



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HON. PAQUITO N. OCHOA, JR., in G.R. No. 216634
his capacity as Executive Secretary,
HON. ROZANNO RUFINO B.
BIAZON, and ATTY. JUAN
LORENZO T. TAÑADA, in their
respective capacities as
Commissioner and Deputy
Commissioner of the Bureau of
Customs,
Petitioners,

- versus -

ATTY. CHRISTOPHER S. DY
BUCO,
Respondent.

X-----X

SANYO SEIKI STAINLESS STEEL G.R. No. 216636
CORPORATION,
Petitioner, Present:

- versus -

ATTY. CHRISTOPHER S. DY
BUCO,
Respondent.

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA,* JJ.

Promulgated:

14 OCT 2020

* On leave.

x ----- x

DECISION

INTING, J.:

These are consolidated Petitions for Review on *Certiorari*¹ filed pursuant to Rule 45 of the Rules of Court assailing the Decision² dated August 15, 2014 and the Resolution³ dated January 29, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 126239. The assailed Decision dismissed the complaint and reversed and set aside the Decision of the Office of the President (OP) that found Atty. Christopher S. Dy Buco (Atty. Dy Buco), among others, guilty of Grave Misconduct, Grave Abuse of Authority and Oppression, Gross Incompetence and Inefficiency, and Conduct Prejudicial to the Best Interest of the Service with the penalty of dismissal from service and the concomitant accessory penalties meted out upon them.

The Antecedents

Atty. Dy Buco, together with Deputy Commissioner Gregorio B. Chavez (Deputy Commissioner Chavez), Edgar Quiñones (Quiñones), Francisco Fernandez, Jr. (Fernandez), Alfredo Adao (Adao), Jose Elmer Velarde (Velarde), Thomas Patric Relucio (Relucio), and Jim Erick Acosta (Acosta), are members of the Run-After-The-Smugglers (RATS) Group of the Bureau of Customs (BOC).

On June 30, 2011, then BOC Commissioner Angelito A. Alvarez (Commissioner Alvarez) issued four Letters of Authority (LOAs) dated June 30, 2011 addressed to the following entities: (a) Sanyo Seiki Stainless Steel Corp. (Sanyo Seiki) Warehouse, New York St., Industrial Subd., Meycauayan, Bulacan (Bulacan address);⁴ (b) McConnell Stainless Incorporated (McConnell), located at the same Bulacan

¹ *Rollo* (G.R. No. 216634, Vol.1), pp. 39-59; (G.R. No. 216636, Vol. 1), 16-44.

² *Rollo* (G.R. No. 216634, Vol.1), pp. 64-83; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicedican and Michael P. Elbinias, concurring.

³ *Id.* at 84-86; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicedican and Zenaida T. Galapate-Laguilles, concurring.

⁴ See Letter dated June 30, 2011, *rollo* (GR No. 216636, Vol.1), p. 492.

address;⁵ (c) Sanyo Seiki Stainless Steel Corp. Warehouse, RSB3 Building, Dagat-dagatan Avenue, near corner 93 Road, Malabon (Malabon address);⁶ and (d) Cowlyn Precision (Cowlyn) Warehouse located at the same Malabon address.⁷ The LOAs were similarly worded as follows:

Sir,

This is to inform you that the following Customs Officers:

ATTY. CHRISTOPHER DY BUCO
SA II EDGAR QUIÑONES
SA II FRANCISCO FERNANDEZ
SA II ALFREDO ADAO
SA I JOSE ELMER VELARDE
SA I THOMAS PATRIC RELUCIO
SA I JIM ERICK ACOSTA

duly authorized by this Office, are directed to enforce Section 2536 of the Tariff and Customs Code of the Philippines (TCCP), as amended. Accordingly, they may demand evidence of payment of duties and taxes and/or other import documents on foreign articles in your premises, either openly offered for sale or kept in storage and/or that pending reconciliation of the documents you may submit, a detailed inventory of said foreign articles/motor vehicle if necessary.

x x x⁸

Commissioner Alvarez also issued Mission Order Nos. 046-11⁹ and 041-11¹⁰ of even date and directed at the Bulacan address of Sanyo Seiki and McConnell respectively. Meanwhile, he issued Mission Order No. 042-11¹¹ which pertained to Cowlyn's Malabon address and Mission Order No. 043-11¹² which, in turn, referred to Sanyo Seiki's Malabon address.

On July 1, 2011, the RATS Group (Atty. Dy Buco, Quiñones, Fernandez, Adao, Velarde, Relucio, and Acosta) requested for police

⁵ *Id.* at 493.

⁶ *Id.* at 494.

⁷ *Id.* at 495.

⁸ *Id.* at 492-495.

⁹ *Id.* at 480.

¹⁰ *Id.* at 481.

¹¹ *Id.* at 483.

¹² *Id.* at 482.

assistance for the service and implementation of the LOAs and Mission Orders at the Bulacan address.¹³ When they arrived at the Bulacan address, the warehouse security guards demanded for a copy of the Mission Order and instructed the RATS Group to wait for the warehouse legal representative outside the premises.¹⁴ However, no one arrived so the RATS Group, except for Acosta, left the premises. Eventually, one Atty. Neil Jerome Rapatan (Atty. Rapatan) arrived and confirmed to Acosta that the warehouse belonged to Sanyo Seiki. Thereafter, the RATS Group and the elements of the Meycauayan police stationed themselves in a vacant lot 20 meters away from the warehouse.¹⁵

Meanwhile, Quiñones, Fernandez, and Relucio tried to serve the LOAs and Mission Orders for the Malabon address on July 4, 2011 with the assistance of *Punong Barangay* Alexander Mangasar of Brgy. 14, Zone 2, District 2 of Caloocan City. However, they were also denied access to the warehouse so they just left.¹⁶

On July 9, 2011, Acosta followed and intercepted an Isuzu delivery truck with Plate Number ZJN-869 that left the Bulacan warehouse. He demanded from the driver the evidence of payment of duties and taxes of the finished stainless steel products aboard the truck. However, what the driver presented were receipts issued by Sanyo Seiki to its local clients.¹⁷ Acosta then brought the delivery truck to the nearest police station.

Atty. Rapatan, acting as Legal Counsel for Sanyo Seiki, explained that the confiscated steel products were locally purchased, but he could not present evidence to prove it.¹⁸ Hence, the RATS Group issued a Warrant of Seizure and Detention¹⁹ against the delivery truck and its cargo.²⁰

¹³ *Rollo* (G.R. No. 216634, Vol. 1), p. 67.

¹⁴ *Id.* at 68.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 69.

¹⁸ *Id.* at 69-70.

¹⁹ *Rollo* (G.R. No. 216636, Vol. 2), p. 534.

²⁰ *Rollo* (G.R. No. 216634, Vol. 1), p. 70.

On July 12, 2011, Atty. Rapatan and Adrian Retardo went to the RATS Office to present Sales Invoice No. 0832²¹ to prove that the steel products were locally purchased from Speedwealth Commercial Company (SCC).²² However, the confiscated delivery truck and its cargo were not released because, upon checking with the records on the BOC Mobile Customs System, Acosta discovered that SCC was neither an accredited importer nor engaged in the manufacture of steel products.²³ He further revealed that SCC is a partnership of the Chan family in the same way that Sanyo Seiki is likewise owned and controlled by the Chans.²⁴

Thereafter, Sanyo Seiki filed a Letter-Complaint with the OP demanding for an investigation relative to the implementation of the subject LOAs and Mission Orders against Atty. Dy Buco and the members of the RATS Group.²⁵

On September 29, 2011, the OP, through then Executive Secretary Paquito N. Ochoa, Jr. (Hon. Ochoa), formally charged Atty. Dy Buco, Deputy Commissioner Chavez, Quiñones, Fernandez, Adao, Velarde, Relucio, and Acosta with Grave Misconduct, Grave Abuse of Authority, Oppression, and Conduct Prejudicial to the Best Interest of the Service.²⁶

Ruling of the OP

In the Decision²⁷ dated January 26, 2012, the OP found Atty. Dy Buco, together with the other members of the RATS Group, guilty of Grave Misconduct, Grave Abuse of Authority and Oppression, Gross Incompetence and Inefficiency, and Conduct Prejudicial to the Best Interest of the Service. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, this Office finds respondents Deputy Commissioner Gregorio B. Chavez, Atty. Christopher Dy Buco, Edgar Quiñones, Francisco Fernandez, Alfredo Adao, Jose Elmer Velarde, Thomas Patric Relucio and Jim Erick

²¹ *Rollo* (G.R. No. 216636, Vol. 1), p. 111.

²² *Rollo* (G.R. No. 216634, Vol. 1), p. 70.

²³ *Id.* at 70-71.

²⁴ *Id.* at 70.

²⁵ *Id.* at 71.

²⁶ See Formal Charge in OP-DC Case No. 11-G-017. *id.* at 149-150.

²⁷ *Id.* at 251-263; signed by Executive Secretary Paquito N. Ochoa, Jr.

Acosta, GUILTY of GRAVE MISCONDUCT, GRAVE ABUSE OF AUTHORITY AND OPPRESSION, GROSS INCOMPETENCE AND INEFFICIENCY, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and hereby imposes the penalty of DISMISSAL from service, with the accessory penalties of CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS, and PERPETUAL DISQUALIFICATION FROM REEMPLOYMENT IN GOVERNMENT SERVICE. Furthermore, for respondent Chavez his temporary appointment as Acting Deputy Commissioner, Bureau of Customs, is deemed terminated, effective immediately.

SO ORDERED.²⁸

The OP ruled that it had jurisdiction over the administrative complaint since Executive Order No. (EO) 13 abolished the then Presidential Anti-Graft Commission (PAGC) and transferred all its powers and functions to the OP which included the power to investigate and hear administrative complaints, provided that: (1) the official to be investigated must be a presidential appointee in the government or any of its agencies or instrumentalities; and (2) the said official must be occupying the position of Assistant Regional Director, or an equivalent rank, or higher. It further ruled that considering Deputy Commissioner Chavez is a presidential appointee as the BOC's Deputy Commissioner for Assessment and Operations Coordinating Group and, in a concurrent capacity, the Executive Director of the RATS Group, he is under the direct disciplining authority of the President; and that the other officers in the administrative complaint who were all members of the RATS Group, together with herein Atty. Dy Buco, were charged to have acted in conspiracy with Deputy Commissioner Chavez; thus, the OP also had jurisdiction over them.²⁹

As to the merits, the OP found Atty. Dy Buco, together with the other members of the RATS Group, guilty of Grave Misconduct, Grave Abuse of Authority and Oppression for enforcing patently defective Mission Orders against Sanyo Seiki. It declared that the Mission Orders enforced against Sanyo Seiki were addressed to McConnell and Cowlyn.

²⁸ *Id.* at 263.

²⁹ *Id.* at 255-256

The OP further ruled that even if Atty. Dy Buco and his team aborted the search upon Sanyo Seiki's refusal for their entry to the warehouse, their act of stationing themselves outside and within the vicinity of Sanyo Seiki's warehouse for several days constituted a violation of Section 3(e)³⁰ of the Anti-Graft and Corrupt Practices Act under Republic Act No. (RA) 3019 and Willful Oppression under the color of law under Section 3604 of the Tariff and Customs Code.³¹

The OP furthermore ruled that there was also Gross Incompetence and Inefficiency committed by Atty. Dy Buco and his group in their failure to obtain Mission Orders which are sufficient in form and substance before proceeding in its implementation and execution; that Atty. Dy Buco and his group are liable for Conduct Prejudicial to the Best Interest of the Service as their acts constituted harassment, corrupt and retaliatory tactics against Sanyo Seiki for the latter's filing of criminal and administrative charges against Deputy Commissioner Chavez with the Office of the Ombudsman (Ombudsman); that the seizure of Sanyo Seiki's truck without a warrant was flawed considering the absence of probable cause; and that Atty. Dy Buco and his group had no authority to demand payment of duties and taxes on account of the sales invoice presented by Sanyo Seiki showing that the seized stainless steel items were not imported, but locally purchased from a common bonded warehouse.

As to the existence of conspiracy, the OP concluded that it was Deputy Commissioner Chavez who was on top of the operations because he was the one who requested for the issuance of the Mission Orders and even requested for continuing police assistance in the implementation of the LOAs and Mission Orders; and that it was also him who instructed Atty. Dy Buco to handle Sanyo Seiki's truck after its seizure without a warrant.

³⁰ Section 3(e) of Republic Act No. 3019 provides:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

³¹ *Rollo* (G.R. No. 216634, Vol. 1), p. 258.

The OP denied the Motion for Reconsideration filed by Atty. Dy Buco in a Resolution³² dated July 27, 2012. Thus, he appealed to the CA.

Ruling of the CA

On August 15, 2014, the CA found the appeal meritorious.³³ It reversed and set aside the OP Decision and dismissed the complaint against Atty. Dy Buco.³⁴ It ruled that Atty. Dy Buco had in his favor the presumption of regularity in the performance of his official duties as he acted with due care in the implementation of the Mission Orders. According to the CA, the OP misunderstood and misinterpreted the LOAs and Mission Orders issued by the BOC which were addressed to McConnell, Cowlyn, and Sanyo Seiki, although it appears therein that the respective warehouses of Sanyo Seiki had the same addresses with those of Cowlyn in Malabon and McConnell in Bulacan. The CA did not give weight to the conclusion of the OP that the LOAs and the Mission Orders were improperly implemented considering that Atty. Dy Buco and the members of the RATS Group were never allowed entry to the warehouse, nor did they persist in entering it.

The CA further held that there was neither Grave Misconduct nor Grave Abuse of Authority in the alleged implementation of the Mission Orders as the Meycauayan Police certified that no untoward incident took place and that Atty. Dy Buco left the premises without having entered the warehouse. The CA furthermore held that there is also no proof that Atty. Dy Buco committed Gross Incompetence and Inefficiency considering that the Mission Orders were not enforced at that time and he was not present during the apprehension of the delivery truck.

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated January 26, 2012, and the Resolution dated July 27, 2012, issued by the Office of the President in OP DC Case No. 11-G-017, insofar as it found herein petitioner Atty. Christopher S. Dy Buco guilty of the offenses charged against him,

³² *Id.* at 292-297; signed by Executive Secretary Paquito N. Ochoa, Jr.

³³ *Id.* at 75.

³⁴ *Id.* at 82.

are REVERSED and SET ASIDE; consequently, the complaint against him is DISMISSED. Atty. Christopher S. Dy Buco is ordered REINSTATED immediately to his former or equivalent position in the Bureau of Customs without loss of seniority or diminution in his salaries and benefits. In addition, he shall be paid his salary and such other emoluments corresponding to the period he was out of the service by reason of the judgment of dismissal decreed by the Office of the President.

SO ORDERED.³⁵

Aggrieved by the CA Decision, Hon. Ochoa, in his capacity as Executive Secretary of the OP; Hon. Rozanno Rufino B. Biazon (Hon. Biazon), in his capacity as Commissioner of the BOC; and Atty. Juan Lorenzo T. Tañada (Atty. Tañada), in his capacity as Deputy Commissioner of the BOC (collectively, petitioners), elevated the case to the Court *via* a petition for review on *certiorari* citing as lone error the following:

WHETHER OR NOT RESPONDENT IS GUILTY OF GRAVE MISCONDUCT, GRAVE ABUSE OF AUTHORITY OR OPPRESSION, GROSS INCOMPETENCE AND INEFFICIENCY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.³⁶

Similarly, Sanyo Seiki filed its petition which raised the following arguments, to wit:

A.

THE COURT OF APPEALS' DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISION/S OF THIS HONORABLE COURT IN FINDING THAT DY BUCO'S GUILT WAS NOT PROVEN BY SUBSTANTIAL EVIDENCE.

B.

THE COURT OF APPEALS' DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISION/S OF THIS HONORABLE COURT IN

³⁵ *Id.* at 82.

³⁶ *Id.* at 47.

FAILING TO RULE THAT THERE WAS CONSPIRACY BETWEEN DY BUCO AND HIS CO-RESPONDENTS IN OP-DC CASE NO. 11-G-017 AS DULY ESTABLISHED BY EVIDENCE ON RECORD AND FULLY SUPPORTED BY THE FACTUAL CIRCUMSTANCES PRESENTED AND OBTAINING IN OP-DC CASE NO. 11-G-017.

C.

THE COURT OF APPEALS' DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISION/S OF THIS HONORABLE COURT IN FAILING TO RULE THAT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES IN FAVOR OF DY BUCO WAS SUFFICIENTLY OVERCOME IN THIS CASE.³⁷

Our Ruling

The petitions lack merit.

Before delving into the substantial matters, the Court shall first address the issue raised by Atty. Dy Bucu in his Consolidated Comment³⁸ questioning the legal personality of Sanyo Seiki to appeal the CA Decision.

Atty. Dy Bucu alleges the following: Sanyo Seiki, as a private complainant, is a mere government witness that cannot appeal from the decision and resolution rendered in an administrative case. With respect to the petition filed by the OP, through the Office of the Solicitor General (OSG), it lacks the signatures of Hon. Biazon and Atty. Tañada as the respective Commissioner and Deputy Commissioner of the BOC in the verification and certificate against forum shopping. Hon. Biazon and Atty. Tañada are not real parties-in-interest and with no legal personality to file the petition as they are no longer connected with the BOC. Hon. Ochoa, acting on behalf of the OP, is also not the real party-in-interest, but an adjudicator who must remain partial and detached.

³⁷ *Rollo* (G.R. No. 216636, Vol. 1), p. 26. Underscoring omitted.

³⁸ *Rollo* (G.R. No. 216634, Vol. 2), pp. 473-552.

“Aggrieved party” who may appeal in an administrative case.

In administrative cases, appeals are extended to the party adversely affected by the decision.³⁹ The phrase “party adversely affected by the decision” refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action, or the disciplining authority whose decision is in question.⁴⁰ This definition does not include the private complainant in the administrative case. It is elementary that in an administrative case, a complainant is a mere witness.⁴¹ No private interest is involved in an administrative case as the offense committed is against the government.⁴²

By inference or implication, considering that only an aggrieved party who is adversely affected by a decision in an administrative case is authorized to file an appeal in cases falling under the Civil Service Commission and the Ombudsman, the Court sees no reason to deviate from this doctrine with respect to appeals on administrative cases falling under the jurisdiction of the OP. To reiterate, there are no private interests involved in an administrative case and the only aggrieved party is the one who shall be adversely affected by a decision imposing a penalty of suspension or removal from service.

In the instant case, Sanyo Seiki, as petitioner herein, cannot be considered as an aggrieved party because it is not the respondent in the administrative case below. As correctly opined by Atty. Dy Buco, Sanyo Seiki, as the complainant, is not the party adversely affected by the decision inasmuch as it has no legal personality to interpose an appeal before the Court. Consequently, the petition of Sanyo Seiki, being the private complainant below, should be denied as it has no legal interest or standing to appeal and seek the nullification of the CA Decision exonerating Atty. Dy Buco from the administrative charges of Grave Misconduct, Grave Abuse of Authority and Oppression, Gross Incompetence and Inefficiency and Conduct Prejudicial to the Best

³⁹ *Paredes v. Civil Service Commission*, 270 Phil. 165, 181 (1990).

⁴⁰ *CSC v. Dacoycoy*, 366 Phil. 86, 105 (1999); *Office of the Ombudsman v. Gutierrez*, 811 Phil. 389, 402 (2017).

⁴¹ *Gonzales v. Judge De. Roda*, 159-A Phil. 413, 413-414 (1975); *Paredes v. Civil Service Commission*, supra note 39 at 182; *National Appellate Board v. P/Insp. Mamauag*, 504 Phil. 186, 193 (2005).

⁴² *National Appellate Board v. P/Insp. Mamauag*, 504 Phil. 186, 193 (2005).

Interest of the Service for it merely acted as a government witness in an administrative case bereft of any private interest.

With respect to the lack of signatures of Hon. Biazon and Atty. Tañada in the petition, in *Torres v. Specialized Packaging Development Corp.*,⁴³ the Court gave due course to a petition even if the verification and certification against forum shopping were not signed by all of the parties. It found substantial compliance in the signatures of just two of the petitioners in the verification considering that they were unquestionably real parties-in-interest who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition. The same rule was applied by the Court in *Cavile v. Heirs of Cavile*,⁴⁴ wherein the Court decreed that the signing by only one of the 22 petitioners in the certificate of non-forum shopping as substantial compliance as the petitioners had a common interest in the property involved, they being relatives and co-owners of that property. Applying these principles to the case at bench, the signature of Hon. Ochoa, acting on behalf of the OP, in the verification and certificate against non-forum shopping is sufficient as substantial compliance taking into account their common interest in the exercise of their disciplining authority over erring government officials in the BOC.

In the same vein, the OP, as the disciplining authority has a legal interest to appeal the CA Decision being a “party adversely affected by the decision”. Emanating from the constitutional mandate of control over all the executive departments, bureaus and offices as well as faithful execution of the law, the direct disciplining authority of the President which proceeds from the well-settled principle that unless otherwise provided by the Constitution, the power to appoint carries with it the power to discipline and remove public officials and employees, the OP has concurrent jurisdiction with the Office of the Ombudsman to hear, investigate, receive, gather, and evaluate intelligence reports and information on administrative cases against all presidential appointees in the executive department and any of its instrumentalities or agencies on the basis of a complaint or *motu proprio*.⁴⁵ The OP exercises quasi-judicial functions to resolve administrative disciplinary cases over erring government officials and employees who commit acts inimical to government and public interest. In the case of *Office of the Ombudsman*

⁴³ 477 Phil. 540 (2004)

⁴⁴ 448 Phil. 302 (2003).

⁴⁵ Executive Order No. 73 (2018).

v. Gutierrez,⁴⁶ the Court ratiocinated that the Ombudsman is vested with legal interest to appeal a decision reversing its ruling being the disciplining authority whose decision is being assailed, pursuant to its mandate under the Constitution bestowing wide disciplinary authority, which includes prosecutorial powers. Similar to the Ombudsman, the Court also views that the OP enjoys the same authority as it cannot be detached, disinterested and neutral specially when defending its decisions in administrative cases against government personnel since the offense is committed against the government and public interest. As a disciplining authority, the OP and the Ombudsman have a direct constitutional and legal interest in the accountability of public officers. Indeed, in keeping with its duty to preserve the integrity of public service, the OP should likewise be given the opportunity to act fully within the parameters of its authority.

The Court shall now discuss the substantial arguments raised by the OP.

As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts.⁴⁷ However, the findings of fact of the OP are different from those of the CA. Thus, it is necessary for the Court to take a second look at the factual matters surrounding the present case.

Pursuant to EO 13, series of 2010, the PAGC was abolished and their vital functions, particularly the investigative, adjudicatory and recommendatory functions and other functions inherent or incidental thereto, were transferred to the office of the Deputy Secretary for Legal Affairs of the OP, and the Investigative and Adjudicatory Division was created. In its repealing clause under Section 6, it effectively modified EO 12 dated April 16, 2001 which created the PAGC. Section 4 of EO 12, series of 2001 provides for the scope of authority of the PAGC which covers other public officials and private persons *who act in conspiracy, collusion, or connivance with any covered Presidential Appointee.*

⁴⁶ 811 Phil. 389 (2017).

⁴⁷ *Office of the Ombudsman v. Racho*, 656 Phil. 148, 157 (2011), citing *Office of the Ombudsman v. Lazaro-Baldazo*, 543 Phil. 130, 133 (2007).

In the present case, Atty. Dy Buco and the other members of the RATS Group were charged by the OP with (1) Grave Misconduct; (2) Grave Abuse of Authority; (3) Oppression; and (4) Conduct Prejudicial to the Best Interest of the Service for having acted in conspiracy with Deputy Commissioner Chavez, a presidential appointee for alleged impropriety of the implementation of the LOAs and Mission Orders.⁴⁸ With the four charges, there are three acts which are being complained of: (a) implementation of the Mission Orders and LOAs; (b) conduct of a stakeout outside the premises of Sanyo Seiki; and (c) confiscation of the delivery truck and its cargo of stainless steel.

The main defense of Atty. Dy Buco against the administrative charges against him is the existence of the Mission Orders and LOAs. Armed with these Mission Orders and LOAs, Atty. Dy Buco asserts that he merely attempted to enforce them in good faith, within the scope of his authority, and in obedience to an order issued by a superior for some lawful purpose.

The Mission Orders and LOA were issued pursuant to Section 2536 of the Tariff and Customs Code of the Philippines.

The issuance of the LOAs and Mission Orders, the stakeout, and the seizure of the delivery truck and its cargo were all authorized exercise of the visitatorial and inspection powers of the BOC and sanctioned by Section 2536⁴⁹ of the Tariff and Customs Code of the Philippines.

As correctly found by the CA, the OP appeared to have misunderstood the import of the LOAs and Mission Orders.

⁴⁸ *Rollo* (GR No. 216634, Vol. 1), pp. 149-150.

⁴⁹ Section 2536 of the Tariff and Customs Code provides:

SECTION 2536. *Seizure of Other Articles.* — The Commissioner of Customs and Collector of Customs and/or any other customs officer, with the prior authorization in writing by the Commissioner, may demand evidence of payment of duties and taxes on foreign articles openly offered for sale or kept in storage, and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings: Provided, however, That during such proceedings the person or entity for whom such articles have been seized shall be given the opportunity to prove or show the source of such articles and the payment of duties and taxes thereon.

There was no Grave Misconduct committed in the implementation of the LOAs and Mission Orders addressed to McConnell, Sanyo Seiki, and Cowlyn. Misconduct generally means a wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.⁵⁰ To constitute as an administrative offense, the misconduct which is an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, should relate to or be connected with the performance of the official functions and duties of a public officer.⁵¹ To be characterized as Grave Misconduct, the transgression must be accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule which must be proved by substantial evidence.⁵²

To support their argument that Atty. Dy Buco committed Grave Misconduct, the OSG harped on the attempt of the RATS Group to implement the LOAs and Mission Orders against Sanyo Seiki that was not the addressee; and that there was a clear intent to violate the law and established rules. In the Decision of the OP, it ruled that Atty. Dy Buco's acts were a flagrant violation of the authority contained in the Mission Orders.

The records of the case reveal otherwise. The elements of Grave Misconduct, particularly violation of the law or flagrant disregard of an established rule, are not attendant here.

There is flagrant disregard of an established rule or, analogously, willful intent to violate the law constitutive of Grave Misconduct when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.⁵³ In *Imperial, Jr. v. Government Service Insurance System*,⁵⁴ the Court elucidated the instances where flagrant disregard of rules is present, to wit:

⁵⁰ See *Office of the Ombudsman v. Magno, et al.*, 592 Phil. 636, 658 (2008).

⁵¹ *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013) as cited in *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 61 (2016).

⁵² *Office of the Ombudsman v. Rojas*, G.R. Nos. 209274 & 209296-97, July 24, 2019, citing *De Guzman v. Office of the Ombudsman, et al.*, 821 Phil. 681, 699 (2017).

⁵³ *Id.*, citing *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 62-63 (2016)

⁵⁴ 674 Phil. 286 (2011).

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.⁵⁵

There are two Mission Orders dated June 30, 2011 directed at the Bulacan address: Mission Order No. 046-11⁵⁶ directed against Sanyo Seiki, and Mission Order No. 041-11⁵⁷ in the name of McConnell. There are also Mission Order No. 043-11⁵⁸ which pertained to Sanyo Seiki's Malabon address and Mission Order No. 042-11⁵⁹ issued to Cowlyn in the same Malabon address. In addition, there are four LOAs dated June 30, 2011 addressed to the following: (a) Sanyo Seiki in the Bulacan address;⁶⁰ (b) McConnell located at the same Bulacan address;⁶¹ (c) Sanyo Seiki in the Malabon address⁶²; and (d) Cowlyn located at the same Malabon address.⁶³ Atty. Dy Buco admitted that only Mission Order No. 041-11 was presented at the Bulacan address. He justified that upon arrival at the target place, they saw the signage "*Connel Specialty Steel Inc., New York Street, Meycauayan Industrial Subd., Brgy. Pantoc, Meycauayan, Bulacan*" which led them to inquire first from the security guards if the warehouse belonged to McConnell or Connell Specialty Steel Inc. while presenting Mission Order No. 041-11.⁶⁴ Instead of an answer, the security guards took Mission Order No. 041-11 and informed the RATS Group to wait for a legal representative from the warehouse. The legal representative only arrived after two hours when the group had already left the place and without having entered the premises to implement the Mission Orders and LOAs.⁶⁵ Based on the surrounding

⁵⁵ *Id.* at 297. Citations and emphasis omitted.

⁵⁶ *Rollo* (G.R. No. 216636, Vol. 1), p. 480.

⁵⁷ *Id.* at 481.

⁵⁸ *Id.* at 482.

⁵⁹ *Id.* at 483.

⁶⁰ *Id.* at 492.

⁶¹ *Id.* at 493.

⁶² *Id.* at 494.

⁶³ *Id.* at 495.

⁶⁴ See Consolidated Comment, *rollo* (G.R. No. 216634, Vol. 2) p. 480.

⁶⁵ *Id.*

circumstances, the RATS Group had no opportunity to present Mission Order No. 046-11 as they were already refused entry early on. Also, their desistance to enter the warehouse was justified because insisting on the implementation of the LOAs and Mission Orders despite uncertainty as to the actual occupants in the subject address would make them criminally and administratively liable. The attendant facts are contrary to the OP's speculative conclusion that their desistance to enter the warehouse proves the lack of a valid Mission Order.

Neither was there Grave Abuse of Authority and Oppression. Jurisprudence defines it as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury constituting an act of cruelty, severity, or excessive use of authority.⁶⁶ No substantial evidence was presented against Atty. Dy Buco to prove that there was a showcase of cruelty, severity, or excessive use of authority against Sanyo Seiki considering that the RATS Group did not successfully implement the LOAs and Mission Orders. There was also no showing that the RATS Group insisted on implementing the Mission Orders and LOAs despite the presence of police assistance to aid them because they needed to confirm first that they were in the right address.

The Court likewise upholds the findings of the CA that Atty. Dy Buco neither participated in the stakeout outside the premises of Sanyo Seiki nor was he present during the apprehension of the latter's delivery truck and cargo. If at all, Atty. Dy Buco's participation in the seizure of the delivery truck and its cargo was when he correctly refused to release the confiscated cargo in the absence of the required documents to prove that there was no violation of the tariff and importation laws.

More importantly, allegations against the propriety of the seizure proceedings should be ventilated in the proper forum, which is the Collector of Customs, anchored upon the policy of placing no unnecessary hindrance on the government's drive not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State to enable the government to carry out the functions it has been instituted to perform.⁶⁷

⁶⁶ *Office of the Ombudsman v. Cabero*, 746 Phil. 111, 119 (2014). Citations omitted.

⁶⁷ *Jao v. CA*, 319 Phil. 105, 115 (1995), citing *Commissioner of Customs v. Judge Makasiar*, 257

Indeed, the Court rules that there was no law nor any established rule violated by Atty. Dy Buco in the implementation of the LOAs and Mission Orders; and that no grave abuse of authority nor oppression was committed by him in the confiscation of Sanyo Seiki's cargo.

As regards the charge of Conduct Prejudicial to the Best Interest of the Service, nothing in the questioned acts could have possibly tarnished the image and integrity of public office⁶⁸ in light of the fact that the acts complained of were not in violation of any law, or established rule and were justified as faithful performance of a duty.

Due process in administrative cases should be observed.

With respect to Atty. Dy Buco's liability for Gross Inefficiency and Incompetence, the Court similarly finds that this charge was not included in the Formal Charge, thus, Atty. Dy Buco cannot be held liable therefor. The Rules on Investigation and Adjudication of Administrative Cases, particularly, Section 1, Article IV on Administrative Adjudication⁶⁹ provides:

SECTION 1. *Formal Charge.* — The Formal Charge shall narrate the ultimate facts constituting an offense, specifying the law, issuance, rule or regulation violated and accompanied by certified true copies of testamentary and/or documentary evidence substantiating the same. Upon filing of the Formal Charge, the complaint shall be docketed as an Administrative Case for purposes of adjudication.

Similarly, the Uniform Rules on Administrative Cases in the Civil Service⁷⁰ provides:

Phil. 864, 873 (1989).

⁶⁸ See *Michaelina Ramos Balasbas v. Patricia B. Monayao*, G.R. No. 190524, February 17, 2014 and *Pia v. Gervacio, Jr.*, 697 SCRA 220, 230 (2013) as cited in *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68-81 (2015).

⁶⁹ Presidential Anti-Graft Commission Rules on Investigation and Adjudication of Administrative Cases, March 4, 2008.

⁷⁰ Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 991936, September 14, 1999.

SECTION 16. *Formal Charge.* — After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

The disciplining authority shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

Although administrative due process cannot be fully equated with due process in its strict judicial sense and technical rules of procedure are not strictly applied, the observance of fairness in the conduct of any investigation is at the very heart of procedural due process.⁷¹ Administrative due process mandates that the party being charged is given an opportunity to be heard.⁷² Due process is complied with if the party who is properly notified of the allegations and the nature of the charges against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions.⁷³ The essence of due process is that a party is afforded reasonable opportunity to be heard and to submit any evidence he/she may have in support of his/her defense.⁷⁴

In *Geronga v. Hon. Varela*,⁷⁵ the Court pronounced the requisites of due process in administrative proceedings as follows:

⁷¹ *Vivo v. Phil. Amusement and Gaming Corporation*, 723 Phil. 34, 39 (2013).

⁷² *Iglesias v. Ombudsman, et al.*, 817 Phil. 338, 358 (2017). Citations omitted.

⁷³ *Id.*, *Gutierrez v. Commission on Audit, et al.*, 750 Phil. 413, 430 (2015).

⁷⁴ *Concerned Officials of MWSS v. Hon. Vasquez*, 310 Phil. 549, 566 (1995) as cited in *Gonzales III v. Office of the President of the Phils.*, 694 Phil. 52 (2012).

⁷⁵ 570 Phil. 39 (2008).

Two fundamental requirements of due process in administrative cases are that a person must be duly informed of the charges against him; and that he cannot be convicted of an offense or crime with which he was not charged. A deviation from these requirements renders the proceeding invalid and the judgment issued therein a lawless thing that can be struck down any time.⁷⁶

In the instant case, the Formal Charge against Atty. Dy Buco did not include the charge of Gross Inefficiency and Incompetence. Neither was there an allegation in the Formal Charge of conspiracy among the RATS Group and Deputy Commissioner Chavez which made the act of one as the act of all. Thus, there was a violation of due process with respect to Atty. Dy Buco's right to be duly informed of the allegations and the nature of the charges against him which included his concomitant right to an opportunity to defend himself adequately. It is only through a formal charge for Gross Inefficiency and Incompetence and commission of the acts in conspiracy that Atty. Dy Buco could have truly and sufficiently defended himself and presented evidence to prove his defenses. The charge of Gross Inefficiency and Incompetence is different from the other offenses of Grave Misconduct, Grave Abuse of Authority, Oppression, and Conduct Prejudicial to the Best Interest of the Service which Atty. Dy Buco was accused of in the Formal Charge.

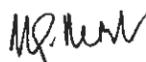
WHEREFORE, the petitions are **DENIED**. The Decision dated August 15, 2014 and the Resolution dated January 29, 2015 respectively of the Court of Appeals in CA-G.R. SP No. 126239 are **AFFIRMED**.

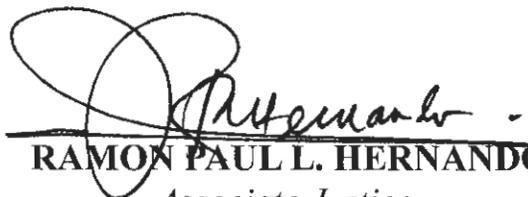
SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

⁷⁶ *Id.* at 54. Citations omitted.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

(On leave)
PRISCILLA BALTAZAR PADILLA
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.


ESTELA M. PERLAS-BERNABE
Senior 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.



DIOSDADO M. PERALTA
Chief Justice

