Republic of the Philippines
Supreme Court
Manila

EN BANC

BUREAU OF CUSTOMS, Petitioner,	**G.R. No. 193253**
	Present:
- *versus* -	
THE HONORABLE AGNES VST DEVANADERA, ACTING SECRETARY, DEPARTMENT OF JUSTICE; HONORABLE JOVENCITO R. ZUÑO, PEDRITO L. RANCES, ARMAN A. DE ANDRES, PAUL CHI TING CO, KENNETH PUNDANERA, MANUEL T. CO, SALLY L. CO, STANLEY L. TAN, ROCHELLE E. VICENCIO, LIZA R. MAGAWAY, JANICE L. CO, VIVENCIO ABAÑO, GREG YU, EDWIN AGUSTIN, VICTOR D. PIAMONTE, UNIOIL PETROLEUM PHILIPPINES, INC., and OILINK, INTERNATIONAL, INC., Respondents.	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR. PEREZ, MENDOZA, REYES,* PERLAS-BERNABE, LEONEN, and JARDELEZA, *JJ.*
	Promulgated: September 8, 2015

x - x

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals

---
* On leave.

(*CA*) Resolutions dated March 26, 2010[1] and August 4, 2010,[2] and to reinstate the petition for *certiorari* in CA-G.R. SP No. 113069, or in the alternative, to issue a decision finding probable cause to prosecute the private respondents for violation of Sections 3601 and 3602, in relation to Sections 2503 and 2530, paragraphs f and l (3), (4) and (5) of the Tariff and Customs Code of the Philippines (*TCCP*), as amended.

The antecedents are as follows:

Private respondent UNIOIL Petroleum Philippines, Inc. is engaged in marketing, distribution, and sale of petroleum, oil and other products, while its co-respondent OILINK International, Inc. is engaged in manufacturing, importing, exporting, buying, selling, or otherwise dealing in at wholesale and retails of petroleum, oil, gas and of any and all refinements and by-products thereof. Except for respondent Victor D. Piamonte who is a Licensed Customs Broker, the following private respondents are either officers or directors of UNIOIL or OILINK:

1. Paul Chi Ting Co – Chairman of UNIOIL and OILINK
2. Kenneth Pundanera – President/Director of UNIOIL
3. Manuel T. Co – Officer/Director of UNIOIL
4. Sally L. Co – Officer/Director of UNIOIL
5. Stanley L. Tan – Officer/Director of UNIOIL
6. Rochelle E. Vicencio – Corporate Administrative Supervisor of UNIOIL
7. Liza R. Magaway – President of OILINK
8. Janice L. Co – Director of OILINK
9. Vivencio Abaño – Director of OILINK
10. Greg Yu – Director of OILINK
11. Edwin Agustin – Corporate Secretary of OILINK

On January 30, 2007, Commissioner Napoleon L. Morales of petitioner Bureau of Customs (*BOC*) issued Audit Notification Letter (*ANL*) No. 0701246,[3] informing the President of OILINK that the Post Entry Audit Group (*PEAG*) of the BOC will be conducting a compliance audit, including the examination, inspection, verification and/or investigation of all pertinent records of OILINK's import transactions for the past three (3)-year period counted from the said date.

On March 2, 2007, a pre-audit conference was held between the BOC Audit Team[4] and the representatives of OILINK.[5] During the conference, the

---

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Isaias P. Dicdican and Florito S. Macalino, concurring; *rollo*, p. 273.

[2] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Michael P. Elbinias and Florito S. Macalino, concurring; *id.* at 306-308.

[3] *Rollo*, p. 130.

[4] Composed of Atty. Balmyrson M. Valdez (Team Leader), Ma. Elenita A. Salcedo (Team Head), Henry D. Angeles and Deo Augustus Y. Yalong.

Audit Team explained to OILINK representatives the purpose of the post-entry audit and the manner by which it would be conducted, and advised it as to the import documents required for such audit.

On March 14, 2007, OILINK submitted to the Audit Team the following documents: Post-Entry Audit Group General Customs Questionnaire, General Information Sheet for the year 2006, SEC Registration, Articles of Incorporation, Company By-laws, and Audited Financial Report for the year 2005.

On April 20, 2007, the Audit Team requested OILINK to submit the other documents stated in the List of Initial Requirements for Submission, namely: 2004 Audited Financial Report, 2004-2006 Quarterly VAT Returns with the accompanying schedule of importations, Organizational chart/structure, and List of foreign suppliers with details on the products imported and the total amount, on a yearly basis.

On May 7, 2007, OILINK expressed its willingness to comply with the request for the production of the said documents, but claimed that it was hampered by the resignation of its employees from the Accounting and Supply Department. OILINK also averred that it would refer the matter to the Commissioner of Customs in view of the independent investigation being conducted by the latter.

On June 4, 2007, OILINK sent a letter stating that the documents which the Audit Team previously requested were available with the Special Committee of the BOC, and that it could not open in the meantime its Bureau of Internal Revenue (*BIR*) – registered books of accounts for validation and review purposes.

In a letter dated July 11, 2007, the Audit Team informed OILINK of the adverse effects of its request for the postponement of the exit conference and its continuous refusal to furnish it the required documents. It advised OILINK that such acts constitute as waiver on its part to be informed of the audit findings and an administrative case would be filed against it, without prejudice to the filing of a criminal action.

On July 24, 2007, Commissioner Morales approved the filing of an administrative case against OILINK for failure to comply with the requirements of Customs Administrative Order (*CAO*) No. 4-2004.[6] Such case was filed on July 30, 2007.

---

[5] Composed of Liza Magaway and Atty. Raymond Zorilla, OILINK's Executive Vice-President and Corporate Counsel, respectively.

[6] CA *rollo*, p. 63.

On September 20, 2007, an Order was issued by the Legal Service of the BOC, submitting the case for resolution in view of OILINK's failure to file its Answer within the prescribed period.

On December 14, 2007, the Legal Service of the BOC rendered a Decision finding that OILINK violated Section IV.A.2(c) and (e) of CAO 4-2004[7] when it refused to furnish the Audit Team copies of the required documents, despite repeated demands. The dispositive portion of the Decision states:

> **WHEREFORE**, in view of the foregoing, this Office finds herein respondent liable for violating Sections IV.A.2 (c) and (e) of Customs Administrative Order No. 4-2004, and a DECISION is hereby rendered:
>
> 1. Ordering OILINK INTERNATIONAL CORPORATION to pay the equivalent of twenty percent (20%) ad valorem on the article/s subject of the Importation

---

[7] SEC. IV. RECORDKEEPING AND COMPLIANCE AUDIT

a. Recordkeeping

x x x x

2. The following records are required to be kept by importers:

x x x x

c. Shipping, importation, exportation, and transportation documentation including the following to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the import entry and necessary for the purpose of collecting the proper duties and taxes on imports, as the case may be:

1. Import and/or export entry;
2. Invoice and or consignment notes;
3. Import and export licenses/permit;
4. Ocean bill of lading, and/or master air waybill, and/or house air waybill, and/or consolidator bill of lading;
5. Shipping instructions and/or freight forwarders instructions;
6. Certificates of Origin, and/or Certificates of Eligibility, and/or Certificate of Inspection and/or Loading;
7. Freight and insurance contracts;
8. Packing Lists;
9. Transhipment permits, and/or boatnotes, and/or special permits to transfer;
10. Quota Allocation and/or Certificates;
11. Customs brokerage agreements, and/or billings, and/or statement of accounts, and/or receipts,
12. Receipts for arrester charges, cargo handling and storage fees;
13. Short shipped/bad order reports, if applicable;
14. Goods tally records, if applicable;
15. Letter of credits, application for letter of credit banks details;
16. Remittance advice;
17. Credit Card Transactions;
18. Telegraphic money transfers;
19. Offshore monetary transactions; and
20. Evidence of payments by any other means, including information detailing non-cash compensation transactions.

x x x x

e. The following bank documents, financial statements, and other accounting information to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the import entry and necessary for the purpose of collecting proper duties and taxes on imports;

1. Receipts, cashbooks;
2. Schedules of accounts payables and accounts receivables and
3. Cheque records.

x x x x

> for which no records were kept and maintained as prescribed in Section 2504 of the Customs Code in the amount of **Pesos: Two Billion Seven Hundred Sixty-Four Million Eight Hundred Fifty-Nine Thousand Three Hundred Four and 80/100 (Php 2,764,859,304.80);**
>
> 2. Ordering the Bureau of Customs to hold the delivery or release of subsequent imported articles to answer for the fine, any revised assessment, and/or as a penalty for failure to keep records.
>
> This is without prejudice to the filing of a criminal case or any appropriate legal action against the importer in order to protect the interest of the government and deter other importers from committing the same offense.
>
> SO ORDERED.[8]

Pursuant to the Decision dated December 14, 2007, Commissioner Morales, in a letter[9] of even date, directed the President of OILINK to pay the BOC the administrative fine of □2,764,859,304.80 for violation of CAO No. 4-2004, in relation to Section 2504 of the TCCP. Copy of the said Decision and letter were served to OILINK through personal service on December 28, 2007.[10]

On March 13, 2008, Atty. Noemi B. Alcala, Officer-in-Charge, Collection Service, Revenue and Monitoring Group, sent a final demand letter for OILINK to settle the administrative fine, otherwise, the BOC will be compelled to file the necessary legal action and put in force Section 1508[11] of the TCCP against its succeeding shipments to protect the government's interest.[12]

On April 23, 2008, a Hold Order[13] was issued by Horacio P. Suansing, Jr., District Collector, Port of Manila, against all shipments of OILINK for failure to settle its outstanding account with the BOC and to protect the interest of the government pursuant to Section 1508 of the TCCP.

---

8 *Rollo*, pp. 137-138. (Emphasis added)

9 *Id.* at 139.

10 CA *rollo*, p. 9.

11 SEC. 1508. *Authority of the Collector of Customs to Hold the Delivery or Release of Imported Articles.* - Whenever any importer, except the government, has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any article imported or consigned to such importer unless subsequently authorized by the Commissioner of Customs, and upon notice as in seizure cases, he may sell such importation or any portion thereof to cover the outstanding account of such importer; Provided, however, That at any time prior to the sale, the delinquent importer may settle his obligations with the Bureau of Customs, in which case the aforesaid articles may be delivered upon payment of the corresponding duties and taxes and compliance with all other legal requirements.

12 *Rollo*, p. 140.

13 *Id*. at 141.

On May 2, 2008, Rochelle E. Vicencio, Corporate Administrative Supervisor of UNIOIL, citing the existing Terminalling Agreement dated January 2, 2008 with OILINK for the Storage of UNIOIL's aromatic process oil and industrial lubricating oils (collectively, "base oils"), requested District Collector Suansing Jr. to allow it to withdraw base oils from OILINK's temporarily closed Terminal.

On May 6, 2008, Commissioner Morales granted the request of UNIOIL to withdraw its base oils stored at OILINK's terminal/depot based on the Terminalling Agreement between the two companies, subject to the following conditions:

> 1. Only Unioil products shall be withdrawn subject to proper inventory by the BIR and BOC.
> 2. Appropriate duties and taxes due on the products to be withdrawn are fully paid or settled.
> 3. The company should allow the operation/withdrawal to be closely monitored and continuously underguarded by assigned Customs personnel.[14]

On May 9, 2008, a Warrant of Seizure and Detention (*WSD*), docketed as Seizure Identification (*S.I.*) No. 2008-082, was issued by District Collector Suansing Jr., directing the BOC officials to seal and padlock the oil tanks/depots of OILINK located in Bataan.

On May 12, 2008, Kenneth C. Pundanera, Operations Manager of UNIOIL, requested Zaldy E. Almoradie, District Collector of Mariveles, Bataan, for permission to release UNIOIL-owned products from OILINK's storage terminal. Pertinent portion of the request letter reads:

> Unioil is a licensed importer of various Petroleum Products by virtue of its import license LTAD-0-021-2002 issued on March 26, 2002 which was revised to include all other petroleum products in 2007 through LTAMII (P) 001-10-07-13639. To pursue its line of business, Unioil has an existing Terminalling Agreement with Oilink for the storage of various Unioil products at the Oilink terminal located at Lucanin Pt., Mariveles, Bataan.
>
> In view of the said temporary closure of Oilink's terminal, Unioil is currently unable to fully utilize its leased tanks as well as make use of the products contained therein. We understand that there is still an unresolved issue between Oilink and the Bureau of Customs. However, with all due respect, said issue should not affect Unioil because it is not a party to the same, furthermore there is a legal and binding terminalling agreement between Oilink and Unioil which should be honored.

---

14 *Id.* at 145.

> Last May 8, 2008, an asphalt importation for Unioil Petroleum Philippines, Inc. arrived in Mariveles, Bataan. This was issued the corresponding discharging permit by the Bureau of Customs. All duties, excise taxes and value added taxes for this product have already been settled. However, we are still unable to withdraw these products in order to serve our customers who are using the product to supply major government infrastructure projects in the country.
>
> In line with the endorsement coming from the Bureau of Customs Commissioner Napoleon D. Morales issued last May 6, 2008, Unioil has complied with the conditions stipulated therein which are:
>
> 1. Only Unioil products shall be withdrawn subject to proper inventory by the BIR and BOC.
> 2. Appropriate duties and taxes due on the products to be withdrawn are fully paid or settled.
> 3. The company (Unioil) should allow the operation/withdrawal to be closely monitored and continuously underguarded by assigned Customs personnel.
>
> In this regard, may we respectfully request your good office to please allow Unioil to withdraw from Oilink's terminal its products which are stored in the following tanks[:][15]

TANK	PROD	CONTENTS (Liters)
2	diesel	2,171,670.00
6	rexo	1,862,846.00
10	asphalt	4,573.14
13	gasoline	809,345.00
14	gasoline	746,629.00
17	diesel	360,097.00
19	sn 500	203,659.00
20	sn 500	643,236.00

In the same request letter, District Collector Almoradie approved the release of the above petroleum products through a handwritten note dated May 12, 2008: "All concerned: Pls. allow the release of the Unioil-owned products from the Oilink Storage Terminal *per this request.* Thanks."[16]

On May 15, 2008, Pundanera wrote a clarificatory letter pursuant to the verbal instruction of District Collector Almoradie to explain the withdrawal of products from the Terminal of OILINK, to wit:

---

15 *Id.* at 156-157.
16 *Id.* at 157.

> As far as Unioil is concerned, we affirm to your good office that the products withdrawn/loaded at the Terminal are entirely Unioil products. Unioil owns these products pursuant to its supply and terminalling agreements with Oilink. (We shall be submitting to you copies of these documents as soon as they arrive from our office in Manila.) In addition, due to the issue involving Oilink and the Bureau of Customs, Unioil was forced to secure its petroleum products from local sources in order to comply with its valid contractual commitments.
>
> Unioil intended to withdraw these products because it believed in good faith and based on documents in its possession that it is allowed to do so. Unioil based its intention pursuant to the Indorsements of the Collector of the Port of Manila as well as the Office of the Commissioner that allowed the withdrawal of Unioil products subject to compliance with the three (3) conditions specified in the abovementioned Indorsements.
>
> This being the precedent, we believe in good faith that, since Unioil owns the products, and it is considered a stranger to the issue between Oilink and the Bureau, then Unioil is allowed to withdraw the products it owns subject to the compliance with the three (3) stated conditions. Besides, any withdrawal is covered by an appropriate delivery receipt, which would clearly indicate that Unioil owns the products being withdrawn.[17]

In a complaint-affidavit dated December 15, 2008, Atty. Balmyrson M. Valdez, a member of the petitioner BOC's Anti-Oil Smuggling Coordinating Committee that investigated the illegal withdrawal by UNIOIL of oil products consigned to OILINK, valued at ₱181,988,627.00 with corresponding duties and taxes in the amount of ₱35,507,597.00, accused the private respondents of violation of Sections 3601[18] and 3602,[19] in

---

17 *Id.* at 159.

18 Sec. 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 and shall be punished with:

1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days, if the appraised value, to be determined in the manner prescribed under the Tariff and Customs Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;
2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed under the Tariff and Customs Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;
3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed under the Tariff and Customs Code, including duties and taxes, of the article unlawfully imported is more than fifty thousand pesos but does not exceed one hundred thousand pesos.
4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under the Tariff and Customs Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos.
5. The penalty of prision mayor shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of reclusion perpetua to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceeding for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed

relation to Sections 2503[20] and 2530,[21] paragraphs f and l (3), (4) and (5), of the TCCP.

In a letter[22] dated December 15, 2008, Commissioner Morales referred to the Office of Chief State Prosecutor Jovencito R. Zuño the said complaint-affidavit, together with its annexes, for preliminary investigation. During the said investigation, BOC's counsel appeared and all of the private

---

and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When, upon trial for a violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court: *Provided*, *however*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section. (R.A. No. 4712, June 18, 1966).

[19] Sec. 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 offense, be punished in accordance with the penalties prescribed in the preceding section. (R.A. No. 4712, June 18, 1966)

[20] Sec. 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. (R.A. No. 7651, June 04, 1993).

[21] Sec. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws*. – Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

x x x x

f. Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

x x x x

m.. 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.

(5) Through any other fraudulent practice or device by means of which such articles was entered through a customhouse to the prejudice of the government.

[22] *Rollo*, pp. 454-458.

respondents submitted their respective counter-affidavits.

In a Resolution[23] dated May 29, 2009, public respondent Arman A. De Andres, State Prosecutor of the Department of Justice (*DOJ*), recommended the dismissal of the complaint-affidavit for lack of probable cause. The Resolution was approved by public respondents Assistant Chief State Prosecutor Pedrito L. Rances and Chief State Prosecutor Zuño. On automatic review, the Resolution was affirmed by then Secretary of Justice Raul M. Gonzales.[24]

Dissatisfied, the BOC filed a motion for reconsideration which was denied by the public respondent, the Acting Secretary of Justice Agnes VST Devanadera, in a Resolution[25] dated December 28, 2009.

On March 11, 2010, the BOC filed a petition for *certiorari* with the CA.

In the Resolution dated March 26, 2010, the CA dismissed outright the petition due to procedural defects:

> The instant petition (i) contains no explanation why service thereof was not done personally (Sec. 11, Rule 13, 1997 Rules of Civil Procedure); (ii) shows that it has no proper verification and certification against forum shopping and (iii) the docket and other lawful fees payment is short by ₱1,530.00.[26]

In the Resolution dated August 4, 2010, the CA denied the private respondents' motion for reconsideration of the March 26, 2010 Resolution, as follows:

> We made a cursory examination of the petition filed in this case as well as the whole *rollo* of the case. It is our finding that, up to the date hereof, the petitioner has not duly submitted to this Court another set of petition with a certification against forum shopping embodied therein or appended thereto. Thus, the petition really suffers from a fatal defect until now, and so, the petitioner has to bear the consequence thereof.[27]

The CA stressed that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the

---

23 *Id.* at 118-127.
24 *Id.* at113-114.
25 *Id.* at 96-99.
26 *Id.* at 273.
27 *Id.* at 306-307.

degree of thoughtlessness in not complying with the procedure prescribed. While it is true that litigation is not a game of technicalities, this does not mean that Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.

Aggrieved, the BOC filed the instant petition for review on *certiorari*, raising the following issues:

> WHETHER THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT DENIED PETITIONER'S MOTION FOR RECONSIDERATION SOLELY ON THE GROUND THAT, ALLEGEDLY, IT DID NOT RECEIVE THE SECOND AND COMPLETE COPY OF THE PETITION, CONTAINING THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.
>
> WHETHER THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN LAW AND JURISPRUDENCE WHEN IT AFFIRMED ITS 26 MARCH 2010 RESOLUTION, DISMISSING THE PETITION ON ACCOUNT OF MERE TECHNICALITIES.
>
> WHETHER THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT DID NOT LOOK INTO THE MERITS OF THE CASE, WHERE IT WAS CLEARLY ESTABLISHED THAT THERE IS PROBABLE CAUSE TO INDICT RESPONDENTS FOR TRIAL FOR VIOLATION OF SECTION 3601 AND 3602 IN RELATION TO SECTION 2530, PARAGRAPHS (E), AND SECTION 3604 (D), (E), (F), AND (H) OF THE TCCP, AS AMENDED.[28]

The petition is partly meritorious.

Although the question of jurisdiction over the subject matter was not raised at bench by either of the parties, the Court will first address such question before delving into the procedural and substantive issues of the instant petition. After all, it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, even though such question is not raised by any of the parties.[29] Courts are bound to take notice of the limits of their authority and, even if such question is neither raised by the pleadings nor suggested by counsel, they may recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[30] Besides, issues or errors not raised by the parties may be resolved by the Court where, as in this case, the issue is one of jurisdiction; it is necessary in

---

28 *Id.* at 33.

29 20 Am. Jur. 2d, Courts, §92, 1965.

30 *Ace Publications, Inc. v. Commissioner of Customs*, 120 Phil. 143, 149 (1964), citing 15 C.J. 852.

arriving at a just decision; and the resolution of the issues raised by the parties depend upon the determination of the unassigned issue or error, or is necessary to give justice to the parties.[31]

On the issue of whether or not the CA has *certiorari* jurisdiction over the resolution of the Acting Secretary of Justice, affirming the dismissal of the complaint-affidavit for violation of provisions of the TCCP due to lack of probable cause, the Court rules in negative.

The elementary rule is that the CA has jurisdiction to review the resolution of the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[32] However, with the enactment[33] of Republic Act (*R.A.*) No. 9282, amending R.A. No. 1125[34] by expanding the jurisdiction of the CTA, enlarging its membership and elevating its rank to the level of a collegiate court with special jurisdiction, it is no longer clear which between the CA and the CTA has jurisdiction to review through a petition for *certiorari* the DOJ resolution in preliminary investigations involving tax and tariff offenses.

Apropos is *City of Manila v. Hon. Grecia-Cuerdo*[35] where the Court *en banc* declared that the CTA has appellate jurisdiction over a special civil action for *certiorari* assailing an interlocutory order issued by the RTC in a local tax case, despite the fact that there is no categorical statement to that effect under R.A. No. 1125, as well as the amendatory R.A. No. 9282. Thus:

> x x x Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of *certiorari*, prohibition and *mandamus*. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of *certiorari*, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of *certiorari*, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.
>
> The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and

---

31 *Villaflores v. Ram System Services, Inc.*, 530 Phil. 749, 763 (2006).
32 *Hasegawa v. Giron*, G.R. No. 184536, August 14, 2013, 703 SCRA 549, 558.
33 Passed into law on March 30, 2004.
34 An Act Creating the Court of Tax Appeals.
35 G.R. No. 175723, February 4, 2014, 715 SCRA 182.

enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

x x x x

Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.

If this Court were to sustain petitioners' contention that jurisdiction over their *certiorari* petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus, the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for *certiorari* seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.

Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of *certiorari* against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of *certiorari* when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of *certiorari*

in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing disquisitions, it can be reasonably

> concluded that the authority of the CTA to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.[36]

Since the Court ruled in *City of Manila v. Hon. Grecia-Cuerdo*[37] that the CTA has jurisdiction over a special civil action for *certiorari* questioning an interlocutory order of the RTC in a local tax case *via* express constitutional mandate and for being inherent in the exercise of its appellate jurisdiction, it can also be reasonably concluded based on the same premise that the CTA has original jurisdiction over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses.

If the Court were to rule that jurisdiction over a petition for *certiorari* assailing such DOJ resolution lies with the CA, it would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative intent, especially considering that R.A. No. 9282 expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power.[38]

Concededly, there is no clear statement under R.A. No. 1125, the amendatory R.A. No. 9282, let alone in the Constitution, that the CTA has original jurisdiction over a petition for *certiorari*. By virtue of Section 1, Article VIII of the 1987 Constitution, vesting judicial power in the Supreme Court and such lower courts as may be established by law, to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government, in relation to Section 5(5), Article VIII thereof, vesting upon it the power to promulgate rules concerning practice and procedure in all courts, the Court thus declares that the CA's original jurisdiction[39] over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses was necessarily transferred to the CTA pursuant to Section 7 of R.A. No. 9282,[40] and that such petition shall be governed by Rule 65 of the

---

[36] *City of Manila v. Hon. Grecia-Cuerdo, supra,* at 201-206. (Emphasis in the original; citation omitted)

[37] *Supra* note 35.

[38] *Id.*

[39] Section 9 (1), BP Blg. 129 – The Court of Appeals shall exercise: (1) Original jurisdiction to issue writs of *mandamus*, prohibition, *habeas corpus*, and *quo warranto* and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction.

[40] Sec. 7. *Jurisdiction.* - The CTA shall exercise:

x x x x

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. **Exclusive original jurisdiction over all criminal offenses arising from violations of the**

Rules of Court, as amended. Accordingly, it is the CTA, not the CA, which has jurisdiction over the petition for *certiorari* assailing the DOJ resolution of dismissal of the BOC's complaint-affidavit against private respondents for violation of the TCCP.

On the procedural issue of whether the CA erred in dismissing the petition for *certiorari* on the sole ground of lack of verification and certification against forum shopping, the Court rules in the affirmative, despite the above discussion that such petition should have been filed with the CTA.

In *Traveño, et al. v. Bobongon Banana Growers Multi-Purpose Cooperative*, *et al.*,[41] the Court restated the jurisprudence on non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."
> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping

---

National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized. (Emphasis added)

[41] 614 Phil. 222 (2009).

> substantially complies with the Rule.
> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[42]

While it admittedly filed a petition for *certiorari* without a certification against forum shopping on March 11, 2010, the BOC claimed to have subsequently complied with such requirement by filing through registered mail a complete set of such petition, the following day which was also the last day of the reglementary period. The problem arose when the CA failed to receive such complete set of the petition for *certiorari* with the verification and certification against forum shopping. In support of the motion for reconsideration of the CA's March 26, 2010 resolution which dismissed outright the petition, the BOC asserted that it filed a complete set of petition by registered mail. It also submitted an affidavit of the person who did the mailing as required by Section 12,[43] Rule 13 of the Rules of Court, including the registry receipt numbers, but not the receipts themselves which were allegedly attached to the original copy mailed to the CA. Instead of ordering the BOC to secure a certification from the postmaster to verify if a complete set of the petition was indeed filed by registered mail, the CA – after examining the whole case *rollo* and finding that no other set of petition with a certification against forum shopping was duly submitted – denied the motion for reconsideration.

Faced with the issue of whether or not there is a need to relax the strict compliance with procedural rules in order that the ends of justice may be served thereby and whether "special circumstances or compelling reasons" are present to warrant a liberal interpretation of such rules, the Court rules – after a careful review of the merits of the case – in the affirmative.

Despite the BOC's failed attempt to comply with the requirement of verification and certification against forum shopping, the Court cannot simply ignore the CA's perfunctory dismissal of the petition on such sole procedural ground vis-à-vis the paramount public interest in the subject matter and the substantial amount involved, *i.e.,* the alleged illegal withdrawal of oil products worth □181,988,627.00 with corresponding duties and taxes worth □35,507,597.00. Due to the presence of such special

---

[42] *Traveño, et al. v. Bobongon Banana Growers Multi-Purpose Cooperative, et al., supra,* at 231-232, citing *Vda. De Formoso, et al. v. Philippine National Bank, et al.,* 665 Phil. 184, 193-194 (2011).

[43] *Sec. 12. Proof of filing* - The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same; **if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to sender after ten (10) days if not delivered.** (Emphasis added)

circumstances and in the interest of justice, the CA should have at least passed upon the substantive issue raised in the petition, instead of dismissing it on such procedural ground. Although it does not condone the failure of BOC to comply with the said basic requirement, the Court is constrained to exercise the inherent power to suspend its own rules in order to do justice in this particular case.

Given that the petition for *certiorari* should have been filed with the CTA, the mistake committed by the BOC in filing such petition before the CA may be excused. In this regard, Court takes note that nothing in R.A. No. 1125, as amended by R.A. No. 9282, indicates that a petition for *certiorari* under Rule 65 may be filed with the CTA. Despite the enactment of R.A. No. 9282 on March 30, 2004, it was only about ten (10) years later in the case of *City of Manila v. Hon. Grecia-Cuerdo*[44] that the Court ruled that the authority of the CTA to take cognizance of such petitions is included in the powers granted by the Constitution, as well as inherent in the exercise of its appellate jurisdiction. While the rule on perfection of appeals cannot be classified as a difficult question of law,[45] mistake in the construction or application of a doubtful question of law, as in this case, may be considered as a mistake of fact, excusing the BOC from the consequences of the erroneous filing of its petition with the CA.

As the CA dismissed the petition for *certiorari* solely due to a procedural defect without resolving the issue of whether or not the Acting Secretary of Justice gravely abused her discretion in affirming the dismissal of the BOC's complaint-affidavit for lack of probable cause, the Court ought to reinstate the petition and refer it to the CTA for proper disposition. For one, as a highly specialized court specifically created for the purpose of reviewing tax and customs cases,[46] the CTA is dedicated exclusively to the study and consideration of revenue-related problems, and has necessarily developed an expertise on the subject.[47] For another, the referral of the petition to the CTA is in line with the policy of hierarchy of courts in order to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of its docket.[48]

Be that as it may, the Court stressed in *The Diocese of Bacolod v. Commission on Elections*[49] that the doctrine of hierarchy of courts is not an iron-clad rule, and that it has full discretionary power to take cognizance and

---

44 *Supra* note 35.
45 *Santos v. Velarde*, 450 Phil. 381 (2003)
46 *Chevron Phils., Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 737 (2008).
47 *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012, 672 SCRA 350.
48 *Cabarles v. Hon. Maceda*, 545 Phil. 210, 223 (2007).
49 G.R. No. 205728, January 21, 2015. (Citations omitted).

assume jurisdiction over special civil actions for certiorari filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. Recognized exceptions to the said doctrine are as follows: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter; (d) the constitutional issues raised are better decided by the Court; (e) where exigency in certain situations necessitate urgency in the resolution of the cases; (f) the filed petition reviews the act of a constitutional organ; (g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[50] Since the present case includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, as well as to avoid multiplicity of suits and further delay in its disposition, the Court shall directly resolve the petition for certiorari, instead of referring it to the CTA.

On the substantive issue of whether the Acting Secretary of Justice gravely abused her discretion in affirming the dismissal of the BOC's complaint-affidavit for lack of probable cause, the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor and to the DOJ the determination of what constitutes sufficient evidence to establish probable cause. As the Court explained in *Unilever Philippines, Inc. v. Tan*:[51]

> The determination of probable cause for purposes of filing of information in court is essentially an executive function that is lodged, at the first instance, with the public prosecutor and, ultimately, to the Secretary of Justice. The prosecutor and the Secretary of Justice have wide latitude of discretion in the conduct of preliminary investigation; and their findings with respect to the existence or non-existence of probable cause are generally not subject to review by the Court.
>
> Consistent with this rule, the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor and to the DOJ the determination of what constitutes sufficient evidence to establish probable cause. Courts can neither override their determination nor substitute their own judgment for that of the latter. They cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.

---

50 *Diocese of Bacolod v. Commission on Elections, supra.*

51 G.R. No. 179367, January 29, 2014, 715 SCRA 36.

> Nevertheless, this policy of non-interference is not without exception. The Constitution itself allows (and even directs) court action where executive discretion has been gravely abused. In other words, the court may intervene in the executive determination of probable cause, review the findings and conclusions, and ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[52]

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[53] As explained in *Sy v. Secretary of Justice,*[54] citing *Villanueva v. Secretary of Justice*:[55]

> x x x [Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause"; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. **It is enough that it is believed that the act or omission complained of constitutes the offense charged.** Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[56]

To find out if there is a reasonable ground to believe that acts or ommissions complained of constitute the offenses charged, the Court must first examine whether or not the allegations against private respondents in the BOC's complaint-affidavit constitute the offenses of unlawful importation under Section 3601 and various fraudulent practices against customs revenue under Section 3602 of the TCCP.

In *Jardeleza v. People,*[57] the Court discussed the concepts of unlawful importation under Section 3601 of the TCCP, and various fraudulent practices against customs revenue under Section 3602 thereof, thus:

> Section 3601 of the TCC was designed to supplement the existing provisions of the TCC against the means leading up to smuggling, which might render it beneficial by a substantive and criminal statement separately providing for the punishment of smuggling. The law was intended not to merge into one and the same offense all the many acts

---

52 *Unilever Philippines, Inc. v. Tan, supra*, at 44-45.
53 *Alejandro, et al. v. Atty. Jose A. Bernas, et al.*, 672 Phil. 698, 707 (2011).
54 540 Phil. 111, 117 (2006).
55 512 Phil. 145 (2005).
56 *Villanueva v. Secretary of Justice, supra,* at 159. (Emphasis added)
57 517 Phil. 179 (2006).

which are classified and punished by different penalties, penal or administrative, but to legislate against the overt act of smuggling itself. This is manifested by the use of the words "fraudulently" and "contrary to law" in the law.

Smuggling is committed by any person who: (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.

The phrase "contrary to law" in Section 3601 qualifies the phrases "imports or brings into the Philippines" and "assists in so doing," and not the word "article." The law penalizes the importation of any merchandise in any manner contrary to law.

The word "law" includes regulations having the force and effect of law, meaning substantive or legislative type rules as opposed to general statements of policy or rules of agency, organization, procedures or positions. An inherent characteristic of a substantive rule is one affecting individual rights and obligations; the regulation must have been promulgated pursuant to a congressional grant of quasi-legislative authority; the regulation must have been promulgated in conformity to with congressionally-imposed procedural requisites.

x x x x

Section 3602 of the TCC, on the other hand, provides:

> Sec. 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 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 knowingly and wilfully 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 wilful act or omission shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.

The provision enumerates the various fraudulent practices against customs revenue, such as 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 fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. 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.
>
> Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform 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.[58]

In unlawful importation, also known as outright smuggling, goods and articles of commerce are brought into the country without the required importation documents, or are disposed of in the local market without having been cleared by the BOC or other authorized government agencies, to evade the payment of correct taxes, duties and other charges. Such goods and articles do not undergo the processing and clearing procedures at the BOC, and are not declared through submission of import documents, such as the import entry and internal revenue declaration.

In various fraudulent practices against customs revenue, also known as technical smuggling, on the other hand, the goods and articles are brought into the country through fraudulent, falsified or erroneous declarations, to substantially reduce, if not totally avoid, the payment of correct taxes, duties and other charges. Such goods and articles pass through the BOC, but the processing and clearing procedures are attended by fraudulent acts in order to evade the payment of correct taxes, duties, and other charges. Often committed by means of misclassification of the nature, quality or value of goods and articles, undervaluation in terms of their price, quality or weight, and misdeclaration of their kind, such form of smuggling is made possible through the involvement of the importers, the brokers and even some customs officials and personnel.

In light of the foregoing discussion, the Court holds that private respondents cannot be charged with unlawful importation under Section 3601 of the TCCP because there is no allegation in the BOC's complaint-affidavit to the effect that they committed any of the following acts: (1) fraudulently imported or brought into the Philippines the subject petroleum

---

[58] *Jardeleza v. People, supra,* at 201-203.

products, contrary to law; (2) assisted in so doing; or (3) received, concealed, bought, sold or in any manner facilitated the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.

The said acts constituting unlawful importation under Section 3601 of the TCCP can hardly be gathered from the following allegations in the BOC's complaint-affidavit:

> 19.1 From May 23, 2007 to February 10, 2008, UNIOIL is not an accredited importer of the BOC;
> 19.2 From the time UNIOIL was accredited on February 11, 2008 until the time of its request to withdraw its oil products on 02 May 2008, they did not import Gasoil (diesel) and Mogas Gasoline;
> 19.3 The Terminalling Agreement allegedly executed between OILINK and UNIOIL was obviously for the purpose of circumventing the Warrant of Seizure and Detention issued against the shipments of OILINK aside from the fact that it was only executed on 02 January 2008 after the decision of the Commissioner finding OILINK liable to pay an administrative fine of Two Billion Seven Hundred Sixty-Four Million Eight Hundred Fifty-Nine Thousand Three Hundred Four Pesos and 80/100 (Php2,764,859,304.80);
> 19.4 Only base oil should have been withdrawn by UNIOIL since it is the only product subject of its request and approved by the Commissioner;
> 19.5 UNIOIL withdrew Gasoil (Diesel) and Mogas which were not covered by importations;
> 19.6 Finally, the illegal release/withdrawal of the oil products deprived the government of the supposed partial payment on the Php2.7 billion liability of OILINK in the approximate amount of Php181,988,627 representing the customs value of the released/withdrawn oil products and estimated duties and taxes of Php35,507,597 due thereon or the total amount of **Php217,496,224.00**.[59]
>
> x x x x
>
> 21.1 When UNIOIL withdrew Gasoil (Diesel) and Mogas without filing the corresponding Import Entry, the shipment becomes unlawful per se and thus falls under unlawful importation under Section 3601 of the Tariff and Customs Code of the Philippines, as amended;
>
> 21.2 The fact that UNIOIL and OILINK executed a belated Terminalling Agreement after the issuance of the Warrant of Seizure and Detention showed the fraudulent intent of the respondents whereby UNIOIL can still withdraw the oil products stored at OILINK's depot likewise in clear violation of section 3601 and 3602 of the Tariff and Customs Code of the Philippines, as amended;
>
> 21.3 The fact that the UNIOIL make [*sic*] it appear that they are the owner of Gasoil (Diesel) and Mogas when in truth and in fact they did not import said products make them liable for [violation of] Section 3602 of

---

59 *Rollo*, pp. 168-169.

> the Tariff and Customs Code of the Philippines, as amended and falsification;[60]

Since the foregoing allegations do not constitute the crime of unlawful importation under Section 3601 of the TCCP, the Acting Secretary of Justice did not commit grave abuse of discretion when she affirmed the State Prosecutor's dismissal the BOC's complaint-affidavit for lack of probable cause.

Neither could private respondents be charged with various fraudulent practices against customs revenue under Section 3602 of the TCCP as the above allegations do not fall under any of the following acts or omissions constituting such crime/s: (1) making or attempting to make any entry of imported or exported article: (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 wilfully 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.

Related to various fraudulent practices against customs revenue by means of undervaluation, misclassification and misdeclaration in the import entry is the following provision of R.A. No. 7651 - An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, as amended:[61]

> Sec. 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

---

60 *Id.* at 171-172.

61 Approved June 4, 1993.

> 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 Sec. 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 Sec. 3602 of this Code**.[62]

A careful reading of the BOC's complaint-affidavit would show that there is no allegation to the effect that private respondents committed 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 which constitute *prima facie* evidence of fraud. Nor is there an allegation that they intentionally committed undervaluation, misdescription, misclassification or misdeclaration in the import entry. Since the allegations in the BOC's complaint-affidavit fall short of the acts or omissions constituting the various fraudulent acts against customs revenue under Section 3602 of the TCCP, the Acting Secretary of Justice correctly ruled that there was no probable cause to believe that they committed such crime/s.

While it is true that the sole office of the writ of *certiorari* is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include a correction of the public respondents' evaluation of the evidence and factual findings thereon, it is sometimes necessary to delve into factual issues in order to resolve the allegations of grave abuse of discretion as a ground for the special civil action of *certiorari.*[63] In light of this principle, the Court reviews the following findings of the Acting Secretary of Justice in affirming the State Prosecutor's dismissal of the BOC's complaint-affidavit for lack of probable cause:

> Respondents are being charged for unlawful importation under Section 3601, and fraudulent practices against customs revenues under Section 3602, of the TCCP, as amended. For these charges to prosper, complainant must prove, first and foremost, that the subject articles were imported. On this score alone, complainant has miserably failed.

---

62 Emphasis added.

63 *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581 (2007).

> Indeed, except for complainant's sweeping allegation, no clear and convincing proof was presented to show that the subject petroleum products (gasoil and mogas) withdrawn by Unioil from the oil depot/terminal of Oilink were imported. For, only when the articles are imported that the importer/consignee is required to file an import entry declaration and pay the corresponding customs duties and taxes. The fact that complainant's record fails to show that an import entry was filed for the subject articles does not altogether make out a case of unlawful importation under Section 3601, or fraudulent practices against customs revenue under Section 3602, of the TCCP, without having first determined whether the subject articles are indeed imported. Thus, in this case, complainant still bears the burden of proof to show that the subject petroleum products are imported, by means of documents other than the import entry declaration, such as but not limited to, the transport documents consisting of the inward foreign manifest, bill of lading, commercial invoice and packing list, all indicating that the goods were bought from a supplier/seller in a foreign country and imported or transported to the Philippines. Instead[,] complainant merely surmised that since the subject products were placed under warrant of seizure and detention[,] they must necessarily be imported. Regrettably, speculation and surmises do not constitute evidence and should not, therefore, be taken against the respondents. x x x Taken in this light, we find more weight and credence in respondent Unioil's claim that the subject petroleum products were not imported by them, but were locally purchased, more so since it was able to present local sales invoices covering the same.
>
> Even assuming *gratia argumenti* that the subject petroleum products were imported, it still behooves the complainant to present clear and convincing proof that the importation was unlawful or that it was carried out through any fraudulent means, practice or device to prejudice the government. But again, complainant failed to discharge this burden.
>
> As can be culled from the records, the warrant of seizure and detention docketed as Seizure Identification No. 2008-082, which covers various gas tanks *already stored* at Oilink's depot/terminal located at Lucanin Pt., Mariveles, Bataan, was issued pursuant to Section 2536, in relation to Section 1508, of the TCCP because of Oilink's failure to pay the administrative fine of P2,764,859,304.80 that was previously meted against the company for its failure/refusal to submit to a post entry audit. In fact, the delivery of all shipments consigned to or handled directly or indirectly by Oilink was put on hold as per order of the Customs Commissioner dated April 23, 2008 pursuant to Section 1508 of the TCCP, also for the same reason. There was nothing on record which shows, or from which it could be inferred, that the warrant of seizure and detention or hold order were imposed pursuant to Section 2530 of the same Code which relates, among others, to unlawfully imported articles or those imported through any fraudulent practice or device to prejudice the government, much less due to non-payment of the corresponding customs duties and taxes due on the shipments/articles covered by the warrant of seizure and detention. Again, what complainant's evidence clearly shows is that Oilink's failure to pay the administrative fine precipitated the issuance of the warrant of seizure and detention and hold order.[64]

---

64 *Rollo*, pp. 97-98. (Citation omitted)

After a careful review of records, the Court affirms the dismissal of the BOC's complaint-affidavit for lack of probable cause, but partly digresses from the reasoning of the Acting Secretary of Justice in arriving at such conclusion. While the Acting Secretary of Justice correctly stated that the act of fraudulent importation of articles must be first proven in order to be charged for violation of Section 3601 of the TCCP, the Court disagrees that proof of such importation is also required for various fraudulent practices against customs revenue under Section 3602 thereof.

As held in *Jardeleza v. People*,[65] the crime of unlawful importation under Section 3601 of the TCCP is complete, in the absence of a *bona fide* intent to make entry and pay duties when the prohibited article enters Philippine territory. Importation, which consists of bringing an article into the country from the outside, is complete when the taxable, dutiable commodity is brought within the limits of the port of entry.[66] Entry through a customs house is not the essence of the act.[67] On the other hand, as regards Section 3602 of the TCCP which particularly deals with the making or attempting to make a fraudulent entry of imported or exported articles, the term "entry" in customs law has a triple meaning, namely: (1) the documents filed at the customs house; (2) the submission and acceptance of the documents; and (3) the procedure of passing goods through the customs house.[68] In view thereof, it is only for charges for unlawful importation under Section 3601 that the BOC must first prove that the subject articles were imported. For violation of Section 3602, in contrast, what must be proved is the act of making or attempting to make such entry of articles.

The Court likewise disagrees with the finding of the Acting Secretary of Justice that the BOC failed to prove that the products subject of the WSD were imported. No such proof was necessary because private respondents themselves presented in support of their counter-affidavits copies of import entries[69] which can be considered as *prima facie* evidence that OILINK imported the subject petroleum products. At any rate, the Acting Secretary of Justice aptly gave credence to their twenty (20) sales invoices[70] covering the dates October 1, 2007 until April 30, 2008 which tend to prove that UNIOIL locally purchased such products from OILINK even before the BOC rendered the Decision dated December 14, 2007 imposing a □2,764,859,304.80 administrative fine, and holding the delivery or release of its subsequently imported articles to answer for the fine, any revised assessment and/or penalty for failure to keep records.

---

65 *Supra* note 57, at 202.
66 *Id.*
67 *Id.*, citing *Tomplain v. United States*, 42 F. 2d 203 (1930).
68 *Id.* at 203.
69 *Rollo*, pp. 236-240; CA *rollo*, pp. 171-175.
70 *Id.* at 216-235; *id*. at 150-170.

The Court also finds as misplaced the BOC's reliance on the Terminalling Agreement dated January 2, 2008 and the Certification[71] that UNIOIL made no importation of Gasoil (diesel) and Mogas gasoline from January 2007 up to June 2008 in order to prove that it illegally imported the said products. Such documentary evidence tend to prove only that UNIOIL was engaged in the importation of petroleum products and that it did not import the said products during the said period. Such documents, however, do not negate the evidence on record which tend to show that OILINK was the one that filed the import entries,[72] and that UNIOIL locally purchased from OILINK such products as indicated in the sales invoices.[73] Not being the importer of such products, UNIOIL, its directors and officers, are not required to file their corresponding import entries. Hence, contrary to the BOC's allegation, UNIOIL's withdrawal of the Gasoil (Diesel) and Mogas gasoline without filing the corresponding import entries can neither be considered as unlawful importation under Section 3601 of the TCCP nor as a fraudulent practice against customs revenue under Section 3602 thereof.

Moreover, the fact that private respondent Paul Chi Ting Co is both the Chairman of UNIOIL and OILINK is not enough to justify the application of the doctrine of piercing the corporate veil. In fact, mere ownership by a single stockholder or by another corporation of a substantial block of shares of a corporation does not, standing alone, provide sufficient justification for disregarding the separate corporate personality.[74] In *Kukan International Corporation v. Hon. Judge Reyes, et al.,*[75] the Court explained the application of the said doctrine in this wise:

> In fine, to justify the piercing of the veil of corporate fiction, it must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings. To be sure, the Court has, on numerous occasions, applied the principle where a corporation is dissolved and its assets are transferred to another to avoid a financial liability of the first corporation with the result that the second corporation should be considered a continuation and successor of the first entity.
>
> In those instances when the Court pierced the veil of corporate fiction of two corporations, there was a confluence of the following factors:
>
> 1. A first corporation is dissolved;

---

71 *Rollo*, p. 161; CA *rollo*, p. 93.
72 *Id.* at 236-240; *id*. at 171-175.
73 *Id.* at 216-235; *id*. at 150-170.
74 *Kukan International Corp. v. Hon. Judge Reyes, et al.*, 646 Phil. 210, 239 (2010), citing *Francisco v. Mejia*, 415 Phil. 153 (2001).
75 *Supra.*

> 2. The assets of the first corporation is transferred to a second corporation to avoid a financial liability of the first corporation; and
> 3. Both corporations are owned and controlled by the same persons such that the second corporation should be considered as a continuation and successor of the first corporation.[76]

Granted that the principle of piercing the veil of corporate entity comes into play only during the trial of the case for the purpose of determining liability,[77] it is noteworthy that even the BOC itself virtually recognized that OILINK and UNIOIL are separate and distinct entities when it alleged that only the base oil products should have been withdrawn by UNIOIL, since they were the only products subject of its request and approved by the Customs Commissioner. As discussed above, however, private respondents were able to present sales invoices which tend to show that UNIOIL locally purchased Gasoil (diesel) and Mogas gasoline products from OILINK. Hence, the BOC cannot invoke the doctrine of piercing the veil of corporate entity in this case.

On a final note, the Court stresses that OILINK, its directors or officers, and Victor D. Piamonte, the Licensed Customs Broker, may still be held liable for various fraudulent practices against customs revenue under Section 3602 of the TCCP, if the final results of the post-entry audit and examination would show that they committed any of the following acts or omissions: (1) making or attempting to make any entry of imported or exported article: (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; or (2) intentional undervaluation, misdescription, misclassification or misdeclaration in the import entries; or (3) undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entries, and the actual value, weight, quantity, or measurement. This is consistent with Section 2301[78] (Warrant for Detention of Property-Cash Bond) of the TCCP which states that nothing therein shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of

---

[76] *Id.* at 237-238.

[77] *Id.* at 234.

[78] SEC. 2301. *Warrant for Detention of Property-Cash Bond.* - Upon making any, seizure, the Collector shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the filing of a cash bond, in an amount to be fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That such importation shall not be released under any bond when there is prima facie evidence of fraud in the importation of the article: Provided, further, That articles the importation of which is prohibited by law shall not be released under any circumstance whomsoever, Provided, finally, That nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the article.

law committed in connection with the importation of articles, which in this case were placed under a WSD for failure of the importer, OILINK, to submit the required post-entry audit documents under CAO No. 4-2004.

In addition, OILINK and its directors or officers may be held liable under Section 16 of R.A. No. 9135:[79]

> SEC. 16. A new section to be known as Section 3611 is hereby inserted in Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:
>
> > SEC. 3611. *Failure to Pay Correct Duties and Taxes on Imported Goods.* - **Any person who, after being subjected to post-entry audit and examination** as provided in Section 3515 of Part 2, Title VII hereof, **is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating, aggravating or extraordinary factors that are clearly established by the available evidence**:
> > (a) Negligence - When the deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by a fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss.
> > (b) Gross Negligence - When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under the statute, it shall be determined to be grossly negligent and punishable by a fine equivalent to not less than two and a half (2 ½) but not more than four (4) times the revenue loss.
> > (c) Fraud - When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by a fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss and imprisonment of not less than two (2) years but not more than eight (8) years.
>
> The decision of the Commissioner of Customs, upon proper hearing, to impose penalties as prescribed in this Section may be appealed in accordance with Section 2402 hereof.[80]

---

[79] An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, As Amended, and For Other Purposes.

[80] Emphasis added.

With respect to the directors or officers of OILINK, they may further be held liable jointly and severally for all damages suffered by the government on account of such violation of Sections 3602 and 3611 of the TCCP, upon clear and convincing proof that they willfully and knowingly voted for or assented to patently unlawful acts of the corporation or was guilty of gross negligence or bad faith in directing its corporate affairs.[81]

WHEREFORE, the petition is **PARTLY GRANTED**. The Court of Appeals Resolutions dated March 26, 2010 and August 4, 2010, in CA-G.R. SP No. 113069, are **REVERSED and SET ASIDE**. The Resolution dated December 28, 2009 of the Acting Secretary of Justice Agnes VST Devanedera, which upheld the State Prosecutor's dismissal of the complaint-affidavit filed by the Bureau of Customs for lack of probable cause, is **AFFIRMED**. This is without prejudice to the filing of the appropriate criminal and administrative charges under Sections 3602 and 3611 of the Tariff and Customs Code of the Philippines, as amended, against private respondents OILINK, its officers and directors, and Victor D. Piamonte, if the final results of the post-entry audit and examination would show that they violated the said provisions.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

---

[81] Corporation Code, Sec. 31. *Liability of directors, trustees or officers.* - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

On leave
BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

MARIA LOURDES P. A. SERENO
Chief Justice