

THIRD DIVISION

[G.R. No. 190487, April 13, 2011]

**BUREAU OF CUSTOMS, PETITIONER, VS. PETER SHERMAN,
MICHAEL WHELAN, TEODORO B. LINGAN, ATTY. OFELIA B.
CAJIGAL AND THE COURT OF TAX APPEALS, RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

Mark Sensing Philippines, Inc. (MSPI) caused the importation of 255, 870,000 pieces of finished bet slips and 205, 200 rolls of finished thermal papers from June 2005 to January 2007. MSPI facilitated the release of the shipment from the Clark Special Economic Zone (CSEZ), where it was brought, to the Philippine Charity Sweepstakes Office (PCSO) for its lotto operations in Luzon. MSPI did not pay duties or taxes, however, prompting the Bureau of Customs (petitioner) to file, under its Run After The Smugglers (RATS) Program, a criminal complaint before the Department of Justice against herein respondents MSPI Chairman Peter Sherman, Managing Director Michael Whelan, Country Manager Atty. Ofelia B. Cajigal and Finance Manager and Corporate Secretary Teodoro B. Lingan, along with Erick B. Ariarte and Ricardo J. Ebuna and Eugenio Pasco, licensed customs broker who acted as agents of MSPI, for violation of Section 3601^[1] *vis-à-vis* Sections 2530 (f) and (l) 5^[2] and 101 (f)^[3] of the Tariff and Customs Code of the Philippines, as amended and Republic Act No. 7916.^[4]

State Prosecutor Rohaira Lao-Tamano, by Resolution of March 25, 2008,^[5] found probable cause against respondents and accordingly recommended the filing of Information against them.

Respondents filed a petition for review^[6] before the Secretary of Justice during the pendency of which the Information was filed on April 11, 2009 before the Court of Tax Appeals (CTA),^[7] the accusatory portion of which reads:

That on or about June 2005 to December 2007, in Manila City, and within the jurisdiction of this Honorable Court, the above named accused, in conspiracy with one another, made forty (40) unlawful importations of 255, 870 pieces of finished printed bet slips and 205, 200 rolls of finished thermal papers from

Australia valued at approximately One Million Two Hundred Forty Thousand Eight Hundred Eighty US Dollars & Fourteen Cents (US\$1,240,880.14), and caused the removal of said imported articles from the Clark Special Economic Zone and delivery thereof to the Philippine Charity Sweepstakes Offices without payment of its corresponding duties and taxes estimated at around Fifteen Million Nine Hundred Seventeen Thousand Six Hundred Eleven Pesos and Eighty Three Cents (Php15,917,611.83) in violation of Section 3601 in relation to Sections 2530 and 101 paragraph (f) of the Tariff and Customs Code of the Philippines to the damage and prejudice of herein complainant.

CONTRARY TO LAW.^[8]

Only respondents Cajigal and Lingan were served warrants of arrest following which they posted cash bail bonds.

By Resolution of March 20, 2009,^[9] the Secretary of Justice *reversed* the State Prosecutor's Resolution and accordingly directed the withdrawal of the Information.

Petitioner's motion for reconsideration having been denied by Resolution of April 29, 2009,^[10] it elevated the case by certiorari before the Court of Appeals, docketed as CA GR SP No. 10-9431.^[11]

In the meantime, Prosecutor Lao-Tamano filed before the CTA a Motion to Withdraw Information with Leave of Court^[12] to which petitioner filed an Opposition.^[13] Respondents, on their part, moved for the dismissal of the Information.

The CTA, by the herein assailed Resolution of September 3, 2009,^[14] granted the withdrawal of, and accordingly dismissed the Information.

Petitioner's motion for reconsideration filed on September 22, 2009^[15] was Noted Without Action by the CTA by Resolution of October 14, 2009, *viz*:

Considering that an Entry of Judgment was already issued in this case on September 23, 2009, **no Motion for Reconsideration of the Resolution dated September 3, 2009 having been filed by State Prosecutor Rohairah Lao-Tamano** of the Department of Justice; the "Motion for Reconsideration of the Resolution dated 3 September 2009" filed on September 22, 2009 by Atty. Christopher F.C. Bolastig of the Bureau of Customs is **NOTED, without action.**

SO ORDERED.^[16] (emphasis partly in the original and partly supplied)

Hence, petitioner's present petition for certiorari.^[17]

The petition is bereft of merit.

It is well-settled that prosecution of crimes pertains to the executive department of the government whose principal power and responsibility is to insure that laws are faithfully executed. Corollary to this power is the right to prosecute violators.^[18]

All criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors.^[19] In the prosecution of special laws, the exigencies of public service sometimes require the designation of special prosecutors from different government agencies to assist the public prosecutor. The designation does not, however, detract from the public prosecutor having control and supervision over the case.

As stated in the above-quoted *ratio* of the October 14, 2009 Resolution of the CTA, it noted without action petitioner's motion for reconsideration, entry of judgment having been made as no Motion for Execution was filed by the State Prosecutor.

By merely noting without action petitioner's motion for reconsideration, the CTA did not gravely abuse its discretion. For, as stated earlier, a public prosecutor has control and supervision over the cases. The participation in the case of a private complainant, like petitioner, is limited to that of a witness, both in the criminal and civil aspect of the case.

Parenthetically, petitioner is not represented by the Office of the Solicitor General (OSG) in instituting the present petition, which contravenes established doctrine^[20] that "the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers."^[21]

IN FINE, as petitioner's motion for reconsideration of the challenged CTA Resolution did not bear the imprimatur of the public prosecutor to which the control of the prosecution of the case belongs, the present petition fails.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

^[1] 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 be have been imported contrary to law shall be guilty of smuggling and shall be punished with:

X X X X

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 proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed 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 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 the payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

[2] 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 subject to forfeiture:

X X X X

(f) Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former:

(l) Any article sought to be imported or exported:

X X X X

5. Through any other practice or device contrary to law by means of which such article was entered through a customhouse to the prejudice of the government.

[3] Section 101. Prohibited Importations. - The importation into the Philippines of the following articles is prohibited:

X X X X

(f) Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof and list of drawings therein.

[4] Otherwise known as the Special Economic Zone Act of 1995.

[5] *Rollo*, pp. 375-386.

[6] *Id.* at 394-413.

[7] The Court of Tax Appeals Second Division is composed of Associate Justices Juanito C. Castañeda (Chairperson), Erlinda P. Uy and Olga Palanca-Enriquez.

[8] *Rollo*, pp. 387-388.

[9] *Id.* at 414-418.

[10] *Id.* at 424-425.

[11] *Id.* at 426-462.

[12] *Id.* at 463-469.

[13] *Id.* at 470-473.

[14] *Id.* at 27-38.

[15] *Ibid.*

[16] *Id.* at 40.

[17] *Id.* at 2-24.

[18] *Webb v. De Leon*, G.R. No. 121234, August 23, 1995, 247 SCRA 652, 685.

[19] Rules of Court, Rule 110, Sec. 5.

[20] *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 194.

[21] Citing Section 35 (1), Chapter 12, Title III, Book IV of the Administrative Code of 1987.

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