



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DANILO L. OPINIANO*

Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

G.R. No. 243517

Present:

CAGUIOA, J., Chairperson,
INTING,
GAERLAN,
DIMAAMPAO,* and
SINGH, JJ.

Promulgated:

December 5, 2022

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) filed under Rule 45 of the Rules of Court, assailing the Decision² dated May 7, 2018 and Resolution³ dated December 12, 2018 of the Court of Appeals⁴ (CA) in CA-G.R. CR No. 38982. In the questioned Decision and Resolution, the CA dismissed the appeal filed by petitioner Danilo L. Opiniano (Opiniano), finding that Branch 21, Regional Trial Court of Manila (RTC) did not err in convicting Opiniano for violation of Section 3602 of the 1999 Tariff and Customs Code of the Philippines (TCCP).

* Indicated as "Opiano" in some parts of the record.

* On official leave.

¹ *Rollo*, pp. 3-15.

² *Id.* at 19-32. Penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Marlene B. Gonzales-Sison and Pedro B. Corales concurring.

³ *Id.* at 33-34. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justice Victoria Isabel A. Paredes and Pedro B. Corales concurring.

⁴ Special Fifteenth (15th) Division and Special Former Special Fifteenth (15th) Division.

Factual Antecedents

An Information was filed in the RTC charging Opiniano and his co-accused, Elenor Tan (Tan), with violation of Section 3602 of the TCCP for misdeclaring the weight of Tan's wheat flour shipment. The accusatory portion of the Information reads:

That on or about March 1-6, 2007, within the jurisdiction of this Honorable Court, accused Elenor Tan, as proprietress of Aiko Shine Fabric, conspiring and confederating with accused Danilo Opiniano, a licensed customs broker, imported shipment of 4,600 bags of wheat flour under Import Entry & Internal Declaration No. C36022, Bill of Lading MOLU489001962, and Commercial Invoice No. 85214 there under-declared said shipment by as much as 65% of its actual weight both accused fraudulently declaring that the net weight per bag of the said shipment of wheat was only 8.7 kgs. contrary to the net real weight of 115,000 kgs[.], and not 40,000 kgs. for which accused Elenor Tan paid only P99,521.00 as total duties and taxes thereon, when in truth and in fact, the total duties and taxes on said importation of wheat should have been P274,539.00, in violation of the Tariff and Customs Code of the Philippines.

CONTRARY TO LAW.⁵

When Opiniano and Tan were arraigned, both pleaded not guilty.

VERSION OF THE PROSECUTION

The main witness of the prosecution was Atty. Marlon Agaceta (Atty. Agaceta), member of the Run After the Smugglers (RATS) Program of the Bureau of Customs (BOC).⁶ Atty. Agaceta conducted an investigation on the importation subject of this case, which involves a 5x20 container van shipment of bags of wheat flour consigned to Aiko Shine Fabric which arrived on March 16, 2007 at the Port of Manila from China on board Conti Germany V 703S with Registry No. MOS-011.⁷ On April 12, 2007, Aiko Shine Fabric, through Opiniano, a licensed Customs Broker, declared the subject shipment under (i) Import Entry & Internal Revenue Declaration No. C36022 (IEIRD), (ii) Bill of Lading No. MOLU489001962 (Bill of Lading), (iii) Commercial Invoice No. 85214 (Commercial Invoice), (iv) Packing List, and (v) Supplemental Declaration on Valuation, with the following details:

Particulars:	4,600 bags wheat flour
Net Weight:	40,000 kgs.
Dutiable Value:	₱488,962.22
Taxes & Duties:	₱99,521.00 ⁸

⁵ Records, p. 000001.

⁶ *Rollo*, p. 21.

⁷ *Id.*

⁸ *Id.* at 22.



The owner/proprietress of Aiko Shine Fabric was Tan. Opiniano and Tan thus signed the IEIRD as broker and importer of the shipment, respectively. Upon arrival to the country, the subject shipment was categorized under the “Red Lane” of the BOC, and pursuant to BOC Memorandum Order No. 9-99, the same was to be referred to the Industry Commodity Experts (ICEs) for Wheat and Flour for verification.⁹ The ICEs made a report that the subject shipment was misdeclared in weight by as much as 65% of its actual weight.¹⁰ A Warrant of Seizure and Detention was thus issued on April 26, 2007 against the subject shipment.¹¹

Upon further verification and physical examination, it was found that the actual shipment bears the markings “wheat 25 kgs[.] net” per bag. The declared weight for the subject shipment was only 8.7 kg. per bag or a total weight of 40,000 kgs. instead of 25 kgs. per bag or a total weight of 115,000 kgs.¹² This amounted to a discrepancy of 75,000 kgs. or 65%. In turn, the duties and taxes paid was only ₱99,521.00 instead of ₱274,539.00, amounting to a discrepancy of ₱175,018.00 or 64%.¹³ Consequently, the RATS Program of the BOC issued a recomputation of the customs duties and taxes due. Seizure proceedings were then instituted against the subject shipment, and a criminal case was also filed against Opiniano and Tan.

VERSION OF THE DEFENSE

Opiniano testified that he was one of the customs brokers for Aiko Shine Fabric from 2005 to 2007. In connection with the shipment subject of this case, he testified that he was in charge of processing the release of the shipment by filing the IEIRD upon receipt of the Bill of Lading, Commercial Invoice, and Packing List from the consignee Aiko Shine Fabric.¹⁴ He insisted that he was not the one who claimed and received the Bill of Lading, Invoice, and Packing List from the shipping lines.¹⁵ He admitted that he was not able to cause the release of the shipment due to the misdeclaration of the weight of the shipment, which resulted in the BOC filing a seizure proceeding against the subject shipment.¹⁶ He claimed to have had no further participation in the facilitation of the release of the subject shipment from that point on.¹⁷

RULING OF THE RTC

On December 9, 2015, the RTC issued a Decision¹⁸ convicting Opiniano but acquitting Tan for the prosecution’s failure to prove that the

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 24.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Records, pp. 0508-0520. Penned by Presiding Judge Alma Crispina B. Collado-Lacorte.



person before the court was the same person named as the consignee in the commercial documents. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

- (1) Accused DANILO L. OPIANO a.k.a. DANILO L. OPINIANO is hereby declared **GUILTY** beyond reasonable doubt of the crime charged in the Information in Criminal Case No. 09-267696 for Violation of Sec. 3602 punishable under paragraph 4 of Sec. 3601 of the Tariff and Customs Code of the Philippines 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 ELENOR B. TAN @ “LEONORA BACTONG” is hereby **ACQUITTED** of the crime charged in the Information for Violation of Sec. 3602 of the Tariff and Customs Code of the Philippines docketed as Criminal Case No. 09-267696 for failure of the prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.¹⁹

In convicting Opiniano, the RTC reasoned that the prosecution was able to establish the gross under-declaration of the weight of the shipment. As Opiniano signed the IEIRD, and he having admitted to being Aiko Shine Fabric’s customs broker, then his guilt for the offense had been proved beyond reasonable doubt. As for Tan, the RTC explained that she should be acquitted because the testimonies of the prosecution witnesses focused on the identification of the documentary evidence, and none of them identified the person in court as the consignee “Elenor Tan” named in the commercial documents.

Opiniano sought reconsideration of the Decision, but the RTC denied the same in its Order²⁰ dated June 10, 2016. Aggrieved, Opiniano filed an appeal with the CA.

RULING OF THE CA

In a Decision²¹ dated May 7, 2018, the CA denied Opiniano’s appeal. The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is **DENIED**. The assailed Decision dated December 9, 2015 and Order dated June 10, 2016 of the Regional Trial Court (RTC), Branch 21 of Manila in Criminal Case No. 09-267696J are hereby **AFFIRMED**.

¹⁹ Id. at 0520.

²⁰ Id. at 0548-0552. Penned by Presiding Judge Alma Crispina B. Collado-Lacorte.

²¹ Supra note 2.



SO ORDERED.²²

In affirming Opiniano's conviction, the CA stated:

It is undisputed that the IEIRD was filed with and the imported goods passed through the customs authorities, thereby satisfying the first element of entry of imported articles. Second, the true weight of the subject imported goods was not reflected in the IEIRD prepared and signed by accused-appellant. The Cargo Manifest and Freight List verily provides that the total weight of the subject goods is 115,460 kilograms instead of 42,500 kilograms as declared by customs broker Danilo Opiniano, herein accused-appellant, and importer or consignee Leonora Bactong of Aiko Shine Fabric in the IEIRD. While it is true that accused-appellant merely relied on the commercial invoice, packing list and bill of lading as to the weight of the subject goods, that does not justify the fact he knowingly failed to verify the veracity of the information contained in the said documents.

While accused-appellant may not be obligated to go beyond the documents presented to him in filing an entry on the basis of such documents, said principle cannot however be applied in the case at bar as his acts after the filing of the entry negate any good faith on his part. x x x²³

The act *after* the filing of the entry referred to by the CA pertains to Opiniano's act of filing a letter to the Collector of Customs requesting the tentative release of the goods "to avoid payment of additional charge and demurrage of the containers and wastage of goods."²⁴ Verily, the CA anchored Opiniano's bad faith on his failure to ask for recomputation, instead of requesting for the tentative release of the goods. Finally, the CA added that Tan's acquittal would not inure to Opiniano's benefit, as the prosecution was able to establish Opiniano's direct participation in the acts constituting the crime.

Opiniano sought reconsideration of the CA's Decision, but the CA denied the same in a Resolution²⁵ dated December 12, 2018.

Hence, the present Petition filed by Opiniano.

On January 30, 2019, the Court issued a Resolution requiring the Office of the Solicitor General (OSG) to file its Comment to Opiniano's Petition. In compliance, the OSG filed its Comment on May 14, 2019.²⁶ The Court also ordered Opiniano to file his Reply, which he complied with on August 13, 2019.²⁷

²² *Rollo*, p. 31.

²³ *Id.* at 28-29.

²⁴ *Id.* at 30.

²⁵ *Supra* note 3.

²⁶ *Rollo*, pp. 58-75.

²⁷ *Id.* at 95-103.



ISSUE

The issue in this case is whether the CA erred in affirming Opiniano's conviction for violation of Section 3602 of the TCCP.

RULING OF THE COURT

The Petition is impressed with merit.

The law allegedly violated, Section 3602 of the TCCP, provides:

SECTION 3602. *Various Fraudulent Practices Against Customs Revenue.* — Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission, shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.

According to jurisprudence, the elements of a violation of the said section are: (1) there must be an entry of imported or exported articles/goods; (2) the entry was made by means of any false or fraudulent invoice, declaration, affidavit, document or fraudulent practice; and (3) there must be intent to avoid payment of taxes.²⁸

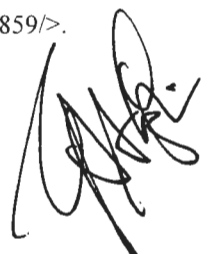
The first two elements are undoubtedly present in this case. As noted by the lower courts, the prosecution was able to establish that the imported goods passed through the customs authorities by reason of the documents, particularly the IEIRD, which do not reflect the true weight of the imported goods. Even Opiniano, in his Petition before this Court, only assails the existence of the third element.²⁹ It is thus clear that the first two elements of the crime have been established.

The third element, however, requires the *intent* to avoid payment of taxes. Hence, it is not enough that there be entry into Philippine ports by reason of the false or fraudulent document or practice — it must be proven separately that the acts were done with the intent to avoid the payment of taxes. This is bolstered by Section 2503³⁰ of the TCCP which provides that

²⁸ *Fernandez v. People*, G.R. No. 249606, July 6, 2022, accessed at <<https://sc.judiciary.gov.ph/29859/>>.

²⁹ *See rollo*, p. 7.

³⁰ As amended by Republic Act No. 7651, Sec. 1.



the general consequence of undervaluation or misdeclaration during entry is the *imposition of a surcharge*, and that Section 3602 is triggered only when the undervaluation or misdeclaration is intentional. Section 2503 of the TCCP provides:

SECTION 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* — When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided*, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: *Provided, further*, That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.
(Emphasis supplied; italics in the original)

Intent, being a state of mind, must necessarily be inferred from some overt act indicating its existence. In this connection, the RTC anchored its conclusion that the third element of the crime is present on the following factual findings:

Accused Opiniano confirmed that by signing the IEIRD, he verified the bill of lading, commercial invoice, and the packing list pursuant to the provisions of Sections 1301 and 1304 of the TCCP. However, he failed to elucidate how and from whom did he make the verification if the entries in the bill of lading, commercial invoice, and the packing list are in all respects genuine and true. Assuming *arguendo*, there was an honest mistake in the declaration of the total weight of the subject shipment, accused Opiniano as broker and/or accused Elenor Tan as consignee should have immediately requested for the re-computation of the customs duties and taxes due and correspondingly paid the discrepancy. Noteworthy is the fact that accused Opiniano as broker and/or accused Elenor Tan never requested for the re-computation of the customs duties and taxes due on the subject shipment. Instead, accused Opiniano requested for the Tentative Release of the subject shipment in a letter dated April 18, 2007 to Atty. Horacio Suansing, Collector of Customs, South Harbor, Port of Manila.³¹

³¹ Records, p. 0518.



As for the CA, as earlier adverted to in this Decision, it faulted Opiniano's failure "to verify the veracity of the information"³² in the commercial documents, as well as his act of requesting for the tentative release of the shipment instead of a recomputation of the taxes due.³³

Contrary to the RTC and the CA, the foregoing facts are not, to the mind of the Court, enough to establish beyond reasonable doubt the third element required by established jurisprudence.

To begin with, both courts cited in their respective decisions the case of *Remigio v. Sandiganbayan*³⁴ (*Remigio*), which similarly dealt with a violation of Section 3602 of the TCCP. In *Remigio*, the accused customs broker was acquitted from the charge, and the Court categorically said that "[a] customs broker is not required to go beyond the documents presented to him in filing an entry on the basis of such documents."³⁵ The documents being referred to by the Court in *Remigio* — "the bill of lading, the invoice, the packing list, letter of credit, the import entry declaration and the Central Bank Release Certificate"³⁶ — are almost exactly the same documents which Opiniano relied on in this case.

Apart from the Court's ruling in *Remigio*, the law is also clear that the signature of a customs broker in import and export entry declarations, such as the IEIRD signed by Opiniano in this case, generally signifies only an assertion of truthfulness based on the commercial documents provided by the importer. Section 27 of Republic Act No. (RA) 9280, or the Customs Brokers Act of 2004, the law applicable at the time surrounding the facts of this case,³⁷ provides:

SECTION 27. *Acts Constituting the Practice of Customs Brokers Profession.* — Any single act or transaction embraced within the provision of Section 6 hereof shall constitute an act of engaging in the practice of customs broker profession. **Import and export entry declarations shall be signed only by a customs broker under oath based on the covering documents submitted by the importers.** (Emphasis supplied)

Thus, when the signature portion of the IEIRD provides that the importer and the customs broker certify "that the information contained in all the pages of this Declaration and the documents submitted are to the best of

³² *Rollo*, p. 28.

³³ *See id.* at 30.

³⁴ 424 Phil. 859 (2002).

³⁵ *Id.* at 869.

³⁶ *Id.* at 868-869.

³⁷ Section 27 has been amended by RA 9853 in 2009, by adding a proviso. Section 27 now reads:

SECTION 27. *Acts Constituting the Practice of Customs Broker Profession.* — Any single act or transaction embraced within the provision of Section 6 hereof shall constitute an act of engaging in the practice of customs broker profession. Import entry shall be signed by a customs broker and the consignee/owner/importer under oath based on the covering documents submitted by the importers: *Provided*, That export declaration shall be signed by the exporter or, at his option, delegate the signing and processing of the document to his designated customs broker or authorized representative.



our knowledge and belief true and correct,”³⁸ the certification of the customs broker extends only to his or her knowledge based on the commercial documents submitted by the importer. Further bolstering this finding is Section 1301 of the TCCP, as amended by RA 7651,³⁹ which provides:

SECTION 1301. *Persons Authorized to Make Import Entry.* — Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: *Provided*, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: ***Provided, further, That such statements under oath shall constitute prima facie evidence of knowledge and consent of the importer of violations against applicable provisions of this Code when the importation is found to be unlawful.*** (Emphasis and underscoring supplied, italics in the original)

Based on the foregoing, the law establishes *prima facie* knowledge of the illegality only upon the importer, not the customs broker.

In all, in cases of *intentional* misdeclarations punished under Section 3602 of the TCCP, customs brokers will be criminally liable only if they are found to have *personally and knowingly* participated in the misdeclaration or undervaluation, or they acted in conspiracy with the consignee or importer.

In this case, there was a categorical finding that there was no conspiracy between the two accused. To quote the CA, the prosecution “failed to prove that accused-appellant and accused Elenor Tan connived or conspired to commit the crime charged.”⁴⁰ Even the RTC had the same findings.⁴¹ Thus, to affirm Opiniano’s conviction, the Court must be convinced of his own participation in the undervaluation or misdeclaration with the intent to evade taxes.

In this regard, it is the Court’s considered view that the prosecution failed to establish beyond reasonable doubt that Opiniano himself had the intent to evade taxes. Despite citing *Remigio* in their respective decisions, the RTC and the CA ruled that the same was inapplicable in Opiniano’s case because of Opiniano’s acts subsequent to the seizure of the shipment. The Court disagrees with the lower courts that the failure to ask for recomputation establishes Opiniano’s intent to evade taxes. When the BOC seizes property,

³⁸ Sample IEIRD in Annex I of Customs Memorandum 1-96 A dated December 21, 1999, accessible at <<https://customs.gov.ph/wp-content/uploads/2021/03/CMO-01A-1996.pdf>>.

³⁹ AN ACT TO REVITALIZE AND STRENGTHEN THE BUREAU OF CUSTOMS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, dated June 4, 1993.

⁴⁰ *Rollo*, p. 31.

⁴¹ *See id.*, quoting the RTC’s Order dated June 10, 2016.



a reappraisal of the goods, and therefore a recomputation of the taxes due, follow as a matter of course.⁴² In fact, in this case, the BOC sought the recomputation on its own, despite there being no request from either the importer or the customs broker to do so.

As well, the letter requesting the tentative release of the shipment cannot be the basis to establish intent to avoid taxes. To recall, the purpose of requesting the release was valid and legitimate: “to avoid payment of additional charge and demurrage of the containers and wastage of goods.”⁴³ More importantly, this process of requesting the release of a shipment pending administrative proceedings is explicitly sanctioned by law. Section 2301 of the TCCP, as amended by RA 7651, provides:

SECTION 2301. *Warrant for Detention of Property-Cash Bond.* — Upon making any seizure, the Collector shall issue a warrant for the detention of the property; **and if the owner or importer desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the filing of a cash bond, in an amount to be fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case:** *Provided,* That such importation shall not be released under any bond when there is a *prima facie* evidence of fraud in the importation of article: *Provided, further,* That articles the importation of which is prohibited by law shall not be released under any circumstance whatsoever: *Provided, finally,* That nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the article. (Emphasis supplied)

Verily, following a remedy provided by the law cannot be the basis of bad faith, let alone of intent to violate the law.

Against this lack of proof by the prosecution as to Opiniano’s knowledge or intent to commit the crime, Opiniano was able to provide a reasonable and believable explanation as to what happened after he was notified of the undervaluation or misdeclaration in the shipment. In his testimony, which was itself quoted by the CA Decision,⁴⁴ Opiniano narrated:

COUNSEL FOR THE DEFENSE: And what happened after you filed these three documents with the Office of the Bureau of Customs?

⁴² See TCCP, Sec. 2305, which provides:

SECTION 2305. *Description, Appraisal and Classification of Seized Property.* — The Collector shall also cause a list and particular description and/or classification of the property seized to be prepared and an appraisement of the same, like, or similar article at its wholesale value in the local market in the usual wholesale quantities in the ordinary course of trade to be made by at least two appraising officials, if there are such officials at or near the place of seizure. In the absence of those officials, then by two competent and disinterested citizens of the Philippines, to be selected by him for that purpose, residing at or near the place of seizure, which list and appraisement shall be properly attested to by the Collector and the persons making the appraisal.

⁴³ *Rollo*, p. 30.

⁴⁴ *Id.* at 29.

DANILO OPINIANO: After I filed that shipment, we received an alert order coming from the Bureau of Customs.

Q: What is that alert order all about?

A: As far as I remember, there is a discrepancy or misdeclaration, sir.

Q: If you remember, what is that discrepancy or misdeclaration?

A: After the physical examination, they found out that the kilograms of the bag is not... "hindi parehas sa naka-declare", (sic)

Q: If you remember, what was declared in the documents?

A: 8 kilograms per bag, sir.

Q: And as far as you remember, after the examination, what was the actual weight of the shipment?

A: The actual weight is 25 kilograms per bag, so there is a misdeclaration of weight.

Q: So Mr. Witness, were you able to successfully release the subject shipment from the Bureau of Customs?

A: No sir.

Q: Why?

A: Because they filed seizure proceedings sir.

Q: Who filed the seizure proceedings?

A: The legal service of the Bureau of Customs, sir.

Q: So after learning that the Bureau of Customs filed seizure proceedings with the subject shipment, what did you do?

A: I directly said to the importer that there was a misdeclaration, that the one stated in the Bill of Lading is different from the actual weight.

Q: And what happened after you informed the consignee about the problem?

A: They were the ones who facilitated the shipment, "sila na kumausap sa legal kung anong dapat gawin, i-assess ulit or to pay duties and taxes and other duties and taxes or any penalty".

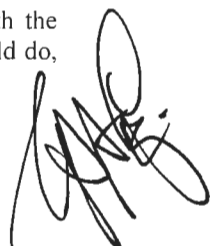
Q: So [as] far as you are concerned, after having informed the consignee about this problem, you did not do anything anymore regarding the facilitation of these goods?

A: Yes, sir.⁴⁵ (Emphasis supplied)

Thus, Opiniano's actions (or the lack thereof) subsequent to the seizure of the shipment cannot be made the factual basis to establish his intent to evade taxes. Law⁴⁶ and commonsense both dictate that an agent shall act in accordance with the instructions of the principal. As Opiniano's principal

⁴⁵ Records, TSN dated September 30, 2010, pp. 1-11.

⁴⁶ CIVIL CODE, Art. 1887. In the execution of the agency, the agent shall act in accordance with the instructions of the principal. In default thereof, he shall do all that a good father of a family would do, as required by the nature of the business.

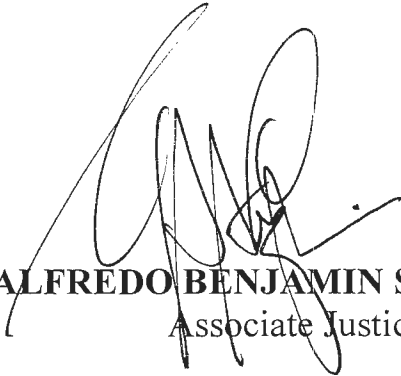


already undertook to directly settle the problem with the BOC, it was understandable, therefore, for him not to have done anything further for the shipment to be released.

All told, the prosecution was unable to prove all the elements of the crime charged, particularly the third element of the intent to evade taxes. As there is reasonable doubt as to Opiniano's culpability, his acquittal must perforce follow.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated May 7, 2018 and Resolution dated December 12, 2018 of the Court of Appeals in CA-G.R. CR No. 38982 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Danilo L. Opiniano is **ACQUITTED** of the crime charged. Let entry of judgment be issued immediately.


SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:


HENRI JEAN PAUL B. INTING
Associate Justice

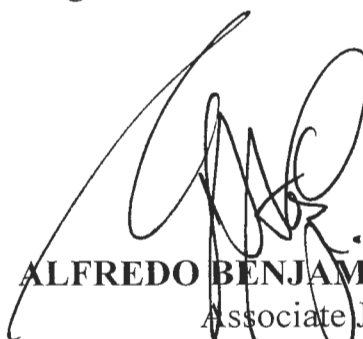

SAMUEL H. GAERLAN
Associate Justice

(on official leave)
JAPAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

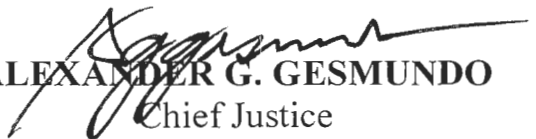
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson



CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice