



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ALICIA O. FERNANDEZ, G.R. No. 249606
ANTHONY JOEY S. TAN,
REYNALDO V. CESA, and Present:
EDGARDO V. MARTINEZ,
Petitioners,

- versus -

GESMUNDO, *Chairperson, C.J.,*
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:
PEOPLE OF THE PHILIPPINES,
Respondent.

JUL 06 2022

X ----- X

DECISION

ZALAMEDA, J.:

The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime. A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.¹

The Case

This Petition for Review on *Certiorari*² under Rule 45 of the Rules of

¹ *Republic Gas Corporation v. Petron Corporation*, 711 Phil. 348, 362 (2013).

² *Rollo*, 8-29.

Court dated 23 November 2019 under Rule 45 (Petition)³ seeks to reverse and set aside the Decision⁴ dated 27 September 2019 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB Crim. Case No. 048. The CTA *En Banc* affirmed the Decision⁵ dated 20 September 2017 and Resolution dated 19 February 2018⁶ of the First Division of the Court of Tax Appeals (CTA First Division) in CTA Crim. Case No. O-133, finding petitioners Alicia O. Fernandez (Fernandez), Anthony Joey S. Tan (Tan), Reynaldo V. Cesa (Cesa), and Edgardo V. Martinez (Martinez; collectively, petitioners), guilty beyond reasonable doubt of violating Section 3602, in relation to Section 2503, of Republic Act No. (RA) 1937, otherwise known as the Tariff and Customs Code of the Philippines (TCCP),⁷ as amended, and RA 7103⁸.

Antecedents

The Information⁹ dated 25 March 2009 filed before the CTA First Division charged petitioners, together with Jeffrey King (King), and Roger Permejo (Permejo; collectively, the accused) with violation of Section 3602, in relation to Section 2503, of the Tariff and Customs Code of the Philippines (TCCP) and RA 7103.¹⁰ The Information states:

That on or about the period 06 May 2006 to 21 July 2006, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, with intent to defraud the government, did then and there knowingly, willfully, unlawfully, and feloniously import, misdeclare, misclassify and undervalue shipment said to contain 2,406 bundles of round steel bars, valued at Eighty Nine Million Seven Hundred Thirty Seven Thousand One Hundred Twenty Seven Pesos (PhP89,737,127.00) but actually found as reinforced/deformed steel bars, through the use of falsified/spurious shipping documents to evade payment of correct and appropriate duties and taxes due thereon in the aggregate amount of Fifteen Million Eight Hundred Seventy Thousand Four Hundred Thirty Eight Pesos (PhP15,870,438.00) to the damage and prejudice of the government.

³ Id. at 8-36.

⁴ Id. at 135-168; penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperenaza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro and Catherine T. Manahan, and dissented in by Associate Justice Catherine T. Manahan.

⁵ Id. at 37-90; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla.

⁶ Id. at 107-113.

⁷ Approved on 22 June 1957.

⁸ Entitled "AN ACT TO STRENGTHEN THE IRON AND STEEL INDUSTRY AND PROMOTE PHILIPPINE INDUSTRIALIZATION AND FOR OTHER PURPOSES" approved on 08 August 1991; *rollo*, pp. 136,162.

⁹ Id. at 11-12.

¹⁰ Id. at 34.

CONTRARY TO LAW.¹¹ (Emphasis omitted.)

Based on the General Information Sheet (GIS) of Kingson Trading International Corporation (Kingson), petitioners Cesa, Tan, Martinez, and Fernandez are the President, Vice-President, Treasurer, and Corporate Secretary, respectively, of said company.¹² However, under the memorandum of agreement to sell (MOA to Sell) between Kingson and Jeffrey N. Co (Co), King was referred to as the President of Kingson.¹³ Meanwhile, Permejo is a duly licensed customs broker accredited by the Bureau of Customs (BOC).¹⁴

The CTA First Division found probable cause for the issuance of the warrant of arrest against all accused and consequently issued a Warrant of Arrest on 15 April 2009.¹⁵ All accused posted bail.¹⁶ When arraigned, they all pleaded not guilty to the charges. Upon termination of pre-trial, trial ensued where the prosecution and the defense presented their respective versions of the facts.¹⁷

The following facts were thus established:

On 06 May 2006, a shipment of 2,406 steel products on board the vessel of S/S "Rich Ocean" with Registry No. PSI-001 arrived at the Port of Manila from the People's Republic of China.¹⁸ While the import entry was being processed at the Formal Entry Division (FED) of the BOC, the assigned customs examiner readjusted the declared customs value of subject shipment and imposed the additional duties and taxes in the amount of ₱544,264.00. Thus, the total duties and taxes paid by Kingson amounted to ₱5,795,304.00.¹⁹

Before the shipment could be released from customs' custody, agents of the Customs Intelligence and Investigation Service (CIIS) received instruction to proceed to Pier 9 to verify whether there was a huge discrepancy between the actual value of the subject shipment and the declared customs value as appearing on the import entry.²⁰ Upon evaluation, the Officer-on-Case (OOC) issued a memorandum to the CIIS Director stating that: *"perusal of the entry reveals that the shipment was declared as*

¹¹ Id. at 137-138.

¹² Id. at 479.

¹³ Id. at 460.

¹⁴ Id. at 478-479.

¹⁵ Id. at 138.

¹⁶ Id.

¹⁷ Id. at 140-147.

¹⁸ Id. at 140.

¹⁹ Id.

²⁰ Id.



2,406 bundles **round bars** with the rate of 1%; however, it turns out that the shipment were consist (sic) of **rebars** and carries a rate of 7%. Likewise, it was noted that the value utilized was only **\$0.26/kg**, but should be **\$0.48/kg**.²¹ Accordingly, the Director of the CIIS recommended the issuance of Warrant of Seizure and Detention (WSD) against the entire shipment for alleged violation of Section 2503, in relation to Section 2530, of the TCCP.²² The District Collector, Port of Manila then issued a WSD against the entire shipment, docketed as Seizure Identification No. 2006-747, with a directive to seize the articles.²³

On 24 May 2006, Co filed a Motion for Intervention through his counsel. He claimed he is the owner of 1,000 tons of steel shipment subject of the seizure proceedings, as evidenced by the MOA to Sell between him and Kingson.²⁴ He also manifested that 700 bundles of the seized steel bars had already been delivered to his warehouse; thus, the same should be excluded from the coverage of the WSD.²⁵

Subsequently, Kingson filed a Motion to Quash/Recall the WSD averring there is no probable cause for its issuance. Kingson cited the alleged failure of the OOC to state the tariff classification of the subject shipment and the specific subsection of Section 2530 of the TCCP allegedly violated. Further, Kingson advanced that if there was a misclassification, the same does not merit the seizure of the shipment and misclassification is not included in the violations under Section 2503 of the TCCP.²⁶

During the hearing on the seizure case, the government prosecutor requested for a chemical analysis of the seized articles to be conducted by Metals Industry Research and Development Center (MIRDC) and that the results thereof be submitted to the Tariff Commission for proper classification of the seized articles.²⁷ On 20 July 2006, District Collector Horacio P. Suansing, Jr. sent a letter to Dr. Agustin M. Fudolig, Chief, Analysis and Testing Division of the MIRDC, requesting assistance on the product testing and analysis for the purpose of determining the chemical composition of the aforesaid seized metal products as well as the proper tariff classification and rate of duty.²⁸

²¹ Id; emphasis supplied.

²² Id.

²³ Id.

²⁴ Id. at 140-141. During trial, Fernandez explained that sometime in April 2006, Co ordered steel products with the size of SCM 440 10mm and 12. Since Kingson already ordered steel products from Tianjin, Fernandez placed the order of Co through a facsimile transmission.

²⁵ Id. at 141.

²⁶ Id.

²⁷ Id.

²⁸ Id.

The Office of the District Collector received a letter dated 28 July 2006, allegedly coming from the Officer-in-Charge (OIC) of the MIRDC, purportedly containing the chemical analysis report on the samples taken from the seized articles. However, the OIC of the MIRDC, Dr. Rio Pagtalunan, in a letter to the BOC, stated that the certificate of chemical analysis on subject metal product attached to the 28 July 2006 letter was **not authentic** and was **not issued by the MIRDC**.²⁹

On 12 February 2007, Chairperson Edgardo Abon of the Tariff Commission requested samples of the seized articles aside from the chemical analysis report furnished them.³⁰ During the hearing on the seizure case set on 13 February 2007, Kingson's counsel manifested that he will not object to the result of the chemical analysis submitted by MIRDC. Kingson also manifested that the latest chemical analysis and subsequent report furnished by MIRDC were not requested by it.³¹

In the course of trial, the government prosecutor sought the assistance of the Philippine Embassy in Beijing. On 29 November 2006, the Philippine Embassy in Beijing wrote the General Administration of Customs - People's Republic of China (GAC-PRC), International Cooperation Department in Beijing *Note Verbale No. S-36-0* to request certified true copies of the counterpart export documents used by Tianjin Mei Hua Trade Co., Ltd. (Tianjin), the foreign shipper. The GAC-PRC acceded to said request.³²

Meanwhile, on 19 April 2007, Atty. Nick Earle L. Hortillas, Chief of Law Division of the BOC, received a letter dated 19 April 2007 from Acting Commissioner Marilou P. Mendoza of the Tariff Commission informing him that the subject articles are classified in subheading 7213.10.10 (if in coils) or under subheading 7214.20.00 (if not in coils), both subheadings are with Most Favored Nation rate of duty of 7% *ad valorem* and Common Effective Preferential Tariff rate of duty of 3% *ad valorem*.³³

On 10 October 2007, the District Collector issued a Decision ordering the forfeiture of 2,406 pieces of steel products in favor of the government.³⁴ On 24 October 2007, Kingson appealed said order to the Commissioner of Customs (COC). On 26 October 2007, the government prosecutor filed a motion to correct typographical error in the Decision dated 10 October 2007 of the District Collector to read "2,406 *Bundles of Steel Products*" instead of "2,406 *pieces of steel products*."³⁵

²⁹ Id.

³⁰ Id.

³¹ Id. at 142.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id. at 142-143.



Then, on 21 November 2007, the Legal Service of BOC issued an order requiring Kingson to file its comment on the motion to correct typographical error. On 18 February 2008, Kingson thus filed its comment saying it has no objection to the motion.³⁶ Thereafter, the COC issued a decision ordering that the subject importations be forfeited in favor of the government for violation of Section 2530, paragraph f and 1 (3,4,5) of the TCCP, as amended.³⁷

Aggrieved, Kingson filed its Petition for Review before the CTA in division assailing the COC decision, docketed as CTA Case No. 7819 on 07 August 2008.³⁸ The Information for violation of Section 3602 in relation to Section 2503 of the TCCP and RA 7103 was filed against petitioners, King, and Permejo.³⁹ Pursuant to Section 11, Rule 9 of the Revised Rules of the CTA,⁴⁰ the criminal and civil cases were consolidated.⁴¹

Ruling of the CTA First Division

After trial, the CTA First Division issued its Decision⁴² dated 20 September 2017 finding petitioners guilty beyond reasonable doubt of violating Section 3602, in relation to Section 2503, of the TCCP, but acquitting King and Permejo for the prosecution's failure to prove their guilt beyond reasonable doubt, to wit:⁴³

WHEREFORE, in light of the foregoing, accused **Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez**, however, are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 3602, in relation to Section 2503 of the TCCP. They are hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, to ten (10) years, as maximum, for violation Section 3602, in relation to Section 2503 of the TCCP; and are **ORDERED** to each pay a fine of Eight Thousand Pesos (PhP8,000.00) for violating Section 3602, in relation to Section 2503 of the TCCP.

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

Furthermore, pursuant to Section 2530, paragraphs (1)(3) and (4)

³⁶ Id. at 143.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ A.M. No. 05-11-07-CTA.

⁴¹ *Rollo*, p. 40.

⁴² Id. at 39-90.

⁴³ Id. at 89.

of the [TCCP], as amended, the subject shipment of 1,436 bundles of 10MM x 6MM and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products subject of these consolidated criminal and civil cases are hereby **FORFEITED** in favor of the government to be disposed of in the manner prescribed by law.

SO ORDERED.⁴⁴

According to the CTA First Division, all the elements of violation of Section 3602 of the TCCP are present.

First, it was undisputed that there was an actual import entry filed before the BOC.⁴⁵ Second, the entry was made by means of false or fraudulent shipping documents and there was intent to evade the payment of taxes and duties. The CTA First Division said that a review of the export documents from the GAC-PRC, which were secured by the BOC, through the assistance of the Philippine Embassy in Beijing, in relation to the IEIRD and other supporting documents filed by Kingson, showed glaring discrepancies as to the consignee's name, description of the imported shipment, and value of shipment.

Moreover, the CTA First Division found that the prosecution sufficiently established that there was an undervaluation in the amount declared in the IEIRD (*i.e.*, US\$692,254.00) by more than 30% of the actual value based on the amount stated in the counterpart documents (*i.e.*, US\$1,281,271.86) presented by the prosecution. This, in turn, constitute *prima facie* evidence of fraud penalized under Section 3602 in relation to Section 2503 of the TCCP.⁴⁶

As to the liability of petitioners, the CTA First Division stressed that Section 1301 of the TCCP imposes a definite burden on persons authorized by law to make the import entry. It held that the statements under oath contained therein, constitutes *prima facie* evidence of knowledge and consent of the importer of violations against the provisions of the TCCP when the importation was found to be unlawful.⁴⁷ In this case, there was *prima facie* evidence of knowledge and consent to the falsities appearing in the IEIRD on the part of Fernandez. As Corporate Secretary of Kingson, Fernandez ought to explain the absence of such knowledge and consent, which, she failed to do.⁴⁸

With regard to the Cesa, Tan, and Martinez, the CTA First Division held that while it is true that Kingson has a separate and distinct personality

⁴⁴ Id.

⁴⁵ Id. at 76.

⁴⁶ Id. at 79.

⁴⁷ Id.

⁴⁸ Id. at 80.



from its directors and officers, as a corporate entity, Kingson can only execute its corporate powers through its board of directors and responsible officers. There is circumstantial evidence to prove that Cesa, Tan, Martinez, and Fernandez, Kingson's President, Vice President, Treasurer, and Corporate Secretary, respectively; and, likewise, incorporators, board members, stockholders, and corporate officers of Kingson based on its GIS and Amended Articles of Incorporation,⁴⁹ undoubtedly knew of the importation of steel from China. Despite their knowledge of the transaction, they failed to perform acts, such as directing their customs broker, to ensure that importation is made in accordance with law. Moreover, the amount involved in this case is too substantial for petitioners, who are responsible corporate officers of Kingson, to be unaware of and ignorant of.⁵⁰

As regards King and Permejo, the CTA First Division ruled that the prosecution failed to prove their participation in the crime, thus reasonable doubt exists as to their guilt.⁵¹

Petitioners filed their Motion for Reconsideration⁵² dated 02 October 2017, but was denied by the CTA First Division in its Resolution⁵³ dated 19 February 2018. They thus filed their petition for review under Rule 43 of the Rules of Court before the CTA *En Banc*.⁵⁴

Ruling of the CTA *En Banc*

The CTA *En Banc*, in its Decision⁵⁵ dated 27 September 2019, denied the Petition for Review and affirmed the CTA First Division's Decision⁵⁶ dated 20 September 2017 and Resolution⁵⁷ dated 19 February 2018:

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision dated September 20, 2017 and the assailed Resolution dated February 19, 2018 are **AFFIRMED *in toto***.

SO ORDERED.⁵⁸

⁴⁹ In addition, the Importer's Accreditation Profile and Application for Registration submitted by Kingson to the BOC states that Cesa, Martinez, and Fernandez are Kingson's President, Director, and Import/Export Manager, respectively.

⁵⁰ *Rollo*, pp. 85-86.

⁵¹ *Id.* at 80-81; 87.

⁵² *Id.* at 91-104.

⁵³ *Id.* at 107-113.

⁵⁴ *Id.* at 114-133.

⁵⁵ *Id.* at 135-168.

⁵⁶ *Id.* at 39-90.

⁵⁷ *Id.* at 107-113.

⁵⁸ *Id.* at 162.



The CTA *En Banc* upheld the First Division's finding that the elements of the crime were established. It added that, to seal the conclusion of guilt, the misdeclaration and undervaluation in weight, measurement, or quantity were found to be more than 30% between the value, weight, measurement, or quantity declared in the entry, and the actual value in weight, quantity, or measurement, which constitute and *prima facie* evidence of fraud. Hence, petitioners, as responsible officers of Kingson, intentionally failed to declare the correct classification of the subject shipment so as to erroneously fall under Tariff Classification heading number 7228.60 at 1% rate duty. A chemical analysis of the same steel products by the Tariff Commission, the samples of which were taken in the presence of both parties, showed that the actual classification of the same shipment falls under heading number 7214.2000 at 7% rate of duty. Petitioners also failed to contravene the findings of the Tariff Commission as to the proper classification of the shipment.⁵⁹

Further, the CTA *En Banc* found no error in the CTA First Division's finding that petitioners, by virtue of their respective offices and the nature of their functions, had knowledge of the transactions entered into by Kingson in the ordinary course of its business operations. It agreed with the CTA First Division that there was: (1) undeniable commission of the crime; (2) the corporation would gain pecuniary advantage had the falsified documents been taken at face value; and (3) was lack of repudiation by the responsible officers of the unlawful acts already committed, or at the very least, a showing of the effort undertaken to make sure that the documents sent in advance to be appended to the IEIRD matched their order. Human nature dictates that when a high value transaction is at stake, such as the subject shipment, persons in positions of responsibility, such as petitioners, would ensure that everything is in order. Petitioners failed to do this which stains their claim of good faith, or even their claim of unintended professional apathy, which the CTA *En Banc* said it cannot ignore.⁶⁰

Finally, the CTA *En Banc* cited *Rodriguez v. Court of Appeals*,⁶¹ which involved textile from the Manila International Container Port that passed through Customs house and was released by means of a Special Permit to Transfer purportedly accomplished and signed by the authorized Customs personnel later found to be falsified. Similar to said case, petitioners have failed to rebut the presumption that they assented or even permitted the falsification to happen, not only of the documents appended to the IEIRD, but also of the falsified chemical analysis of the seized steel bars purportedly coming from the MIRDC in a bid to secure a lower Tariff Classification rate. Echoing the reasoning of the CTA First Division – Fernandez testified that

⁵⁹ Id. at 157.

⁶⁰ Id. at 160.

⁶¹ *Rodriguez v. Court of Appeals*, 318 Phil. 313 (1995).



when the defect in the MOA to Sell between Kingson and Co was discovered, wherein King was erroneously referred to as President of Kingson, the corporate officers of Kingson, composed of petitioners, had a meeting to rectify the same. An addendum to said MOA to Sell was executed to correct the error and reflect that King was not in fact Kingson's President. Evidently, according to the CTA *En Banc*, this indicates that petitioners were aware of the transaction involving the subject shipment.⁶²

Feeling aggrieved, petitioners filed the instant petition⁶³ before this Court.

Issue

The issue is whether the CTA *En Banc* erred in affirming petitioners' conviction for violating Section 3602, in relation to Section 2503, of the TCCP.

According to petitioners: (1) there was no fraud since the IEIRD was filled out long before the existence of the counterpart export documents provided by GAC-PRC; (2) in filling out the IEIRD, they merely relied on the documents provided to them by Tianjin; and (3) even assuming that the details in the IEIRD, as well as the appended documents thereto, were fraudulent, the prosecution has not established petitioners' direct participation in misdeclaration, misclassification, or undervaluation of the shipment.⁶⁴

Ruling of the Court

We resolve to deny the instant petition.

Questions of fact are generally beyond the scope of a petition for review on certiorari under Rule 45

We have repeatedly held that the Supreme Court is not a trier of facts. In a petition for review on *certiorari*, only questions of law may be raised.⁶⁵ Section 1, Rule 45 categorically states that a petition for review on *certiorari* shall raise only questions of law, which must be distinctly set

⁶² *Rollo*, pp. 160-161.

⁶³ *Id.* at 8-29.

⁶⁴ *Id.* at 17-20.

⁶⁵ *Commissioner of Internal Revenue (CIR) v. Spouses Magaan*, G.R. No. 232663, 03 May 2021.

forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must *not* involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.⁶⁶

The findings of fact of the CTA, which, by the very nature of its functions, is dedicated exclusively to the study and consideration of tax problems and tariff and customs laws, and has necessarily developed an expertise on the subject, are generally regarded as final, binding, and conclusive upon this Court. The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion.⁶⁷

We find no cogent reason to depart from the foregoing general principles. Here, petitioners argue that there was no fraud on their part and that they have no knowledge and participation in the willful importation, misdeclaration, misclassification, and undervaluation of shipment using falsified/spurious shipping documents to evade payment of correct and appropriate duties and taxes.⁶⁸ However, these matters involve questions of fact, which are beyond the coverage of a Rule 45 petition, because they involve an examination of the probative value of the evidence presented.⁶⁹

Further, We emphasize that the CTA *En Banc* adopted the factual findings of the court in Division in ruling that petitioners defrauded the government, and that they have knowledge and participation in the commission of the crime charged. Said factual findings are supported by the evidence and thus binding on this Court. Petitioners have not alleged, substantiated, and proved any of the exceptions for this Court to evaluate the facts. They did not also show that the CTA erred in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this Court.⁷⁰ Significantly, Section 5, Rule 45 of the Rules of Court provides that the failure of the petitioner to comply with the requirements on the contents of the petition, which include the mandate to only raise questions of law, shall be sufficient ground for the dismissal

⁶⁶ *Magdiwang Realty Corp. v. Manila Banking Corp.*, 694 Phil. 392, 404 (2012).

⁶⁷ *CIR v. Philex Mining Corp.*, G.R. No. 230016, 23 November 2020; *See Chu Hoi Horn v. Court of Tax Appeals*, 134 Phil. 756 (1968).

⁶⁸ *Rollo*, pp. 75, 13-29.

⁶⁹ *Magdiwang Realty Corp. v. Manila Banking Corp.*, *supra*.

⁷⁰ *See Pascual v. Burgos*, 776 Phil. 167, 186 (2016).

thereof.⁷¹

Hence, the petition may be dismissed based on the foregoing discussions alone. Nevertheless, even if We consider the factual questions submitted before Us, this petition remains unmeritorious.

All essential elements were established by the prosecution

Petitioners were charged with violating Section 3602, in relation to Section 2503 of the TCCP. Section 3602⁷² of the TCCP 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.⁷³ Petitioners' violation involves the willful importation of goods through the use of false statements or fraudulent practice to evade payment of the correct and appropriate duties and taxes, the elements of which may be broken down as follows:

1. There must be an entry of imported or exported articles/goods;
2. The entry was made by means of any false or fraudulent invoice, declaration, affidavit, document or fraudulent practice; and
3. There must be intent to avoid payment of taxes.⁷⁴

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

⁷¹ See Rules of Court, Rule 45, Sec. 1; *Heirs of Racaza v. Spouses Abay-Abay*, 687 Phil. 584 (2012).

⁷² 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 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.

⁷³ *Jardeleza v. People*, 517 Phil. 179, 202-203 (2006).

⁷⁴ TCCP, Sec. 3602.

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.⁷⁵

To further elucidate, fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when the 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.⁷⁶

In relation to this, Section 2503⁷⁷ of the TCCP provides that an undervaluation, misdeclaration in weight, measurement or quantity of more than 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.

As correctly found by both CTA First Division and *En Banc*, all the elements of the violation of Section 3602 of the TCCP are present in the case at bar. As to the first element, petitioners already admitted that there was an import entry.⁷⁸ In fact, the accused formally offered the following documents: (a) Import Entry and Internal Revenue Declaration (IEIRD); (b) Commercial invoice; (c) Packing List; (d) Sales Contract; and (e) Bill of Lading.⁷⁹

The second and third elements were likewise established. As correctly found by the CTA First Division, a review of the export documents from the

⁷⁵ *Jardeleza v. People*, supra.

⁷⁶ *Id.*

⁷⁷ 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 importer's description on the face of the entry would less by ten percent (10%) than should be legally collected based on the tariff classification of 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 misdeclaration or undeclared imported article/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 penal provision under Section 3602 of this Code.

⁷⁸ *Rollo*, pp. 76 and 153.

⁷⁹ *Id.* at 76.

GAC-PRC, namely: (a) Invoice; (b) Customs Clearance Bill; (c) Packing List; and (d) Sales Contract, in relation to the IEIRD and other supporting documents filed by Kingson, highlights the significant discrepancies between the two sets of documents as to the consignee's name, the description of the imported shipment, and the value of the imported articles:⁸⁰

Description	IEIRD and attached documents filed with the BOC	Counterpart Export Documents provided by the GAC-PRC, as certified by the Philippine Embassy in Beijing, China
[...]	[...]	[...]
Consignee	Kingson International Trading Corporation [Import Entry, Invoice, Packing List, Sales Contract, and Bill of Lading]	Solid Sea Products H.K. [Sales Contract, Invoice, and Packing List]
[...]	[...]	[...]
Description of the Imported Shipment	2,406 Bundles of STEEL PRODUCTS (SCM 440 ROUND BAR) [Import Entry, Invoice, Packing List and Bill of Lading]	1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M or a total of 2,406 bundles. [Packing List]
Value of Shipment	US\$692,254.00 [Import Entry, Invoice, and Sales Contract]	US\$1,281,271.86 [Sales Contract, Invoice, Customs Clearance Bill] ⁸¹

Specifically, the consignee as appearing on the counterpart export documents is not Kingson, but Solid Sea Products H.K. As to the description of the shipment, Kingson's documents state "2,406 bundles of steel products (SCM 440 round bar)," whereas the counterpart export documents indicate: "1,436 bundles of 10MM x 6M and 970 bundles of 12MMx6M or a total of 2,406 bundles" while Kingson's documents provide "2,406 bundles of steel products (SCM 440 round bar)." Lastly, the value of shipment as declared by Kingson is US\$692,254.00, which is substantially undervalued in comparison to the counterpart export documents indicating US\$1,281,271.86.⁸²

Undoubtedly, such misdeclaration as to the actual value by more than

⁸⁰ Id. at 66-67.

⁸¹ Id.

⁸² Id. at 154-156, 66-67.

30% is *prima facie* evidence of fraud as provided under Section 2503 of the TCCP.⁸³ Section 2503 provides that an undervaluation, misdeclaration in weight, measurement, or quantity of more than 30% between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute *prima facie* evidence of fraud penalized under Section 2530 of the TCCP.⁸⁴ However, both Kingson and petitioners failed to provide any plausible explanation for these glaring discrepancies, the burden of evidence having shifted to them.

The burden of evidence is defined as that logical necessity which rests on a party at any particular time during a trial to create a *prima facie* case in his own favor, or to overthrow one when created against him. It is determined by the progress of the trial, and shifts to one party when the other party has produced sufficient evidence to be entitled as a matter of law to a ruling in his favor.⁸⁵ It may also be determined by the provisions of the substantive law or procedural rules, which may relieve the party from presenting evidence on the fact alleged, *i.e.*, presumptions, judicial notice, and admissions.⁸⁶ In *People v. Galam*,⁸⁷ We provided the following depiction of burden of proof and burden of evidence:

As for Lito, *People v. Villanueva* ordains that the prosecution's burden of proof does not shift to the defense but remains in the prosecution throughout the trial, except in case of self-defense. **When the prosecution, however, has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the Court of the truth of the allegations in the information or has established a *prima facie* case against the accused, as in this case, the burden of evidence shifts to the accused making it incumbent upon him or her to adduce evidence in order to meet and nullify, if not to overthrow, that *prima facie* case.** Here, just like his brother Dante, Lito failed to discharge such burden of evidence. As it was, Lito did not even offer any defense on his behalf since the trial court heard the case up until now.⁸⁸

Thus, We affirm the conclusion that the actual value of the shipment was **intentionally reduced** by more than 30% to lower the amount of duty that petitioners should have paid for the subject shipment.

Petitioners' claim that Kingson did not misstate the shipment and that it merely reflected the description and details of the shipment, as found in the commercial and shipping documents entirely prepared and provided by the

⁸³ Id. at 79, 157.

⁸⁴ Id.

⁸⁵ Diosdado M. Peralta and Eduardo B. Peralta, Jr., *Insights on Evidence* (2020 Edition), p. 617.

⁸⁶ Id. at 617-618 citing 2 Regalado, *Remedial Law Compendium* (9th Revised Edition, 2001), p. 670.

⁸⁷ *People v. Galam*, G.R. No. 224222, 09 October 2019.

⁸⁸ Id. Emphasis supplied.

shipper, fails to convince this Court.⁸⁹ In concluding that petitioners did not declare the correct details of its shipment, the CTA First Division and *En Banc* relied on the counterpart export documents which were duly authenticated by the respective authorities from both the foreign and the Philippine Government. On the other hand, Kingson failed to prove the authenticity of the documents it appended to its IEIRD. Clearly, if it was true that Kingson's documents were authentic and came from the supplier, petitioners could have secured a certification from the supplier attesting that it made a mistake in the initial documents it sent to Kingson. However, petitioners failed to do so.⁹⁰

More telling is that petitioners failed to explain why the MOA to Sell and the corresponding receipt show that these documents do not involve "*Steel Products (SCM 440 Round Bar)*." Instead, the agreement involved "*(a) 700.00 Metric Tons or 200,000 pieces, more or less of Grade 230 (Structural Grade) 12mm/5.0 kilos more or less at P132.13/piece.*"⁹¹ This being the case, the steel product description in the IEIRD and other importation documents should match the description in the MOA to Sell. However, as can be observed, said descriptions pertain to different steel products.

As regards petitioners' argument that there was no fraud since the IEIRD was filled out long before the existence of the counterpart export documents provided by GAC-PRC, this contention is clearly misplaced. The documents sent by GAC-PRC are *mere* certified true copies of the documents already provided by Tianjin to Kingson. We are not persuaded that these are "new" documents that Kingson was previously unaware of. During trial, Fernandez readily admitted that they already had previous transactions with Tianjin. As such, she could have easily secured a certification from said foreign exporter that the documents it originally transmitted to Kingson were erroneous, but she failed to do so.⁹²

Finally, the finding that there was a misclassification of the shipment was based on a chemical analysis of the steel products by the Tariff Commission. While Kingson declared the shipment under Tariff Classification heading number No. 7228.60 at 1% rate of duty, the actual classification of the same shipment based on the chemical analysis of the same steel product showed that it falls under heading number 7214.2000 at 7% rate of duty.⁹³ Thus, to Our mind, this is a clear case of willful misdeclaration, misclassification, and undervaluation of the subject shipment of steel bars to avoid or reduce payment of taxes and duties.

⁸⁹ *See rollo*, pp. 19-21.

⁹⁰ *Id.* at 78.

⁹¹ *Id.*

⁹² *Id.* at 80.

⁹³ *Id.* at 157.



Petitioners should be held criminally liable

A corporation possesses a personality separate and distinct from the person of its officers, directors and stockholders. Petitioners, being corporate officers and/or directors, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime.⁹⁴ As We declared in *Securities and Exchange Commission v. Price Richardson Corporation*,⁹⁵ to be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.⁹⁶

This Court upholds the consistent findings of both CTA First Division and *En Banc* that there is a clear showing of: (1) undeniable commission of the crime; (2) the pecuniary advantage the corporation would gain had the falsified documents been taken at face value; and (3) lack of repudiation by the responsible officers of the unlawful acts already committed, or at the very least, a showing of the effort undertaken to make sure that the documents sent by the foreign shipper to be appended to the IEIRD matched their order, despite the fact that they undoubtedly knew of the importation of steel from China.

The totality of evidence proves that petitioners, who were responsible officers, have assented to the corporation's unlawful acts or were guilty of omission in directing the corporate affairs.⁹⁷ Petitioners, by virtue of their respective offices and the nature of their functions, had knowledge of the transactions entered into by Kingson in the ordinary course of its business operations.⁹⁸ They are persons in positions of responsibility and should ensure that everything is in order. They failed to do this which stains their claim of good faith, or even their claim of unintended professional apathy, which the Court cannot ignore.⁹⁹ Petitioners here have failed to rebut the fact that they assented or even permitted the falsification to happen, not only of the documents appended to the IEIRD, but also of the falsified chemical analysis of the seized steel bars purportedly coming from the MIRDC in a bid to secure a lower Tariff Classification rate.

More importantly, as to petitioner Fernandez, there is proof beyond reasonable doubt that she took an active part in Kingson's willful importation of goods through the use of false statements or fraudulent

⁹⁴ *Republic Gas Corp. v. Petron Corp.*, supra note 1.

⁹⁵ 814 Phil. 589 (2017).

⁹⁶ Id. at 615.

⁹⁷ *Rollo*, pp. 83-84.

⁹⁸ *Ching v. Secretary of Justice*, 517 Phil. 151, 178 (2006).

⁹⁹ *Rollo*, p. 160.



practice to evade payment of the correct and appropriate duties and taxes. She signed the IEIRD containing the fraudulent information as Kingson's attorney-in-fact. Right above her signature was her declaration that, "*I/We hereby certify that the information contained in all pages of this Declaration and the documents submitted are to the best of our knowledge and belief are true and correct.*"¹⁰⁰ As aptly emphasized by the CTA First Division, Section 1301 of the TCCP imposes a definite burden on the part of the persons authorized by law to make the Import Entry. It held that the statements under oath contained therein, constitutes *prima facie* evidence of knowledge and consent of the importer of violations against applicable provisions of said law when the importation is found to be unlawful. Fernandez did not offer any plausible explanation for the discrepancies as proven by the prosecution aside from her bare assertion that she relied in good faith on the documents appended to the IEIRD, further claiming that the same came directly from the foreign supplier. The records also showed that Fernandez readily admitted that they already had previous transactions with Tianjin. That being the case, she could have easily secured a certification from the supplier that the documents it originally transmitted to Kingson was erroneous, but she failed to do so.¹⁰¹ Thus, Fernandez's guilt beyond reasonable doubt of the crime charged has been duly established.¹⁰²

The same is true for petitioners Cesa, Tan, and Martinez – their culpability has likewise been established by proof beyond reasonable doubt. Their denial of the alleged fraud, insisting that Kingson's declarations were merely based on the documents provided by the foreign shipper, is pregnant with an admission, *i.e.*, that they were personally aware of the details of the shipment and the contents of the submitted importation documents. Evidently, this denial has the earmark of a negative pregnant, which is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party.¹⁰³ Moreover, during the course of trial and even in their petition before this Court, petitioners Cesa, Tan, and Martinez never denied their knowledge or awareness of the subject shipment.

Significantly, as the CTA First Division and *En Banc* noted, Fernandez testified that when the defect in the MOA to Sell between Kingson and Co was discovered, wherein King was erroneously referred to as President of Kingson, petitioners, as the corporate officers of Kingson consisting of petitioners had a meeting to rectify the same. An Addendum of MOA to Sell was thereafter executed to correct the error and reflect that King was not the President. In said addendum, they further agreed to "*recognize the validity*

¹⁰⁰ Id. at 334.

¹⁰¹ Id. at 80.

¹⁰² Id.

¹⁰³ *Republic v. Sandiganbayan*, 830 Phil. 423, 457 (2018).



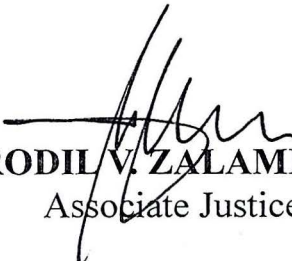
*and enforceability of the Memorandum of Agreement to Sell dated April 7, 2006[.]*¹⁰⁴ As discussed earlier, the steel products that will be sold to Co pursuant to said MOA to Sell would be sourced from the subject shipment. Thus, to Our mind, this plainly indicates that petitioners were aware of the details of the subject shipment.¹⁰⁵ They cannot now conceal their personal participation behind the veil of corporate fiction to evade their criminal responsibility.

Petitioners, as responsible corporate officers of Kingston are criminally liable by assenting to the commission by Kingston or by being grossly negligent in directing Kingston's affairs.¹⁰⁶ After all, they exercise direct control and supervision in the management and conduct of Kingston's affairs, and, by virtue of their respective positions, they cannot feign ignorance that Kingston misdeclared, misclassified, and undervalued its shipment of steel bars.

In fine, an erring corporate officer cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability.¹⁰⁷ In view of the foregoing, both the CTA First Division and *En Banc* correctly found petitioners guilty beyond reasonable doubt of violating Section 3602, in relation to Section 2503, of the TCCP.

WHEREFORE, the Petition is **DENIED**. The Decision dated 27 September 2019 of the Court of Tax Appeals *En Banc* in CTA Crim. Case No. 048 is hereby **AFFIRMED with MODIFICATION**. Petitioners **ALICIA O. FERNANDEZ, ANTHONY JOEY S. TAN, REYNALDO V. CESA, and EDGARDO V. MARTINEZ** are **GUILTY** beyond reasonable doubt of the crime of violating Section 3602, in relation to Section 2503, of the Tariff and Customs Code of the Philippines. They are **SENTENCED** to suffer an indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum, and are **ORDERED** to each pay a fine of Eight Thousand Pesos (₱8,000.00).

SO ORDERED.”


RODIL V. ZALAMEDA
Associate Justice

¹⁰⁴ *Rollo*, p. 279.


¹⁰⁵ *Id.* at 160-161.

¹⁰⁶ *Id.* at 86.

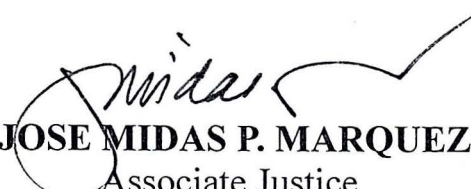
¹⁰⁷ *Republic Gas Corp. v. Petron Corp.*, supra note 1.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

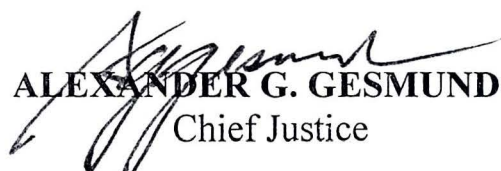

RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

