



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**FEDERATED LPG DEALERS
 ASSOCIATION,**

Petitioner,

- versus -

**MA. CRISTINA L. DEL ROSARIO,
 CELSO E. ESCOBIDO II,
 SHIELA M. ESCOBIDO,
 and RESTY P. CAPILI,**

Respondents.

G.R. No. 202639

Present:

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA,* *and*
 LEONEN, *JJ.*

Promulgated:
 09 NOV 2016

X -----

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari* assails the April 27, 2012 Decision¹ and July 6, 2012 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 115750, which respectively dismissed the Petition for *Certiorari* filed therewith by petitioner Federated LPG Dealers Association and denied the motion for reconsideration thereto.

Factual Antecedents

On June 1, 2006, petitioner, through counsel Atty. Genesis M. Adarlo (Atty. Adarlo) of Joaquin Adarlo and Caoile, sought assistance from the Criminal Investigation and Detection Group, Anti-Fraud and Commercial Crimes Division (CIDG-AFCCD) of the Philippine National Police³ in the surveillance, investigation, apprehension, and prosecution of certain persons and establishments within Metro Manila reportedly committing acts violative of *Batas Pambansa Blg. 33 (BP 33)*,⁴ as amended by Presidential Decree No. 1865 (PD 1865),⁵ to wit: (1)

* On official leave.

¹ CA *rollo*, pp. 454-467; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas Peralta and Mario V. Lopez.

² Id. at 483-484.

³ Id. at 72-73.

⁴ 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.

refilling of Liquefied Petroleum Gas (LPG) cylinders branded as Shellane, Petron Gasul, Caltex, Totalgaz and Superkalan Gaz without any written authorization from the companies which own the said brands in violation of Section 2(a),⁶ in relation to Sections 3⁷ and 4;⁸ (2) underfilling of LPG products or possession of underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange or barter in violation of Section 2(c),⁹ in relation to Sections 3¹⁰ and 4; and, (3) refilling LPG cylinders without giving any receipt therefor, or giving out receipts without indicating the brand name, tare weight, gross weight and/or price thereof, among others, again in violation of Section 2(a) in relation to Sections 3(b)¹¹ and 4.

Penalties Therefor and for Other Purposes", 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"

⁶ Sec. 2. Prohibited Acts. – The following acts are prohibited and penalized:

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

x x x x

⁷ Sec. 3. Definition of terms. – For the purpose of this Act, the following shall be construed to mean:

Illegal trading in petroleum and/or petroleum products –

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;

x x x x

⁸ 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 (₱20,000.00) but not more than FIFTY thousand pesos (₱50,000.00) 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, 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 retails outlet, or hauler, the cancellation of his license.

Trial of case arising under 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.

⁹ Sec. 2. Prohibited Acts. – The following acts are prohibited and penalized:

x x x x

(c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

x x x x

¹⁰ Sec. 3. Definition of terms. – For the purpose of this Act, the following shall be construed to mean:

x x x x

Underfilling or Underdelivery – Refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually beyond authorized limits than the quantity indicated or registered on the metering device of container. This refers, among others, to the quantity of petroleum retail outlets or to liquefied petroleum gas in cylinder or to lube oils in packages.

¹¹ Sec. 3. Definition of terms. – For the purpose of this Act, the following shall be construed to mean:

Illegal trading in petroleum and/or petroleum products –

x x x x

(b) Non-issuance of receipts by licensed [traders] oil companies, marketers, distributors, dealers, subdealers and other retail outlets, to final consumers; provided: That such receipts, in the case of gas cylinders, shall indicate therein the brand name, tare weight, gross weight, and price thereof;

x x x x

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

Acting on the same, a group composed of P/Supt. Francisco M. Esguerra (P/Supt. Esguerra) and PO2 Joseph R. Faeldonia (PO2 Faeldonia), both of the CIDG-AFCCD, and a team of paralegal investigators having extensive training and experience in LPG matters led by Bernabe C. Alajar (Alajar), mapped out a plan for the surveillance and investigation of ACCS.¹³ After a series of surveillance, the group observed that various vehicles and individuals carrying branded LPG cylinders have been going in and out of ACCS refilling plant. Hence, on July 15, 2006, they conducted a test-buy operation, the details of which were uniformly narrated by P/Supt. Esguerra, PO2 Faeldonia, and Alajar as follows:

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

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

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

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

(b) Lastly, we brought one (1) empty Totalgaz 11 kg. LPG cylinder and one (1) Superkalan Gaz 2.7 kg. LPG cylinder for refilling. An employee of the ACCS Refilling Plant got our empty branded LPG Cylinders, brought them to the refilling platform inside, and refilled them. Again, from our location, we witnessed the actual refilling of our empty branded LPG cylinders. We were thereafter required to pay the amount of FIVE

¹² CA rollo, pp. 95-99.

¹³ See respective Affidavits of P/Supt. Esguerra, id. at 128-130; PO2 Joseph Faeldonia, id. at 134-136; and Alajar, id. at 131-133.



HUNDRED NINETY PESOS (Php590.00). We made the necessary payment, and in turn, we were issued ACCS Control No. 12120 dated 15 July 2006 x x x

x x x Thereafter, we left the premises of ACCS Refilling Plant and brought with us the abovementioned refilled branded LPG Cylinders, which all did not have any LPG valve seals. Immediately, we proceeded to the CIDG-AFCCD Headquarters and made the proper identification markings on the branded LPG cylinders, such as the name of ACCS Refilling Plant where they were refilled and the date when they were refilled. x x x¹⁴

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

Having reasonable grounds to believe that ACCS was in violation of BP 33, P/Supt. Esguerra filed with the Regional Trial Court (RTC) of Manila applications for search warrant against the officers of ACCS, to wit: Antonio G. Del Rosario (Antonio) and, respondents Ma. Cristina L. Del Rosario, Celso E. Escobido II, and Shiela M. Escobido. Pursuant to search warrants¹⁶ accordingly issued by the said court on August 1, 2006, a search and seizure operation was conducted on August 3, 2006 at No. 882 G. Araneta Avenue, Quezon City. This resulted in the seizure of an electric motor, a hose with filling head, scales, v-belt, vapor compressor, booklets of various receipts, and 73 LPG cylinders of various brands and sizes, four of which were filled, *i.e.*, two Superkalan 3.7 kg. LPG cylinders, one Shellane 11 kg. LPG cylinder, and one Totalgaz 11 kg. cylinder.¹⁷ Inspection and evaluation of the said filled LPG cylinders showed that they were underfilled by 0.5 kg. to 0.9 kg.¹⁸

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

In his Counter-Affidavit,²⁰ Antonio admitted that he was the General Manager of ACCS but denied that the company was engaged in illegal trading and underfilling. He claimed that ACCS was merely a dealer of LPG products to various retailers in Quezon City and that the alleged refilling plant in G. Araneta Avenue, Quezon City was only being used by ACCS as storage of LPG products intended for distribution. He also denied that ACCS has anything to do with the

¹⁴ Id. at 129-130

¹⁵ See Inspection/Evaluation Reports, id. at 114-117.

¹⁶ One for alleged violation of Section 2(a), in relation to Sections 3 (c) and 4 of BP 33 as amended, id. at 150-154, and another for alleged violation of Section 2(c), in relation to Sections 3 and 4 of the same law, id. at 155-159.

¹⁷ See Receipt of Property Seized, id. at 160.

¹⁸ As alleged in the Complaint-Affidavit for Underfilling, id. at 169-173.

¹⁹ Docketed as I.S. No. 2006-1173 and I.S. No. 2006-1174. However, only a copy of the Complaint-Affidavit in I.S. No. 2206-1173 (for underfilling) is found in the records, id.

²⁰ Id. at 210-211.

persons allegedly in-charge of refilling activities in the said compound since they were not its employees. Likewise, the properties seized during the search and seizure operation were not owned by ACCS but by third parties who were bringing in LPG tanks for refilling with which, as mentioned, ACCS has nothing to do. Antonio likewise asserted that the herein respondents were merely incorporators of ACCS who have no active participation in the operation of the business of the corporation.

Respondents, for their part, filed a Joint Counter-Affidavit²¹ corroborating the statements of Antonio that they were merely incorporators/stockholders of ACCS who have no active participation in the operation, management, and control of the business; that ACCS was only engaged in the distribution of LPG products and not in the refilling of LPG cylinders; and, that ACCS did not commit any violation of BP 33 as amended.

P/Supt. Esguerra filed a Reply-Affidavit²² wherein he pointed out that during the test-buy operation, his team was issued ACCS Control Receipts. To him, this negated the claim of Antonio and respondents that ACCS was not engaged in the refilling of cylinder tanks and that the persons in-charge thereof were not ACCS' employees. P/Supt. Esguerra likewise stressed that pursuant to Section 4 of BP 33, the President, General Manager, Managing Partner, or such other officer charged with the management of the business affairs of the corporation, or the employee responsible for the violation shall be criminally liable. Thus, Antonio, being the General Manager, is criminally liable. Anent the respondents, P/Supt. Esguerra averred that the Articles of Incorporation (AOI) of ACCS provides that there shall be five incorporators who shall also serve as the directors. Considering that respondents were listed in the AOI as incorporators, they are thus deemed as the directors of ACCS. And since the By-Laws of ACCS provides that all business shall be conducted and all property of the corporation controlled and held by the Board of Directors, and also pursuant to Section 23²³ of the Corporation Code, respondents are likewise criminally liable.

In their Joint Rejoinder-Affidavit,²⁴ Antonio and respondents reiterated that ACCS was only a dealer and distributor of petroleum products and not engaged in refilling activities. They also stressed, among others, that respondents cannot be held liable under BP 33 as amended since the AOI of ACCS did not state that they were the President, General Manager, Managing Partner, or such other officer charged with the management of business affairs. What the AOI plainly indicated

²¹ Id. at 214.

²² Id. at 216-225.

²³ 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.

²⁴ CA rollo, pp. 236-240.



was that they were the incorporating stockholders of the corporation and nothing more.

However, P/Supt. Esguerra in his Sur-Rejoinder Affidavit²⁵ insisted that ACCS committed illegal trading of petroleum products and underfilling and that Antonio and respondents are criminally liable for the same.

Ruling of the Department of Justice

In a Joint Resolution²⁶ dated June 25, 2008, Chief State Prosecutor Jovencito R. Zuño approved the finding of probable cause by Senior State Prosecutor Edwin S. Dayog, albeit only against Antonio and only for the charge of illegal trading, viz.:

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

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

WHEREFORE, it is respectfully recommended that Antonio G. Del Rosario be charged with illegal refilling of LPG cylinders penalized under Section 2(a) of Batas Pambansa Bilang 33 as amended by Presidential Decree No. 1865

²⁵ Id. at 241-251.

²⁶ Id. at 252-255.



and that the complaints as against Ma. Cristina L. Del Rosario, Celso E. Escobido II, Sheila M. Escobido, and Resty P. Capili be dismissed.

SO RESOLVED.²⁷

The respective motions for reconsideration of P/Supt. Esguerra and Antonio were denied in another Joint Resolution²⁸ dated November 11, 2008.

P/Supt. Esguerra, now joined by petitioner, filed a Petition for Review²⁹ before the Secretary of Justice assailing the aforementioned Joint Resolutions. The Secretary of Justice, however, upheld the said issuances and dismissed the Petition in a Resolution³⁰ dated September 4, 2009. The Motion for Reconsideration³¹ thereto was likewise denied in a Resolution³² dated June 23, 2010.

Ruling of the Court of Appeals

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

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

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

SO ORDERED.³⁴

The Motion for Reconsideration³⁵ thereto having been denied in a Resolution³⁶ dated July 6, 2012, petitioner comes to this Court through this Petition for Review on *Certiorari*.

²⁷ Id. at 253-254.

²⁸ Id. at 274-275.

²⁹ Id. at 277-308.

³⁰ Id. at 48-49; signed by Undersecretary Ernesto L. Pineda for the Secretary of Justice.

³¹ Id. at 53-71.

³² Id. at 50-51; signed by Acting Secretary Alberto C. Agra.

³³ Id. at 454-467.

³⁴ Id. at 466.

³⁵ Id. at 468-480.

³⁶ Id. at 483-484.

Issues

Essentially at fore in this Petition are the following questions:

1. Can respondents, as members of the Board of Directors of ACCS, be criminally prosecuted for the latter's alleged violation/s of BP 33 as amended?
2. Are the offenses of illegal trading of petroleum products under Section 2(a) and underfilling under Section 2(c), both of BP 33 as amended, distinct offenses?

Our Ruling

There is partial merit in the Petition.

Respondents cannot be prosecuted for ACCS' alleged violations of BP 33. They were thus correctly dropped as respondents in the complaints.

The CA ratiocinated that by the election or designation of Antonio as General Manager of ACCS, the daily business operations of the corporation were vested in his hands and had ceased to be the responsibility of respondents as members of the Board of Directors. Respondents, therefore, were not officers charged with the management of the business affairs who could be held liable pursuant to paragraph 3, Section 4 of BP 33, as amended, which states that:

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. x x x

Petitioner, on the other hand, insists that the Board of Directors, by law, is responsible for the general management of the business affairs of a corporation. Conversely, respondents as members of the Board of Directors of ACCS fall under the classification of officers charged with the management of business affairs.

The Court finds no need to belabor this point as it has already made a definite pronouncement on an identical issue in *Ty v. NBI Supervising Agent De Jemil*.³⁷

³⁷ 653 Phil. 356 (2010).

In the said case, therein petitioners were members of the Board of Directors of Omni Gas Corporation (Omni), which was found by operatives of the National Bureau of Investigation (NBI) as allegedly engaged in illegal trading of LPG and underfilling of LPG cylinders. While the State Prosecutor found probable cause against therein petitioners, the Secretary of Justice, however, reversed and set aside the said finding. On *certiorari* petition by the Office of the Solicitor General, the CA granted the same and consequently reinstated the finding of probable cause of the State Prosecutor. Naturally, petitioners brought the matter to this Court through a Petition for Review on *Certiorari* where one of the core issues raised was whether therein petitioners could be held liable for the corporation's alleged violations of BP 33. In resolving the same, the Court ratiocinated, *viz.*:

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

x x x x

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; x x x

x x x x

Relying on the x x x 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 they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable [therefor, they] 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 [General Information Sheet (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 undisputably 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 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 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 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. 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.

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. 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.³⁸

As clearly enunciated in *Ty*, a member of the Board of Directors of a corporation, cannot, by mere reason of such membership, be held liable for the

³⁸ Id. at 381-385; emphases and italics in the original; citations omitted.

corporation's probable violation of BP 33. If one is not the President, General Manager or Managing Partner, it is imperative that it first be shown that he/she falls under the catch-all "such other officer charged with the management of the business affairs," before he/she can be prosecuted. However, it must be stressed, that the matter of being an officer charged with the management of the business affairs is a factual issue which must be alleged and supported by evidence. Here, there is no dispute that neither of the respondents was the President, General Manager, or Managing Partner of ACCS. Hence, it becomes incumbent upon petitioner to show that respondents were officers charged with the management of the business affairs. However, the Complaint-Affidavit³⁹ attached to the records merely states that respondents were members of the Board of Directors based on the AOI of ACCS. There is no allegation whatsoever that they were in-charge of the management of the corporation's business affairs.

At any rate, the Court has gone through the By-Laws of ACCS and found nothing therein which would suggest that respondents were directly involved in the day-to-day operations of the corporation. True, Section 1⁴⁰ of Article III thereof contains a general statement that the corporate powers of ACCS shall be exercised, all business conducted, and all property of the corporation controlled and held by the Board of Directors. Notably, however, the same provision likewise significantly vests the Board with specific powers that were generally concerned with policy making from which it can reasonably be deduced that the Board only concerns itself in the business affairs by setting administrative and operational policies. It is actually the President under Section 2,⁴¹ Article IV of the said by-laws who is vested with wide latitude in controlling the business operations of the corporation. Among others, the President is specifically empowered to supervise and manage the business affairs of the corporation, to implement the administrative and operational policies of the corporation under his supervision and control, to appoint, remove, suspend or discipline employees of the corporation, prescribe their duties, and determine their salaries. With these functions, the President appears to be the officer charged with the management of the business affairs of ACCS. But since there is no allegation or showing that any of the respondents was the President of ACCS, none of them, therefore, can be considered as an officer charged with the management of the business affairs even in so far as the By-Laws of the subject corporation is concerned.

Clearly, therefore, it is only Antonio, who undisputedly was the General Manager – a position among those expressly mentioned as criminally liable under paragraph 4, Section 3 of BP 33, as amended – can be prosecuted for ACCS' perceived violations of the said law. Respondents who were mere members of the Board of Directors and not shown to be charged with the management of the business affairs were thus correctly dropped as respondents in the complaints.

³⁹ For Violation of Section 2(c), in relation to sections 3 and 4, of BP 33 as amended.

⁴⁰ CA *rollo*, pp. 88-89.

⁴¹ *Id.* at 90-91.

The offenses of illegal trading under Section 2(a) and underfilling under Section 2(c) both under BP 33, as amended, are distinct offenses.

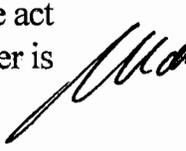
The State Prosecutor held that the offense of illegal trading by means of unauthorized refilling is not distinct from the offense of underfilling since these two offenses involve the very same act of refilling. He likewise held that the offender in the latter offense must be an entity duly authorized to refill LPG cylinders. And in view of his finding that ACCS probably committed illegal trading by refilling “without authority”, the State Prosecutor impliedly held that the charge of underfilling could not prosper in this case.

Petitioner, however, argues otherwise. It asserts that illegal trading of LPG products is committed when an entity not authorized to refill a specified brand of LPG cylinder refills the same, regardless of whether or not the LPG cylinder is underfilled. Underfilling, on the other hand, is committed when an entity refills an LPG cylinder below the required quantity, regardless of whether or not such entity is authorized to refill. Hence, the two offenses are separate and distinct.

The Court agrees with petitioner.

Illegal trading and underfilling are among the eight acts prohibited under Section 2 of BP 33, as amended.

By definition, the acts penalized by both offenses are essentially different. Under paragraph 1(c) of Section 3 of the said law, illegal trading in petroleum and/or petroleum products is committed by refilling LPG cylinders without authority from the Bureau of Energy Utilization, or refilling of another company’s or firm’s cylinder without such company’s or firm’s written authorization. Underfilling or underdelivery, on the other hand, under paragraph 3 of the same section refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually below the quantity indicated or registered on the metering device of a container. While it may be said that an act could be common to both of them, the act of refilling does not in itself constitute illegal trading through unauthorized refilling or that of underfilling. The concurrence of an additional requisite different in each one is necessary to constitute each offense. Thus, aside from the act of refilling, the offender must have no authority to refill from the concerned government agency or the company or firm owning the LPG cylinder refilled for the act to be considered illegal trading through unauthorized refilling. Whereas in underfilling, it is necessary that apart from the act of refilling, the offender must have refilled the LPG cylinder below the authorized limits in the sale of petroleum products. Moreover, the offense of underfilling is not limited to the act of refilling below the authorized limits. Possession of an underfilled LPG cylinder is



another way of committing the offense. As therefore correctly argued by petitioner, the offenses of illegal trading through unauthorized refilling and underfilling are separate and distinct offenses.

Besides, it is not accurate to say that in this case the charges of illegal trading and underfilling were based on the same act of refilling committed by ACCS during the test-buy operation. While it appears from the records that the charge of illegal trading was principally based on ACCS' act of refilling the four branded LPG cylinders without authority during the test buy, the Complaint-Affidavit for underfilling would show that it was not solely based on the same. Aside from the four branded LPG cylinders caused to be refilled by police operatives in the test buy which were later found to be underfilled by 0.5 kg to 1.3 kg, the said complaint was likewise anchored on the other four branded LPG cylinders seized during the search and seizure operation which were also found to be underfilled, this time by 0.5 kg. to 0.9 kg. It is thus apparent that with respect to the last four underfilled cylinders, the basis for the charge is not the act of refilling but ACCS's possession of the same since as already mentioned, the offense of underfilling is not limited to the act of refilling an LPG cylinder below authorized limits but also contemplates possession of underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange or barter.

In any event, the Court in *Ty* had impliedly upheld the filing of separate Informations for illegal trading through unauthorized refilling and for underfilling even if the charges emanated from the same act of refilling. There, the charge of underfilling was based on the fact that one of the eight LPG cylinders illegally refilled during a test-buy operation turned out to be underfilled. Notably, the same eight LPG cylinders illegally refilled, including the one underfilled, also formed part of the bases for the charge of illegal trading.

Further, the Court finds without legal basis the conclusion of the State Prosecutor that the offense of underfilling presupposes that the offender is a duly authorized refiller. Section 4 of BP 33, as amended, clearly provides that any of the acts prohibited by the said law can be committed by *any person* and not only by a duly authorized refiller. And while the same provision lays down an additional penalty of cancellation of license in case the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer, other retail outlets, or hauler, it cannot be deduced therefrom that only a duly-licensed refiller can be held liable for underfilling. Verily, it can also be committed by an authorized marketer, distributor, dealer, sub-dealer or hauler which so happened to have a license to do business in such capacity but nevertheless commits underfilling. Plainly, the law does not limit the commission of the offense of underfilling to offenders who/which are duly authorized to refill. "It is [a] well recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos*. The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and



general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated.”⁴²

All told, the Court so holds that aside from illegal trading through unauthorized refilling, the State Prosecutor should have also taken cognizance of the complaint for underfilling. Consequently, the CA erred when it affirmed in full the Resolutions of the Secretary of Justice sustaining the ruling of the State Prosecutor.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The assailed April 27, 2012 Decision and July 6, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 115750 are **AFFIRMED with MODIFICATION** that the State Prosecutor is **ORDERED** to take cognizance of the Complaint-Affidavit for Underfilling under Section 2(c), BP 33, as amended, docketed as I.S. No. 2006-1173, but only insofar as Antonio G. Del Rosario is concerned.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice

(On official leave)
JOSE CATRAL MENDOZA
Associate Justice

⁴² *Philippine British Assurance Co., Inc. v. Intermediate Appellate Court*, 234 Phil. 512, 519 (1987); italics and underscoring in the original.



MARVIC M.V.F. LEONEN
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.



ANTONIO T. CARPIO
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.



MARIA LOURDES P. A. SERENO
Chief Justice



