

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE  
PHILIPPINES,

Plaintiff-Appellee,

- versus -

IAN CHIRSTOPHER  
MIGUEL y BAYONETA,<sup>1</sup>

Accused-Appellant,

MARCELO N. GOMEZ,<sup>2</sup>

Accused.

CTA CRIM. CASE NO. A-7

Members:

DEL ROSARIO, *P.J.*, Chairperson,  
MANAHAN, and  
REYES-FAJARDO, *JJ.*

Promulgated:

AUG 10 2022 1:15 pm

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DECISION

***DEL ROSARIO, P.J.:***

This is an appeal by accused-appellant from the Joint Decision dated January 26, 2018<sup>3</sup> and Order dated April 20, 2018<sup>4</sup> rendered by the Regional Trial Court (RTC) of Manila, Branch 21<sup>5</sup> in Criminal Case Nos. 14-310345 and 14-310346 convicting him of the crime of Violation of Section 3601 of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to Presidential Decree (PD) No. 1433.

The dispositive portions of the assailed Joint Decision and Order are as follows:

<sup>1</sup> Accused-appellant is identified as Ian Chirstopher in the Joint Decision dated January 26, 2018 and Order dated April 20, 2018, and Ian Christopher in the Resolution dated November 27, 2020 in CA-G.R. CR No. 42822. In the Order dated August 5, 2015, the RTC granted the amendment of the Informations to correct the name of the accused to Ian Chirstopher Miguel y Bayoneta. RTC Docket, pp. 204-205.

<sup>2</sup> At large and yet to be arraigned as of the promulgation of the Joint Decision dated January 26, 2018.

<sup>3</sup> RTC Docket, pp. 395-406

<sup>4</sup> RTC Docket, pp. 468-471.

<sup>5</sup> Both the Joint Decision dated January 26, 2018 and Order dated April 20, 2018 were penned by Presiding Judge Alma Crispina B. Collado-Lacorte.



**Joint Decision dated January 26, 2018**

“**WHEREFORE**, the judgment is hereby rendered as follows:

1. Accused **IAN CHIRSTOPHER MIGUEL y BAYONETA** is hereby declared **GUILTY** beyond reasonable doubt of the crime of Violation of Section 3601 of the Tariff and Customs Code of the Philippines (TCCP), as amended in relation to Presidential Decree No. 1433 (Plant Quarantine Decree of 1978) docketed as Criminal Case No. 14-310345 and he is hereby sentenced to suffer an indeterminate imprisonment of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum and to pay a fine of eight thousand pesos (₱8,000.00).
2. Accused **IAN CHIRSTOPHER MIGUEL y BAYONETA** is hereby **ACQUITTED** of the crime charged in the Information for Violation of Section 3 of P[.]D. [No.] 1433 (Plant Quarantine Decree of 1978) in relation to Section 2, Rule II, of Bureau of Plant Industry Quarantine Administrative Order No. 1, Series of 1981 (BPI QAO No. 1-1981) docketed as Criminal Case No. 14-310346, for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.”

**Order dated April 20, 2018**

“Finding no cogent reason to reverse its earlier ruling, the Partial Motion for Reconsideration of the Joint Decision dated January 26, 2018 filed by the accused is hereby **DENIED**.

SO ORDERED.”

**THE PARTIES**

Accused-appellant is the licensed customs broker for the shipment of imported garlic from China which arrived in the Philippines on October 3, 2013, consigned to Silver Glade Enterprises, a sole proprietorship registered in the name of Marcelo N. Gomez.<sup>6</sup>

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<sup>6</sup> Appellant's Brief, CA Docket, p. 26.



The plaintiff-appellee is the People of the Philippines, represented by the Office of the Solicitor General (OSG).<sup>7</sup>

## THE FACTS

On October 3, 2013, a shipment containing 1,873 bags of garlic consigned to Silver Glade Enterprises arrived at the Port of Manila from China on board the vessel MCC Benoa 11S covered by Bill of Lading No. 06SEA1309003<sup>8</sup> and declared under Import Entry No. C-116693-13.<sup>9</sup>

On October 4, 2013, the Commissioner of Customs (COC) issued Customs Alert Order No. A/OC/20131004-102<sup>10</sup> directing Justin Roman S. Geli and Dominic L. Garcia, agents of the Bureau of Customs (BOC), to witness the 100% examination of the aforementioned shipment.

On October 9, 2013, Customs Agents Geli and Garcia witnessed the 100% examination conducted by one Lydia Rialph, COO III, Port of Manila, and found that the imported articles contained garlic but without the required Import Permit from the Bureau of Plant Industry (BPI) of the Department of Agriculture (DA).<sup>11</sup> Thus, they recommended that a Warrant of Seizure and Detention be issued against the subject shipment.

Per the recommendation of Customs Agents Geli and Garcia, Atty. Leovigildo M. Dayoja, Officer-in-Charge, Port of Manila, BOC, issued Warrant of Seizure and Detention No. 2013-125 on November 14, 2013,<sup>12</sup> thereby seizing the subject shipment of garlic for violation of Section 2530(f) of the TCCP, as amended.

On November 21, 2013, Customs Agents Geli and Garcia executed a Complaint-Affidavit alleging that accused-appellant, together with accused Marcelo N. Gomez, violated Section 3601, in relation to Section 101 of the TCCP, as amended, and Section 3 of PD No. 1433.<sup>13</sup>

Accused-appellant and accused Gomez filed a Joint Counter-Affidavit on January 6, 2014,<sup>14</sup> contending that the importation of garlic does not require an Import Permit. They argue that under Republic Act

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<sup>7</sup> Appellee's Brief, CA Docket, p. 73.

<sup>8</sup> Exhibit "D", RTC Docket, p. 242.

<sup>9</sup> Exhibit "C", RTC Docket, p. 243.

<sup>10</sup> Exhibit "E", RTC Docket, p. 246.

<sup>11</sup> Exhibits "F" to "F-6", RTC Docket, pp. 247-248.

<sup>12</sup> Exhibit "G", RTC Docket, p. 249.

<sup>13</sup> Exhibits "A" to "A-6", RTC Docket, pp. 30-36.

<sup>14</sup> Exhibit "1", RTC Docket, pp. 38-46.

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(RA) No. 8178,<sup>15</sup> the quantitative restriction on the importation of garlic has been eliminated, essentially allowing garlic to be imported into the country without limitation on the volume local importers ship out from the country of origin.<sup>16</sup> They further contend that under BPI Quarantine Administrative Order (QAO) No. 1-1981 and DA Administrative Order (AO) No. 09, series of 2010, an Import Permit is only required for imported vegetables which have been declared as prohibited or restricted under special quarantine orders.<sup>17</sup> There being no specific special quarantine order for garlic, an import permit is not required.

On January 21, 2014, Customs Agents Geli and Garcia filed a Reply-Affidavit,<sup>18</sup> alleging that an importer must apply for an Import Permit in order for the BPI to determine whether the importation is prohibited or restricted, or that a special quarantine order is necessary.<sup>19</sup>

Thereafter, on January 28, 2014, accused-appellant and accused Gomez filed a Joint Rejoinder-Affidavit,<sup>20</sup> arguing that fraud, which is an element of the crime of Smuggling under Section 3601 of the TCCP, is absent since they acted in good faith based on their understanding of the rules governing importation of garlic in the country.<sup>21</sup> They likewise contend that since the absence of a special quarantine order for the importation of garlic did not make the act of importing without a permit criminal, they could not be charged with Smuggling.<sup>22</sup>

On May 6, 2014, the DOJ Task Force on Anti-Smuggling issued a Resolution which found probable cause to charge accused-appellant and accused Gomez for: (1) violation of Section 3601 of the TCCP, in relation to Section 3 of PD No. 1433; and (2) violation of Section 3 of PD No. 1433, in relation to Section 2, Rule II of BPI QAO No. 1-1981.<sup>23</sup>

Thus, on November 19, 2014, two (2) Informations both dated May 6, 2014 were filed before the RTC of Manila, viz.:

### **Criminal Case No. 14-310345**

"That on or about October 13, 2013, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the name of Silver

<sup>15</sup> Otherwise known as the "Agricultural Tariffication Act" approved on March 28, 1996.

<sup>16</sup> Exhibit "1-C", RTC Docket, p. 41.

<sup>17</sup> Exhibit "1-E", RTC Docket, p. 43.

<sup>18</sup> Exhibits "B" to "B-2", RTC Docket, pp. 50-52.

<sup>19</sup> *Id.* at 51.

<sup>20</sup> Exhibits "5" to "5-D", RTC Docket, pp. 53-57.

<sup>21</sup> *Id.* at 55.

<sup>22</sup> *Id.*

<sup>23</sup> RTC Docket, pp. 3-15.



DECISION

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Glade Enterprises, conspiring and mutually aiding one another, knowingly, willfully and feloniously bring and unlawfully import into the Philippines, One Thousand Eight Hundred Seventy Three (1,873) bags of garlic with an approximate value of Two Million Pesos (P2,000,000.00) from China on board MCC Benoa 11S, covered by bill of lading No. 06SEA1309003 and Import Entry and Internal Revenue Declaration (IEIRD) No. C-116693-13, without the required Permit to Import issued by the Director of Plant Industry, to the damage and prejudice of the government.

**CONTRARY TO LAW.**<sup>24</sup>

**Criminal Case No. 14-310346**

"That on or about October 13, 2013, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the name of Silver Glade Enterprises, willfully, feloniously and unlawfully conspired with one another to cause, aid and facilitate the importation and/or introduction into the Philippines plants/plant products, being the consignee of the 1x20 container van no. CICU2013106, containing One Thousand Eight Hundred Seventy Three (1,873) bags of garlic with an approximate value of Two Million Pesos (P2,000,000.00) from China on board MCC Benoa 11S, covered by bill of lading No. 06SEA1309003 and Import Entry and Internal Revenue Declaration (IEIRD) No. C-116693-13, without the required Permit to Import issued by the Director of Plant Industry, to the damage and prejudice of the government.

**CONTRARY TO LAW.**<sup>25</sup>

**THE PROCEEDINGS BEFORE THE RTC**

The prosecution moved for consolidation of the two (2) Informations since they are closely related to and inextricably interwoven with one another.<sup>26</sup> The two (2) cases were consolidated and were raffled jointly to the RTC of Manila, Branch 21.

Doubting the existence of probable cause required for the issuance of an arrest warrant since plaintiff did not submit any certification from the BPI that a Permit to Import must first be secured prior to importation of garlic, the RTC issued an Order dated December 2, 2014 giving the prosecution five (5) days from receipt to submit additional evidence.<sup>27</sup>

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<sup>24</sup> RTC Docket, pp. 2-3.

<sup>25</sup> RTC Docket, pp. 5-6.

<sup>26</sup> RTC Docket, p. 1.

<sup>27</sup> RTC Docket, p. 101.



On June 25, 2015, upon the conduct of a compliance hearing with the public prosecutor, the RTC issued an Order finding probable cause for the crimes charged, thus ordering the issuance of warrants of arrest against both accused-appellant and accused Gomez, with bail fixed at ₱120,000.00 each for Criminal Case No. 14-310345 and ₱40,000.00 each for Criminal Case No. 14-310346.<sup>28</sup> Thus, a Warrant of Arrest was issued by the RTC on the same day.<sup>29</sup>

For his provisional liberty, accused-appellant posted on July 24, 2015 two (2) bail bonds for Criminal Case Nos. 14-310345 and 14-310346.<sup>30</sup> In view of the posting of the bail bonds, the RTC issued a Recall Order on the same day directing the return of the Warrant of Arrest issued against accused-appellant without any further action.<sup>31</sup> Thereafter, the RTC set accused-appellant's arraignment on August 5, 2015.<sup>32</sup>

On August 3, 2015, accused-appellant filed an Urgent Motion to Defer Arraignment and Suspend Proceedings, on the ground that he has filed a Petition for Review before the Secretary of Justice.<sup>33</sup>

In an Order dated August 5, 2015, the RTC denied accused-appellant's Urgent Motion to Defer Arraignment and Suspend Proceedings since the Petition for Review was filed with the Secretary of Justice on November 21, 2014, or eight (8) months prior, however suspension of arraignment is only allowed under the Rules of Court for sixty (60) days.<sup>34</sup> Thereafter, accused-appellant was arraigned and entered a plea of "**NOT GUILTY**" in both Criminal Case Nos. 14-310345 and 14-310346.<sup>35</sup>

In a Letter dated July 27, 2015 and received by the RTC on August 14, 2015,<sup>36</sup> Police Officer (PO) 3 Rolly D.G. Caranto, Manila Police District, returned the Warrant of Arrest against accused Gomez as he no longer resides at the given address and his whereabouts cannot be ascertained.

On August 14, 2015, the RTC issued an Order for the issuance of Alias Warrant of Arrest against accused Gomez, and sent the case against him to archives.<sup>37</sup> Thus, on the same day, the trial court issued an Alias Warrant of Arrest against accused Gomez.<sup>38</sup>

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<sup>28</sup> RTC Docket, p. 116.

<sup>29</sup> RTC Docket, p. 117.

<sup>30</sup> RTC Docket, pp. 108-180.

<sup>31</sup> RTC Docket, p. 181.

<sup>32</sup> RTC Docket, p. 186.

<sup>33</sup> RTC Docket, pp. 187-202.

<sup>34</sup> RTC Docket, pp. 204-205.

<sup>35</sup> RTC Docket, p. 206.

<sup>36</sup> RTC Docket, pp. 208-209.

<sup>37</sup> RTC Docket, p. 210.

<sup>38</sup> RTC Docket, p. 211.



Preliminary conference was held on September 3, 2015.<sup>39</sup>

The RTC issued the Pre-Trial Order on October 1, 2015.<sup>40</sup>

On October 6, 2015, the RTC received another Letter dated September 29, 2015,<sup>41</sup> from PO3 Caranto, who returned the Alias Warrant of Arrest against accused Gomez. Thus, a Second Alias Warrant of Arrest was issued by the trial court on October 12, 2015.<sup>42</sup>

Trial of the consolidated cases against accused-appellant ensued. The prosecution submitted documentary and testimonial evidence. The prosecution presented the testimonies of: (1) Customs Agent Geli, who testified that he conducted the inspection of the subject importation of garlic, and found that accused-appellant was not able to present any relevant document such as the Import Permit;<sup>43</sup> (2) Customs Agent Garcia, who testified that he is one of the alerting officers of the subject shipment and, together with agent Geli, was the one who examined the shipment subject of this case;<sup>44</sup> and (3) Mr. Ariel Montoya, Plant Quarantine Inspector of the BPI, who testified that he is the BPI representative in the examination of the subject importation, and he found out that such shipment had no import permit and that Silver Glade Enterprises was not authorized by BPI to import garlic.<sup>45</sup>

Meanwhile, on December 14, 2015, the RTC received another Letter dated December 4, 2015 from PO3 Caranto, who returned the Second Alias Warrant of Arrest against accused Gomez.<sup>46</sup> Thus, a Third Alias Warrant of Arrest against accused Gomez was issued by the RTC on December 18, 2015.<sup>47</sup>

The prosecution filed its Formal Offer of Exhibits (FOE) on February 20, 2017.<sup>48</sup> Accused-appellant filed his Comment/Opposition (To Prosecution's FOE) on March 24, 2017.<sup>49</sup>

In an Order dated April 17, 2017,<sup>50</sup> the RTC admitted all of the prosecution's Exhibits "A" to "K", inclusive of sub-markings.

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<sup>39</sup> RTC Docket, pp. 213-214.

<sup>40</sup> RTC Docket, pp. 216-218.

<sup>41</sup> RTC Docket, pp. 219-221.

<sup>42</sup> RTC Docket, pp. 222-223.

<sup>43</sup> RTC Transcript of Stenographic Notes (TSN) of October 1, 2015 and December 3, 2015.

<sup>44</sup> RTC TSN of April 14, 2016 and May 18, 2016.

<sup>45</sup> RTC TSN of August 31, 2016 and October 20, 2016.

<sup>46</sup> RTC Docket, pp. 226-228.

<sup>47</sup> RTC Docket, pp. 229-230.

<sup>48</sup> RTC Docket, pp. 303-304.

<sup>49</sup> RTC Docket, pp. 305-311.

<sup>50</sup> RTC Docket, p. 312.



With the RTC's resolution of the prosecution's FOE, accused-appellant moved for leave of court to file demurrer to evidence, which was granted.<sup>51</sup> Accordingly, accused-appellant was given a non-extendible period of ten (10) days from April 19, 2017 to file a demurrer to evidence.

On May 2, 2017, accused-appellant filed his Demurrer to Evidence.<sup>52</sup> With the prosecution's filing of its Comment/Opposition (to the Demurrer to Evidence dated April 28, 2017) on May 15, 2017,<sup>53</sup> accused-appellant's Demurrer to Evidence was submitted for resolution on May 24, 2017.<sup>54</sup>

On August 22, 2017, the RTC denied accused-appellant's Demurrer to Evidence, ruling that the averments of accused-appellant in his demurrer are matters of defense which must be thoroughly ventilated and threshed out in trial during the presentation of his evidence.<sup>55</sup>

With the denial of his Demurrer to Evidence, accused-appellant presented documentary and testimonial evidence, and offered his testimony as lone witness.<sup>56</sup>

Accused-appellant filed a Motion with Formal Offer of Evidence on October 4, 2017,<sup>57</sup> while the prosecution filed its Comment (to the Formal Offer of Exhibits) on October 11, 2017.<sup>58</sup>

In an Order dated November 16, 2017, the RTC admitted in evidence accused-appellant's Exhibits "1", and "4" to "7". Meanwhile, Exhibits "2" and "3" were denied admission for being mere photocopies.<sup>59</sup>

On December 6, 2017, the RTC issued an Order granting the parties until December 21, 2017 to file their respective Memoranda, and setting the promulgation of judgment on January 26, 2018.<sup>60</sup>

With the filing of accused-appellant's Memorandum on December 21, 2017,<sup>61</sup> sans the prosecution's Memorandum, the case was submitted for decision on December 29, 2017.<sup>62</sup>

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<sup>51</sup> Order dated April 19, 2017, RTC Docket, p. 314.

<sup>52</sup> RTC Docket, pp. 315-327.

<sup>53</sup> RTC Docket, pp. 328-333.

<sup>54</sup> RTC Docket, p. 334.

<sup>55</sup> RTC Docket, pp. 335-337.

<sup>56</sup> Judicial Affidavit of Ian Chirstopher B. Miguel, RTC Docket, pp. 338-343.

<sup>57</sup> RTC Docket, pp. 365-370.

<sup>58</sup> RTC Docket, pp. 371-372.

<sup>59</sup> RTC Docket, p. 374.

<sup>60</sup> RTC Docket, p. 378.

<sup>61</sup> RTC Docket, pp. 379-391.

<sup>62</sup> RTC Docket, p. 392.



Thus, on January 26, 2018, the RTC rendered the assailed Joint Decision, which was promulgated by reading the dispositive portion thereof to the accused-appellant, with the assistance of his counsel.<sup>63</sup>

The RTC convicted accused-appellant of Violation of Section 3601 of the TCCP in Criminal Case No. 14-310345, and acquitted him of the charge in Criminal Case No. 14-310346. The RTC ruled that under DA AO No. 09, series of 2010, a plant importer is required to secure a Sanitary and Phytosanitary (SPS) Import Clearance before the concerned agency prior to the importation. Since Silver Glade Enterprises has not secured an SPS Import Clearance, and is not registered to import garlic based on its BPI registration, accused-appellant's facilitation of the subject importation violated Section 3601 of the TCCP, as amended.

For his provisional liberty pending appeal of his guilty verdict in Criminal Case No. 14-310345, accused-appellant posted an appeal bond,<sup>64</sup> which the RTC noted on January 26, 2018.<sup>65</sup>

On February 9, 2018, accused-appellant filed a Motion for Partial Reconsideration, praying that his conviction in Criminal Case No. 14-310345 be set aside and vacated and a new judgment be issued acquitting him.<sup>66</sup>

In an Order dated February 15, 2018, the RTC granted the prosecution ten (10) days from receipt of said Order to file its comment/opposition to accused-appellant's Motion for Partial Reconsideration.<sup>67</sup>

With the filing by the prosecution of its Comment/Opposition to accused-appellant's Motion for Partial Reconsideration on April 12, 2018,<sup>68</sup> the said Motion was submitted for resolution.<sup>69</sup>

In the assailed Order dated April 20, 2018, the RTC denied accused-appellant's Motion for Reconsideration and upheld the conviction in Criminal Case No. 14-310345.<sup>70</sup>

Undaunted, accused-appellant filed a Notice of Appeal on July 13, 2018.<sup>71</sup> Accused-appellant likewise paid the assessed appeal

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<sup>63</sup> Order dated January 26, 2018, RTC Docket, p. 394.

<sup>64</sup> RTC Docket, pp. 407-436.

<sup>65</sup> Order dated January 26, 2018, RTC Docket, p. 437.

<sup>66</sup> RTC Docket, pp. 438-459.

<sup>67</sup> RTC Docket, p. 461.

<sup>68</sup> RTC Docket, pp. 464-465.

<sup>69</sup> Order dated April 12, 2018, RTC Docket, p. 467.

<sup>70</sup> RTC Docket, pp. 468-471.

<sup>71</sup> RTC Docket, pp. 472-489.



fees.<sup>72</sup> Thus, in an Order dated July 16, 2018, the RTC directed that the entire records of the cases be forwarded to the Court of Appeals (CA) for proper disposition.<sup>73</sup>

### **THE PROCEEDINGS BEFORE THE CA**

Accused-appellant's appeal before the CA was docketed as CA-G.R. CR No. 42822.

Notices dated March 4, 2019 were sent by Mr. Renato M. Sister, Supervising Judicial Staff Officer, Judicial Records Division (JRD), CA, requiring accused-appellant's counsel to file Appellant's Brief within thirty (30) days from receipt of the notice, and the OSG to file Appellee's Brief within thirty (30) days from receipt of a copy of Appellant's Brief.<sup>74</sup>

Accused-appellant filed his Appellant's Brief on May 3, 2019.<sup>75</sup>

On June 13, 2019, the OSG filed a Motion for Extension of Time to File Brief, praying that it be granted an extension of ninety (90) days from June 15, 2019, or until September 13, 2019, within which to file the Appellee's Brief.<sup>76</sup> In a Minute Resolution dated September 4, 2019, the CA granted the OSG's Motion for Extension of Time to File Brief.<sup>77</sup>

Thus, on September 13, 2019, the OSG filed the Brief for the Plaintiff-Appellee.<sup>78</sup>

On September 19, 2019, the CA issued a Minute Resolution directing the OSG to submit proof of receipt (registry return card/postmaster's certification) showing the exact date when counsel for accused-appellant received a copy of the Appellee's Brief, for the purpose of computing the period for the filing of the Reply Brief.<sup>79</sup>

Without the OSG's compliance with the Minute Resolution dated September 19, 2019, accused-appellant filed his Reply Brief on October 9, 2019.<sup>80</sup>

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<sup>72</sup> RTC Docket, pp. 490-491.

<sup>73</sup> RTC Docket, p. 492.

<sup>74</sup> CA Docket, pp. 17-18.

<sup>75</sup> CA Docket, pp. 20-66.

<sup>76</sup> CA Docket, pp. 67-69.

<sup>77</sup> CA Docket, p. 70.

<sup>78</sup> CA Docket, pp. 71-90.

<sup>79</sup> CA Docket, p. 91.

<sup>80</sup> CA Docket, pp. 92-105.



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In a Minute Resolution dated October 22, 2019, after noting the filing of accused-appellant's Reply Brief on October 9, 2019, the CA submitted the instant appeal for decision.<sup>81</sup>

On October 25, 2019, the OSG filed a Manifestation in relation to the CA Ninth Division's Minute Resolution dated September 19, 2019.<sup>82</sup>

On November 27, 2020, the CA promulgated a Resolution in CA-G.R. CR No. 42822,<sup>83</sup> the dispositive portion of which reads:

"ACCORDINGLY, the *Resolution* dated 22 October 2019, declaring this case "submitted for decision" is RECALLED.

For lack of jurisdiction, the instant appeal is REFERRED to the Court of Tax [A]ppeals for proper disposition.

Let the record of this case be forwarded to the Court of Tax Appeals without delay.

IT IS SO ORDERED."

### THE PROCEEDINGS BEFORE THIS COURT

In a Letter dated February 8, 2021,<sup>84</sup> received by the Court on March 18, 2022, Mr. Jaypherson M. Navarro, Records Officer I, OIC, Criminal Cases Section, JRD, CA, stated that the records of this case consisting of one (1) folder of original records consisting of 492 pages and one (1) folder of transcript of stenographic notes were transmitted to the Court of Tax Appeals (CTA).

In a Letter dated June 7, 2021 signed by Mr. Ronnie A. Inacay, OIC, Criminal Cases Section, JRD, CA, and received by the Court on June 30, 2021,<sup>85</sup> a certified xerox copy of the Resolution dated November 27, 2020 rendered by the CA Second Division was submitted to the CTA.

In a Letter dated June 22, 2021 addressed to Mr. Fernando C. Prieto, Chief, JRD, CA and received on July 14, 2021,<sup>86</sup> Atty. Maria Johoanna F. Chan-Te, Executive Clerk of Court II of this Court,

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<sup>81</sup> CA Docket, p. 106.

<sup>82</sup> CA Docket, pp. 107-112.

<sup>83</sup> CA Docket, pp. 116-123.

<sup>84</sup> CTA Docket, p. 7.

<sup>85</sup> CTA Docket, p. 19.

<sup>86</sup> CTA Docket, p. 18.



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requested that the *complete* records of CA-G.R. CR No. 42822 be elevated to the CTA within ten (10) days from receipt thereof.

Two (2) Records Verifications dated December 3, 2021<sup>87</sup> and March 10, 2022<sup>88</sup> both disclosed that the entire records of CA-G.R. CR No. 42822 have not been transmitted to the CTA per the Letter dated June 22, 2021.

In another Letter dated March 14, 2022 addressed to Mr. Prieto,<sup>89</sup> and received on March 15, 2022, Atty. Margarette Y. Guzman, Executive Clerk of Court III of this Court, requested anew that the *complete* records of CA-G.R. CR No. 42822 be elevated to the CTA within ten (10) days from receipt thereof.

Responding to the Letter dated March 14, 2022, Mr. Sister submitted a letter<sup>90</sup> to the Court stating that the records of the case consisting of one (1) folder original records with 492 useful pages and one (1) folder transcript of stenographic notes have already been transmitted to the CTA. This was reiterated in the Letter dated March 17, 2022 of the Hon. Remedios A. Salazar-Fernando, Presiding Justice, CA.<sup>91</sup>

In a Letter dated March 17, 2022 addressed to Mr. Prieto and received on March 15, 2022,<sup>92</sup> Atty. Guzman particularly requested the original or certified true copies of the CA Second Division's *rollo* of CA-G.R. CR No. 42822.

On March 21, 2022, Mr. Sister submitted to the CTA a Letter dated March 18, 2022 transmitting a Certification dated March 17, 2022 issued by Mr. Inacay, and the certified photocopy of the entire *rollo* of CA-G.R. CR No. 42822.<sup>93</sup>

On March 29, 2022, this Court issued a Resolution<sup>94</sup> which: (1) noted the Resolution dated November 27, 2020 of the CA Second Division in CA-G.R. CR No. 42822 and the above-listed letters and correspondence from the pertinent officials of the CA; and (2) submitted accused-appellant's appeal for decision, considering that the parties have filed their respective Briefs as found in the records of CA-G.R. No. 42822 which have been transmitted to this Court.

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<sup>87</sup> CTA Docket, p. 30.

<sup>88</sup> CTA Docket, p. 32.

<sup>89</sup> CTA Docket, p. 34.

<sup>90</sup> CTA Docket, pp. 36-46.

<sup>91</sup> CTA Docket, pp. 49-50.

<sup>92</sup> CTA Docket, p. 58.

<sup>93</sup> CTA Docket, pp. 59-63.

<sup>94</sup> CTA Docket, pp. 65-70.



## THE ASSIGNED ERRORS

Accused-appellant assigned the following errors allegedly committed by the RTC:

- (1) The court *a quo* committed reversible error when it found accused-appellant guilty beyond reasonable doubt of Smuggling under Section 3601 of the TCCP based on its finding that Silver Glade Enterprises is not a registered importer of garlic, the same being in violation of appellant's constitutional right.
- (2) The court *a quo* committed reversible error when it found accused-appellant guilty beyond reasonable doubt of Smuggling under Section 3601 of the TCCP for importing garlic without SPS Import Clearance, the same being in violation of appellant's constitutional right.
- (3) The court *a quo* committed reversible error when it concluded that Permit to Import is the same with SPS Import Clearance as used under DA AO No. 09, series of 2010.
- (4) The court *a quo* committed reversible error when it concluded that "Permit to Import" pertains to any document required by law.
- (5) The court *a quo* committed reversible error when it concluded that "Permit to Import" covers the accreditation of the importer.<sup>95</sup>

## THE ARGUMENTS OF THE PARTIES

### ***Accused-Appellant's Arguments***

Accused-appellant argues that the trial court erred in convicting him of Smuggling under Section 3601 of the TCCP, as amended, because Silver Glade Enterprises is not a registered importer of garlic and was not issued an SPS Import Clearance, even if such were not alleged in the Information.

He further contends that the phrase "Permit to Import" alleged in the Information is not the same as an SPS Import Clearance, as they both have different definitions under DA AO No. 09, series of 2010. By saying that the Permit to Import is the same as an SPS Import

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<sup>95</sup> Appellant's Brief, CA Docket, p. 24.



Clearance, accused-appellant insists that his constitutional right was violated for he was not clearly informed of the cause of the accusation against him.

Moreover, accused-appellant argues that "Permit to Import" does not cover the accreditation of the importer. As a customs broker, he could not be held liable for the non-registration of Silver Glade Enterprises as an importer of garlic since it is not one of the functions of a customs broker. He further contends that the two (2) Informations are exactly the same and both speak of "Permit to Import", yet he was acquitted in one and convicted in the other. For accused-appellant, the trial court erred when it concluded that a "Permit to Import" pertains to any document, which includes the SPS Import Clearance and the importer's accreditation.<sup>96</sup>

### ***Plaintiff-Appellee's Arguments***

The OSG posits that the elements of Smuggling as provided for in Section 3601 of the TCCP were complied with in this case. First, it was undisputed that there was an importation into the Philippines of garlic. Second, the importation was contrary to law, since Silver Glade Enterprises was not registered as an importer of garlic, and did not secure an SPS Import Clearance from the BPI prior to importation in accordance with DA AO No. 09, series of 2010. The OSG further argues that the allegations in the Information were sufficient enough to inform the accused-appellant of the nature and cause of the accusation against him as the term "Permit to Import" should be understood to include an SPS Import Clearance. Third, the importation was attended by fraud because Silver Glade Enterprises imported garlic without having been registered as such, which denotes a wilful and fraudulent intent on the part of the importer. Lastly, accused-appellant, as customs broker, assisted in the unlawful importation by Silver Glade Enterprises.<sup>97</sup>

## **THE COURT'S RULING**

After a judicious review of the facts as borne by the records of this case, and applying the pertinent law on the matter, the Court finds accused-appellant's appeal meritorious.

***The Court can exercise jurisdiction over this referred case from the CA***

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<sup>96</sup> CA Docket, pp. 29-38.

<sup>97</sup> CA Docket, pp. 78-88.



Section 7(b) of RA No. 1125, as amended by RA No. 9282, provides for the jurisdiction of the Court in criminal cases, to wit:

"SEC. 7. *Jurisdiction.* - The CTA shall exercise:

x x x

x x 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 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.

2. **Exclusive appellate jurisdiction in criminal offenses:**

a. **Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.** x x x"  
(*Boldfacing supplied*)

Relatedly, Section 3(b)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides that it is the Court in Division which exercises exclusive appellate jurisdiction over criminal cases decided by the RTC involving violation of tax laws, thus:

"SEC. 3. *Cases within the jurisdiction of the Court in Divisions.*

– The Court in Divisions shall exercise:

x x x

x x x

x x x



(b) **Exclusive jurisdiction over cases involving criminal offenses, to wit:**

x x x

x x x

x x x

- (2) **Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed[.]**  
(*Boldfacing supplied*)

*Exclusive jurisdiction* precludes the idea of co-existence and refers to jurisdiction possessed to the exclusion of others,<sup>98</sup> while *appellate jurisdiction* means “[t]he power and authority to take cognizance of a cause and proceed to its determination, not in its initial stages but only after it has been finally decided by an inferior court[.]”<sup>99</sup>

It is this Court which has the exclusive power to review the decisions or final orders of the RTC in relation to violations of the TCCP, as amended, to the exclusion of all other courts.

Thus, accused-appellant’s prayer in its Notice of Appeal to elevate the records of Criminal Case No. 47-310345 to the CA for disposition of his appeal assailing the Joint Decision dated January 26, 2018 and Order dated April 20, 2018 rendered by the RTC was in plain error since the CA does not possess the power and authority to review said judgments.

Section 18, Rule 124 of the Rules of Court, as amended, provides that the provisions in Rule 50 relating to procedure in the CA in appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with Rule 124. Section 2, Rule 50 of the Rules of Court, as amended, provides:

“Section 2. *Dismissal of improper appeal to the Court of Appeals.* – x x x.

**An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.”** (*Boldfacing supplied*)

<sup>98</sup> *Felixberto Cubero, et al. vs. Laguna West Multi-Purpose Cooperative, Inc., et al.*, G.R. No. 166833, November 30, 2006.

<sup>99</sup> BLACK’S LAW DICTIONARY (1968 Ed.), p. 126.



When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.<sup>100</sup> Without jurisdiction to take cognizance of accused-appellant's appeal, the CA should have dismissed, as a matter of course, the appeal outright, and not transfer or refer the same to the appropriate court, which in this case is this Court.

However, the CA referred accused-appellant's appeal to this Court by invoking the ruling of the Supreme Court in *Rolando S. Sideño vs. People of the Philippines (Sideño)*.<sup>101</sup>

In *Sideño*, accused was a Barangay Chairperson who was charged with three (3) counts of violation of Section 3(b) of RA No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, before the RTC of Manila, Branch 25. After due trial, the RTC found the accused guilty of the crimes charged. Accused then filed a Notice of Appeal, stating that he was elevating the decision of the trial court to the CA.

While the case was pending before the CA, the OSG filed a motion seeking for the outright dismissal of the accused's appeal for lack of jurisdiction. The OSG argued that the appeal should have been brought to the Sandiganbayan (SB), as the case fell within the exclusive appellate jurisdiction of the SB under Section 4 of PD No. 1606.

The CA denied the OSG's motion to dismiss the erroneously lodged appeal, and instead ordered the forwarding of the appealed case to the SB for proper disposition.

However, the SB dismissed the appeal outright, ruling that the time frame within which to appeal before it had already long lapsed.

Accused assailed the SB's resolution before the Supreme Court, which ruled in his favor and reinstated his appeal. In holding that the SB should not have dismissed the accused's appeal, the Supreme Court stated thus:

"Verily, upon his conviction, Sideño's remedy should have been an appeal to the SB. There is nothing in the afore-quoted provisions which can conceivably justify the filing of Sideño's appeal before the CA. Indeed, the appeal was erroneously taken to the CA because Sideño's case properly falls within the appellate jurisdiction of the SB. Section 2, Rule 50 of the Rules of Court provides, among others, that an appeal erroneously taken to the CA shall not be

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<sup>100</sup> *Bernadette S. Bilag, et al. vs. Estela Ay-Ay, et al.*, G.R. No. 189950, April 24, 2017.

<sup>101</sup> G.R. No. 235640, September 3, 2020.



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transferred to the appropriate court but shall be dismissed outright. This has been the consistent holding of the Court.

However, the peculiar circumstances of the case at bench constrain the Court to relax and suspend the rules to give Sideño a chance to seek relief from the SB. After all, the Court has the power to except a particular case from the operation of the rule whenever the purpose of equity and substantial justice requires it. **It bears stressing that aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character**, and an examination and review by the appellate court of the lower court's findings of fact, the other elements that are to be considered are the following: **(1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory, (5) the other party will not be unjustly prejudiced thereby.** All these factors are attendant in this case." (*Boldfacing supplied*)

Similar to *Sideño*, the factors enumerated by the Supreme Court are likewise present in this case.

*First*, this is a criminal case where the accused-appellant is facing not just dispossession of property through payment of fine, but also deprivation of his liberty due to imprisonment. As held by the Supreme Court in *Cenita M. Cariaga vs. People of the Philippines*:<sup>102</sup>

**"Since the appeal involves criminal cases, and the possibility of a person being deprived of liberty due to a procedural lapse militates against the Court's dispensation of justice, the Court grants petitioner's plea for a relaxation of the Rules.**

For rules of procedure must be viewed as tools to facilitate the attainment of justice, such that any rigid and strict application thereof which results in technicalities tending to frustrate substantial justice must always be avoided." (*Boldfacing supplied*)

Thus, the accused-appellant's conviction imposing upon him imprisonment and payment of fine is a compelling circumstance which the Court takes into consideration.

*Second*, the case involves the application of Section 3601 of the TCCP. It has consistently been held that this Court has "developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems."<sup>103</sup>

<sup>102</sup> G.R. No. 180010, July 30, 2010.

<sup>103</sup> *Misnet, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 210604, June 3, 2019.



Thus, as the specialized court on tax and tariff matters, it is proper that this Court resolve the case at bar based on its merits.

*Third*, the error of bringing the appeal to the improper court is not entirely attributable to the accused-appellant. Although the Notice of Appeal prayed that “the records of the case x x x be elevated to the Court of Appeals for disposition of the appeal”,<sup>104</sup> the trial court likewise erred in forwarding the records to the CA. As held in *Gilda C. Ulep vs. People of the Philippines*:<sup>105</sup>

**“The trial court, on the other hand, was duty bound to forward the records of the case to the proper forum, the Sandiganbayan. It is unfortunate that the RTC judge concerned ordered the pertinent records to be forwarded to the wrong court, to the great prejudice of petitioner. Cases involving government employees with a salary grade lower than 27 are fairly common, albeit regrettably so. The judge was expected to know and should have known the law and the rules of procedure. He should have known when appeals are to be taken to the CA and when they should be forwarded to the Sandiganbayan. He should have conscientiously and carefully observed this responsibility specially in cases such as this where a person’s liberty was at stake.” (Boldfacing supplied)**

Within the judicial system, the law intends this Court to have exclusive jurisdiction to resolve all tax problems.<sup>106</sup> Thus, the trial court should have been circumspect that the instant case belonged to the exclusive appellate jurisdiction of this Court.

*Fourth*, there is lack of any showing that the appeal is merely frivolous and dilatory. A frivolous appeal is one where no error can be brought before the appellate court, or whose result is obvious and the arguments of error are totally bereft of merit, or which is prosecuted in bad faith, or which is contrary to established law and unsupported by a reasoned, colorable argument for change.<sup>107</sup> The instant appeal raises valid grounds not only on the appreciation of the evidence that led to accused-appellant’s conviction, but also on the interpretation of Section 3601 of the TCCP, as amended. Moreover, the appeal is not dilatory as accused-appellant timely filed his Appellant’s Brief and Reply Brief before the CA, showing his regard to the prescribed periods provided for under the Rules of Court, as amended.

*Fifth*, taking cognizance of the instant appeal will not unjustly prejudice the plaintiff-appellee. The due process rights of the latter

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<sup>104</sup> RTC Docket, p. 473.

<sup>105</sup> G.R. No. 183373, January 30, 2009.

<sup>106</sup> *Banco de Oro, et al. vs. Republic of the Philippines, et al.*, G.R. No. 198756, August 16, 2016.

<sup>107</sup> *Maglana Rice and Corn Mill, Inc. and Ramon P. Dao vs. Annie L. Tan and her husband Manuel Tan*, G.R. No. 159051, September 21, 2011.



have been observed as the OSG was able to file its Appellee's Brief as found in the records of this case.

It is also worthy to note that the Notice of Appeal was seasonably filed,<sup>108</sup> reflecting the accused-appellant's resolve to comply with the fifteen (15)-day period to appeal as prescribed by the Rules of Court, as amended, and the RRCTA, as amended.

It is not lost on the Court that in the case of *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs (Mitsubishi)*,<sup>109</sup> the Supreme Court ruled that the act of the CA in referring the wrongful appeal before it to the CTA under the guise of furthering the interests of substantial justice was erroneous. However, there are obvious differences in the factual milieu between *Mitsubishi* and this case.

*Mitsubishi* involves a civil collection suit for unpaid duties and taxes, while the instant appeal is a criminal case for violation of the TCCP, as amended. Moreover, in *Mitsubishi*, the CA simply referred the case to the CTA by merely invoking "substantial justice". Here, there are compelling circumstances, as afore-discussed, which support the exercise of jurisdiction by this Court over accused-appellant's appeal. Thus, it is the considered view of this Court that the facts of this case are incompatible with the ruling in *Mitsubishi*.

In sum, the peculiar circumstances of this case, which this Court examined and found to be in accordance with the guidelines set forth by the Supreme Court in *Sideño*, necessitate the relaxation of the rules; thereby, the Court resolves to take cognizance of this case.

***The Informations were filed  
without the requisite approval of  
the COC***

At the outset, the Court notes that the records are bereft of proof that the Informations were filed with the requisite approval of the COC.

Section 2401 of the TCCP, as amended, reads:

"SEC. 2401. *Supervision and Control Over Criminal and Civil Proceedings.* - Civil and criminal actions and proceedings instituted in behalf of the government under the authority of this Code or other law enforced by the Bureau shall be brought in the name of the government of the Philippines and shall be

<sup>108</sup> Accused-appellant received the assailed Order dated April 20, 2018 on June 28, 2018. Thus, the filing of the Notice of Appeal on July 13, 2018 was within the fifteen (15)-day period provided for by the Rules.

<sup>109</sup> G.R. No. 209830, June 17, 2015.



**conducted by customs officers but no civil or criminal action for the recovery of duties or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.” (Boldfacing supplied)**

The word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.<sup>110</sup> Evidently, the approval of the COC is a mandatory prerequisite before criminal action for violation of the TCCP, as amended, may be filed in court.

Failure of the prosecution to secure the prior approval of the COC, a mandatory requirement under Section 2401 of the TCCP, as amended, renders the charge against accused-appellant void.<sup>111</sup> Thus, accused-appellant's conviction, which stemmed from an invalid Information, is likewise void.<sup>112</sup>

Notwithstanding, the Court shall proceed to the merits of this case for a full disposition of the present appeal.

***Accused-appellant's right to be informed of the nature and cause of accusation against him was not violated***

Accused-appellant contends that the term "Permit to Import" as used in the Information is a separate document from the SPS Import Clearance required to be secured from the BPI. Thus, it was erroneous for the trial court to construe the two as one and the same.

The OSG, on the other hand, insists that the term is broad enough to include the SPS Import Clearance, and accused-appellant's failure to secure such document made the subject importation contrary to law.

Accused-appellant's argument deserves scant consideration.

Due process in criminal prosecutions includes the right "to be informed of the nature and cause of the accusation" against the

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<sup>110</sup> *UCPB General Insurance Company, Inc. vs. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016.

<sup>111</sup> Art. 5, Civil Code. "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

<sup>112</sup> See *People of the Philippines vs. Bernabe Pangilinan y Crisostomo*, G.R. No. 183090, November 14, 2011.



accused.<sup>113</sup> As a manifestation of this right, it is required that an Information charging a person with an offense must be “sufficient,” by including a statement of the acts or omissions constituting the offense charged, subject of the complaint.<sup>114</sup> The purpose of the written information is to: (1) enable the accused to make his or her defense; (2) for protection against double jeopardy; and (3) for the court to determine whether the facts alleged support a conviction.<sup>115</sup>

For an Information to be sufficient, it must state:

- (1) The name of the accused;
- (2) The designation of the offense given by the statute;
- (3) **The acts or omissions complained of as constituting the offense;**
- (4) The name of the offended party;
- (5) The approximate date of the commission of the offense; and,
- (6) The place where the offense was committed.<sup>116</sup>

The Rules provide that the acts or omissions constituting the offense must be stated in “ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged”.<sup>117</sup> As held by the Supreme Court in *Omar Villarba vs. Court of Appeals and People of the Philippines*:<sup>118</sup>

“Hence, to successfully state the acts or omissions that constitute the offense, they must be **described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged**. Furthermore, the use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.” (*Boldfacing supplied and quotation marks omitted*)

Here, the Information is found to be sufficient. As provided for in the Rules of Court and applicable jurisprudence, the prosecution is only mandated to use ordinary and concise language in the information that would apprise the accused, with reasonable certainty, of the offense charged.

“Permit” in legal parlance means “[a] written license or warrant, issued by a person in authority, empowering the grantee to do some

<sup>113</sup> Section 14(2), Article III, Constitution.

<sup>114</sup> *People of the Philippines vs. Ltsg. Domindaor Bayabos, et al.*, G.R. No. 171222 and *People of the Philippines vs. Radm. Virginio R. Aris, et al.*, G.R. No. 174786, February 18, 2015.

<sup>115</sup> *Noe S. Andaya vs. People of the Philippines*, G.R. No. 168486, June 27, 2006, citing *The United States vs. J. Valentine Karelsen*, G.R. No. 1376, January 21, 1904.

<sup>116</sup> Section 6, Rule 110, Rules of Court, as amended.

<sup>117</sup> Section 9, Rule 110, Rules of Court, as amended.

<sup>118</sup> G.R. No. 227777, June 15, 2020.



act not forbidden by law, but not allowable without such authority.”<sup>119</sup>  
Thus, the term “Permit to Import” should be read in its literal and ordinary meaning as **any written authorization** issued by the relevant government agency that allows one to import any product or article subject of such authorization.

In this case, “Permit to Import” pertains to the written authorization issued by the BPI, even though otherwise denominated in such other name, that allows one to import garlic, and without which the importation is considered to be illegal.

Section II(A) of DA AO No. 09, series of 2010, provides for the articles or products covered by the said AO:

**“SECTION II.  
COVERAGE**

Scope – This Order covers the importation of:

- A. Plant, **plant products** and other related materials capable of harboring plant pests, to include:

x x x                      x x x                      x x x”  
(*Boldfacing supplied*)

Section III of the same AO requires importers to secure an SPS Import Clearance prior to the intended importation, viz.:

**“SECTION III.  
APPLICATION AND ISSUANCE  
FOR SPS IMPORT CLEARANCE**

- A. Any accredited importer who desires to import any of the products enumerated in Section II except Section II. A. 10 hereof **must secure an SPS Import Clearance** (Annex “A” hereof) from any of the following:

1. Issuing bureau or agency

x x x                      x x x                      x x x

- c. **BPI – for plants and plant products as enumerated in Section II.A**

x x x                      x x x                      x x x”  
(*Boldfacing supplied*)

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<sup>119</sup> BLACK’S LAW DICTIONARY (1968 ed.), p. 1298.

The consequences of the failure to secure an SPS Import Clearance is provided for under Section VII(A) of DA AO No. 09, series of 2010, to wit:

**"SECTION VII.  
CONFISCATION AND DISPOSAL  
OF REFUSED ENTRY PRODUCTS/COMMODITIES**

A. If it appears from the examination of subject product/commodity that (1) the product/commodity has been manufactured, processed or packed under unsanitary conditions or (2) product/commodity is forbidden or restricted from sale in the country in which it was produced or from which it was exported or (3) the product/commodity is adulterated, contaminated, dangerous, noxious, misbranded, misdeclared, unregistered or in violation of the terms and conditions embodied in the SPS Import Clearance; this Order and sanitary and/or phytosanitary measures; **(4) arriving without the required SPS Import Clearance and International SPS Certificate;** (5) using a fake SPS Import Clearance then the DA Border Inspector shall so inform the BOC examiner and **such product/commodity shall be seized, confiscated or refused admission**, unless such product/commodity is exported under regulations prescribed by the Bureau of Customs within ninety (90) days of the date of notice of such refusal or within such time as may be permitted pursuant to such regulations. If the product/commodity arrives at a port of entry other than Metro Manila, the collection of such samples shall be the responsibility of the regional office having jurisdiction over the port of entry." *(Boldfacing supplied)*

Evidently, under DA AO No. 09, series of 2010, an accredited importer of plant products must first secure an SPS Import Clearance from the BPI, and the failure of such importer to secure an SPS Import Clearance will lead to the seizure, confiscation and refusal from admission of the imported goods.

The SPS Import Clearance is considered to be a written authorization issued by the BPI that is required prior to any importation of plant and plant products. Verily, the SPS Import Clearance falls under the general term "Permit to Import" as alleged in the Information.

Accused-appellant was sufficiently apprised of the allegations in the Information as the SPS Import Clearance, an authorization required prior to the importation of plant products such as garlic, is included in the term "Permit to Import." This is supported by the Complaint-Affidavit<sup>120</sup> filed before the DOJ by Customs Agents Geli and Garcia, which cited DA AO No. 09, series of 2010, as one of the regulations that required importers to secure an authorization from the BPI.

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<sup>120</sup> Exhibit "A", RTC Docket, pp. 30-36.

Thus, accused-appellant's right to be informed of the nature and cause of the accusation against him was not violated as the phrase "Permit to Import", when read in its plain meaning, includes the SPS Import Clearance required under DA AO No. 09, series of 2010.

***Accused-appellant is not guilty of Smuggling in violation of Section 3601 of the TCCP, as amended***

Section 3601 of the TCCP, as amended, reads:

"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 this 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 this 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 this 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 this Code, including duties and taxes, of the artic unlawfully imported exceeds one hundred fifty thousand pesos;

5. The penalty of prison may or 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.



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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 prescribe 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 payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section."

Section 3601 of the TCCP, as amended, punishes the crime of Smuggling, which 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.<sup>121</sup>

As can be gleaned from above, the crime of Smuggling is consummated even if the offender merely *assisted* in the fraudulent importation of any article contrary to law. In fact, in the consolidated cases of *Rene M. Francisco vs. People of the Philippines*<sup>122</sup> and *Oscar A. Ojeda vs. People of the Philippines*,<sup>123</sup> the Supreme Court affirmed the conviction of individuals who "assisted in the unlawful importation of dutiable articles by facilitating their release from the Bureau of Customs without payment of proper duties and taxes."<sup>124</sup>

Thus, the elements of the second type of smuggling are as follows:

- (1) There is importation into the Philippines of any article;
- (2) The importation is contrary to law;
- (3) The importation was done fraudulently; and,
- (4) The accused assisted in the importation.

<sup>121</sup> *Maribel B. Jardeleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006.

<sup>122</sup> G.R. No. 177430, July 14, 2009.

<sup>123</sup> G.R. No. 178935, July 14, 2009.

<sup>124</sup> *Id.*



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After a careful review of the records of this case, the Court finds that the third element of fraud was **NOT** satisfied.

First element: There is importation into the Philippines of any article

The fact of importation of garlic was clearly established. The prosecution offered in evidence the Import Entry and Internal Revenue Declaration (IEIRD)<sup>125</sup> that showed the importation of 1,873 bags of garlic into the Philippines by Silver Glade Enterprises. This is supported by the Officers-on-Case Report<sup>126</sup> executed by Customs Agents Geli and Garcia, who witnessed the 100% examination of the shipment of garlic. Accused-appellant even admitted that the importation in this case is undisputed.<sup>127</sup>

Second element: The importation is contrary to law

The word "law" under Section 3601 of the TCCP, as amended, 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.<sup>128</sup>

Accused-appellant argues that an import permit is required only when the subject of importation is covered by a Special Quarantine Order, as provided for under Section 2, Rule II of BPI QAO No. 1-1981 and Section II(A)(4) of DA AO No. 09, series of 2010.<sup>129</sup> He contends that since the prosecution failed to establish the existence of a Special Quarantine Order declaring garlic from China as prohibited or that China is a restricted area, accused-appellant cannot be convicted of Smuggling.<sup>130</sup>

Section 2, Rule II of BPI QAO No. 1-1981 states:

*"SEC. 2. Plants, Plant Products and Other Materials which a "Permit to Import" is required. – The following materials, as a condition of their entry, must be covered by a "Permit to Import" issued by the Director of Plant Industry.*

x x x

x x x

x x x

<sup>125</sup> Exhibit "C", RTC Docket, p. 243.

<sup>126</sup> Exhibit "F", RTC Docket, p. 247.

<sup>127</sup> Memorandum for the Accused, RTC Docket, p. 382.

<sup>128</sup> *Maribel B. Jardeleza vs. People of the Philippines*, G.R No. 165265, February 6, 2006.

<sup>129</sup> Memorandum for the Accused, RTC Docket, pp. 384-385.

<sup>130</sup> *Id.* at p. 386.



- Fresh fruits, **vegetables** and other plant products **which have been declared as prohibited/restricted imports under Special Quarantine Orders** by virtue of their being known hosts of certain plant pests, or because they originate from restricted areas.” (*Boldfacing supplied*)

Meanwhile, Section II(A)(4) of DA AO No. 09, series of 2010, provides:

**“SECTION II.  
COVERAGE**

Scope – This Order covers the importation of:

- A. Plant, plant products and other related materials capable of harboring plant pests, **to include:**

x x x

x x x

x x x

4. fresh fruits, vegetables and other plant products which have been declared as prohibited/restricted import under special quarantine orders because of being known host of dangerous plant pests or originating from restricted areas.” (*Boldfacing supplied*)

While accused-appellant is correct in his contention that a “Permit to Import” is required only for vegetables under Special Quarantine Orders under BPI QAO No. 1-1981, it is not the only authorization that must be secured by importers under prevailing rules and regulations of the DA and BPI.

An SPS Import Clearance is required for all “plant, plant products and other related materials capable of harboring plant pests.” As provided for in Section 1 (Definition of Terms) of DA AO No. 09, series of 2010, “plants” include “living plants and parts thereof including seeds, cuttings, rhizomes, bulbs and corns, grafts, leaves, roots, scions and other plant parts that are capable of propagation” while “plant products” are “products derived from plants either in their natural state or in manufactured or processed form and are capable of harboring plant pests.” Verily, garlic is included in the term “plant, plant products and other related materials capable of harboring plant pests”.

Although Section II(A)(4) of DA AO No. 09, series of 2010, provides that “vegetables xxx declared as prohibited/restricted import under special quarantine orders” are required to have an SPS Import Clearance, the construction of the provision shows that the word “to include” simply means that it is one of those required to have an SPS Import Clearance.



In statutory construction, the term "including" (or "to include") is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.<sup>131</sup> Thus, the rule is that all "plant, plant products and other related materials capable of harboring plant pests" are required to have an SPS Import Clearance and vegetables such as garlic, either under a special quarantine order or not, are included in such requirement.

In this case, the prosecution was able to establish that the subject importation of garlic was without the required SPS Import Clearance from the BPI. Accused-appellant did not offer in evidence any SPS Import Clearance to refute the prosecution's allegation. Thus, the subject importation of garlic *sans* an SPS Import Clearance is contrary to law, which satisfies the second element.

Third element: The importation was  
not done fraudulently

The fraud envisaged in the crime of Smuggling is elucidated by the Supreme Court in *Maribel B. Jardeleza vs. People of the Philippines*,<sup>132</sup> viz.:

**"The fraud contemplated by law must be intentional fraud, consisting of deception, wilfully 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." (*Boldfacing supplied*)

The OSG contends that Silver Glade Enterprises imported garlic without having been registered as an importer of fresh garlic based on

<sup>131</sup> *Federal Land Bank vs. Bismarck Co. of St. Paul*, 314 U.S. 95 (1941).

<sup>132</sup> G.R. No. 165265, February 6, 2006.

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the Certification issued by the BPI. This denotes a wilful and fraudulent intent to import garlic with the full knowledge that it is ineligible to do so.

The Court sees no merit in the OSG's contention.

The Certification<sup>133</sup> issued by the BPI and identified by prosecution witness Montoya reads:

"This is to certify that, based on our available records; [sic] Silver Glade Enterprises is **registered as an Importer of fresh and frozen fruits & vegetables**, mungbeans, wheat & rice flour, beans, tapioca, corn starch, peanut, black pepper and dried raisin from 2013 to 2015.

However; [sic] the aforesaid company has never been **registered as an Importer of Fresh Onion and Garlic** hence; [sic] not eligible to be issued Sanitary and Phytosanitary Import Clearance for the said commodities." (*Boldfacing supplied*)

Evidently, the statements in the afore-quoted Certification engender doubt as to the contention of the OSG that fraud attended the subject importation. In the first paragraph of the Certification, it appears that Silver Glade Enterprises is eligible to import garlic since it is a registered importer of fresh vegetables. However, in the second paragraph, it is stated that Silver Glade Enterprises was not registered to import fresh garlic. Thus, there exists an ambiguity in the terms of the Certification, and in case of doubt, the Court shall rule for the accused. *In dubio pro reo*.<sup>134</sup>

To note, no evidence was adduced by the prosecution to show that the importation of garlic requires a separate registration with the BPI. The OSG's contention that accused-appellant acted fraudulently is based merely on the Certification of the BPI, the terms of which are found to be ambiguous.

Moreover, accused-appellant's whole defense rested on the theory that an Import Permit, including an SPS Import Clearance, is not required for the importation of garlic, viz.:

"Fiscal Ramos: You in fact, your defense is that there's no permit needed for the import [sic] of the garlic subject of this case?

<sup>133</sup> Exhibit "K", RTC Docket, p. 273.

<sup>134</sup> *People of the Philippines vs. Brendo P. Pagal, a.k.a. "Dindo"*, G.R. No. 241257, September 29, 2020.

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Witness: Yes ma'am.

Fiscal Ramos: It is your belief that there's no need for you to secure permit as regards the importation of garlic?

Witness: Yes.

Fiscal Ramos: In fact you mentioned a particular government policy or Order.

Witness: Yes ma'am.

Fiscal Ramos: Pointing to this Honorable Court that permit to the importation of garlic is not needed, am I correct?

Witness: Yes ma'am."<sup>135</sup>

A mistake or error of law arises when "one who is truly informed of the existence of facts x x x draws from them erroneous conclusions of law."<sup>136</sup>

In this case, accused-appellant has consistently maintained that he is not mandated to secure both an Import Permit under BPI QAO No. 1-1981 and an SPS Import Clearance under DA AO No. 09, series of 2010, based on his own interpretation of the said issuances, albeit erroneous. From the time of filing of his Counter-Affidavit before the DOJ up to the filing of the instant appeal, accused-appellant was of the firm belief that said permit and clearance are not required for the importation of garlic.

When one commits an error of law, such is not tantamount to fraud. As explained by the Supreme Court in *Commissioner of Internal Revenue vs. Melchor J. Javier, Jr. and the Court of Tax Appeals*:<sup>137</sup>

"In the case at bar, there was no actual and intentional fraud through willful and deliberate misleading of the government agency concerned, the Bureau of Internal Revenue, headed by the herein petitioner. The government was not induced to give up some legal right and place itself at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities because Javier did not conceal anything. **Error or mistake of law is not fraud.** The petitioner's zealousness to collect taxes from the unearned windfall to

<sup>135</sup> Testimony of Ian Chirstopher B. Miguel, RTC TSN, September 20, 2017, pp. 5-6.

<sup>136</sup> BLACK'S LAW DICTIONARY (1968 ed.), p. 639.

<sup>137</sup> G.R. No. 78953, July 31, 1991.

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Javier is highly commendable. Unfortunately, the imposition of the fraud penalty in this case is not justified by the extant facts. Javier may be guilty of swindling charges, perhaps even for greed by spending most of the money he received, but the records lack a clear showing of fraud committed because he did not conceal the fact that he had received an amount of money although it was a "subject of litigation." As ruled by respondent Court of Tax Appeals, the 50% surcharge imposed as fraud penalty by the petitioner against the private respondent in the deficiency assessment should be deleted." (*Boldfacing supplied*)

Section 3601 of the TCCP, as amended, requires that the fraud attending the importation be "intentional", "wilful" and "deliberate". These terms similarly mean "premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence[.]"<sup>138</sup>

In *Bureau of Customs vs. The Honorable Agnes VST Devanadera, Acting Secretary, Department of Justice, et al.*,<sup>139</sup> the Supreme Court expounded that the ultimate objective in Smuggling is the evasion of the payment of correct taxes and duties, viz.:

"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." (*Boldfacing supplied*)

In *NPC Alliance Corporation, represented by Renato B. Magadia, Vice-Chairman of the Board vs. Commissioner of Customs*,<sup>140</sup> this Court found that there is fraud when there is misdeclaration in the import documents, such as when the details in the IEIRD do not match the information contained in the bill of lading.

Here, accused-appellant did not misdeclare the subject importation. He properly declared that the importation consists of 1,873 bags of garlic as reflected in the IEIRD,<sup>141</sup> and confirmed by the 100%

<sup>138</sup> *Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G.R. No. 119322, June 4, 1996.

<sup>139</sup> G.R. No. 193253, September 8, 2015.

<sup>140</sup> CTA Case No. 7742, October 20, 2021.

<sup>141</sup> Exhibit "C", RTC Docket, p. 243.



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examination witnessed by Customs Agents Geli and Garcia. Examination of the said IEIRD shows that the information declared therein match with the details found in the Bill of Lading.<sup>142</sup>

No willful or deliberate intent to defraud the Government of the correct taxes and duties to be paid can be inferred from accused-appellant. Again, the only issue here is the lack of SPS Import Clearance, which is borne of accused-appellant's erroneous interpretation of DA AO No. 09, series of 2010, a mistake or error of law not equivalent to fraud.

Thus, the element of fraud in this case was not established.

Fourth element: The accused assisted in the importation

The fact that accused-appellant, as the customs broker, assisted Silver Glade Enterprises in the subject importation of garlic is undisputed and likewise admitted.<sup>143</sup>

In sum, the prosecution was not able to establish that all the elements of the crime of Smuggling under Section 3601 of the TCCP, as amended, were satisfied.

As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.<sup>144</sup> In fact, the assailed Joint Decision and Resolution of the RTC did not discuss the element of fraud under Section 3601 of the TCCP, as amended. Finding that the RTC committed reversible error, this Court has no other recourse but to acquit accused-appellant.

**WHEREFORE**, the instant appeal is **GRANTED**. The Joint Decision dated January 26, 2018 and Order dated April 20, 2018 in Criminal Case No. 14-310345 both rendered by the Regional Trial Court of Manila, Branch 21, are **REVERSED and SET ASIDE**. Accordingly, accused-appellant is **ACQUITTED** of the crime of Violation of Section 3601 of the Tariff and Customs Code of the Philippines, as amended, for failure of the prosecution to prove his guilt beyond reasonable doubt. Accused-appellant's bail pending appeal (surety bond) is deemed **CANCELLED**.

<sup>142</sup> Exhibit "D", RTC Docket, p. 242.

<sup>143</sup> Memorandum for the Accused, RTC Docket, p. 382.

<sup>144</sup> *People of the Philippines vs. PO1 Dennis Jess Esteban Lumikid*, G.R. No. 242695, June 23, 2020.



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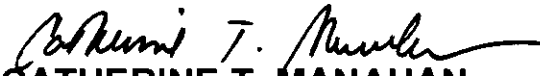
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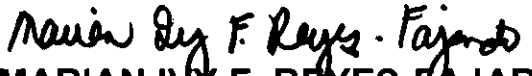
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**SO ORDERED.**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

*WE CONCUR:*

  
**CATHERINE T. MANAHAN**  
Associate Justice

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

**CERTIFICATION**

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

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice