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FIRST DIVISION

[G.R. No. 182147. December 15, 2010]

ARNEL U. TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY, and ALVIN TY, *petitioners, vs.* **NBI SUPERVISING AGENT MARVIN E. DE JEMIL, PETRON GASUL DEALERS ASSOCIATION, and TOTALGAZ DEALERS ASSOCIATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE FOR THE FILING OF INFORMATION IS SUBJECT TO JUDICIAL REVIEW WHERE THE SAME IS TAINTED WITH GRAVE ABUSE OF DISCRETION.— While it is the consistent principle in this jurisdiction that the determination of probable cause is a function that belongs to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing to the corresponding information or move for the dismissal of the case; such determination is subject to judicial review where it is established that grave abuse of discretion tainted the determination.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE IMPLIES "PROBABILITY" OF GUILT.— Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. After all, probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief—probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ACT INVOLVING PROHIBITED ACTS RELATIVE TO PETROLEUM (BP 33);

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ILLEGAL TRADING IN PETROLEUM; PRESENT WHERE THE REFILLING OF BRANDED LPG CYLINDERS IS MADE WITHOUT AUTHORIZATION.— [T]hat the filled LPG cylinders were indeed already loaded on customers' trucks when confiscated, the fact that these refilled LPG cylinders consisting of nine branded LPG cylinders, specifically *Totalgaz, Petron Gasul* and *Shellane,* tends to show that Omni indeed refilled these branded LPG cylinders without authorization from Total, Petron and Pilipinas Shell. Such a fact is bolstered by the test-buy conducted by Agent De Jemil and NBI confidential agent Kawada: Omni's unauthorized refilling of branded LPG cylinders, contrary to Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended.

4. ID.; ID.; ID.; ID.; ID.; THE SAME CONSIDERED AN INFRINGEMENT OF PROPERTY RIGHTS AKIN TO UNAUTHORIZED SALE OF BRANDED LPG CYLINDERS. — In *Yao, Sr. v. People*, a case involving criminal infringement of property rights under Sec. 155 of RA 8293, in affirming the courts *a quo's* determination of the presence of probable cause, this Court held that from Sec. 155.1 of RA 8293 can be gleaned that "mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is *likely* to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement." The Court affirmed the presence of infringement involving the **unauthorized sale** of *Gasul* and *Shellane* LPG cylinders and the **unauthorized refilling** of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

5. ID.; ID.; ID.; ID.; ID.; SEARCH WARRANT MAY BE DIRECTED TO THE PERSON IN CONTROL OF THE BRANDED LPG TO BE SEIZED, AS OWNERSHIP THEREOF UNDER BP 33 IS OF NO CONSEQUENCE; FINDING OF PROBABLE CAUSE, UPHELD.— The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence. The law does not require that the property to be seized should be owned by the person against whom the search warrants is directed. Ownership, therefore, is of no

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consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized. Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound. In fine, we also note that among those seized by the NBI are 16 LPG cylinders bearing the embossed brand names of *Shellane, Gasul* and *Totalgaz* but were marked as Omnigas. Evidently, this pernicious practice of tampering or changing the appearance of a branded LPG cylinder to look like another brand violates the brand owners' property rights as *infringement* under Sec. 155.1 of RA 8293. Moreover, tampering of LPG cylinders is a mode of perpetrating the criminal offenses under BP 33, as amended, and clearly enunciated under DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation. Foregoing considered, in the backdrop of the quantum of evidence required to support a finding of probable cause, we agree with the appellate court and the Office of the Chief State Prosecutor, which conducted the preliminary investigation, that there exists probable cause for the violation of Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended.

6. ID.; ID.; ID.; INCLUDES EVEN A SINGLE UNDERFILLING OF LPG CYLINDER.— [A] single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*, the Court affirmed the validity of DOE Circular No. 2000-06-010 which **provided penalties on a per cylinder basis for each violation.** x x x The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of **any act** as mandated under Sec. 4 of BP 33, as amended.

7. ID.; ID.; ID.; PERSONS CRIMINALLY LIABLE FOR THE VIOLATION OF BP 33.— Sec. 4 of BP 33, as amended, provides for the penalties and persons who are criminally liable, thus: x x x the persons who may be held liable for violations of the law, *viz*: (1) the president, (2) general manager, (3) managing partner, (4) such officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread

of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

APPEARANCES OF COUNSEL

Dulay Pagunsan & Ty Law Offices for petitioners.
Joaquin Adarlo & Caoile for respondents.
CVCLAW Center for respondent intervenor.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioners seek the reversal of the Decision[1] dated September 28, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 98054, which reversed and set aside the Resolutions dated October 9, 2006[2] and December 14, 2006[3] of the Secretary of Justice, and reinstated the November 7, 2005 Joint Resolution[4] of the Office of the Chief State Prosecutor. Petitioners assail also the CA Resolution[5] dated March 14, 2008, denying their motion for reconsideration.

The Facts

Petitioners are stockholders of Omni Gas Corporation (Omni) as per Omni's General Information Sheet[6] (GIS) dated March 6,

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[1] *Rollo*, pp. 72-92. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Andres B. Reyes and Arcangelita Romilla Lontok.

[2] *Id.* at 375-380. Penned by DOJ Undersecretary Ernesto L. Pineda.

[3] *Id.* at 417-418. Penned by DOJ Secretary Raul M. Gonzalez.

[4] *Id.* at 269-274.

[5] *Id.* at 61-63.

[6] *Id.* at 112-115.

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2004 submitted to the Securities and Exchange Commission (SEC). Omni is in the business of trading and refilling of Liquefied Petroleum Gas (LPG) cylinders and holds Pasig City Mayor's Permit No. RET-04-001256 dated February 3, 2004.

The case all started when Joaquin Guevara Adarlo & Caoile Law Offices (JGAC Law Offices) sent a letter dated March 22, 2004[7] to the NBI requesting, on behalf of their clients Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc., and Totalgaz Dealers Association, Inc., for the surveillance, investigation, and apprehension of persons or establishments in Pasig City that are engaged in alleged illegal trading of petroleum products and underfilling of branded LPG cylinders in violation of *Batas Pambansa Blg*. (BP) 33,[8] as amended by Presidential Decree No. (PD) 1865.[9]

Earlier, the JGAC Law Offices was furnished by several petroleum producers/brand owners their respective certifications on the dealers/plants authorized to refill their respective branded LPG cylinders, to wit: (1) On October 3, 2003, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) issued a certification[10] of the list of entities duly authorized to refill *Shellane* LPG cylinders; (2) on December 4, 2003, Petron Corporation (Petron) issued a certification[11] of their dealers in Luzon, Visayas, and Mindanao authorized to refill *Petron Gasul* LPG cylinders; and (3) on January 5, 2004, Total (Philippines) Corporation (Total)

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[7] *Id.* at 107-108.

[8] "An Act Defining and Penalizing certain Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties therefor and for Other Purposes," promulgated on June 6, 1979.

[9] "Amending Batas Pambansa Blg. 33, x x x, by Including Short-Selling and Adulteration of Petroleum and Petroleum Products and Other Acts in the Definition of Prohibited Acts, Increasing the Penalties therein, and for Other Purposes," issued on May 25, 1983.

[10] *Rollo*, p. 117.

[11] *Id.* at 118-119.

issued two certifications[12] of the refilling stations and plants authorized to refill their *Totalgaz* and *Superkalan Gaz* LPG cylinders.

Agents De Jemil and Kawada attested to conducting surveillance of Omni in the months of March and April 2004 and doing a test-buy on April 15, 2004. They brought eight branded LPG cylinders of *Shellane*, *Petron Gasul*, *Totalgaz*, and *Superkalan Gaz* to Omni for refilling. The branded LPG cylinders were refilled, for which the National Bureau of Investigation (NBI) agents paid PhP 1,582 as evidenced by Sales Invoice No. 90040[13] issued by Omni on April 15, 2004. The refilled LPG cylinders were without LPG valve seals and one of the cylinders was actually underfilled, as found by LPG Inspector Noel N. Navio of the Liquefied Petroleum Gas Industry Association (LPGIA) who inspected the eight branded LPG cylinders on April 23, 2004 which were properly marked by the NBI after the test-buy.

The NBI's test-buy yielded positive results for violations of BP 33, Section 2(a) in relation to Secs. 3(c) and 4, *i.e.*, refilling branded LPG cylinders without authority; and Sec. 2(c) in relation to Sec. 4, *i.e.*, underdelivery or underfilling of LPG cylinders. Thus, on April 28, 2004, Agent De Jemil filed an Application for Search Warrant (With Request for Temporary Custody of the Seized Items)[14] before the Regional Trial Court (RTC) in Pasig City, attaching, among others, his affidavit[15] and the affidavit of Edgardo C. Kawada,[16] an NBI confidential agent.

On the same day of the filing of the application for search warrants on April 28, 2004, the RTC, Branch 167 in Pasig City

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[12] *Id.* at 120-122.

[13] *Id.* at 123.

[14] *Id.* at 127-129.

[15] *Id.* at 132-134.

[16] *Id.* at 135-137.

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issued Search Warrants No. 2624[17] and 2625.[18] The NBI served the warrants the next day or on April 29, 2004 resulting in the seizure of several items from Omni's premises duly itemized in the NBI's Receipt/Inventory of Property/Item Seized.[19] On May 25, 2004, Agent De Jemil filed his Consolidated Return of Search Warrants with *Ex-Parte* Motion to Retain Custody of the Seized Items[20] before the RTC Pasig City.

Subsequently, Agent De Jemil filed before the Department of Justice (DOJ) his Complaint-Affidavits against petitioners for: (1) *Violation of Section 2(a), in relation to Sections 3(c) and 4, of B.P. Blg. 33, as amended by P.D. 1865*;[21] and (2) *Violation of Section 2(c), in relation to Section 4, of B.P. Blg. 33, as amended by P.D. 1865*,[22] docketed as I.S. Nos. 2004-616 and 2004-618, respectively.

During the preliminary investigation, petitioners submitted their Joint Counter-Affidavit,[23] which was replied[24] to by Agent De Jemil with a corresponding rejoinder[25] from petitioners.

The Ruling of the Office of the Chief State Prosecutor in I.S. No. 2004-616 and I.S. No. 2004-618

On November 7, 2005, the 3rd Assistant City Prosecutor Leandro C. Catalo of Manila issued a Joint Resolution,[26] later approved by the Chief State Prosecutor Jovencito R. Zuño upon the recommendation of the Head of the Task Force on Anti-

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[17] *Id.* at 148-149.

[18] *Id.* at 150-151.

[19] *Id.* at 140.

[20] *Id.* at 144-147, dated April 30, 2004.

[21] *Id.* at 102-106, dated May 31, 2004.

[22] *Id.* at 156-161, dated May 31, 2004.

[23] *Id.* at 214-217, dated June 28, 2004.

[24] *Id.* at 219-225, Reply-Affidavit, dated July 9, 2004.

[25] *Id.* at 226-229, Joint Rejoinder-Affidavit, dated July 30, 2004.

[26] *Supra* note 4.

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Intellectual Property Piracy (TFAIPP), Assistant Chief State Prosecutor Leah C. Tanodra-Armamento, finding probable cause to charge petitioners with violations of pertinent sections of BP 33, as amended, resolving as follows:

> WHEREFORE, premises considered, it is hereby recommended that two (2) Informations for violations of Section 2 [a] (illegal trading in petroleum and/or petroleum products) and Section 2 [c] (underfilling of LPG cylinders), both of Batas Pambansa Bilang 33, as amended, be filed against respondents [herein petitioners] ARNEL TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY and ALVIN TY.[27]

Assistant City Prosecutor Catalo found the existence of probable cause based on the evidence submitted by Agent De Jemil establishing the fact that Omni is not an authorized refiller of *Shellane*, *Petron Gasul*, *Totalgaz* and *Superkalan Gaz* LPG cylinders. Debunking petitioners' contention that the branded LPG cylinders are already owned by consumers who are free to do with them as they please, the law is clear that the stamped markings on the LPG cylinders show who are the real owners thereof and they cannot be refilled sans authority from Pilipinas Shell, Petron or Total, as the case may be. On the underfilling of one LPG cylinder, the findings of LPG Inspector Navio of the LPGIA were uncontroverted by petitioners.

Petitioners' motion for reconsideration,[28] was denied through a Resolution[29] by the Office of the Chief State Prosecutor issued on May 3, 2006.

In time, petitioners appealed to the Office of the Secretary of Justice.[30]

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[27] *Rollo*, p. 273.

[28] *Id.* at 275-289, dated February 8, 2006.

[29] *Id.* at 318-320.

[30] *Id.* at 321-338, Petition for Review, dated June 1, 2006.

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The Ruling of the DOJ Secretary in I.S. No. 2004-616 and I.S. No. 2004-618

On October 9, 2006, the Office of the Secretary of Justice issued a Resolution[31] reversing and setting aside the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor, the dispositive portion of which reads:

> WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The Chief State Prosecutor is directed to cause the withdrawal of the informations for violations of Sections 2(a) and 2(c) of B.P. Blg. 33, as amended by P.D. 1865, against respondents Arnel Ty, Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty and report the action taken within ten (10) days from receipt hereof.
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> SO ORDERED.[32]

The Office of the Secretary of Justice viewed, *first*, that the underfilling of one of the eight LPG cylinders was an isolated incident and cannot give rise to a conclusion of underfilling, as the phenomenon may have been caused by human error, oversight or technical error. Being an isolated case, it ruled that there was no showing of a clear pattern of deliberate underfilling. *Second*, on the alleged violation of refilling branded LPG cylinders sans written authority, it found no sufficient basis to hold petitioners responsible for violation of Sec. 2 (c) of BP 33, as amended, since there was no proof that the branded LPG cylinders seized from Omni belong to another company or firm, holding that the simple fact that the LPG cylinders with markings or stamps of other petroleum producers cannot by itself prove ownership by said firms or companies as the consumers who take them to Omni fully owned them having purchased or acquired them beforehand.

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[31] *Supra* note 2.

[32] *Rollo*, p. 379.

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Agent De Jemil moved but was denied reconsideration[33] through another Resolution[34] dated December 14, 2006 prompting him to repair to the CA via a petition for *certiorari*[35] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 98054.

The Ruling of the CA

The Office of the Solicitor General (OSG), in its Comment[36] on Agent De Jemil's appeal, sought the dismissal of the latter's petition viewing that the determination by the Office of the Secretary of Justice of probable cause is entitled to respect owing to the exercise of his prerogative to prosecute or not.

On August 31, 2007, Petron filed a Motion to Intervene and to Admit Attached Petition-in-Intervention[37] and Petition-in-Intervention[38] before the CA in CA-G.R. SP No. 98054. And much earlier, the Nationwide Association of Consumers, Inc. (NACI) also filed a similar motion.

On September 28, 2007, the appellate court rendered the assailed Decision[39] revoking the resolutions of the Office of the Secretary of Justice and reinstated the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor. The *fallo* reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed resolutions dated October 9, 2006 and December 14, 2006 are hereby **REVERSED** and **SET ASIDE**. The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor finding probable

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[33] *Id.* at 381-309, Motion for Reconsideration (Re: Resolution dated 9 October 2006), dated October 20, 2006.

[34] *Supra* note 3.

[35] *Rollo*, pp. 419-459.

[36] *Id.* at 490-499, dated May 8, 2007.

[37] *Id.* at 811-826, dated August 30, 2007.

[38] *Id.* at 827-855, dated August 30, 2007.

[39] *Supra* note 1.

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cause against private respondents Arnel Ty, Marie Antonette Ty, Jason Ong, Willy Dy, and Alvin Ty is hereby REINSTATED.

SO ORDERED.[40]

Citing Sec. 1 (1) and (3) of BP 33, as amended, which provide for the presumption of underfilling, the CA held that the actual underfilling of an LPG cylinder falls under the prohibition of the law which does not require for the underfilling to be substantial and deliberate.

Moreover, the CA found strong probable violation of "refilling of another company's or firm's cylinders without such company's or firm's written authorization" under Sec. 3 (c) of BP 33, as amended. The CA relied on the affidavits of Agents De Jemil and Kawada, the certifications from various LPG producers that Omni is not authorized to refill their branded LPG cylinders, the results of the test-buy operation as attested to by the NBI agents and confirmed by the examination of LPG Inspector Navio of the LPGIA, the letter-opinion[41] of the Department of Energy (DOE) to Pilipinas Shell confirming that branded LPG cylinders are properties of the companies whose stamp markings appear thereon, and Department Circular No. 2000-05-007[42] of the DOE on the required stamps or markings by the manufacturers of LPG cylinders.

After granting the appeal of Agent De Jemil, however, the motions to intervene filed by Petron and NACI were simply noted by the appellate court.

Petitioners' motion for reconsideration was rebuffed by the CA through the equally assailed March 14, 2008 Resolution.[43]

Thus, the instant petition.

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[40] *Rollo*, pp. 91-92.

[41] *Id.* at 565-568, signed by DOE Secretary Vincent S. Perez, dated December 9, 2004.

[42] *Id.* at 361, issued by DOE Secretary Mario V. Tiaoqui.

[43] *Supra* note 5.

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The Issues

I. WHETHER OR NOT RESPONDENTS WERE ENTITLED TO THE SPECIAL CIVIL ACTION OF *CERTIORARI* IN THE COURT OF APPEALS.

II. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(A) OF BATAS PAMBANSA BLG. 33, AS AMENDED.

III. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(C) OF BATAS PAMBANSA BLG. 33, AS AMENDED.

IV. WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE UNDER BATAS PAMBANSA BLG. 33, AS AMENDED, FOR BEING MERE DIRECTORS, NOT ACTUALLY IN CHARGE OF THE MANAGEMENT OF THE BUSINESS AFFAIRS OF THE CORPORATION.[44]

The foregoing issues can be summarized into two core issues: *first*, whether probable cause exists against petitioners for violations of Sec. 2 (a) and (c) of BP 33, as amended; and *second*, whether petitioners can be held liable therefor. We, however, will tackle at the outset the sole procedural issue raised: the propriety of the petition for *certiorari* under Rule 65 availed of by public respondent Agent De Jemil to assail the resolutions of the Office of the Secretary of Justice.

Petron's Comment-in-Intervention

On April 14, 2009, Petron entered its appearance by filing a Motion for Leave to Intervene and to Admit Comment-in-Intervention[45] and its Comment-in-Intervention [To petition for Review on *Certiorari* dated 13 May 2008].[46] It asserted vested interest in the seizure of several *Gasul* LPG cylinders and the

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[44] *Rollo*, p. 44.

[45] *Id.* at 726-745, dated April 13, 2009.

[46] *Id.* at 749-772, dated April 13, 2009.

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right to prosecute petitioners for unauthorized refilling of its branded LPG cylinders by Omni. Petitioners duly filed their Comment/Opposition[47] to Petron's motion to intervene. It is clear, however, that Petron has substantial interest to protect in so far as its business relative to the sale and refilling of *Petron Gasul* LPG cylinders is concerned, and therefore its intervention in the instant case is proper.

The Court's Ruling

We partially grant the petition.

Procedural Issue: Petition for *Certiorari* under Rule 65 Proper

Petitioners raise the sole procedural issue of the propriety of the legal remedy availed of by public respondent Agent De Jemil. They strongly maintain that the Office of the Secretary of Justice properly assumed jurisdiction and did not gravely abuse its discretion in its determination of lack of probable cause—the exercise thereof being its sole prerogative—which, they lament, the appellate court did not accord proper latitude. Besides, they assail the non-exhaustion of administrative remedies when Agent De Jemil immediately resorted to court action through a special civil action for *certiorari* under Rule 65 before the CA without first appealing the resolutions of the Office of the Secretary of Justice to the Office of the President (OP).

We cannot agree with petitioners.

For one, while it is the consistent principle in this jurisdiction that the determination of probable cause is a function that belongs to the public prosecutor[48] and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding

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[47] *Id.* at 961-971, Comment/Opposition (To the Motion for Leave to Intervene and to Admit Attached Comment-in-Intervention), dated June 29, 2009.

[48] *Baltazar v. People*, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 291.

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information or move for the dismissal of the case;[49] such determination is subject to judicial review where it is established that grave abuse of discretion tainted the determination.

For another, there is no question that the Secretary of Justice is an alter ego of the President who may opt to exercise or not to exercise his or her power of review over the former's determination in criminal investigation cases. As aptly noted by Agent De Jemil, the determination of probable cause by the Secretary of Justice is, under the doctrine of qualified political agency, presumably that of the Chief Executive unless disapproved or reprobated by the latter.

Chan v. Secretary of Justice[50] delineated the proper remedy from the determination of the Secretary of Justice. Therein, the Court, after expounding on the policy of non-interference in the determination of the existence of probable cause absent any showing of arbitrariness on the part of the public prosecutor and the Secretary of Justice, however, concluded, citing *Alcaraz v. Gonzalez*[51] and *Preferred Home Specialties, Inc. v. Court of Appeals*,[52] that an aggrieved party from the resolution of the Secretary of Justice may directly resort to judicial review on the ground of grave abuse of discretion, thus:

> x x x [T]he **findings of the Justice Secretary may be reviewed through a petition for *certiorari* under Rule 65** based on the allegation that he **acted with grave abuse of discretion**. **This remedy is available to the aggrieved party**.[53] (Emphasis supplied.)

It is thus clear that Agent De Jemil, the aggrieved party in the assailed resolutions of the Office of the Secretary of Justice,

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[49] *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 535; citing *Advincula v. Court of Appeals*, G.R. No. 131144, October 18, 2000, 343 SCRA 583, 589-290 and *Punzalan v. Dela Peña*, G.R. No. 158543, July 21, 2004, 434 SCRA 601.

[50] G.R. No. 147065, March 14, 2008, 548 SCRA 337.

[51] G.R. No. 164715, September 20, 2006, 502 SCRA 518.

[52] G.R. No. 163593, December 16, 2005, 478 SCRA 387.

[53] *Chan v. Secretary of Justice*, *supra* note 50, at 350.

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availed of and pursued the proper legal remedy of a judicial review through a petition for *certiorari* under Rule 65 in assailing the latter's finding of lack of probable cause on the ground of grave abuse of discretion.

First Core Issue: Existence of Probable Cause

Petitioners contend that there is no probable cause that Omni violated Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended, prohibiting the refilling of another company's or firm's LPG cylinders without its written authorization. *First*, the branded LPG cylinders seized were not traded by Omni as its representative annotated in the NBI receipt of seized items that the filled LPG cylinders came from customers' trucks and the empty ones were taken from the warehouse or swapping section of the refilling plant and not from the refilling section. *Second*, the branded LPG cylinders are owned by end-user customers and not by the major petroleum companies, *i.e.*, Petron, Pilipinas Shell and Total. And even granting arguendo that Omni is selling these LPG cylinders, still there cannot be a *prima facie* case of violation since there is no proof that the refilled branded LPG cylinders are owned by another company or firm.

Third, granting that Petron, Total and Pilipinas Shell still own their respective branded LPG cylinders already sold to consumers, still such fact will not bind third persons, like Omni, who is not privy to the agreement between the buying consumers and said major petroleum companies. Thus, a subsequent transfer by the customers of Petron, Total and Pilipinas Shell of the duly marked or stamped LPG cylinders through swapping, for example, will effectively transfer ownership of the LPG cylinders to the transferee, like Omni.

Fourth, LPG cylinder exchange or swapping is a common industry practice that the DOE recognizes. They point to a series of meetings conducted by the DOE for institutionalizing the validity of swapping of all and any kind of LPG cylinders among the industry players. The meetings resulted in a draft Memorandum of Agreement (MOA) which unfortunately was not signed due to the withdrawal of petroleum major players

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Petron, Total and Pilipinas Shell. Nonetheless, the non-signing of the MOA does not diminish the fact of the recognized industry practice of cylinder exchange or swapping. Relying on Republic Act No. (RA) 8479,[54] petitioners maintain that said law promotes and encourages the entry of new participants in the petroleum industry such as Omni. And in furtherance of this mandate is the valid practice of cylinder exchange or swapping in the LPG industry.

We are not persuaded by petitioners' strained rationalizations.

Probable violation of Sec. 2 (a) of BP 33, amended

First. The test-buy conducted on April 15, 2004 by the NBI agents, as attested to by their respective affidavits, tends to show that Omni illegally refilled the eight branded LPG cylinders for PhP 1,582. This is a clear violation of Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended. It must be noted that the criminal complaints, as clearly shown in the complaint-affidavits of Agent De Jemil, are not based solely on the seized items pursuant to the search warrants but also on the test-buy earlier conducted by the NBI agents.

Second. The written certifications from Pilipinas Shell, Petron and Total show that Omni has no written authority to refill LPG cylinders, embossed, marked or stamped *Shellane, Petron Gasul, Totalgaz* and *Superkalan Gaz*. In fact, petitioners neither dispute this nor claim that Omni has authority to refill these branded LPG cylinders.

Third. Belying petitioners' contention, the seized items during the service of the search warrants tend to show that Omni illegally refilled branded LPG cylinders without authority.

On April 29, 2004, the NBI agents who served the search warrants on Omni seized the following:

Quantity/Unit	Description
7 LPG cylinders	*Totalgaz*, 11.0 kg [filled]
1 LPG cylinder	*Petron Gasul*, 11.0 kg [filled]

[54] Downstream Oil Industry Deregulation Act of 1998.

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1 LPG cylinder	*Shellane*, 11.0 kg [filled]
29 LPG cylinders	*Superkalan Gaz*, 2.7 kg [empty]
17 LPG cylinders	*Petron Gasul*, 11.0 kg [emptly]
8 LPG cylinders	Marked as *Omnigas* with *Shell* emboss, 11.0 kg [empty]
5 LPG cylinders	Marked as *Omnigas* with *Totalgaz* emboss, 11.0 kg [empty]
23 LPG cylinders	*Shellane*, 11.0 kg [empty]
3 LPG cylinders	Marked as *Omnigas* with *Gasul* emboss, 11.0 kg [empty]
21 LPG cylinders	*Totalgaz*, 11.0 kg [empty]

The foregoing list is embodied in the NBI's Receipt/Inventory of Property/Item Seized[55] signed by NBI Agent Edwin J. Roble who served and implemented the search warrants. And a copy thereof was duly received by Atty. Allan U. Ty, representative of Omni, who signed the same "under protest" and made the annotation at the bottom part thereon: "The above items/cylinders were taken at customers' trucks and the empty cylinders taken at the warehouse (swapping section) of the company."[56]

Even considering that the filled LPG cylinders were indeed already loaded on customers' trucks when confiscated, yet the fact that these refilled LPG cylinders consisting of nine branded LPG cylinders, specifically *Totalgaz, Petron Gasul* and *Shellane*, tends to show that Omni indeed refilled these branded LPG cylinders without authorization from Total, Petron and Pilipinas Shell. Such a fact is bolstered by the test-buy conducted by Agent De Jemil and NBI confidential agent Kawada: Omni's unauthorized refilling of branded LPG cylinders, contrary to Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended. Said provisos provide:

Sec. 2. Prohibited Acts.—The following acts are prohibited and penalized:

(a) **Illegal trading in petroleum and/or petroleum products**;

x x x x x x x x x

[55] *Supra* note 19.

[56] *Rollo*, p. 140.

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Sec. 3. Definition of terms.—For the purpose of this Act, the following terms shall be construed to mean:

Illegal trading in petroleum and/or petroleum products—

x x x x x x x x x

(c) **Refilling of liquefied petroleum gas cylinders** without authority from said Bureau, or refilling **of another company's or firm's cylinders without such company's or firm's written authorization**; (Emphasis supplied.)

As petitioners strongly argue, even if the branded LPG cylinders were indeed owned by customers, such fact does not authorize Omni to refill these branded LPG cylinders without written authorization from the brand owners Pilipinas Shell, Petron and Total. In *Yao, Sr. v. People*,[57] a case involving criminal infringement of property rights under Sec. 155 of RA 8293,[58] in affirming the courts *a quo*'s determination of the presence of probable cause, this Court held that from Sec. 155.1[59] of RA 8293 can be gleaned that "mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is *likely* to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement."[60] The Court affirmed the presence of infringement involving the **unauthorized sale** of *Gasul* and *Shellane* LPG

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[57] G.R. No. 168306, June 19, 2007, 525 SCRA 108.

[58] Intellectual Property Code of the Philippines, promulgated on June 6, 1997 and took effect on January 1, 1998.

[59] Sec. 155. *Remedies; Infringement.* - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is **likely to cause confusion**, or to **cause mistake**, or **to deceive**; x x x (Emphasis supplied.)

[60] *Yao, Sr. v. People*, *supra* note 57, at 126.

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cylinders and the **unauthorized refilling** of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

Similarly, in the instant case, the fact that Omni refilled various branded LPG cylinders even if owned by its customers but without authority from brand owners Petron, Pilipinas Shell and Total shows palpable violation of BP 33, as amended. As aptly noted by the Court in *Yao, Sr. v. People*, only the duly authorized dealers and refillers of *Shellane, Petron Gasul* and, by extension, *Total* may refill these branded LPG cylinders. Our laws sought to deter the pernicious practices of unscrupulous businessmen.

Fourth. The issue of ownership of the seized branded LPG cylinders is irrelevant and hence need no belaboring. BP 33, as amended, does not require ownership of the branded LPG cylinders as a condition *sine qua non* for the commission of offenses involving petroleum and petroleum products. Verily, the offense of refilling a branded LPG cylinder without the written consent of the brand owner constitutes the offense regardless of the buyer or possessor of the branded LPG cylinder.

After all, once a consumer buys a branded LPG cylinder from the brand owner or its authorized dealer, said consumer is practically free to do what he pleases with the branded LPG cylinder. He can simply store the cylinder once it is empty or he can even destroy it since he has paid a deposit for it which answers for the loss or cost of the empty branded LPG cylinder. Given such fact, what the law manifestly prohibits is the refilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner. Apropos, a refiller cannot and ought not to refill branded LPG cylinders if it has no written authority from the brand owner.

Besides, persuasive are the opinions and pronouncements by the DOE: brand owners are deemed owners of their duly embossed, stamped and marked LPG cylinders even if these are possessed by customers or consumers. The Court recognizes this right pursuant to our laws, *i.e.*, Intellectual Property Code of the Philippines. Thus the issuance by the DOE Circular

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No. 2000-05-007,[61] the letter-opinion[62] dated December 9, 2004 of then DOE Secretary Vincent S. Perez addressed to Pilipinas Shell, the June 6, 2007 letter[63] of then DOE Secretary Raphael P.M. Lotilla to the LPGIA, and DOE Department Circular No. 2007-10-0007[64] on LPG Cylinder Ownership and Obligations Related Thereto issued on October 13, 2007 by DOE Secretary Angelo T. Reyes.

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[61] *Supra* note 42, DOE Department Circular No. 2000-05-07 provides:

Embossed Identifying Mark on LPG Cylinders and Installation of Collars with Distinctive Design or Markings on Existing LP Cylinders During Requalification

FOR: LPG REFILLERS ASSOCIATION (LPGRA) PHILIPPINE LPG ASSOCIATION (PLPGA) LPG INSTITUTE OF THE PHILIPPINES (LPGIP) SOUTHERN ISLANDS TASK FORCE (SILTF) LIQUIGAS PHILIPPINES CORPORATION (LPC) PETRONAS ENERGY PHILIPPINES, INC. (PEPI) PRYCE GASES INCORPORATED (PGI) NATION GAS (NATION) TOTAL LPG PHILIPPINES (TOTAL) PETRON CORPORATION (PETRON) PILIPINAS SHELL PETROLEUM CORP. (PSPC) CALTEX TRADING CORP. (CATGAS) MANILA GAS CORPORATION (MGC) PHILIPPINE ASSOCIATION OF LPG CYLINDERS MANUFACTURERS, INC. (PALCMI) ALL OTHERS CONCERNED

WHEREAS, pursuant to Section 2 and Section 5 (k) of Chapter 1 of RA No. 7638, the DEPARTMENT OF ENERGY (DOE) shall formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution.

WHEREAS, it has come to the attention of his Office that there is a **substantial number of LPG cylinders circulating without appropriate distinguishing marks to identify the owner or source for purposes of pinpointing responsibility in cases of underfilling and other violations related to said cylinders**;

WHEREAS, with the intensified drive against violators in the conduct of the downstream LPG industry the DOE finds that there is a need to address this problem of proper identification;

WHEREAS, premises considered, all concerned LPG industry players are hereby directed to strictly comply with the following:

In the **manufacture of new LPG cylinders the body shall be embossed with clear markings or signs indicating ownership**. New and locally manufactured cylinders shall conform to the required Product Standard (PS) mark. For imported cylinders the same shall be marked with the appropriate Import Commodity Clearance (ICC) prior to local circulation. For existing

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LPG cylinders without the embossed markings or signs, including all imported cylinders, distinctive collars or collars with distinctive designs or markings of permanent character shall be installed upon requalification or prior to local circulation, as the case may be. The installation of the required collar or distinctive markings of permanent character shall be made only by government accredited cylinders manufacturers or requalifiers with the date of installation properly indicated thereon.

This Department Circular shall take effect one (1) month after its complete Publication in two (2) newspaper [sic] of general circulation.

MARIO V. TIAOQUI
Secretary
(Emphasis supplied.)

[62] *Supra* note 41.

[63] *Rollo*, pp. 563-564.

[64] *Id.* at 658-659, DOE Department Circular No. 2007-10-0007 provides:

LPG CYLINDER OWNERSHIP AND OBLIGATIONS RELATED THERETO

WHEREAS, pursuant to Republic Act Nos. 7368 (Department of Energy Act of 1992) and 8479 (Downstream Oil Industry Deregulation Act of 1998), Batas Pambansa Blg. 33 as amended by Presidential Decree 1865 (Defining and penalizing certain prohibited acts involving petroleum/petroleum products), and under pertinent rules and regulations, the DOE has the power to monitor, supervise and regulate the petroleum industry and impose corresponding administrative penalties for violations thereof;

WHEREAS, disputes and disagreements among industry players have increased in the recent years regarding generally, the ownership of liquefied petroleum gas (LPG) cylinders, owing to the absence of clear guidelines defining such ownership, misunderstanding by consumers and dealers alike, and the inordinate indifference of industry players to address this particular concern amongst themselves;

WHEREAS, the DOE has already issued Department Circular No. DC2000-05-07, requiring among others that the **owners or sources of LPG cylinders to emboss their brand and ownership markings on the LPG cylinders, in an attempt to identify the owners thereof for purposes of accountability**;

WHEREAS, **illegal practices in LPG industry are escalating, more particularly in the refilling LPG cylinders without the prior approval of consent of the owner of the LPG cylinders, in the process depriving the latter of reasonable business return, fomenting unsafe handling practice, and thus increasing risk and danger to the consuming public**;

WHEREAS, there is now a pressing need to establish clear directives in order to diminish, if not totally eliminate, illegal practices and abuses such as above, to prevent evasion of liability on the part of LPG industry players, and

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to provide clear guidelines and reference on the ownership of LPG cylinders, to enable the Department to identify the proper liable persons and impose the appropriate penalty thereof;

WHEREAS, in consideration of the foregoing, the following guidelines are hereby promulgated to govern these concerns:

SECTION 1. The **brand owner whose permanent mark/markings appear/s on the LPG cylinder shall be presumed the owner thereof, irrespective of the party in custody or possession of the cylinder**, and regardless of whether such cylinder is, or continues to be, properly marked, stamped or identified to contain its LPG brand, or whether such cylinder is in compliance, or continues to comply with any other product or quality standard prescribed under law, by the DOE or by the Department of Trade and Industry (DTI), **unless there is any unequivocal proof or indication that such cylinder was sold, alienated, or otherwise disposed of by the brand owner to an unrelated third party under a written instrument**.

SECTION 2. The brand owner shall have the obligation to ensure that its cylinders comply with all required product quality, quantity and safety standards and specifications before they are released for sale/distribution and while they are in circulation; Provided that receipt by the DOE of a verified notice or report from the brand owner regarding any loss, stolen or missing LPG cylinders shall *prima facie* relieve the cylinder owner of the obligation to ensure the quality, safety and exact net content of such LPG cylinders. Such report may be rebutted by contrary evidence.

SECTION 3. The **brand owner shall issue authorization to entity/ firm authorized to refill their LPG cylinders**. Consequently, **an entity/ firm who shall refill LPG cylinders without authority from the brand owner shall be charged with "Illegal Refilling" and corresponding sanctions shall be applied**;

SECTION 4. Upon notice of this Circular, all brand owners shall immediately commence LPG cylinder audit and recovery program for a period not exceeding six (6) months from effectivity of this Circular; and report the same to OIMB.

Provisions to complement this definition may be issued subsequently, as necessary.

Penalties and sanctions for violations of this Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig City, October 13, 2007.

ANGELO T. REYES
Secretary
Department of Energy

(Emphasis supplied.)

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Fifth. The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence.

The law does not require that the property to be seized should be owned by the person against whom the search warrants is directed. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized.[65] Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound.

In fine, we also note that among those seized by the NBI are 16 LPG cylinders bearing the embossed brand names of *Shellane, Gasul* and *Totalgaz* but were marked as Omnigas. Evidently, this pernicious practice of tampering or changing the appearance of a branded LPG cylinder to look like another brand violates the brand owners' property rights as *infringement* under Sec. 155.1 of RA 8293. Moreover, tampering of LPG cylinders is a mode of perpetrating the criminal offenses under BP 33, as amended, and clearly enunciated under DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation.

Foregoing considered, in the backdrop of the quantum of evidence required to support a finding of probable cause, we agree with the appellate court and the Office of the Chief State Prosecutor, which conducted the preliminary investigation, that there exists probable cause for the violation of Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended. Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged

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[65] *Yao, Sr. v. People, supra* note 57, at 138; citing *Burgos, Sr. v. Chief of Staff, AFP,* No. 64261, December 26, 1984, 133 SCRA 800.

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was guilty of the crime for which he was prosecuted.[66] After all, probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief—probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[67]

Probable violation of Sec. 2 (c) of BP 33, as amended

Anent the alleged violation of Sec. 2 (c) in relation to Sec. 4 of BP 33, as amended, petitioners strongly argue that there is no probable cause for said violation based upon an underfilling of a lone cylinder of the eight branded LPG cylinders refilled during the test-buy. Besides, they point out that there was no finding of underfilling in any of the filled LPG cylinders seized during the service of the search warrants. Citing DOE's Bureau of Energy Utilization Circular No. 85-3-348, they maintain that some deviation is allowed from the exact filled weight. Considering the fact that an isolated underfilling happened in so many LPG cylinders filled, petitioners are of the view that such is due to human or equipment error and does not in any way constitute deliberate underfilling within the contemplation of the law.

Moreover, petitioners cast aspersion on the report and findings of LPG Inspector Navio of the LPGIA by assailing his independence for being a representative of the major petroleum companies and that the inspection he conducted was made without the presence of any DOE representative or any independent body having technical expertise in determining LPG cylinder underfilling beyond the authorized quantity.

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[66] *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431, 452; *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 251, citing *Cruz v. People*, G.R. No. 110436, June 27, 1994. 233 SCRA 439, 453-454 as cited in *Ladlad v. Velasco*, G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 348, 335.

[67] *Chan v. Secretary of Justice*, *supra* note 50, at 352; citing *Ching v. The Secretary of Justice*, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 629; *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans (FFCBL) v. Desierto*, G.R. No. 136225, April 23, 2008, 552 SCRA 513, 528.

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Again, we are not persuaded.

Contrary to petitioners' arguments, a single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*,[68] the Court affirmed the validity of DOE Circular No. 2000-06-010 which **provided penalties on a per cylinder basis for each violation**, thus:

> B.P. Blg. 33, as amended, criminalizes **illegal trading**, adulteration, **underfilling**, hoarding, and overpricing of petroleum products. Under this general description of what constitutes criminal acts involving petroleum products, the Circular merely lists the various modes by which the said criminal acts may be perpetrated, namely: no price display board, no weighing scale, no tare weight or incorrect tare weight markings, **no authorized LPG seal**, no trade name, unbranded LPG cylinders, no serial number, no distinguishing color, no embossed identifying markings on cylinder, **underfilling LPG cylinders**, **tampering LPG cylinders**, and unauthorized decanting of LPG cylinders. These specific acts and omissions are obviously within the contemplation of the law, which seeks to curb the pernicious practices of some petroleum merchants.[69] (Emphasis supplied.)

Moreover, in denying the motion for reconsideration of the LPG Refillers Association of the Philippines, Inc., the Court upheld the basis of said DOE Circular No. 2000-06-010 on the **imposition of penalties on a per cylinder basis**, thus:

> Respondent's position is untenable. The Circular is not confiscatory in providing penalties on a per cylinder basis. Those penalties do not exceed the ceiling prescribed in Section 4 of B.P. Blg. 33, as amended, which penalizes "*any person who commits* ***any act*** *[t]herein prohibited*." Thus, violation on a per cylinder basis falls within the phrase "*any act*" as mandated in Section 4. To provide the same penalty for one who violates a prohibited act in B.P. Blg. 33, as amended, regardless of the number of cylinders involved would result

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[68] G.R. No. 159149, June 26, 2006, 492 SCRA 638.

[69] *Id.* at 649-650.

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in an indiscriminate, oppressive and impractical operation of B.P. Blg. 33, as amended. The equal protection clause demands that "*all persons subject to such legislation shall be treated alike, **under like circumstances** and conditions, both in the privileges conferred and in the liabilities imposed*."[70]

The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of **any act** as mandated under Sec. 4 of BP 33, as amended. Ineluctably, the underfilling of one LPG cylinder constitutes a clear violation of BP 33, as amended. The finding of underfilling by LPG Inspector Navio of the LPGIA, as aptly noted by Manila Assistant City Prosecutor Catalo who conducted the preliminary investigation, was indeed not controverted by petitioners.

On the issue of manifest bias and partiality, suffice it to say that aside from the allegation by petitioners, they have not shown that LPG Inspector Navio is neither an expert nor qualified to determine underfilling. Besides, it must be noted that the inspection by LPG Inspector Navio was conducted in the presence of NBI agents on April 23, 2004 who attested to that fact through their affidavits. Moreover, no rules require and petitioners have not cited any that the inspection be conducted in the presence of DOE representatives.

Second Core Issue: Petitioners' Liability for Violations

Sec. 4 of BP 33, as amended, provides for the penalties and persons who are criminally liable, thus:

Sec. 4. Penalties. — Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (₱20,000) but not more than fifty thousand pesos (₱50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding,

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[70] *Perez v. LPG Refillers Association of the Philippines, Inc.*, G.R. No. 159149, August 28, 2007, 531 SCRA 431, 435.

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overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a **corporation**, partnership, or other juridical person, the **president**, the **general manager, managing partner**, or such other **officer charged with the management of the business affairs thereof**, or **employee responsible for the violation** shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office. (Emphasis supplied.)

Relying on the third paragraph of the above statutory proviso, petitioners argue that they cannot be held liable for any perceived violations of BP 33, as amended, since they are mere directors of Omni who are not in charge of the management of its business affairs. Reasoning that criminal liability is personal, liability attaches to a person from his personal act or omission but not from the criminal act or negligence of another. Since Sec. 4 of BP 33, as amended, clearly provides and enumerates who are criminally liable, which do not include members of the board of directors of a corporation, petitioners, as mere members of the board of directors who are not in charge of Omni's business affairs, maintain that they cannot be held liable for any perceived violations of BP 33, as amended. To bolster their position, they attest to being full-time employees of various firms as shown by the Certificates of Employment[71] they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit

[71] *Rollo*, pp. 241-243.

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that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable thereof not being in any way connected with the commission of the alleged violations, and, consequently, the criminal complaints filed against them based solely on their being members of the board of directors as per the GIS submitted by Omni to SEC are grossly discriminatory.

On this point, we agree with petitioners except as to petitioner Arnel U. Ty who is indisputably the President of Omni.

It may be noted that Sec. 4 above enumerates the persons who may be held liable for violations of the law, *viz:* (1) the president, (2) general manager, (3) managing partner, (4) such other officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

It is undisputed that petitioners are members of the board of directors of Omni at the time pertinent. There can be no quibble that the enumeration of persons who may be held liable for corporate violators of BP 33, as amended, excludes the members of the board of directors. This stands to reason for the board of directors of a corporation is generally a policy making body. Even if the corporate powers of a corporation are reposed in the board of directors under the first paragraph of Sec. 23[72] of the Corporation Code, it is of common knowledge and practice that the board of directors is not directly engaged or charged with the running of the recurring business affairs of the corporation. Depending on the powers granted to them by the

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[72] Sec. 23. *The board of directors or trustees*.—Unless otherwise provided in this Code, the **corporate powers** of all corporations formed under this Code shall be **exercised, all business conducted** and **all property** of such corporations **controlled and held by the board of directors** or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (Emphasis supplied.)

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Articles of Incorporation, the members of the board generally do not concern themselves with the day-to-day affairs of the corporation, except those corporate officers who are charged with running the business of the corporation and are concomitantly members of the board, like the President. Section 25[73] of the Corporation Code requires the president of a corporation to be also a member of the board of directors.

Thus, the application of the legal maxim *expressio unius est exclusio alterius*, which means the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.[74] The fourth officer in the enumerated list is the catch-all "such other officer charged with the management of the business affairs" of the corporation or juridical entity which is a factual issue which must be alleged and supported by evidence.

A scrutiny of the GIS reveals that among the petitioners who are members of the board of directors are the following who are likewise elected as corporate officers of Omni: (1) Petitioner Arnel U. Ty (Arnel) as President; (2) petitioner Mari Antonette Ty as Treasurer; and (3) petitioner Jason Ong as Corporate Secretary. Sec. 4 of BP 33, as amended, clearly indicated firstly the president of a corporation or juridical entity to be criminally liable for violations of BP 33, as amended.

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[73] Sec. 25. *Corporate officers, quorum*.—Immediately after their election, the directors of a corporation must formally organize by the election of a **president, who shall be a director**, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any tow (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

[74] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 93 (citations omitted).

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Evidently, petitioner Arnel, as President, who manages the business affairs of Omni, can be held liable for probable violations by Omni of BP 33, as amended. The fact that petitioner Arnel is ostensibly the operations manager of Multi-Gas Corporation, a family owned business, does not deter him from managing Omni as well. It is well-settled that where the language of the law is clear and unequivocal, it must be taken to mean exactly what it says.[75] As to the other petitioners, unless otherwise shown that they are situated under the catch-all "such other officer charged with the management of the business affairs," they may not be held liable under BP 33, as amended, for probable violations. Consequently, with the exception of petitioner Arnel, the charges against other petitioners must perforce be dismissed or dropped.

WHEREFORE, premises considered, we *PARTIALLY GRANT* the instant petition. Accordingly, the assailed September 28, 2007 Decision and March 14, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 98054 are *AFFIRMED* with *MODIFICATION* that petitioners Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty are excluded from the two Informations charging probable violations of Batas Pambansa Bilang 33, as amended. The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor is modified accordingly.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez, JJ.*, concur.

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[75] *Yu v. Orchard Golf & Country Club, Inc.*, G.R. No. 150335, March 1, 2007, 517 SCRA 169, 177 (citations omitted).