of Customs even indicate the bills of lading numbers.[19]

Uy and Cabanes further submitted that there were no missing load port surveys. In any case, load port surveys were required in the ports of Davao and Batangas only in August and July 2010, respectively. The shipments were imported before these dates.[20]

In 2012, the prosecutor recommended the dismissal of the complaint for insufficient evidence.[21] Thus:

> WHEREFORE, premises considered, it is respectfully recommended that the amended complaint filed against respondent Dennis Ang Uy and Jorland C. Cabanes for violation of Section 3602 in relation to Sections 3601, 2530 no. 1(1), (3), (4), and (5), 1801, 1802, and 3604, 1203, 1501, and 1502 of the Tariff and Customs Code of the Philippines (TCCP), as amended, Administrative Order (AO) No. 2430A, Customs Administrative Order (CAO) No. 3-2010 and Customs Memorandum Order (CMO) No. 18-2010 be DISMISSED for insufficient evidence.[22] (Citation omitted)

Aggrieved, the Bureau of Customs filed a Motion to Reopen Preliminary Investigation for the purpose of filing additional evidence.[23] However, the Department of Justice Panel of Prosecutors (DOJ Panel) denied the motion.[24] It held that the additional evidence Bureau of Customs wished to present are not newly discovered and there was no justification why they were not submitted earlier.[25]

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15 Id. at 27.
16 Id. at 27–28.
17 Id. at 36.
18 Id. at 29, 34.
19 Id. at 29.
20 Id. at 31, 35.
21 Id. at 38.
22 Id.
23 Id. at 39.
24 Id.
25 Id.

On automatic review, Department of Justice Undersecretary Francisco F. Baraan III (Undersecretary Baraan III) affirmed the dismissal of the Bureau of Customs' complaint.[26]

The Bureau of Customs then filed a Motion for Reconsideration assailing Undersecretary Baraan III's Resolution, to which Uy filed a Comment/Opposition.[27] Subsequently, the Bureau of Customs filed a Reply.[28]

Secretary De Lima granted the Bureau of Customs' motion and issued an April 24, 2013 Resolution[29] ordering the filing of Informations against Uy and Cabanes.

> WHEREFORE, complainant's Motion for Reconsideration is hereby GRANTED. The Resolution promulgated on 16 November 2012 is hereby REVERSED AND SET ASIDE. The Office of the Prosecutor General is hereby directed to cause the filing of the appropriate information in court for violation of the Tariff and Customs Code of the Philippines (TCCP) against the respondents and to report the action thus taken hereon within ten (10) days from receipt hereof.
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> SO ORDERED.[30]

Secretary De Lima concluded that Uy and Cabanes's counterevidence failed to controvert the complaint's allegations.[31]

First, she held that the Import Entry and Internal Revenue Declarations submitted by Uy and Cabanes which purportedly disproved the lack of import entries do not pertain to the shipments in June to November 2010.[32] Second, the Statements of Settlement of Duties and Taxes submitted by Uy and Cabanes with respect to shipments in January to March 2011 were immaterial because the payments were 36 to 65 days late from the date of arrival. Thus, the shipments were already deemed abandoned in favor of the government.[33]

Third, Uy and Cabanes submitted bills of ladings allegedly covering importations made in June 2010 to April 2011. However, the bills of lading are different from those reflected in the shipments' import entries.[34] Lastly,

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26 Id. at 39.
27 Id. at 39–40.
28 Id. at 40.
29 Id. at 865–872.
30 Id. at 872.
31 Id. at 870–871.
32 Id. at 869–870.
33 Id. at 870.
34 Id.

Uy and Cabanes introduced Discharge Port Survey Reports. However, the reports present inconsistent data and they do not pertain to the shipments.[35]

Secretary De Lima further held that Uy and Cabanes cannot feign ignorance of the inconsistencies in the import documents. Uy cannot simply claim that the preparation and submission of the documents were left to his employees. Cabanes, on the other hand, had direct participation in the processing and release of the shipments.[36]

Uy moved for reconsideration of the resolution.[37] He mainly argued that his right to due process was violated when he was prevented from responding to the Bureau of Customs' Reply, which raised new allegations.[38] However, Secretary De Lima denied Uy's motion.[39] Accordingly, three Informations before the Regional Trial Court of Batangas and 22 Informations before the Regional Trial Court of Davao City were filed against him and Cabanes.[40]

Meanwhile, Cabanes filed a Petition before the Court of Appeals-Manila assailing Secretary De Lima's Resolution without filing a motion for reconsideration.[41] Uy likewise filed a Petition challenging the same Resolution.[42] The Petitions were consolidated.[43]

The Court of Appeals-Manila granted the petitions in its July 25, 2014 Decision.[44]

> WHEREFORE, finding merit in the instant petitions for certiorari, the same are hereby GRANTED. The Resolutions dated April 24, 2013 and August 13, 2013, respectively, issued by the Secretary of Justice are NULLIFIED and SET ASIDE. The Informations filed against petitioner Dennis A. Uy and Jorlan C. Cabanes before the Regional Trial Courts of Batangas City and Davao City, should be WITHDRAWN and/or DISMISSED for lack of probable cause.
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> SO ORDERED.[45]

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35 Id.
36 Id. at 872.
37 Id. at 41.
38 Id.
39 Id. at 42.
40 Id.
41 Id.
42 *Rollo* (G.R. No. 229705), p. 25.
43 Id.
44 *Rollo,* (G.R. No. 219295–96), pp. 17–88. The Decision dated July 25, 2014 was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justice Florito S. Macalino and Associate Justice Samuel H. Gaerlan (now a member of this Court) of the Special Former Special Tenth Division of the Court of Appeals, Manila.
45 Id. at 88.

As to the procedural issue, it held that Cabanes's direct resort to the Court of Appeals-Manila is warranted.[46] This is because the filing of a motion for reconsideration was not a plain, speedy, and adequate remedy because it would not have forestalled the filing of the Informations given the tenor of the Resolution.[47]

The Court of Appeals-Manila found that Secretary De Lima's Resolution was issued with grave abuse of discretion.[48] It ruled that the Bureau of Customs' Reply before the Secretary of Justice contained new allegations and documents which served as basis for the Resolution.[49] Thus, in allowing the introduction of new evidence, Secretary De Lima essentially permitted the Bureau of Customs to do indirectly what the DOJ Panel of Prosecutors already denied.[50]

It highlighted that the Bureau of Customs introduced new arguments in its Reply, to wit: (a) the entry numbers in the Import Entry and Internal Revenue Declarations did not match the Single Administrative Declarations and the Statements of Settlement of Duties and Taxes; (b) Phoenix took too long to discharge the shipments which can be done within 72 hours from arrival; (c) Cabanes and Uy manipulated the E2M Customs System to release the shipments; and (d) the Single Administrative Declarations and bills of ladings are inconsistent.[51] These new arguments substantially changed the accusations against Cabanes and Uy.[52]

Moreover, the Court of Appeals-Manila ruled that there is no probable cause to charge Cabanes and Uy because there is no proof of their personal liability.[53] While Cabanes was the customs broker who processed the import documents, there was no evidence that he made the false import entries.[54] On the other hand, Uy cannot be charged solely based on his position as president and chief executive officer of Phoenix.[55] As a rule, a corporation's personality is separate and distinct from its officers, stockholders, and members.[56] Moreover, there was no allegation and proof that Uy was personally liable and responsible for the filing and processing of the import documents in question.[57]

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46 Id. at 45.
47 Id. at 46.
48 Id. at 52.
49 Id.
50 Id. at 53.
51 Id.
52 Id. at 53–54.
53 Id. at 73.
54 Id. at 78.
55 Id. at 79.
56 Id.
57 Id. at 80.

The Court of Appeals-Manila further held that there was no evidence of fraud with respect to Phoenix's importations from 2010 to 2011.[58] Cabanes and Uy offered sufficient counterevidence proving that the importations were duly processed.[59]

The discrepancies in the exporters' names in the bills of ladings and Import Entry and Internal Revenue Declarations was because the counterparty suppliers of Phoenix have several traders and/or refineries.[60] The shipper is not always the exporter or supplier of the petroleum products.[61] There can also be no fraud based merely on the discrepancies in these documents because they were drawn up by foreign suppliers without Phoenix's participation.[62]

As to the allegation of noncompliance with the port survey requirements, the Court of Appeals-Manila ruled that this is not a criminal offense per se. If there is no load port survey, the shipment must be withheld until a discharge port survey report has been conducted. There is no criminal liability with respect to the importer. Moreover, the Bureau of Customs never disputed that load port surveys were required in the Ports of Batangas and Davao only in August 2010 and July 2010, respectively—long after the shipments were made.[63]

Similarly, there is no criminal sanction for abandonment. In any case, the Single Administrative Declarations submitted by the Bureau of Customs do not prove that Phoenix failed to file an import entry within 30 days from the date of last discharge of shipment. They merely indicated the date of arrival of the shipment in the Philippines, which was irrelevant in the charge of abandonment. Lastly, the E2M System's acceptance of Phoenix's import entries belied Bureau of Customs' claim of irregularities.[64]

Secretary De Lima and the Bureau of Customs moved for reconsideration of the decision but to no avail.[65]

Pending resolution of the petitions before the Court of Appeals-Manila, Uy moved for a judicial determination of probable cause and suspension of issuance and service of warrant of arrest before the Regional

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58 Id. at 76.
59 Id. at 77.
60 Id. at 84.
61 Id.
62 Id. at 85.
63 Id. at 86.
64 Id. at 87.
65 Id. at 90–91. The Resolution dated July 2, 2015 was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justice Florito S. Macalino and Associate Justice Samuel H. Gaerlan of the Special Former Special Tenth Division, Court of Appeals, Manila.

Trial Court of Davao City.[66] The Regional Trial Court granted the motion and dismissed all 22 charges against Uy in its October 4, 2013 Order.[67]

> WHEREFORE, considering the absence of any probable cause to issue a warrant of arrest against DENNIS ANG UY, the instant cases are hereby ordered DISMISSED.
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> SO ORDERED.[68]

The Regional Trial Court held that there is no probable cause to issue warrants of arrest against Uy.[69] It explained that to be charged under Section 3602 of the Tariff and Customs Code, the following elements must be present:

> a) That there was intent on his part to defraud the government;
> b) That he made an importation in the Philippines or assisted in doing so in a fraudulent and illegal manner;
> c) That he caused the importations to be released despite being deemed abandoned in favor of the government for failure to file an import entry within the thirty (30)-day prescribed period;
> d) That he caused the importation to be done without the requisite bill of lading;
> e) That he caused the importation to be done without a load port survey or discharge port survey reports; and
> f) That acts caused damage or prejudice to the government.[70]

The trial court ruled that the Informations do not allege specific acts committed by Uy which corresponds to any of the elements.[71] After going through the records of the cases, the trial court observed that there was no allegation that Uy was personally responsible for the filing and processing of the import documents.[72] Moreover, the government was not defrauded because the taxes, customs, and duties were duly paid by Phoenix.[73]

The trial court further held that the abandonment under the Tariff and Customs Code does not give rise to criminal liability.[74] In any case, there is no proof that Phoenix failed to file an import entry within the prescribed period for the shipment to be deemed abandoned.[75] Moreover, the acceptance by the E2M Customs System is confirmation of Phoenix' payment of taxes and fees.[76] On the other hand, the Bureau of Customs

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66 *Rollo* (G.R. No. 229705), p. 25.
67 Id. at 1132–1142. The Order was penned by Presiding Judge George E. Omelio of the Regional Trial Court, Branch 14, Davao City.
68 Id. at 1141.
69 Id. at 1133.
70 Id. at 1134.
71 Id.
72 Id. at 1134.
73 Id. at 1136.
74 Id. at 1138.
75 Id.
76 Id. at 1140.

failed to substantiate its claim that Uy manipulated the E2M Customs System to successfully process Phoenix' import entries.[77]

The trial court ruled that the shipments were covered by bills of lading and the failure to submit a load port survey is not a criminal offense. In any event, the submission of the load port survey is not Phoenix's obligation and it was not required to be filed at the time the shipments were made.[78]

The trial court emphasized that it is not bound by Secretary De Lima's Resolution and it can ascertain for itself whether there is probable cause to charge the accused.[79] While a judge's determination of probable cause is generally limited to the purpose of issuing arrest warrants, a judge may immediately dismiss a case if the evidence fails to establish probable cause.[80]

Uy subsequently informed the Regional Trial Court of the Court of Appeals-Manila's Decision ordering the withdrawal of the Informations.[81]

The prosecution moved for reconsideration of the Regional Trial Court's Order but it was denied.[82] Subsequently, it filed a Petition for Certiorari before the Court of Appeals-Cagayan De Oro[83] but it was denied.[84]

The Court of Appeals-Cagayan De Oro held that the legal and factual issues raised in the Petition are similar to those raised and resolved in the Decision of the Court of Appeals-Manila.[85] That decision deserves respect as it was rendered by a court of competent jurisdiction.[86]

In any event, the prosecution's petition must still fail.[87] The Court of Appeals-Cagayan De Oro ruled that Uy cannot be charged solely on the basis of his position in Phoenix. Generally, a corporation has a separate and distinct personality from its officers.[88] There are exceptions to this rule but none apply to Uy because he had no actual participation in the complained acts.[89]

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77 Id.
78 Id.
79 Id. at 1135.
80 Id. at 1134.
81 Id. at 26.
82 Id.
83 Id. at 12.
84 Id. at 12–44. The Decision dated October 12, 2016 was penned by Associate Justice Maria Filomena D. Singh and concurred in by Edgardo A. Camello and Associate Justice Perpetua T. Atal-Paño of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.
85 Id. at 27.
86 Id. at 29.
87 Id.
88 Id. at 30.
89 Id. at 30–33.

Similarly, there is no basis to hold Uy liable for abandonment of shipments. The Single Administrative Declarations submitted by the prosecution do not show the date of the discharge of the last package, which is the reckoning period for abandonment. Moreover, the taxes and duties were all paid through the E2M Customs System which required the filing of all import documents. Thus, E2M Customs System's acceptance of Phoenix's import entries is proof of submission of import documents.[90] To add, the Court of Appeals-Cagayan De Oro found that the shipments were duly covered by bills of lading and load port surveys.[91]

The prosecution moved for reconsideration of the Decision but to no avail.[92]

Aggrieved, Secretary De Lima and the Bureau of Customs, through the Office of the Solicitor General, filed a Petition for Review on Certiorari assailing the Decision and Resolution of the Court of Appeals-Manila.[93] The petition was docketed as G.R. No. 219295–96. Subsequently, Uy and Cabanes filed their respective Comments to which petitioners filed a Consolidated Reply.[94]

This Court then ordered the parties to submit their memoranda. Petitioners and respondents complied.[95]

Meanwhile, the People of the Philippines filed a Petition for Review on Certiorari assailing the Court of Appeals-Cagayan De Oro's Decision and Resolution.[96] The petition was docketed as G.R. No. 229705.[97] Uy then filed his Comment/Opposition to the petition[98] to which the Office of the Solicitor General filed a Manifestation in lieu of Reply.[99]

The two petitions were consolidated.

In their Memorandum,[100] petitioners Secretary De Lima and Bureau of Customs argue that respondents Uy and Cabanes's claims must not be considered by this Court because they involve a review of the allegations

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90 Id. at 35.
91 Id. at 40–43.
92 Id. at 46–49. The Resolution dated January 25, 2017 was penned by Associate Justice Maria Filomena D. Singh and concurred in by Edgardo A. Camello and Associate Justice Perpetua T. Atal-Paño of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.
93 *Rollo* (G.R. No. 219295–96), pp. 105–140.
94 Id. at 3022.
95 Id. at 3022–3023.
96 *Rollo* (G.R. No. 229705), p. 55.
97 Id.
98 *Rollo* (G.R. No. 219295–96), p. 3271.
99 Id. at 9943–9974.
100 Id. at 3016–3049.

and evidence in the Bureau of Customs' Reply, which is beyond the scope of a Rule 45 petition.[101] They likewise question Cabanes' direct resort to this Court without filing a motion for reconsideration before the Court of Appeals.[102]

Petitioners contend that there is no grave abuse of discretion in petitioner Secretary De Lima's ruling against respondents Uy and Cabanes.[103] There is no violation of due process when respondents were not required to file a response to Bureau of Customs' Reply because a Rejoinder is not mandated by law.[104]

They further point out that respondents were never prohibited to respond to the Reply.[105] They could have immediately submitted a rejoinder or a manifestation of their intent to respond but none was filed.[106] Respondents Uy and Cabanes had 35 and 22 days, respectively, from their receipt of the Reply until the issuance of the Resolution, but they slept on their right.[107]

They maintain that there is no grave abuse of discretion in admitting the Reply.[108] Petitioner Secretary De Lima cannot be expected to *motu proprio* determine whether the Reply contained new matters that would have precluded her from accepting it.[109] In any case, the Reply did not introduce new matters and it did not depart from the original charges.[110]

Further, the DOJ Panel's Order which denied Bureau of Customs' Motion to Reopen Preliminary Investigation does not preclude the admission of its Reply. The Order, which allegedly covered the same documents attached in the Reply, was resolved on technical grounds. Moreover, the DOJ Panel's Order is merely interlocutory and it could not attain finality. Thus, the rule on immutability of judgments does not apply.[111] Besides, petitioner Secretary De Lima has the authority to review and overturn the findings of the DOJ Panel.[112]

On the determination of probable cause, petitioners contend that this is an executive function which belongs to the public prosecutor and Secretary of Justice, and should be respected by the courts.[113] The

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101 Id. at 3027–3028.
102 Id. at 3039.
103 Id. at 3025.
104 Id. at 3026.
105 Id. at 3029.
106 Id. at 3030–3031.
107 Id. at 3033.
108 Id. at 3028.
109 Id. at 3029.
110 Id. at 3032.
111 Id. at 3029.
112 Id. at 3042–3043.
113 Id. at 3044.

prosecutor's findings may only be overturned upon a showing of grave abuse of discretion, which is absent in this case because respondents were never deprived of due process.[114] Respondents' recourse is to proceed to trial where they can fully present their evidence.[115]

In his Memorandum,[116] respondent Cabanes reiterates that his direct resort to the Court of Appeals is justified because the filing of a motion for reconsideration was not a plain, speedy, and adequate remedy.[117] The resolution of petitioner Secretary De Lima is immediately executory and void for violating his right to due process.[118]

Respondent Cabanes claims that he was not given sufficient time to refute the new allegations in the Reply.[119] While he had 22 days from the receipt of the Reply to file his Rejoinder, this period was not sufficient, as compared with Bureau of Customs who had 55 days to file its Reply.[120]

Moreover, respondent Cabanes asserts that he is not raising questions of fact before this Court because the existence of new allegations in petitioner Bureau of Customs' Reply was already settled by the Court of Appeals.[121] In the contrary, it is petitioners who ask for a reconsideration of factual issues when they claim that the Reply is a mere rehash of the original complaint.[122]

Respondent Cabanes further reiterates that the new matters raised in the Reply were used as basis for reversing the DOJ Panel's Order.[123] He argues that petitioner Secretary De Lima acted beyond the bounds of her authority in reversing the DOJ Panel's Order and allowing new evidence which the DOJ Panel had already denied.[124] Moreover, he avers that the DOJ Panel's Order, which was issued on the merits, has attained finality; thus, it can no longer be reversed by the Secretary De Lima.[125]

He asserts that there were no allegations of fraud which constitute unlawful and illegal importations.[126] Echoing the Court of Appeals-Manila's Decision, respondent Cabanes submits that there is no competent evidence showing fraud on his part.[127]

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114 Id. at 3045.
115 Id. at 3046–3047.
116 Id. at 3065–3158.
117 Id. at 3095.
118 Id. at 3096–3097.
119 Id. at 3112–3114.
120 Id. at 3117.
121 Id. at 3099.
122 Id. at 3101.
123 Id. at 3122–3124.
124 Id. at 3104.
125 Id. at 3105–3107.
126 Id. at 3137.
127 Id. at 3139–3140.

Respondent Cabanes argues that the entries reflected in the import documents are consistent with each other.[128] The purported inconsistency in the entries was due to the different numbering systems used in the Port of Davao and Bureau of Customs' E2M Customs System.[129] A comparison of the entries would show that the documents pertain to the same shipments.[130]

Similarly, the alleged differences in the names of exporters appearing on the bills of ladings, Single Administrative Declarations, and Import Entry and Internal Revenue Declarations can be reconciled by referring to commercial invoices.[131] The discrepancies in the exporters indicated in the bills of ladings and Import Entry and Internal Revenue Declarations were due to the fact that Phoenix's suppliers have different traders and/or refineries. There is nothing irregular in this scenario and these entries can be easily reconciled with the commercial invoices.[132] There is likewise no discrepancy in the names of the carrying vessels and countries of origin of Phoenix's shipments.[133] The accuracy of entries in the customs declarations is confirmed when the E2M Customs System itself accepted the entries and the payment.[134]

Respondent Cabanes argues that load port surveys were not yet required at the time of Phoenix's shipments.[135] In any case, noncompliance with this requirement is not a criminal offense and all of Phoenix's shipments underwent comprehensive physical examination.[136] The Bureau of Customs itself issued permits to discharge the shipments.[137]

Even if there were fraudulent acts imputable, respondent Cabanes says he can no longer be held liable because Phoenix had already settled all taxes, duties, and fees on the shipments.[138]

In his Memorandum,[139] respondent Uy avers that petitioner Secretary De Lima's review of DOJ Panel's Order is tantamount to a new preliminary investigation.[140] Thus, Secretary De Lima's issuance of the Resolution absent his response to the new allegations is a violation of due process required during preliminary investigation.[141]

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128 Id. at 3141.
129 Id. at 3141–3142.
130 Id. at 3142–3144.
131 Id. at 3144–3146.
132 Id. at 3147.
133 Id. at 3147–3148.
134 Id. at 3148–3149.
135 Id. at 3150.
136 Id. at 3151–3152.
137 Id. at 3152–3153.
138 Id. at 3154–3155.
139 Id. at 3167–3253.
140 Id. at 3199.
141 Id. at 3202.

Respondent Uy echoes respondent Cabanes's argument that petitioner Secretary De Lima gravely abused her discretion when she admitted the Reply notwithstanding the earlier denial of Bureau of Customs' Motion to Reopen Preliminary Investigation.[142] While Secretary De Lima can review the decisions of her subordinate, she can only re-assess the very same evidence presented during the preliminary investigation.[143]

He reiterates that the Reply was not a mere rehash of the complaint because none of the allegations in the earlier pleadings pertained to the new allegations in the Reply.[144] Thus, at the very least, he should have been given the opportunity to respond by way of a Rejoinder.[145] He adds that it is highly unreasonable to expect him to file a responsive pleading within the short period of time considering that the new matters are factual in nature. A review of these allegations would necessarily require more time.[146]

Respondent Uy likewise questions the swift resolution made by the Secretary of Justice. He highlights that the DOJ Panel took more than a year to issue its findings due to the volume of documents but Secretary De Lima only spent 34 days to arrive at a contrary position.[147]

He adds that petitioners failed to allege his actual acts or omissions in relation to the shipments.[148] His position as president does not require him to personally perform tasks required in the importation.[149] Further, there is no evidence showing that he acted fraudulently and no criminal liability may be imputed to him because all taxes, duties, and fees on the shipments were duly paid by Phoenix.[150] He echoes the argument of respondent Cabanes that the alleged discrepancies and inconsistencies in their counterevidence have already been debunked.[151]

Respondent Uy likewise claims that the dismissal of the charges before the Regional Trial Courts in Davao City only shows the lack of probable cause to indict him.[152]

In the second Petition,[153] petitioner People of the Philippines contends that the Court of Appeals-Cagayan De Oro gravely erred in relying on the

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142 Id. at 3228–3230.
143 Id. at 3230–3231.
144 Id. at 3207.
145 Id. at 3208.
146 Id. at 3223.
147 Id. at 3215–3216.
148 Id. at 3239.
149 Id. at 3241.
150 Id. at 3248.
151 Id. at 3250.
152 Id. at 3244.
153 *Rollo* (G.R. No. 229705), pp. 55–90.

Decision of Court of Appeals-Manila because the causes of action are different. In the Court of Appeals-Cagayan De Oro, the Orders of the Regional Trial Court of Davao City were assailed for lack of probable cause to issue a warrant of arrest against Uy. Meanwhile, the petition filed before the Court of Appeals-Manila assailed the Resolution of Secretary De Lima which found probable cause to file Informations against respondents.[154]

Petitioner maintains that there is probable cause to charge respondents because the evidence submitted by the Bureau of Customs during preliminary investigation supported the allegations, and the counterevidence of respondents were sufficiently controverted.[155]

Moreover, the Regional Trial Court of Davao City went beyond the scope of its authority because it made an exhaustive assessment of the evidence in dismissing the complaint when it was only tasked to determine probable cause for the issuance of an arrest warrant.[156] The existence of the crime's elements is evidentiary in nature and is a defense best threshed out in a full-blown trial.[157]

Even assuming that there is insufficient evidence to issue a warrant of arrest, the dismissal of the charges is still improper.[158] Insufficiency of evidence is not a ground to overturn the public prosecutor's determination of probable cause to charge an accused.[159]

As regards the liability of respondent Uy, petitioner argues that it is highly improbable that Uy is unaware of the transactions in question considering the large amount of money involved.[160]

In his Comment/Opposition,[161] respondent Uy argues that the petition raises factual allegations which is beyond the scope of a Rule 45 petition.[162] While there are exceptions to this rule, none apply to the petition.[163]

He further asserts that the Court of Appeals-Cagayan De Oro did not err in relying on the Decision of the Court of Appeals-Manila based on the principle of judicial stability.[164] As both courts reviewed the same set of

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154 Id. at 69.
155 Id. at 73.
156 Id. at 85.
157 Id. at 86.
158 Id. at 85–86.
159 Id. at 86.
160 Id. at 88–89.
161 *Rollo* (G.R. No. 219295–96), pp. 3271–3397.
162 Id. at 3308–3311.
163 Id. at 3312–3313.
164 Id. at 3315.

facts and evidence, they cannot arrive at conflicting findings as to the existence of probable cause.[165]

Further, the Regional Trial Court did not go beyond its authority in determining the existence of probable cause.[166] Respondent Presiding Judge George E. Omelio (Judge Omelio) is mandated to make an independent judgment based on the evidence presented to him or, at the very least, verify the public prosecutor's findings as to the existence of probable cause.[167] He did not overstep the prosecutors' functions.[168]

Respondent Uy contends that there are no factual allegations attributable to him.[169] He argues that the use of words "false," "fraudulent practice," and the phrase "the receipt, concealment, sale, purchase or facilitation thereof after the unlawful importation" in the Informations are mere sweeping statements.[170]

Moreover, he cannot be charged solely based on his position in Phoenix and absent any showing of his actual participation in the complained acts.[171] As President, he cannot be expected to handle and manage every detail in the operations of Phoenix, including the processing of import documents.[172] Further, the Tariff and Customs Code does not impose criminal liability on corporate officers by virtue of the positions they occupy.[173]

Respondent Uy argues that while the shipments subject of the cases in the Regional Trial Court Batangas are different from those in the Regional Trial Court Davao City, all Informations arose from the same complaint. Thus, the cases suffer the same defects.[174]

He further contends that the purported conspiracy between him and the several John and Jane Does alleged in the Informations was not established.[175] There are no factual allegations proving that he acted in concert with them.[176]

Moreover, respondent Uy argues that the Court of Appeals correctly affirmed the dismissal of the case given the insufficiency of evidence against

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165 Id. at 3316.
166 Id. at 3329.
167 Id. at 3332.
168 Id. at 3334.
169 Id.
170 Id. at 3336.
171 Id. at 3344–3346.
172 Id. at 3350.
173 Id. at 3351.
174 Id. at 3343.
175 Id. at 3354–3355.
176 Id. at 3356.

him.[177] As determined by the Court of Appeals, the shipments were released to Phoenix after it has settled all required taxes, customs duties, and fees. This is admitted by the Bureau of Customs itself when it processed Phoenix's import documents through the E2M Customs Systems and issued the Statements of Settlement of Duties and Taxes. These serve as evidence of Phoenix's payment.[178]

Respondent Uy reiterates that there is no abandonment in this case.[179] Abandonment under the Tariff and Customs Code does not provide for criminal liability.[180] In any case, there is no proof that the shipments were abandoned.[181] The Single Administrative Declarations submitted by the Bureau of Customs do not show that Phoenix failed to file the import entries within the 30-day period from the date of discharge of last package. Moreover, if the import entries were inconsistent and were lodged beyond the period allowed, the E2M Customs System should have rejected the entries.[182]

He argues that the period between the issuance of the bills of lading and the dates indicated in the IEIRD is immaterial in the offenses charged against him.[183] As to the discrepancies in the exporters/suppliers in the bills of lading, respondent Uy points out that exporters indicated in the bills of lading and IEIRDs are essentially the same and they can be reconciled by referring to the commercial invoices.[184]

Lastly, respondent Uy maintains that the submission of the port survey reports was not yet required at the time of importation. Moreover, failure to submit these documents is not a criminal offense.[185]

In its Manifestation in lieu of Reply,[186] the Office of the Solicitor General changed its position and agreed with the dismissal of the charges.[187]

It submits that the respondents' right to due process was violated when Secretary De Lima admitted the Reply and did not require respondents to file a responsive pleading.[188] Moreover, the Bureau of Customs failed to cite the criminal acts allegedly committed by the respondents.[189] There was

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177 Id. at 3358.
178 Id. at 3359–3360.
179 Id. at 3364.
180 Id. at 3365.
181 Id. at 3366.
182 Id. at 3367.
183 Id. at 3378.
184 Id. at 3380–3383.
185 Id. at 3392–3394.
186 *Rollo* (G.R. No. 219295–96), pp. 9943–9974.
187 Id. at 9949.
188 Id. at 9950–9951.
189 Id. at 9953.

no competent evidence of fraud or fraudulent practice committed by respondents.[190] In any case, the acts complained of are not criminal.[191]

The Office of the Solicitor General adds that the issuance of the documents by the Bureau of Customs and the Bureau of Internal Revenue clears the release of imports and proves compliances with the payment of taxes.[192]

It further argues that the Bureau of Customs failed to identity and charge the John and Jane Does allegedly in conspiracy with respondents.[193] Moreover, while respondent Uy is a corporate officer of Phoenix, there is no basis to charge him because TCCP, unlike penal statutes, does not presume that corporate officers are personally liable in the commission of offenses.[194]

The Office of the Solicitor General likewise contends that the determination of the prosecutor in the filing of the Information does not bind the judge who makes their own determination of probable cause.[195]

Lastly, the Court of Appeals-Cagayan De Oro did not err in relying on part on the Decision of the Court of Appeals-Manila.[196] Both sets of cases resolved the sufficiency of evidence in finding of probable cause and ultimately, they involve the sole question of whether respondents should be tried for violations of the Tariff and Customs Code.[197]

The following issues are for this Court's resolution:

First, whether or not petitioners may raise factual questions in the petitions;

Second, whether or not there is a violation of respondents' right to due process;

Third, whether or not Secretary De Lima gravely abused her discretion in overturning the DOJ Panel's Order;

Fourth, whether or not the Court of Appeals-Manila gravely abused its discretion in overturning Secretary De Lima's finding of probable cause; and

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190 Id. at 9953–9955.
191 Id. at 9955.
192 Id. at 9957–9958.
193 Id. at 9958.
194 Id. at 9959.
195 Id. at 9960–9961.
196 Id. at 9962–9963.
197 Id. at 9963.

Finally, whether or not the Court of Appeals-Cagayan De Oro gravely abused its discretion in affirming the dismissal of the cases.

I

It is settled that only questions of law may be raised in a Rule 45 petition. Factual findings of appellate courts are final, binding, and conclusive on the parties and upon this Court when confirmed by substantial evidence. This Court is not a trier of facts and it is not equipped to resolve questions of fact.[198] Nevertheless, this rule admits exceptions, to wit:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[199]

Evidently, the Petitions before us raise questions of fact because their resolution entails a review of the "truthfulness or falsity of the allegations of the parties" and an "assessment of the 'probative value of the evidence presented.'"[200] In particular, the Petitions question the factual determination of the Court of Appeals with respect to allegedly inconsistent evidence from both parties.

Petitioners, however, claim exception, stating that the Court of Appeals gravely abused its discretion in overturning the Justice Secretary's finding of probable cause.

A scrutiny of the Petitions fails to show grave abuse of discretion on the part of the Court of Appeals. Regardless, a review of the evidence fails to persuade this Court to overturn the assailed decisions.

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198 *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

199 Id. at 182–183 citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 132 (1990) [Per J. Bidin, Third Division].

200 Id. at 183.

II

Preliminary investigation is conducted to determine whether probable cause exists to file an information against an accused.[201] It is merely inquisitorial and is only a "means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare [the] complaint or information."[202]

It is not part of trial and its purpose is limited to "determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof."[203] In *Santos v. Go*:[204]

> [T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.[205]

Consequently, it is not subject to the same due process safeguards available during trial.[206] In *Webb v. De Leon*:[207]

> Considering the low quantum and quality of evidence needed to support a finding of probable cause, we also hold that the DOJ Panel did not gravely abuse its discretion in refusing to call the NBI witnesses for clarificatory questions. The decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator and the investigator alone. If the evidence on hand already yields a probable cause, the investigator need not hold a clarificatory hearing. To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. In the case at bar, the DOJ Panel correctly adjudged that enough evidence had been adduced to establish probable cause and clarificatory hearing was unnecessary.[208]

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201 *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 114 (2017) [Per J. Leonen, Second Division].
202 *Bautista v. Court of Appeals*, 413 Phil. 159, 168 (2001) [Per J. Bellosillo, Second Division].
203 Id.
204 510 Phil. 137 (2005) [Per J. Quisumbing, First Division].
205 Id. at 147.
206 *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 119 (2017) [Per J. Leonen, Second Division].
207 317 Phil. 758 (1995) [Per J. Puno, Second Division].
208 Id. at 789.

Due process at this stage is limited to those provided by procedural law.[209] Rule 112, Section 3 of the Rules of Court provides:

> SECTION 3. Procedure. — The preliminary investigation shall be conducted in the following manner:
>
> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause...
>
> (b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
>
> ...
>
> (c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
>
> (d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
>
> (e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.
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> ....
>
> (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.[210]

Clearly, the Rules of Court do not require the filing of a responsive pleading to a reply. The same is observed with the 2000 National Prosecution Service Rule on Appeal, which provides that an adverse party may file a comment; if none is filed, the appeal may be resolved based on the petition.[211] Thus, within the parameters given under the law, the filing of

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209 *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 119 (2017) [Per J. Leonen, Second Division].

210 RULES OF COURT, Rule 112, sec. 3.

211 2000 National Prosecution Service Rule on Appeal, sec. 8 provides:
Section 8. Comment. Within a non-extendible period of fifteen (15) days from receipt of a copy of the petition, the adverse party may file a verified comment, indicating therein the date of such receipt and submitting proof of service of his comment to the petitioner and the Prosecution Office concerned. Except when directed by the Secretary of Justice, the investigating/reviewing/approving prosecutor need not submit any comment.

a rejoinder is not part of respondents' due process rights. Consequently, petitioner Secretary De Lima's failure to require a rejoinder from respondents is not a grave abuse of her discretion.

This Court further observes that respondents were not prevented by petitioner from filing a rejoinder and they could have filed their responsive pleading within the given time. To reiterate, preliminary investigation is not part of trial and only in a trial can an accused demand a broader range of rights. Here, petitioner Secretary De Lima is not bound to require a response to the Reply, even if it contained new allegations and evidence. Concomitantly, she is not bound to wait for respondents to submit their responsive pleading.

At any rate, respondents cannot claim that they were deprived of due process. Due process only demands that parties be given a "fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of."[212] In this case, respondents were able to assail the Resolution of petitioner Secretary De Lima. Respondent Uy filed his Motion for Reconsideration where he raised his contentions against the Bureau of Customs' Reply.[213] The same opportunity was available to respondent Cabanes. Thus, respondents cannot insist that there was a violation of their right to due process.

III

The Secretary of Justice is given the discretion, upon motion or *motu proprio*, to conduct a reinvestigation upon seeing a probable miscarriage of justice in the conduct of a preliminary investigation.[214] They have control and supervision over prosecutors and it is within their "authority to affirm, nullify, reverse, or modify the resolution of [their] prosecutors."[215]

This is encoded in Section 4 of Republic Act No. 10071, otherwise known as the Prosecution Service Act of 2010. The provision reads:

> SECTION 4. Power of the Secretary of Justice. - The power vested in the Secretary of Justice includes authority to act directly on any matter involving national security or a probable miscarriage of Justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor and to review, reverse, revise, modify or affirm on appeal or petition for review as the law or the

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If no comment is filed within the prescribed period, the appeal shall be resolved on the basis of the petition.

212 *Binay v. Office of the Ombudsman*, G.R. No. 213957–58, August 7, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552> [Per J. Leonen, Third Division].

213 *Rollo* (G.R. No. 219295–96), p. 3227.

214 *De Lima v. Reyes*, 776 Phil. 623, 628 (2016) [Per J. Leonen, Second Division].

215 Id. at 643.

rules of the Department of Justice (DOJ) may provide, final judgements and orders of the prosecutor general, regional prosecutors, provincial prosecutors, and city prosecutors.

For purposes of determining the cases which may be acted on, directly by the Secretary of Justice, the phrase "national security" shall refer to crimes against national security as Provided under the Penal Code, Book II, Title 1, and other cases involving acts of terrorism as defined under the Human Security Act under Republic Act No. 9372.

The Secretary of Justice may *motu proprio* reverse or modify resolutions of the provincial or city prosecutor or the chief state prosecutor.[216] Under Rule 112, Section 4 of the Rules of Court:

SECTION 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

. . . .

If upon petition by a proper party under such rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

In *Community Rural Bank of Guimba, Inc. v. Hon. Talavera*:[217]

The actions of prosecutors are not unlimited; they are subject to review by the secretary of justice who may affirm, nullify, reverse or modify their actions or opinions. Consequently the secretary may direct them to file either a motion to dismiss the case or an information against the accused.

In short, the secretary of justice, who has the power of supervision and control over prosecuting officers, is the ultimate authority who decides which of the conflicting theories of the complainants and the respondents should be believed.[218]

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216 Id. at 643–644.
217 495 Phil. 30 (2005) [Per J. Panganiban, En Banc].
218 Id. at 41–42.

Section 4 of Republic Act No. 10071 also gives the Secretary of Justice the authority to directly act on any "probable miscarriage of justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor." Accordingly, the Secretary of Justice may step in and order a reinvestigation even without a prior motion or petition from a party to prevent any probable miscarriage of justice.

De Lima v. Reyes[219] is likewise instructive:

> A criminal prosecution is initiated by the filing of a complaint to a prosecutor who shall then conduct a preliminary investigation in order to determine whether there is probable cause to hold the accused for trial in court. The recommendation of the investigating prosecutor on whether to dismiss the complaint or to file the corresponding information in court is still subject to the approval of the provincial or city prosecutor or chief state prosecutor.
>
> However, a party is not precluded from appealing the resolutions of the provincial or city prosecutor or chief state prosecutor to the Secretary of Justice. Under the 2000 NPS Rule on Appeal, appeals may be taken within 15 days within receipt of the resolution by filing a verified petition for review before the Secretary of Justice.[220] (Citations omitted)

The determination of probable cause for the purpose of filing an information in court is an executive function which lies within the discretion of the public prosecutor and justice secretary. It is generally not reviewable by courts regardless of its correctness, except when there is showing of grave abuse of discretion.[221] In *Securities and Exchange Commission v. Price Richardson Corporation*:[222]

> If the public prosecutor finds probable cause to charge a person with a crime, he or she causes the filing of an information before the court. The court may not pass upon or interfere with the prosecutor's determination of the existence of probable cause to file an information regardless of its correctness. It does not review the determination of probable cause made by the prosecutor. It does not function as the prosecutor's appellate court. Thus, it is also the public prosecutor who decides "what constitutes sufficient evidence to establish probable cause."
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> However, if the public prosecutor erred in its determination of probable cause, an appeal can be made before the Department of Justice Secretary. Simultaneously, the accused may move for the suspension of proceedings until resolution of the appeal.

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219 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

220 Id. at 641–642.

221 *Securities and Exchange Commission v. Price Richardson Corp.*, 814 Phil. 589, 607–608 (2017) [Per J. Leonen, Second Division].

222 814 Phil. 589 (2017) [Per J. Leonen, Second Division].

> Upon filing of the information before the court, judicial determination of probable cause is initiated. The court shall make a personal evaluation of the prosecutor's resolution and its supporting evidence. Unlike the executive determination of probable cause, the purpose of judicial determination of probable cause is "to ascertain whether a warrant of arrest should be issued against the accused." This determination is independent of the prosecutor's determination of probable cause and is a function of courts for purposes of issuance of a warrant of arrest.[223] (Citations omitted)

Prosecutors are granted a wide latitude of discretion in resolving whether a complaint must be dismissed or an information should be filed. Generally, courts do not interfere with the prosecutor's determination of probable cause and conduct of preliminary investigation.[224] In *First Women's Credit Corporation v. Baybay*:[225]

> It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the Department of Justice, as reviewer of the findings of public prosecutors. The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized. The rule is also consistent with this Court's policy of non-interference in the conduct of preliminary investigations, and of leaving to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender.
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> While prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are subject to review by the Secretary of Justice.
>
> Once a complaint or information is filed in court, however, any disposition of the case, e.g., its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the Court.[226] (Citations omitted)

Thus, petitioner Secretary De Lima has the power to review the Order of the DOJ Panel. She may overturn the lack of finding of probable cause when she determines that there is sufficient evidence to hold respondents for trial in court. She is not precluded from overturning the findings of the prosecutors. Her authority as Secretary of Justice grants her the prerogative

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223 Id. at 608.
224 *De Lima v. Reyes*, 776 Phil. 623, 647 (2016) [Per J. Leonen, Second Division].
225 542 Phil. 607 (2007) [Per J. Carpio Morales, Second Division].
226 Id. at 614–615.

to reverse the decision of her subordinates. Accordingly, she can reassess the evidence and arrive at a contrary conclusion.

Respondents' allegation of inconsistencies in the evidence submitted before the DOJ Panel and before Secretary De Lima is a factual matter which requires this Court to thresh out evidence. Absent showing grave abuse of discretion, the correctness of Secretary De Lima's determination of probable cause is an issue beyond the bounds of this Court's review. This Court may not pass upon or interfere with the justice secretary's determination of existence of probable cause in filing an information regardless of its correctness and assessment of evidence. To reiterate, this Court does not function as the prosecutor's appellate court. Ultimately, it is the prosecutor and the justice secretary who settles what constitutes sufficient evidence.[227]

In any case, the issue of whether there is probable cause to charge respondents has been rendered moot by the filing of the Informations before the trial courts.

IV

The "executive determination of probable cause is different from the judicial determination of probable cause."[228] Executive determination belongs to the public prosecutor who decides whether there is probable cause to charge an accused before the court. On the other hand, judicial determination is made by a judge, determining whether there is probable cause to issue a warrant of arrest against the accused. In *People v. Castillo and Mejia*:[229]

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
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> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on

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227 *Securities and Exchange Commission v. Price Richardson Corp.*, 814 Phil. 589, 608 (2017) [Per J. Leonen, Second Division].

228 *De Lima v. Reyes*, 776 Phil. 623, 647 (2016) [Per J. Leonen, Second Division].

229 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

> the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[230] (Citations omitted)

Once an information is filed, the preliminary investigation is terminated and the court acquires jurisdiction over the case. In *Crespo v. Mogul*:[231]

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.
>
> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
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> . . . .
>
> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done

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230 Id. at 764–765.

231 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

> before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[232] (Citations omitted)

A judge's determination of probable cause is different from a prosecutor's determination. Trial courts do not act as an appellate court of the prosecutor. They make an independent assessment of the evidence to determine whether a warrant of arrest should be issued. They do not reassess the prosecutor's determination of probable cause. Thus, in dismissing a case or requiring additional evidence, the judge does not overstep the authority of the prosecutor.[233]

In resolving whether there is probable cause to issue warrant arrest, a judge may "(1) dismiss the case if the evidence on record has clearly failed to establish probable cause; (2) issue a warrant of arrest upon a finding of probable cause; or (3) order the prosecutor to present additional evidence[.]"[234]

When probable cause is already judicially determined by the trial court, questions on the propriety of the executive determination of probable cause becomes moot.[235] At that point, questions on the accused's guilt or innocence rests on the trial court's sound discretion.[236]

In this case, Informations against respondents are already filed before the Regional Trial Courts of Davao City and Batangas. Resolving whether there is grave abuse discretion in Secretary De Lima's determination of probable cause would be of no practical value.

More important, the Regional Trial Court of Davao City has already made its independent determination, concluding that there is no probable cause to issue an arrest warrant with respect to the 22 Informations.

Petitioners are mistaken in claiming that the trial court went beyond its scope of authority when it found no probable cause. To reiterate, the judge's determination of probable cause is distinct from the prosecutor's determination. The motion for the determination of probable cause for the purpose of issuance of an arrest warrant before the trial court is not an appeal of Secretary De Lima's resolution. Thus, Judge Omelio can make his own independent assessment and judgment of the case, regardless of the prosecution's resolution.

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232 Id. at 474–476.

233 *Fenix v. Court of Appeals*, 789 Phil. 391, 405 (2016) [Per C.J. Sereno, First Division].

234 Id.

235 *Relampagos v. Sandiganbayan (Second Division)*, G.R. No. 235480, January 27, 2021, <https://sc.judiciary.gov.ph/18829/> 10 [Per J. Inting, Third Division].

236 *Marantan v. Department of Justice*, G.R. No. 206354, March 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65148> [Per J. Leonen, Third Division].

With regard to the second Petition questioning the trial court's dismissal of the cases, we find that the trial court did not gravely abuse its discretion in its determination of probable cause.

A court may dismiss a case for lack of probable cause when "the records readily show uncontroverted and, thus, established facts that unmistakably negate the existence of the elements of the crime charged."[237]

According to the 22 Informations filed before the Regional Trial Court of Davao City, respondent Uy is charged with fraudulent practice under Section 3602,[238] in relation to Sections 3601,[239] 2530 1(1) and (5),[240] 1801,[241] 1802,[242] and 3604[243] of the Tariff and Customs Code.[244] In sum, the

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237 *Fenix v. Court of Appeals*, 789 Phil. 391, 409 (2016) [Per C.J. Sereno, First Division].

238 TARIFF CODE, sec. 3602 provides:
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.

239 TARIFF CODE, sec. 3601 provides:
Section 3601. Unlawful Importation. - Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling[.]

240 TARIFF CODE, sec. 2530 provides:
Section 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:
. . . .
1. Any article sought to be imported or exported
(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
. . . .
(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government.

241 TARIFF CODE, sec. 1801 provides:
Section 1801. Abandonment, Kinds and Effects of - An imported article is deemed abandoned under any of the following circumstances:
b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date o posting of the notice to claim such importation.

242 TARIFF CODE, sec. 1802 provides in part:
Section 1802. Abandonment of Imported Articles. - An abandoned article shall ipso facto be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code.

243 TARIFF CODE, sec. 3604 provides in part:
Section 3604. Statutory Offenses of Officials and Employees. - Every official, agent or employee of the Bureau or of any other agency of the government charged with the enforcement of the provisions of this Code, who is guilty of any delinquency herein below indicated shall be punished with a fine of not less than Five thousand pesos nor more than Fifty thousand pesos and imprisonment for not less than one year nor more than ten years and perpetual disqualification to hold public office, to vote and to participate in any public election.

244 *Rollo* (G.R. No. 229705), p. 1133.

Informations charge respondent Uy for fraudulently causing the release of the imported goods despite their abandonment and for failure to submit bill of ladings and load port surveys/discharge port surveys.[245]

Section 3602 recites the fraudulent practices against customs revenue, to wit:

> (1) Making or attempting to make any entry of imported or exported article:
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> (a) by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal; or
>
> (b) by any means of any false or fraudulent practice whatsoever; or
>
> (2) Knowingly effecting any entry of goods, wares or merchandise, at less than the 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
>
> (3) Knowingly and willfully filing any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise; or
>
> (4) Making or filing 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.[246]

Section 3611(c) of the Tariff and Customs Code defines fraud as the occurrence of a "material false statement or act in connection with the transaction [which] was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence[.]"[247]

Fraud must be intentional, meaning, there is "deception, willfully and deliberately dared or resorted to[.]"[248] *Jardeleza v. People*[249] explains the import of Section 3602:

> The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.
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> Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform

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245 Id. at 15–25.

246 *Bureau of Customs v. Devanadera*, 769 Phil. 231, 268 (2015) [Per J. Peralta, En Banc].

247 TARIFF CODE, sec. 3611(c).

248 *Jardeleza v. People*, 517 Phil. 179, 203 (2006) [Per J. Callejo, Sr., First Division].

249 517 Phil. 179 (2006) [Per J. Callejo, Sr., First Division].

> was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.[250] (Citations omitted)

As observed by the trial court and affirmed by the Court of Appeals, there were neither allegations nor proof showing that respondent Uy participated in the preparation, processing, and lodging of import documents and release of shipments to Phoenix.[251] There was no proof that he willfully and deliberately acted to defraud the government to complete the importation.[252] Respondent Uy was being charged solely on the basis of his position in Phoenix and on the presumption that he knew the details of the importation given the value of shipments involved.[253] However, to find probable cause to issue a warrant against respondent Uy, there must be a showing of his actual participation and not merely a speculation based on his position in the company.

It is a settled rule that corporations have separate and distinct personalities from their officers and employees. Officers and employees may only be held criminally liable if they have active participation in the commission of the wrongful act.[254] Active participation involves "a showing of overt physical acts or intention to commit such acts."[255] Thus, absent proof that respondent Uy himself committed the acts, he cannot be charged for fraudulent practices. On this basis alone, the criminal charges against respondent Uy must fail.

At any rate, there is no probable cause to charge respondent Uy for violations of the Tariff and Customs Code.

Section 1801(b) of the Tariff and Customs Code states that there is implied abandonment when the importer fails to file an import entry within 30 days from the date of discharge of the last package from the vessel. An Import Entry Declaration is "basis for the payment of advance duties on importations[.]"[256] On the other hand, an Import Entry and Internal Revenue Declaration is evidence of final payment of duties and taxes.[257]

Section 1801(b) states:

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250 Id. at 203.
251 *Rollo* (G.R. No. 229705), pp. 30–31, 1134.
252 Id. at 1136.
253 Id. at 1134–1135.
254 *ABS-CBN Corp. v. Gozon*, 755 Phil. 709, 776 (2015) [Per J. Leonen, Second Division].
255 Id. at 777.
256 *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 718 (2008) [Per J. Corona, First Division].
257 Id.

> SECTION 1801. Abandonment, Kinds and Effects of - An imported article is deemed abandoned under any of the following circumstances:
>
> . . . .
>
> b. When the owner, importer, consignee or interested party after due notice, **fails to file an entry within thirty (30) days**, which shall not be extendible, **from the date of discharge of the last package from the vessel or aircraft, or having filed such entry,** fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.
>
> Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein. (Emphasis supplied)

Here, the prosecution failed to show proof that Phoenix failed to file an import entry within the prescribed period. As culled from the records, the Single Administrative Documents submitted by the Bureau of Customs only indicate the date of the arrival of the shipment in the Philippines and not the date of discharge of the last package.[258] Petitioners claim that the shipments were deemed abandoned because the import entries were filed 36 to 65 days late *from the date of arrival.* However, the law's reckoning point for the 30-day period is the date of the discharge of the last package from the carrying vessel or aircraft, and not from the date of arrival. Without this reckoning point, the prosecution cannot claim that there is an abandonment of the shipment.

Moreover, the prosecution's claim of lack of import entries, bills of lading, and port surveys was sufficiently controverted by respondent Uy.

Petitioners assert that the bills of lading submitted by respondents are inconsistent and do not pertain to the shipments in question. However, this is debunked by a cross-checking of the entries indicated in the bills of lading and import entries using the customs reference numbers.[259]

The commercial invoice is the document which shows the actual exporter or supplier of the shipment.[260] Under Section 1308 of the Tariff and Customs Code, an invoice indicates an article's actual buyer and provides a "detailed description of the articles . . . in customary terms or commercial designation[.]" On the other hand, the party reflected in the bill of lading is not the actual exporter or supplier. It only shows the party who

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258 *Rollo* (G.R. No. 229705), p. 1138.
259 Id. at 39.
260 Id. at 41.

entered into a contract of carriage for the shipment of the goods.[261] The Import Entry Internal Revenue Declaration confirms the final payment of duties and taxes.[262]

As discovered by the lower courts, the names of the exporters in the bills of lading can be reconciled by referring to the commercial invoices, which bear the same exporter or supplier.[263] The entries in the import declarations match the entries in the commercial invoice, as follows:

Custom Reference No.	**Exporter per [Import Entry Internal Revenue Declaration]**	**Exporter per bills of lading**	**Exporter per commercial invoice**
C-1450	Kangqi International PTE Ltd.	BP Singapore PTE Ltd.	Kangqi International PTE Ltd.
C-1457	SK Networks Co. Ltd.	BP Singapore PTE Ltd.	SK Networks Co. Ltd.
C-1558	Kangqi International PTE Ltd.	Total Trading Asia	Kangqi International PTE Ltd.
C-1538	SK Networks Co. Ltd.	Morgan Stanley Capital Group	SK Networks Co. Ltd.
C-2486	SK Networks Co. Ltd.	BP Singapore PTE Ltd.	SK Networks Co. Ltd.
C-2490	SK Networks Co. Ltd.	BP Singapore PTE Ltd.	SK Networks Co. Ltd.
C-3284	SK Networks Co. Ltd.	BP Singapore PTE Ltd.	SK Networks Co. Ltd.[264]

The difference between the entries in the import declarations and bills of lading is due to the fact that the supplier of Phoenix have different traders and refineries.[265] On the other hand, the bills of lading only reflect the party who entered into the contract of carriage for the shipment of the products, not the actual exporter or supplier.[266] Thus, there is nothing dubious with having different entries in import declarations and bills of lading.

Further, Phoenix's alleged failure to submit its load port survey for the shipments sometime in June 2010 to April 2011 does not give rise to any violation because the submission of port surveys was required long after the importations were made.[267] This was never denied by the Bureau of Customs. In any case, the lack of load port survey is not criminal per se. Customs Memorandum Order No. 18-2010 only provides that if a load port survey is not submitted, the shipments shall remain under continuous

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261 Id.
262 *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 718 (2008) [Per J. Corona, First Division].
263 *Rollo* (G.R. No. 229705), pp. 39–40, 1140.
264 Id. at 39–40.
265 Id. at 42.
266 Id. at 41.
267 Id. at 42–43, 1140.

guarding until a subsequent discharge port survey is conducted and correct duties and taxes are settled.[268]

Lastly, the evidence on record shows that the taxes and duties due on the shipments were all settled by Phoenix through the Bureau of Customs' E2M Customs System, which indispensably requires the lodging and filing of all import documents and entries.[269] This is proof that Phoenix complied and filed all the necessary import documents.[270] Moreover, the Import Entry and Internal Revenue Declaration proves the final payment of duties and taxes.[271] Meanwhile, the Bureau of Customs merely claims that respondents manipulated its system to allow the processing of the import entries without any evidence.

In sum, the lower courts' finding of no probable cause are supported by relevant laws and evidence on record. Mindful of these considerations, the Court of Appeals' affirmation of the dismissal of the charges is not tainted with grave abuse of discretion.

WHEREFORE, the Petitions are **DENIED**. The Court of Appeals' Decisions and Resolutions in CA-G.R. SP No. 129740 and CA-G.R. SP No. 131702 and CA-G.R. SP No. 06500-MIN are **AFFIRMED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

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268 Customs Memorandum Order No. 18-2010 (2010), sec. 7.3 provides:
Section 7.3 For customs control purposes, high risk shipments shall not be granted permits to discharge and shall remain under continuous customs under guarding until the DPS has been conducted byt he ACSC assigned for the purpose and the report thereon submitted and full payment of the correct duties and taxes, including any fine imposed by the BOC, have been made.

269 *Rollo* (G.R. No. 229705), p. 35.

270 Id. at 35.

271 *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 718 (2008) [Per J. Corona, First Division].

HENRI JEAN PAUL B. INTING
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice