

SECOND DIVISION

[G.R. No. 202639, November 09, 2016]

FEDERATED LPG DEALERS ASSOCIATION, PETITIONER, VS. MA. CRISTINA L. DEL ROSARIO, CELSO E. ESCOBIDO II, SHIELA M. ESCOBIDO, AND RESTY P. CAPILI, RESPONDENTS.

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari* assails the April 27, 2012 Decision^[1] and July 6, 2012 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 115750, which respectively dismissed the Petition for *Certiorari* filed therewith by petitioner Federated LPG Dealers Association and denied the motion for reconsideration thereto.

Factual Antecedents

On June 1, 2006, petitioner, through counsel Atty. Genesis M. Adarlo (Atty. Adarlo) of Joaquin Adarlo and Caoile, sought assistance from the Criminal Investigation and Detection Group, Anti-Fraud and Commercial Crimes Division (CIDG-AFCCD) of the Philippine National Police^[3] in the surveillance, investigation, apprehension, and prosecution of certain persons and establishments within Metro Manila reportedly committing acts violative of *Batas Pambansa Blg. 33* (BP 33),^[4] as amended by Presidential Decree No. 1865 (PD 1865),^[5] to wit: (1) refilling of Liquefied Petroleum Gas (LPG) cylinders branded as Shellane, Petron Gasul, Caltex, Totalgaz and Superkalan Gaz without any written authorization from the companies which own the said brands in violation of Section 2(a),^[6] in relation to Sections 3^[7] and 4;^[8] (2) underfilling of LPG products or possession of underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange or barter in violation of Section 2(c),^[9] in relation to Sections 3^[10] and 4; and, (3) refilling LPG cylinders without giving any receipt therefor, or giving out receipts without indicating the brand name, tare weight, gross weight and/or price thereof, among others, again in violation of Section 2(a) in relation to Sections 3(b)^[11] and 4.

A few days later or on June 8, 2006, Atty. Adarlo again wrote the CIDG-AFCCD informing the latter of its confirmation that ACCS Ideal Gas Corporation (ACCS), which allegedly has been refilling branded LPG cylinders in its refilling plant at 882 G. Araneta Avenue, Quezon City, has no authority to refill per certifications from gas companies owning the branded LPG cylinders.^[12]

Acting on the same, a group composed of P/Supt. Francisco M. Esguerra (P/Supt. Esguerra) and PO2 Joseph R. Faeldonia (PO2 Faeldonia), both of the CIDG-AFCCD, and a team of paralegal investigators having extensive training and experience in

LPG matters led by Bernabe C. Alajar (Alajar), mapped out a plan for the surveillance and investigation of ACCS.^[13] After a series of surveillance, the group observed that various vehicles and individuals carrying branded LPG cylinders have been going in and out of ACCS refilling plant. Hence, on July 15, 2006, they conducted a test-buy operation, the details of which were uniformly narrated by P/Supt. Esguerra, PO2 Faeldonia, and Alajar as follows:

x x x On 15 July 2006, using an investigation pre-text, we went undercover and executed our test-buy operations. In order for us to successfully execute our test-buy operation and avoid suspicion, we decided to separately and successively bring FOUR (4) empty branded LPG cylinders to the ACCS Refilling Plant.

x x x It is worthy to emphasize that while we were bringing with us the FOUR (4) empty branded LPG cylinders, we observed that other individuals were simultaneously bringing in for refilling various empty unbranded and branded LPG cylinders, including Shellane, Petron Gasul, Totalgaz, and Superkalan Gaz LPG cylinders.

x x x In particular, we were able to conduct our test-buy operation in the following manner:

(a) We first brought one (1) empty Petron Gasul 11 kg. LPG cylinder and one (1) empty Shellane 11 kg. LPG cylinder for refilling. An employee of the ACCS Refilling Plant got our empty branded LPG cylinders, brought them to the refilling platform inside, and refilled them. From our location, we witnessed the actual refilling of our empty branded LPG cylinders. We were thereafter required to pay the total amount of NINE HUNDRED FIFTY-FOUR PESOS (Php954.00) for the refilled branded LPG cylinders. We made the necessary payment and, in turn, we were issued ACCS Control Receipt No. 12119 dated 15 July 2006 x x x.

(b) Lastly, we brought on (1) empty Totalgaz 11 kg. LPG cylinder and on (1) Superkalan Gaz 2.7 kg. LPG cylinder for refilling. An employee of the ACCS Refilling Plant got our empty branded LPG Cylinders, brought them to the refilling platform inside, and refilled them. Again, from our location, we witnessed the actual refilling of our empty branded LPG cylinders. We were thereafter required to pay the amount of FIVE HUNDRED NINETY PESOS (Php590.00). We made the necessary payment, and in turn, we were issued ACCS Control No. 12120 dated 15 July 2006 x x x

x x x Thereafter, we left the premises of ACCS Refilling Plant and brought with us the abovementioned refilled branded LPG Cylinders, which all did not have any LPG valve seals. Immediately, we proceeded to the CIDG-AFCCD Headquarters and made the proper identification markings on the

branded LPG cylinders, such as the name of ACCS Refilling Plant where they were refilled and the date when they were refilled. x x x^[14]

Inspection and evaluation of the refilled LPG cylinders further revealed that they were underfilled by 0.4 kg to 1.3 kg.^[15]

Having reasonable grounds to believe that ACCS was in violation of BP 33, P/Supt. Esguerra filed with the Regional Trial Court (RTC) of Manila applications for search warrant against the officers of ACCS, to wit: Antonio G. Del Rosario (Antonio) and, respondents Ma. Cristina L. Del Rosario, Celso E. Escobido II, and Shiela M. Escobido. Pursuant to search warrants^[16] accordingly issued by the said court on August 1, 2006, a search and seizure operation was conducted on August 3, 2006 at No. 882 G. Araneta Avenue, Quezon City. This resulted in the seizure of an electric motor, a hose with filling head, scales, v-belt, vapor compressor, booklets of various receipts, and 73 LPG cylinders of various brands and sizes, four of which were filled, *i.e.*, two Superkalan 3.7 kg. LPG cylinders, one Shellane 11 kg. LPG cylinder, and one Totalgaz 11 kg. cylinder.^[17] Inspection and evaluation of the said filled LPG cylinders showed that they were underfilled by 0.5 kg. to 0.9 kg.^[18]

On December 14, 2006, P/Supt Esguerra filed with the Department of Justice (DOJ) Complaints-Affidavits against Antonio and respondents for illegal trading of petroleum products and for underfilling of LPG cylinders under Section 2(a) and 2(c), respectively, of BP 33, as amended.^[19]

In his Counter-Affidavit,^[20] Antonio admitted that he was the General Manager of ACCS but denied that the company was engaged in illegal trading and underfilling. He claimed that ACCS was merely a dealer of LPG products to various retailers in Quezon City and that the alleged refilling plant in G. Araneta Avenue, Quezon City was only being used by ACCS as storage of LPG products intended for distribution. He also denied that ACCS has anything to do with the persons allegedly in-charge of refilling activities in the said compound since they were not its employees. Likewise, the properties seized during the search and seizure operation were not owned by ACCS but by third parties who were bringing in LPG tanks for refilling with which, as mentioned, ACCS has nothing to do. Antonio likewise asserted that the herein respondents were merely incorporators of ACCS who have no active participation in the operation of the business of the corporation.

Respondents, for their part, filed a Joint Counter-Affidavit^[21] corroborating the statements of Antonio that they were merely incorporators/stockholders of ACCS who have no active participation in the operation, management, and control of the business; that ACCS was only engaged in the distribution of LPG products and not in the refilling of LPG cylinders; and, that ACCS did not commit any violation of BP 33 as amended.

P/Supt. Esguerra filed a Reply-Affidavit^[22] wherein he pointed out that during the test-buy operation, his team was issued ACCS Control Receipts. To him, this negated the claim of Antonio and respondents that ACCS was not engaged in the refilling of cylinder tanks and that the persons in-charge thereof were not ACCS' employees. P/Supt. Esguerra likewise stressed that pursuant to Section 4 of BP 33, the

President, General Manager, Managing Partner, or such other officer charged with the management of the business affairs of the corporation, or the employee responsible for the violation shall be criminally liable. Thus, Antonio, being the General Manager, is criminally liable. Anent the respondents, P/Supt. Esguerra averred that the Articles of Incorporation (AOI) of ACCS provides that there shall be five incorporators who shall also serve as the directors. Considering that respondents were listed in the AOI as incorporators, they are thus deemed as the directors of ACCS. And since the By-Laws of ACCS provides that all business shall be conducted and all property of the corporation controlled and held by the Board of Directors, and also pursuant to Section 23^[23] of the Corporation Code, respondents are likewise criminally liable.

In their Joint Rejoinder-Affidavit,^[24] Antonio and respondents reiterated that ACCS was only a dealer and distributor of petroleum products and not engaged in refilling activities. They also stressed, among others, that respondents cannot be held liable under BP 33 as amended since the AOI of ACCS did not state that they were the President, General Manager, Managing Partner, or such other officer charged with the management of business affairs. What the AOI plainly indicated was that they were the incorporating stockholders of the corporation and nothing more.

However, P/Supt. Esguerra in his Sur-Rejoinder Affidavit^[25] insisted that ACCS committed illegal trading of petroleum products and underfilling and that Antonio and respondents are criminally liable for the same.

Ruling of the Department of Justice

In a Joint Resolution^[26] dated June 25, 2008, Chief State Prosecutor Jovencito R. Zuño approved the finding of probable cause by Senior State Prosecutor Edwin S. Dayog, albeit only against Antonio and only for the charge of illegal trading, *viz.*:

The pieces of documentary evidence on record, notably the receipts issued to the operatives of the PNP, CIDG, who conducted the 'test-buy' operations on 15 July 2006, and the inventory of the items they seized pursuant to the search warrant issued by the Regional Trial Court of Manila, tend to suggest that ACCS Ideal Gas Corporation did engage in refilling LPG cylinders bearing the brands Shellane, Petron Gasul, Totalgaz, and Superkalan Gas. There is no dispute that ACCS Ideal Gas was not duly authorized by Pilipinas Shell, Petron, and Total (Philippines) Inc. to refill their respective LPG cylinders with LPG. Consequently, the act of ACCS Ideal Gas in refilling the LPG cylinders constitutes 'illegal trading in petroleum and/or petroleum products' under Section 2(a) of Batas Pambansa Bilang 33 as amended by Presidential Decree No. 1986, for which respondent Antonio G. Del Rosario, the general manager of ACCS Ideal Gas Corporation, should be prosecuted. The offense of underfilling of LPG cylinders under Section 2(c) may not be considered a distinct offense, the very same act being involved. We hold that underfilling of LPG cylinders under Section 2(c) presupposes that the person or entity who committed it is duly authorized to refill LPG cylinders.

The other respondents may not be prosecuted for the offense. The law specifies the persons to be charged in case where violations of B.P. Blg. 33 are committed by a corporation, to wit, the president, general manager, officer charged with the management of the business affairs thereof, or employee responsible therefor (Section 4, B.P. Blg. 33). The record fails to disclose who among the respondents was the president, officer charged with the management of the business affairs of ACCS Ideal Gas, or the employee responsible for the commission of the offense. It is simply improper to charge all respondents for the offense based solely on the fact that they were the directors of ACCS Ideal Gas at the time the alleged violation was committed. A member of the board of directors of a corporation is not necessarily an 'officer charged with the management of the business affairs thereof.'

WHEREFORE, it is respectfully recommended that Antonio G. Del Rosario be charged with illegal refilling of LPG cylinders penalized under Section 2(a) of Batas Pambansa Bilang 33 as amended by Presidential Decree No. 1865 and that the complaints as against Ma. Cristina L. Del Rosario, Celso E. Escobido II, Sheila M. Escobido, and Resty P. Capili be dismissed.

SO RESOLVED.^[27]

The respective motions for reconsideration of P/Supt. Esguerra and Antonio were denied in another Joint Resolution^[28] dated November 11, 2008.

P/Supt. Esguerra, now joined by petitioner, filed a Petition for Review^[29] before the Secretary of Justice assailing the aforementioned Joint Resolutions. The Secretary of Justice, however, upheld the said issuances and dismissed the Petition in a Resolution^[30] dated September 4, 2009. The Motion for Reconsideration^[31] thereto was likewise denied in a Resolution^[32] dated June 23, 2010.

Ruling of the Court of Appeals

P/Supt. Esguerra and petitioner elevated the matter to the CA through a *certiorari* petition. They contended that the Secretary of Justice acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in affirming the dropping of respondents from the complaints and the ruling out of the offense of underfilling.

The CA, however, sustained the Secretary of Justice and on April 27, 2012 rendered a Decision,^[33] the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the petition. The assailed Resolutions are hereby AFFIRMED. No costs.

SO ORDERED.^[34]