

## SECOND DIVISION

[ G.R. No. 203057, June 06, 2016 ]

**BUREAU OF INTERNAL REVENUE AS REPRESENTED BY THE  
COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
MANILA HOME TEXTILE, INC,\*\*\* THELMA LEE AND SAMUEL LE,E,  
RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

There is grave abuse of discretion when the determination of probable cause is exercised in an arbitrary or despotic manner due to passion or personal hostility, so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.<sup>[1]</sup>

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court impugns the May 7, 2012 Decision<sup>[2]</sup> and the July 25, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 112159.

This case started out as a criminal complaint for tax evasion and perjury against respondents herein. Docketed as I.S. No. 2006-372, the Bureau of Internal Revenue (BIR), represented herein by the Commissioner of Internal Revenue (CIR), accused respondents the Manila Home Textile, Inc. (MHI), its President Thelma Lee (Thelma), and its Vice-President Samuel Lee (Samuel), and certain unidentified John Does and/or Jane Does, with having violated Sections 254,<sup>[4]</sup> 255,<sup>[5]</sup> 257<sup>[6]</sup> and 267<sup>[7]</sup> of the National Internal Revenue Code (NIRC).

It is alleged that the MHI is a duly organized domestic corporation and registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 140920; that its primary purpose is to engage in the business of manufacturing, buying, selling, exporting, importing and otherwise dealing in home textiles, apparels of all kinds, and their end-products, and any and all supplies, materials, tools, machines, appliances or apparatus employed in or related to the manufacture of said goods, for itself or as contractor, and to contract with third parties, natural or juridical persons, to supply the work, labor and materials for the manufacture and processing of such materials as independent contractors; that to facilitate importation, MHI was issued a license by the Garments and Textiles Export Board (GTEB) to operate a Customs Bonded Manufacturing Warehouse (CBMW); that as a rule, the CBMW operates by having imported raw materials stored at the warehouse; that these raw materials are duty-free provided that these are utilized and consumed for the manufacture of its final product, which are intended for export, as the same would have a different treatment in terms of "tax incentives" than the regular importations; that investigation of the MHI's importations documents revealed that for the taxable years 2001 and 2002, the said company

made several importations of PVC (or polyvinyl chloride) materials, woven fabrics, PVC leather and other raw materials used in the manufacture of its end-products; that on January 14, 2005 BIR issued Letter of Authority (LOA) No. 00002462<sup>[8]</sup> to the MHI advising it that BIR agents under the National Investigation Division (NID) had been authorized to examine its books of accounts and other accounting records for all internal revenue taxes for taxable years 1997 to 2002 and unverified prior years; that several attempts to serve the LOA were made by the BIR but all these efforts proved futile because MHI could not be located at the address given in its Annual Income Tax Returns and other BIR records; that indeed on March 3, 2004, GTEB issued a certification to the effect that MHI, with address at De la Paz St., Manggahan, Pasig, Metro Manila, had been inactive since 1997; and, that the SEC issued a certification on November 3, 2003 that the MHI failed to file its General Information Sheet for the years 1998-2005 and financial statements for the period 1997-2002.

It is further alleged that based on the information gathered by the NED, the MHI, through its corporate officers, directors and/or employees understated its importations and/or purchases, to wit:

YEAR	PURCHASES/IMPORTATION
2002	P 976,123.00
2001	P 3,355,853.00

which information is at war with the data provided by the BIR's Amended Information, Tax Exemption and Incentives Division (AITEID) covering the MHI's Importers Detailed Report, thus -

YEAR	PURCHASES/IMPORTATION
2002	P 555,778,491.00
2001	P 431,764,487.00

In conclusion, it is alleged that the "MHI, through its corporate officers, directors and/or employees, wilfully under-declared the amount of its purchases and/or importations for taxable, years 2001 and 2002 by as much as P428,408,634.00 and P554,802,368.00, respectively. This under-declaration resulted in estimated Deficiency Income Taxes in the amount of P43,716,161.84 for taxable year 2001, and P34,561,975.40 for taxable year 2002, both inclusive of interests and increments x x x."<sup>[9]</sup>

Although Thelma's and Samuel's counter-affidavits had not been appended to the records of this case, the investigating prosecutor adverted to it in his Resolution<sup>[10]</sup> of January 30, 2007. Therein Thelma and Samuel allegedly denied the accusation against them and instead asserted that the "MHI as an independent contractor and supplier of work, labor and other materials for the manufacture of garments and similar products like handbags,"<sup>[11]</sup> in the year 2001, it merely "receive[d] various consignments of raw materials worth P431,764,487.00, imported tax-free;"<sup>[12]</sup> that "[t]hese were processed at its customs bonded warehouse and eventually re-

exported as finished handbags or unused materials;"<sup>[13]</sup> that it "did the same thing with respect to the P555,778,491.00 worth of materials it imported in 2002;"<sup>[14]</sup> that "MHI did not declare as purchases the foregoing importations of raw materials because it did not buy them;" that it "processed them into finished products for its foreign customers; the rest it returned as excess raw materials;"<sup>[15]</sup> that "[a]ll that MHI supplied in the manufacture of the finished products x x x were shipped out and re-exported under what is known' in the export industry as cut, make and trim or CMT invoices;"<sup>[16]</sup> that "[u]nder its CMT arrangement, MHI could not dispose of any of its products it produced out of the imported raw materials;"<sup>[17]</sup> that "[considering that the importation and re-exportation happened four or five years ago, its records are no longer readily available;"<sup>[18]</sup> and that "[l]ikewise, a request made to the Bureau of Customs to provide copies of the export documents including CMT invoices and bills of lading proved futile."<sup>[19]</sup>

Against the foregoing backdrop, the investigating prosecutor ruled -

Truly, criminal intent is irrelevant in a special law, however the intent to commit the prohibited act must be established. (People vs. De Gratia, 233 SCRA 716) Obviously, respondents have not been shown to have intended to deliberately understate the importation and/or purchases in their income tax returns for the years 2001 and 2002 considering that the raw materials were imported duty-free and as clearly explained, respondents did not pay for the imported raw materials which were merely consigned to them to be used in the manufacture of finished products for re-export under CMT invoices. Thus, we cannot readily conclude that respondents intended to evade the payment of proper taxes on the mere basis of suspicion and speculation which cannot substitute for evidence. All told, this Office has not found any overt criminal act on the part of respondents which could be made the basis for a complaint for tax evasion.

WHEREFORE, premises considered, it is respectfully recommended that the complaint against respondents Thelma U. Lee and Samuel U. Lee for tax evasion and perjury be DISMISSED.<sup>[20]</sup>

Petitioner filed a motion for reconsideration but this motion was denied.

Hence, petitioner appealed to the Secretary of Justice. But on September 29, 2009 Department of Justice (DOJ) Undersecretary Ernesto L. Pineda, signing for the Secretary of Justice, resolved to dismiss the appeal.

Thereafter, petitioner instituted a Petition for *Certiorari* before the CA, thereat docketed as CA-G.R. SP No. 112159. The CA rendered judgment dismissing the Petition for *Certiorari*. The CA ruled -

Notably, [petitioner hastily concluded and attributed fraudulent intent on the part of herein [p]rivate [respondents solely by the apparent understatement of the amount of its purchases/importations, without at

the very least offering proof that the amount withheld is subject to tax. To simply put it, what is there to evade when no tax is due at all? In contrast, [p]rivate [respondents were able to substantiate their claim that the amount they failed to include are not purchases/importations subject to tax but consignments exclusively used for the manufacture of its finished products for export, and hence duty-free. While it is true that no direct evidence was presented by [p]rivate [respondent to prove such fact, the records are however replete with strong circumstantial evidence inexorably leading to the same conclusion.

Ultimately, [petitioner cannot seek refuge from the adequacy or weight of the evidence of [p]rivate [respondents. Petitioner must be reminded that the burden is upon it as the complainant, to prove the cause of action and show to the satisfaction of the state prosecutor the facts and law upon which the claim is based.

WHEREFORE, the instant Petition for *Certiorari* is hereby DISMISSED for lack of merit.

SO ORDERED.<sup>[21]</sup>

Its motion for reconsideration of the foregoing CA Decision having been denied, petitioner files this Petition for Review on *Certiorari* contending that all the Resolutions issued by the investigating prosecutor, the DOJ Undersecretary, as well as the Decision and the Resolution of the CA were all tainted with grave abuse of discretion.

With this contention we agree.

As clearly made out in the complaint-affidavit filed by the petitioner with the DOJ, petitioner, in line with the governments' campaign against tax evasion conducted an inquiry or preliminary investigation to determine the MHTs tax compliance; that in the course of this inquiry or preliminary investigation, data or information culled by the petitioner from certified copies of the Income Tax Return, the VAT, and other returns which the MHI was required to file with the appropriate revenue district office/s, indeed indicated that the MHI might have understated its purchases/importations for the years 2001 and 2002; that the MHI declared in its audited financial statements purchases/importations to the tune of P976,123.00 for 2002 and P3,355,853.00 for 2001; that by contrast, data from the BIR's ATTEID showed that the MHTs importations and/or purchases were P555,778,491.00 for 2002, and P431,764,487.00 for 2001; which thus indicates that the MHI and its President, Thelma and Vice-President Samuel, deliberately understated the amounts of importations and/or purchases by as much as £428,408,634.00 for 2001, and P554,802,368.00 for 2002; and that this explains why the MHI and its responsible corporate officers are being charged with violations of Sections 254, 255, 257 and 267 vis-a-vis Sections 52(A), 105 and 114(A) of the NIRC.

In refutation of the foregoing charges, Thelma and Samuel averred that they merely received on consignment the raw materials valued at P431,764,487.00 and P555,778,497.00, which were brought to the Philippines tax-free; that these raw materials were then processed at the MHTs customs bonded warehouse and