

**In the Court of Magistrates (Malta)**  
**As a Court of Criminal Judicature**

**Sections 18, 48A and 83A (1), (4) and (5), 183, 184 and 188 of Chapter 9, Sections 18, 60 (a) (b) (k); Sections 62 (a) (b) (i) (k) (m), 68 (1), 69 (1) (2), and Paragraph (a) of the Proviso of Section 62, of the Customs Ordinance Chapter 37, and Articles 16 (1) (j) and 17 (A) of Act XV1 of 1995 of the Laws of Malta, 60 (a) (b) (c) (f) (g) (h) (j) (k) and paragraph (a) of the Proviso of Section 62, of the Customs Ordinance Chapter 37, of the Laws of Malta**

**Magistrate**  
**Dr Consuelo Scerri Herrera LL.D. DIP. MATR. (Can)**

**The Police**  
**(Inspector Ian Joseph Abdilla)**

**vs**

**ARTHUR CIANCIO and AARON**  
**ARTHUR CIANCIO**

**Today, 14<sup>th</sup> September 2017.**

**The Court,**

Having seen that the accused **Arthur Ciancio** and **Aaron Arthur Ciancio** were arraigned before her accused with:

- A. having, jointly and/or severally, and /or in their capacity as directors of Liberty Merchants Limited (registration number C29770), on these Islands, between 1<sup>st</sup> January 2005 and on 27<sup>th</sup> March 2005, in various parts of Malta and outside Malta, by means of several acts committed by them, even if at different times, which acts constitute violations of the same provisions of the law;

1. for having, promoted, constituted, organized or financed an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more;  
*(This in breach of Sections 18 and 83A (1), (4) and (5) of Chapter 9 of the Laws of Malta)*
  
  2. for having, made part or belonged to an organisation referred to in Subarticle (1) of Article 83A of Chapter 9 of the Laws of Malta;  
  
*(This in breach of Sections 18 and 83A (2), (4) and (5) of Chapter 9 of the Laws of Malta)*
  
  3. for having, in Malta conspired with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act;  
  
*(This in breach of Sections 18 and 48A of Chapter 9 of the Laws of Malta)*
- B. furthermore, they were charged with having, jointly and/or severally, and/or in their capacity as directors of Liberty Merchants Limited (registration number C29770), on these Islands, between 1<sup>st</sup> January 2005 and on 27<sup>th</sup> March 2005, in Malta, by means of several acts committed by them, even if at different times, which acts constitute violations of the same provisions of the law;
1. with having, committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or

discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alterations of any clause, declaration or fact which such instruments or documents were intended to contain or prove;

*(This in breach of Sections 18 and 183 of Chapter 9 of the Laws of Malta)*

2. with having, knowingly made use of any of the false acts, writings, instruments or documents mentioned in Article 184 of Chapter 9 of the Laws of Malta;

*(This in breach of Sections 18 and 184 of Chapter 9 of the Laws of Malta)*

3. with having, in order to gain any advantage or benefit for themselves or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;

*(This in breach of Sections 18 and 188 of Chapter 9 of the Laws of Malta)*

4. with having committed any other kind of forgery, or knowingly made use of any other forged document;

*(This in breach of Sections 18 and 189 of Chapter 9 of the Laws of Malta)*

- C. Also, on behalf of the Comptroller of Customs, also charged the accused **Arthur CIANCIO** and **Aaron CIANCIO**, jointly and severally and/or in their capacity as directors of Liberty Merchants Limited bearing registration number C29770:-

1. with having on the 26<sup>th</sup> February 2005 and/or on an earlier date in order to obtain to their advantage and/or for personal benefit and/or for someone else, when as a consignee of Container Number CCLU313735/0 which arrived in Malta on MV Norasia Hamburg, purposely, involved themselves by making a false declaration and/or furnished a document and/or information which were false in substantial detail, in the sense that the contents of this container were not Promotional Toys as declared in the Cargo Manifest/Bill of Lading bearing number 8SHAMLA3A3467, but cigarettes, and which document was subsequently consigned to the Customs Authorities as stipulated and needed according to Law;
  
2. and with having on the 26<sup>th</sup> March 2005 and/or on an earlier date, under the same circumstances, when acting as a consignee of Container Number CCL651879/2 which arrived in Malta with MV CSCL Europe V, purposely, had by way involved themselves by making a false declaration and/or submitted a document and/or information which were in fact false in substantial detail, in the sense that the contents of this container were not Giftwares as declared in the Cargo Manifest/Bill of Lading Number 8PKGMLA421245, but cigarettes, and which document was subsequently consigned to the Customs Authorities;
  
3. and with having in the same period of time, place and circumstances, with the intent to fraud the Maltese Government, knowingly imported and/or entered, or was involved in order to be imported into Malta, these cigarettes of which the importation is prohibited and/or restricted and this knowingly so as to avoid the duty and/or any other form of tax due on these cigarettes for the detriment of the Government of Malta.

As regards to the cigarettes found in Container bearing number CCLU313735/0, the estimated value is Lm44,205 Excise duty due Lm198.502 and also import duty and value added tax which amount to Lm25,462 and Lm49,678 respectively; whilst in container bearing number CCLU 651879/2 the estimated value is Lm99,950 Excise duty due Lm448,821 and import duty and Value Added Tax amounting to Lm57,571 and Lm112,324 respectively.

As regards the cigarettes found in Container bearing number CCLU313735/0, the value was estimated to be Lm78,096.00c, Excise duty amounting to Lm198,502.00c and Value Added Tax amounting to Lm49,678.00c, whilst the cigarettes found in Container bearing number CCLU651879/2 the value was estimated to be Lm176,577.00c, Excise duty due Lm448821.00c and Value Added Tax amounting to Lm112,324.00c.

In breach of Sections 18, 60 (a) (b) (k); Sections 62 (a) (b) (i) (k) (m), 68 (1), 69 (1) (2), and Paragraph (a) of the Proviso of Section 62, of the Customs Ordinance Chapter 37, and Articles 16 (1) (j) and 17 (A) of Act XV1 of 1995 of the Laws of Malta.

D. Also, on behalf of the Commissioner of Value Added Tax, also charged the accused **Arthur CIANCIO**, and **Aaron CIANCIO**, jointly and severally and/or in their capacity as directors of Liberty Merchants Limited bearing registration number C 29770.

4. For having on the 26<sup>th</sup> February 2005 and/or an earlier date in order to obtain to their advantage and/or for personal benefit and/or for someone else, when as a consignee of Container Number CCLU313735/0 which arrived in Malta on MV Norasia Hamburg, purposely, involved themselves by making a false declaration and/or furnished a document and/or information which were false in

substantial detail, in the sense that the contents of this container were not Promotional Toys as declared in the Cargo Manifest/Bill of Lading bearing number 8SHAMLA3A3467, but cigarettes, and which document was subsequently consigned to the Customs Authorities as stipulated and needed according to Law;

5. and for on the 26<sup>th</sup> March 2005 and/or on an earlier date, under the same circumstances, when acting as a consignee of Container Number CCLU651879/2 which arrived in Malta with MV CSCL Europe V, purposely, had by way involved themselves by making a false declaration and/or submitted a document and/or information which were in fact false in substantial detail, in the sense that the contents of this container were not Giftwares as declared in the Cargo Manifest/Bill of Lading Number 8PKGMLA421245, but cigarettes, and which document was subsequently consigned to the Customs Authorities;

6. and for having in the same period of time, place and circumstances, with the intent to fraud the Maltese Government, knowingly imported and/or entered, or was involved in order to be imported into Malta, these cigarettes of which the importation is prohibited and/or restricted and this knowingly so as to avoid the duty and/or any other form of tax due on these cigarettes for the detriment of the Government of Malta.

As regards to the cigarettes found in Container bearing number CCLU313735/0, the value was estimated to be Lm44,205.00c, Excise duty amounting to Lm198,502.00c Importation Duty and Value Added Tax amounting to Lm25,462.00c and Lm49,678.00c respectively, whilst the cigarettes found in Container bearing number CCLU 651879/2 the value was estimated to be Lm99,950.00c, Excise duty Lm448,821.00c, Import

duty and Value Added Tax amounting to Lm57571.00c and Lm112,324 respectively.

The seized cigarettes which altogether amount to Lm144.155 and which are subject to Excise Duty amounting to Lm647,323, Import Duty amounting to Lm83,033.00c which duties were not duly paid and/or secured are also subject to Value Added Tax, which tax amounts to Lm162,002.00c and which tax has not been duly paid and/or secured, and this in breach to Article 80 of the Value Added Tax Act XXIII of 1998, offences and penalties.

As regards the cigarettes found in Container bearing number CCLU313735/0, the value was estimated to be Lm78,096.00c, Excise duty amounting to Lm198,502.00c and Value Added Tax amounting to Lm49,678.00c, whilst the cigarettes found in Container bearing number CCLU651879/2 the value was estimated to be Lm176,577.00c, Excise duty Lm448,821.00c and Value Added Tax amounting to Lm112,324.00c.

The seized cigarettes which altogether amount to Lm254.673 and which are subject to Excise Duty amounting to Lm627,784, which excise duty were not duly paid and/or secured are also subject to Value Added Tax, which Tax amounts to Lm162,002 and which Tax has not been duly paid and/or secured, and this in breach to Article 80 of the Value Added Tax Act XXIII of 1998, Offences and Penalties.

Also in contravention of Sections 60 (a) (b) (c) (f) (g) (h) (j) (k) and paragraph (a) of the Proviso of Section 62, of the Customs Ordinance Chapter 37, of the Laws of Malta.

The Court was requested that should the accused be found guilty, apart from inflicting the punishment prescribed at Law, it should also order the forfeiture of all the objects exhibited in these proceedings.

The Court was requested that, whilst pronouncing judgement or in any subsequent order, in the eventuality that the accused are convicted, to jointly or severally, condemn the accused to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the appointments of any experts in these proceedings, within such period and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen all the documents exhibited in the acts of these proceedings by the Prosecution in particular the passports of the accused a fol. 10 and 11, the Maltese Identification Cards a fol. 12 and 13, two extracts of the birth certificates a fol. 14 and 15 and two conviction sheets a fol. 16 and 17 in the acts of these proceedings.

The Court also declares that this case was temporarily assigned to her in its above mentioned competence by a decree given by the Chief Justice on the 21<sup>st</sup> April 2014 and then permanently by another decree delivered by him on the 20<sup>th</sup> November, 2014.

The Court heard the evidence brought forward by the Prosecution namely:

**Paul Scicluna** gave evidence on the 8<sup>th</sup> April 2005 and explained that he was representing the VAT Department and gave evidence on behalf of the Commissioner of VAT. He was shown folio 21 and folio 22 of the acts and he confirmed that the document therein exhibited is the Letter to Prosecute issued by the Commissioner of VAT in relation to this case .

**Inspector Ian Joseph Abdilla** gave evidence on the 8<sup>th</sup> April, 2005 and explained that around the 24<sup>th</sup> of February 2005, the police had received information that a container load of cigarettes, possibly counterfeit, was due to arrive in Malta in the last week or the week previous to the last week of February 2005 and that such container would subsequently be transhipped to the United Kingdom. As soon as the police received this information, he personally started the investigations together with Customs Officials. In fact they started examining certain containers which were due to arrive in Malta via the Malta Freeport Terminal.

Unfortunately, the container was not identified during that weekend when they received the information. It was only on the 22<sup>nd</sup> of March 2005, that the container bearing number CCLU3137350 belonging to China Shipping was identified as containing the suspicious shipment. This container was a twenty foot container. It had arrived in Malta on the 25<sup>th</sup> of February 2005 on board the vessel Marisia Hamburg, and the container had been discharged from this vessel from the Malta Freeport on the 26<sup>th</sup> February 2005. This container had left the port of Shanghai, in China, on the 31<sup>st</sup> of January 2005 and it was accompanied by a declaration stating that it contained 510 cartons of promotional toys for a Maltese company bearing the name of Grand Harbour Promotions Limited situated at Knights Templar House, Birkirkara Hill, St Julian's.

He presented a copy of the China Shipping Freight Manifest which is marked as Doc. IA 1 which he confirmed was a true copy of the original found in the report of court expert Martin Bajada. This manifest shows the container number, the bill of lading number, the description of the goods and the consignment being destined to Grand Harbour Promotions Limited. It also transpired from the records of Malta Freeport that on the 25<sup>th</sup> of February 2005 this container had its status changed from a local import to an in transit one. He then presented a true copy of the Customs Container

and Enquiry report issued by the Malta Freeport. This copy was marked as Doc. IA 2. This document confirmed this affirmation. This document in its original format was exhibited in the report of court expert Martin Bajada.

From certain inquiries which were carried out both by police and by customs, it resulted that this company Grand Harbour Promotions was not, registered with the Malta Financial Services Authority online company registry and so he together with Sergeant 494 Gordon Borg in person went to trace this address at Birkirkara Hill, St Julian's. There again this address could not be found. Subsequently the Customs decided that it was time to examine this container in more detail and on the 23<sup>rd</sup> of March after some bureaucratic complications from the Malta Freeport this container was scanned and it soon resulted that this container most probably contained cigarettes.

In fact on the 24<sup>th</sup> of March this container was opened by Customs and it transpired that it contained four hundred and twenty one (421) master cases, each master case contained ten thousand (10,000) cigarettes bearing the brand name Regal cigarettes.

In the meantime whilst Customs were handling this container, the police carried on with their investigations to establish how this container had its status changed from a local import to an in-transit one. The Police were informed by the Malta Freeport that they changed the status of this container after they had received an email dated 24<sup>th</sup> of February 2005 from Medsea Shipping which is the local agent for China asking them to change the status of this container. He presented a copy of this email which was sent to the Malta Freeport by a certain Robert Gauci for Medsea Shipping, again this is a copy of the original held by the court expert Martin Bajada and exhibited in his report. The copy of this email was marked Doc IA3.

Subsequent to this email, he called personally to the offices of China Shipping situated in G Debono Square, Msida, and spoke with a certain Marco Micallef the Representative of China Shipping Agency in Malta and to Pierre Vella, Sales Manager at Medsea Shipping Agency so that he could identify who gave them instructions to change this container from a local import to an in-transit one.

He was informed by Mr. Pierre Vella that on the 24<sup>th</sup> of February, 2005 they received instructions by telephone from a client who identified himself as being a certain Charles Galea on behalf of Grand Harbour Promotions Limited who gave them these instructions. On the 17<sup>th</sup> of March 2005 Pierre Vella received an email from a certain Charles Galea from email address [grandharbourpromos@yahoo.co.uk](mailto:grandharbourpromos@yahoo.co.uk) confirming the instructions that had been given to him by phone. The witness presented this email marked as document IA4, again the original of which lies in the report of court expert Martin Bajada. Mr Vella also stated that they had received the original Bill of Lading of this container by post. In fact he presented one of the three a copies, the original of such copy was in the report of expert Martin Bajada. This Bill of Lading is being marked as IA5. This bill of lading shows that this container belonged to Grand Harbour Promotions Limited and should have contained promotional toys.

He then asked Mr. Vella to give him all the information with respect to this email and of particular interest to the police, was the IP information and header details of the said email dated 17<sup>th</sup> March 2005 received from [grandharbourpromos@yahoo.co.uk](mailto:grandharbourpromos@yahoo.co.uk) . From the header details it was possible to trace this email as having been sent from IP address number 194.204.117.45 on the 17<sup>th</sup> March 2005. He presented as document IA6 the email header details for the email which he had already presented marked as IA4. This document was presented and marked as Doc IA6.

He had then passed this information to the Cyber Crime Unit and asked them whether they could trace who had sent this email and in fact from the enquiries that have been made it was established that this email was sent from a subscriber of Waldonet internet service provider using phone number 21523352 and which turned out to be a certain Arthur Ciancio on behalf of Liberty Merchants Limited situated at Villa Riviera, number 44, Triq W Lassel, Mellieha. He together with court expert Martin Bajada had gone to Waldonet internet service provider and they had provided them with the documents concerning this customer. The witness presented a document which was marked as Dok IA7 which consists of six pages; the first page is from Waldonet records and states the details of the client. Second page is the connection logs for that client and IP address 194.204.117.45 is highlighted in this same page. He presented a copy of the details for Arthur Ciancio and the contact numbers for their client and he also presented a copy of the details registered with Maltacom telephone confirming that the phone number 21523352 belongs to Arthur Ciancio, whereby telephone number 21522379 is registered in the name of Liberty Merchants Limited.

Subsequent to this information which was supplied from Waldonet, he had requested the duty Magistrate Dr. Silvio Meli to issue Search and Arrest Warrants so that police could carry out the necessary searches of Arthur Ciancio at the place numbered 44, Villa Riviera, Lassel Street, Mellieha.

On the 24<sup>th</sup> of March 2005, he together with PS 494 Gordon Borg, PC 1116 T Zammit and WPC 245 Deborah Grima proceeded to the arrest of Arthur Ciancio which took place during the search which was being carried out in his residence. From this search various documents had been seized and also a number of cigarettes had been seized too. Apart from that a personal computer, a laptop and the personal data assistant were seized from the room which was used by Ciancio family, a study room. They had also

seized the personal computer that was situated in a room which was used as a gym and at one point he received a telephone call and had to go to the terrace from where he personally had retrieved a detachable hard drive which was found in his pockets, its cover was lying on the terrace of this said property.

All these items were seized for further analysis together with other cables pertaining to the detachable hard disk. Of particular interest; the police seized also various documents pertaining to Mdina Glass and to Bristow Potteries. These documents were found in three different locations. Basically they had found the said documents in Cianco's main bedroom, they found other documents in his study whereas they had also found some of these documents lying in the study bin. They then handed over all these documents to court expert Mr Martin Bajada.

Also in the presence of some Customs Officials, they seized a document which immediately struck their attention, basically a document which they had found on the bedside table of Mr. Ciancio's bedroom. This document consisted of a Bill of Lading and was made up of three copies which pertained to The Falcon Company regarding a shipment of 1,225 cases of giftware. Again this document in its original format is found in the report of court expert Martin Bajada.

Upon examining these documents some anomalies were noted. In fact after further examination it was established that The Falcon Company is a non-existent company not registered with the Malta Financial Services Authority, online company registry, in fact during a physical check at number 24 Triq il-Wilga, Paceville, San Giljan could also not be traced. This Bill of Lading marked as 8PKGMLA421245 pertained to a container bearing number CCLU6518792. The telephone number and fax number which were also noted on the Bill of Lading, first telephone number which

is 21523486 belongs to a 97 year old lady with the name of Josephine Pisani residing at 6, Triq Gnien Ingraw, Mellieha. This information was obtained from online Maltacom inquiries. Regarding the fax number 21532477, this pertained to a certain Joseph Vella also of Mellieha, residing at 59, Triq it-Tramuntana, again this information was obtained from Maltacom online telephone directory.

After Customs had inquired about this container it was discovered that this container was due to arrive in Malta on Good Friday that is on the 25<sup>th</sup> of March 2005, on board CSCL (China Shipping Company Line) Europe vessel and had been loaded from Port Klang in Malaysia. He presented a copy of the original Bill of Lading which had been found on the bedside table of Mr Arthur Ciancio's main bedroom. This document was marked as Doc IA8. Together with its supporting documents which were attached with a clip. This batch of documents were marked as Doc IA 9 together with details of telephone number 21523486 tracking to Josephine Pisani marked as document IA 10 and the details of telephone number 21523477 tracking to Joseph Vella which was presented and marked as Doc IA11. Arthur Ciancio was detained at the CID lock up.

Police investigations with the Customs were underway to try to establish the contents of this container relating to The Falcon Company container number CCLU6518792. This container arrived in Malta on board China Shipping Company Line Europe on the 25<sup>th</sup> March 2005. Strangely enough as soon as Customs went to check with the online shipping company container tracking, and upon checking with the China Shipping Line for this container, they discovered that this container was destined to Malta but strangely enough the ship's manifest showed otherwise particularly that this container was not going to be coming over to Malta.

Members of Customs went on board of this vessel and spoke to the ship's Captain (Captain Paylopoulos) who stated that he had received an email from a ship's agent to change the destination of this container from Malta to Felixstowe. The witness states that he personally, on the 25<sup>th</sup> of March, 2005 went on board the vessel Europe and spoke with captain Paylopoulos and enquired further on the facts of this investigation which was being carried out by the police and of certain suspicions that they had. On the 25<sup>th</sup> of March, 2005 which was a public holiday, namely Good Friday, there was no one working at the Malta Freeport. Subsequently the container was unloaded on the 26<sup>th</sup> of March 2005. This container was once again scanned and upon it being opened, it resulted that this container did not contain what it had been declared to contain, that is giftware, but instead it was discovered that it contained 726 master cases of cigarettes namely:- 17 master cases which contained 74 cartons with 200 each Super King brands, 681 master cases which contained 65 cartons of 200 cigarette of Dorchester cigarettes whereas, another 28 master cases which contained 74 cartons with 200 cigarettes with the mark Lambert & Butler.

Whilst the Customs officials were underway with checking this container, the police called at the China Shipping Agency to inquire why they had changed the destination of this container from a local import and why they had changed the destination to Felixstowe. Pierre Vella once again informed him that he had first received telephone instructions on the 20<sup>th</sup> March, 2005 and then those instructions were confirmed on the following day by an e mail dated 21<sup>st</sup> of March, 2005, whereby a client by the name of John Mifsud using email address [thefalconcompany@yahoo.co.uk](mailto:thefalconcompany@yahoo.co.uk) instructed him to change the destination for Bill of Lading 8PKGMLA421245. He presented a copy of that email, marked as document IA12 the original of which is with court expert Martin Bajada. Again he contacted Pierre Vella to hand over to the police the email headers and all the information for that email; he presented that information as Doc. IA13.

Once again it was established that the document received by Medsea Shipping originated from a subscriber of Waldonet using IP address 194.204.117.45 on the 21<sup>st</sup> March 2005. This user was also identified as being Arthur Ciancio of Liberty Merchants number 44, Villa Riviera, W Lassel Street, Mellieha. This document was presented and marked as Doc. IA13.

In the meantime a criminal enquiry was also underway, which enquiry was led by the then Duty Magistrate Dr. Miriam Hayman who also nominated Architect Richard Aquilina and Martin Bajada together with SOCO personnel as court experts. Both containers, the first one belonging to Grand Harbour Promotions and the second one being a forty foot container belonging to The Falcon Company were off loaded and kept at Mifsud Veranda, Customs premises. Necessary samples had been taken from each brand of cigarettes.

From an examination of the documents which had been seized from Arthur Ciancio's residence, the police tried to identify why there were documents relating to Bristow Potteries and Mdina Glass being kept at Ciancio's residence. It transpired that the first container, the twenty foot container bearing number CCLU3137350 had to leave Malta under the name of Mdina Glass. In fact the police managed to seize an invoice which refers to this same container bearing number CCLU3137350 together with a packing list for the same container and a letter signed by a certain Joseph Grech the Assistant Marketing Manager of Mdina Glass addressed to a certain Michael German of All Trade Logistics in London. Whereas the second container, the forty foot container, had to leave this island declared as giftware pertaining to Bristow Potteries. They also discovered the invoices and packing's lists for this container document number CCLU6518792 and a letter, signed by a certain Charles Catania, Sales Manager, also addressed

to the same Michael German of All Trade Logistics in London, UK. The originals of these documents are with Martin Bajada.

On Easter Sunday, 27<sup>th</sup> of March, 2005 the court expert Martin Bajada and himself also spoke to Mr Joseph Said being the Director of Mdina Glass and Mr David Grima, being one of the Directors of Bristow Potteries, and these both confirmed that none of the invoices nor the packing lists had ever been issued by their respective companies. In fact the layouts of the invoices relating to Bristow Potteries and Mdina Glass were not similar to these two documents. Joseph Said confirmed that Joe Grech, Assistant Marketing Manager at Mdina Glass, did not work with their company and had never worked with the company, whereas Mr David Grima also confirmed that the name Charles Catania, which appears as Sales Manager with Bristow Potteries, is also non existent with their company. He presented parts of the documents, in their photocopied formats pertaining to Mdina Glass document that was marked as Doc. IA14, and he presented part of the documents which have been discovered and pertaining to Bristow Potteries as Doc. IA15.

The witness also referred to a particular diskette which was marked as Doc. IA16, this diskette contain two excel files, one is named ILZ0730 (OLZ0580) export gibbs KPM (xiamen) and CRGLSUK promo toys (giftwares) 20180804, and the second excel file, is named ILZ0760 (OLZ0595) switch, steve colin (james) crglsuk (giftware) 200405. He said that he had personally saved these two documents on a diskette which was not found at Cianco's residence but he presented just these two files. He did not print these two files because each contained some seven hundred and thirty pages (730) and are important so that he could make reference during this testimony. This diskette together with a printout of what it contains was presented and marked as Doc. IA16.

From an examination of the computers which were seized, certain patterns similar to this operation, were noticed. It resulted to the Police that in this residence at number 44, Villa Riviera. Triq W Lassel, Mellieha there resided two persons, namely the accused Arthur Ciancio and his son Aaron Arthur Ciancio. The police discovered various container shipments, documents, and there were workings pertaining to these shipments, certain workings as others were printed in orange paper, and some other shipments were printed on yellow papers.

One of these orange papers, which they suspected made reference to malicious containers, and was marked Doc. IA17 bearing reference invoice ILZ0730, referred also to the second file which was saved on the computer diskette and that is Doc. IA16. Going through the documents which they had seized particularly one which he had found in the bin which was situated in the study room, it appeared to be a document referring to Liberty Merchants Limited and signed by Arthur Ciancio. This document dated March 23<sup>rd</sup> 2005 and addressed DHL International, Luqa, whereby DHL had been instructed as follows- "DHL reference 1273337925, Please be advised that the above Bill of Lading was wrongly addressed to The Falcon Company and should be sent to them (Liberty Merchants) instead. Please deliver to Villa Riviera, number 44, Triq W Lassel, Il-Qortin, Mellieha, MLH 04, and there is Malata which should read Malta". A photocopy of this document was exhibited and marked as Doc. IA18, the original pieces of this document were found in the dustbin, had been handed over to court expert Martin Bajada.

Again following this discovery they also contacted DHL for further information from their end. The witness presented 5 pages which have been collected by the police from DHL DHL in Malta, DHL International, DHL Buildings, number 6, Vassallo Street, Luqa, By Pass Luqa, in the original format. He explains that court expert Martin Bajada does not have

another copy of this document marked IA19. DHL had informed the police that they had received an email containing the Liberty Merchants document, whereby they received instructions to change the addressee of these documents marked DHL reference 1273337925 from the Falcon Company to Villa Riviera, number 44, Triq W Lassel, il-Qortin, Mellieha, and they also confirmed that the same instructions had been transmitted also by a DHL representative in Malaysia. These documents were therefore in original format as they had been sent, as they had been given to the police by the DHL themselves.

He also presented a copy of the airway bill number and the signature of Mr. Ciancio numbered in the delivery list sheet.

Apart from those documents he also presented a copy of a T2L Declaration by Customs which was also found in the residence of Mr Arthur Ciancio in Mellieha. This document states that consignor Playmobil Malta Limited, Qasam Industrijali Estate, Bulebel Zejtun, and the consignee is the Playmobil UK Limited, 6 Argent Court, Southfields Business Park, Laindon, Essex, had been found in the residence of Mr Ciancio.

He then contacted Playmobil, who confirmed that this same document was not theirs and that the address stated as Playmobil UK Limited, did not exist in the list. This document was presented and marked as Doc. IA 20, the original of which is at Martin Bajada.

Again as part of the evidence which had been seized from Mr Arthur Ciancio's residence they also found a rubber stamp which states Playmobil Malta Limited, however from investigations carried out by the police it transpired that this rubber stamp did not belong to Playmobil Malta. This rubber stamp which is one of those rubber stamps where you put words was

exhibited and marked as Doc. IA21. Also at Mr Ciancio's residence there was a list of companies which had been discovered.

There are various companies besides Mdina Glass, which he already made reference to. These same documents (the original format of which was with court expert Martin Bajada) were exhibited and marked as Doc IA22. These documents were made up of six pages, and he drew the attention of the Court, to page number 1, with regards to the address of Playmobil, whereby there was also a note which states that there is no reference to Malta address on internet site [www.playmobil.com](http://www.playmobil.com) and also to page number 4 whereby there was a note stating that it has a factory in Malta, VAT no, check, with Noel before using and again the address of Playmobil. This document was exhibited and marked as Doc. IA22.

Arthur Ciancio had been investigated at length whereby he refused to answer any questions put forward to him. He also refused to answer questions like what's the weather like in Australia. On the 25<sup>th</sup> of March 2005 Arthur Ciancio released a statement which was exhibited and marked as Doc. IA23, a statement made up of four pages whereby Ciancio did not answer any of the questions put forward to him. This statement was taken after he was given the usual caution according to law. The witness recognised his signature, and the signature of PS494 Gordon Borg. Arthur Ciancio whom he recognised as the accused in court did not sign this statement. Subsequently, to this first interrogation Ciancio was released on police bail on Saturday 26<sup>th</sup> March, 2005. Mr Ciancio was kept under continuous surveillance and in the meantime work was carried out on the second container, which he already mentioned, to establish its true contents. On that same day of the 26<sup>th</sup> of March, 2005 Mr Arthur Ciancio was called into his office and he was further interrogated.

Another more detailed search was carried out at his residence whereby other documents had been seized and these documents had all been passed over to the court expert Martin Bajada. Through this second interrogation Mr Arthur Ciancio released his second statement and on the 28<sup>th</sup> of March, 2005, after being cautioned according to Law, which statement was made up of three pages. Arthur Ciancio decided to sign this statement. Inspector Abdilla recognised his signature, that of Arthur Ciancio and the signature of PC273 Frankie Tabone. This statement was marked as Doc. IA24. He recognised Arthur Ciancio here as the accused. Once again Arthur Ciancio decided not to answer any questions put forward to him. This statement was taken after he was given the caution according to law.

From the information which was coming to his attention throughout this investigation it appeared that Arthur Ciancio's son, Aaron Arthur Ciancio was also involved in this criminal activity. Inspector Abdilla states that he was continuously updated by his IT personnel and also by the findings that were being carried out by court expert Martin Bajada that Aaron Arthur Ciancio was helping his father in things like costings, the container costings, certain accounts, and certain accounting work which was being carried out.

In fact Aaron Arthur Ciancio was also asked to his office on the 28<sup>th</sup> of March 2005. He released a written statement which he presented and was marked as Doc. IA25 a statement made up of three pages. This statement was taken after Aaron Arthur Ciancio was cautioned according to law. Mr Ciancio decided not to sign this statement and also not to answer most of the questions which had been put forward. The witness recognized his signature, that of PC 273 Tabone. He recognized Aaron Arthur Ciancio as the accused present in the court.

He also presented printouts of the MFSA company online registry, basically for two companies namely Liberty Merchants Limited, company registration C29770 whereby it confirms that Aaron Arthur Ciancio and Arthur Ciancio are directors of this company, and also of Japan Mediterranean Agencies Limited registration number C20025 whereby Arthur Ciancio is the director of this company. This document was presented and marked as Doc. IA26. The last exhibit is an envelope marked as IA27 which contains some blank samples, blank papers, photocopy papers.

The same witness in the same sitting under cross examination explained that he have been asked whether he have been leading this investigation from the inquiry stage, he replied that he had been leading this investigation previous to the initial Magisterial Investigation consequently from the early stages. He said that he had informed the Magistrate in the Magisterial Inquiry, on Friday 25<sup>th</sup> or Saturday 26<sup>th</sup> March, when it was evident that this was not a simple, small investigation, but when the second container cropped up he had asked the Magistrate to appoint a court expert to examine computers which had been seized, to examine all documents which also had been seized and he had also asked Magistrate to appoint an expert to establish whether the cigarettes were counterfeit or otherwise.

Being asked whom he had asked the Magistrate to appoint, the witness explained that he did not in any way ask for any particular expert. Basically the experts nominated by Magistrate Hayman where nominated simply by herself.

Being asked what specific instructions were given to Martin Bajada, he answered that he could not recall, he didn't know whether there had been any communications between Mr Bajada and Magistrate Hayman in this

case but he had been informed that the expert had been nominated to examine the computers, to examine the documents and also to check whether these cigarettes were genuine or not. He also said that subject to correction, he thought that Architect Richard Aquilina was present in the counting of the second container, and was also present at the opening of this container. Being asked whether SOCO experts had been nominated as well, he explained that yes as he had mentioned in his testimony, Magistrate Hayman nominated a police photographer for this case as well. In fact he was present with him throughout the whole opening of the second container and he was also present during the second search done at the residence of Arthur and Aaron Arthur Ciancio.

**Joseph Borg** gave evidence on the 8<sup>th</sup> April, 2005 in his capacity as Representative to the Comproller of Customs. He was being shown document at folio 18 and 19 of the court proceedings and confirmed that this was the Letter to Prosecute issued by the Comptroller of Customs and he also recognized the signature of the Comptroller of Customs. He exhibited Doc. JB1, as Seizure Noote number 14 of 2005. He exhibited contents of safe which were being exhibited formally as Doc. JB2.

With reference to items listed on Document JB2 whereby there is the word Worchester, this should be Dorchester and not Worchester. This is with reference to container number CCLU651879/0 item 2.

The same witness in the same sitting under cross examination stated that he had exhibited formally Doc. JB2 which are the contents of the containers and the contents were presently being held at Mifsud Veranda. Mifsud Veranda is the property of the Customs Department. He was not present when the containers were opened. From the Customs file it results that the Customs representative present at the opening of the containers was Inspector Joseph P. Brincat and this with reference to container number

CCLU313735/0. According to the Customs file there were others Customs Officers present who were Alfred Mallia, A. Calleja and I. Samuel, and the container CCLU313735/0 was at the Malta Freeport.

With reference to the other container, mainly container number CCLU651879/0, the witness said that the file in his possession whilst testifying, whilst containing a reference to container number CCLU651879/0, no mention of the Customs officers present when this said container was opened is made.

He exhibited a true copy of the original of Red 6 of the Customs file. There is the reference which he had made in relation to container number CCLU6518879/0. This document was exhibited as Doc. JB3. He also explained that upon further examination of the Customs file he noted that there is a reference as to the Customs officers present on the opening of the container number CCLU651879/2. The Customs officers present were Inspector Emanuel Sammut and Officer Raymond Muscat. Therefore he made a correction in the sense that now he had noticed that this information is included in the Customs file.

**Dr. Claudette Fenech** gave evidence on the 8<sup>th</sup> April, 2005 and explained that she is the Representative of the Malta Financial Services Authority. She exhibited a copy of the Memorandum and Articles of Association of the company Liberty Merchants Limited registration number C29770, registered on the 24<sup>th</sup> day of May 2002. This document was exhibited and marked as Doc. CFA1. She was also requested to make verifications in relation to the two limited liability companies by the name of Falcon Company Limited and Grand Harbour Promotions Limited. She declared that after making the appropriate verifications, it resulted that these two companies were not registered with the Malta Financial Services Authority.

**Charmaine Galea Triganza** gave evidence on the 20<sup>th</sup> May 2005 and explained that she is a Representative of Maltacom and she had been asked to verify in relation to telephone numbers held in the name of Aaron Ciancio ID number 477045M and also in relation to Aaron Arthur Ciancio ID number 442300L. Also in relation to these persons, she had been requested to verify about Liberty Merchants Company Limited, company registration number C29770 at the residence Villa Riviera, 44 W Lassel Street, Mellieha.

The witness said that according to their records, Arthur Cianco's telephone numbers are 21522380 and 21522379, and the phones are installed at 44, Villa Riviera, W. Lassel Street, Santa Maria Estate, Mellieha. There are no numbers registered in the names of the companies given to her. She exhibited her results as document Doc. CGT 1.

On the 20<sup>th</sup> May 2005, Robert Bugeja, on behalf of the Registrar of Courts, exhibited the acts of the Process Verbal carried out by Magistrate Miriam Hayman.

**Charles Schiavone** gave evidence on the 20<sup>th</sup> May, 2005 and explained that he is a Security Manager of DHL Malta. He was shown Doc marked as IA9 exhibited at fol. 94 to fol. 98 of the acts of the case. He declared that this document is a Delivery Shipments Note with reference number 127337925 addressed to Falcon Company, in Malta. He explained with reference to this document Doc. IA19 that it is documentation in relation to a parcel. He explained that according to this document the person who sent this parcel is Mr JC Lee from Malaysia. This parcel was originally addressed to Falcon Company Limited, 24, Triq Wilga, Paceville and that his company was commissioned to delivery this parcel. Then on the 23<sup>rd</sup> of March, 2005 they received a letter by email showing the reference number already mentioned, whereby they were asked to change the address of the delivery of the

parcel. This emerges from folio 94 in document IA19. The new destination for delivery was Villa Riviera, 44, W Lassel Street, il-Qortin, Mellieha. They also received instructions from DHL Malaysia with the same request. This also emerges from folio 97 and 98 of the said document Doc. IA19. The package was delivered on the 23<sup>rd</sup> of March, 2005 and there was indicated that the delivery was done to Arthur Ciancio and the address where it was delivered was the address of the Villa at Mellieha. This emerges from folio 96 from the acts from the same document Doc. IA19.

**Pierre Vella** gave evidence on the 20<sup>th</sup> May, 2005 and explained that he is a representative of Medsea Shipping agents of China Shipping. He is Sales and Marketing Manager at the MedSea Limited. He was approached by Inspector Ian Joseph Abdilla in relation to two containers which were in Malta in separate periods, one at the end of February of 2005, and one at the end of March 2005. In relation to the first container having Bill of Lading number 86HAML3A3467 he confirmed that this container was expected to be delivered to Grand Harbour Promotions. However they received instructions to change the destination of the container from Malta to Felixstowe. This request was sent to him by email. The email referred to a previous phone call he had received, and this is the reference to the email. Then as was his duty he forwarded this email to the operations department. He remembered the phone call, that it was made by a male and that this phone call contained the same request made in the email. After forwarding the email to the Operations Department, he received by post the original Bills of Lading. He was shown document marked as IA 04 which is at folio 55 and 56 of the acts of the case and he confirmed that this is the email that he received where there was also a reference to the earlier phone call and which email he forwarded to the Operations Department. Asked by the Prosecution, whether he himself personally, or if to his knowledge the company which he represents, had worked with Grand Harbour Promotions and specifically with a certain Mr Charles Galea he replied that he do not

recall. He was shown also Document IA 05 folio 57 of the acts of the case and he confirmed this a copy of the Bill of Lading that he had received by post. He specified that he did not remember the Bills of Lading that he received in relation to this first container.

In relation to the second container which arrived in Malta in March 2005 this had the Bill of Lading number 8PQGMLA421245 and he confirmed that he had received a request for a change of destination and he forwarded this to the operations department. These instructions came by email. If he was not mistaken this second email referred to a phone call but he did not remember if he had received the phone call in relation to this second container. Ninety percent of his work was phone calls and he didn't recall all the phone calls that he received. He believed that he did not receive any Bills of Lading in relation to the second container. He was shown document IA 12, at folio 77 in the acts of case and he confirmed that this was the email sent to him in relation to the second container which arrived in Malta in March 2005.

**Martin Bajada** gave evidence on the 11<sup>th</sup> July 2005 and exhibited his report carried out after being nominated by the Inquiring Magistrate Dr. Miriam Hayman on the 27<sup>th</sup> March 2005. This was marked as Doc. MB. Together with this report he exhibited six (6) volumes which were marked from Doc. MB1 to Doc. MB6. He also exhibited samples of cigarettes taken from two containers marked as Doc. MB7 and Doc. MB8. He also exhibited three (3) packets of cigarettes which were marked as Doc. MB9. With reference to Doc. MB9, he said that these are originals supplied by Imperial Tobacco. With reference to Doc. MB7 he made a correction namely he exhibited as Doc. MB7A Regal cigarettes and as Doc. MB7B Super Kings and cigarettes named Lumbard and Butler. Therefore as

regards the documents which he previously mentioned as Doc. MB7, these are being exhibited as Doc. MB7 and Doc. MB7B respectively.

He stated that basically there are two sets of documents regarding the container and the status of the container which was changed. He also said that attached to these documents there are documents relating to Imdina Glass and Bristow Potteries including spread sheets containing movements on the alleged counterfeit shipment.

In respect to the cigarettes the Inquiring Magistrate Dr Miriam Hayman had requested he examines two sticks of each brand, but he said that only one packet of each brand was sent to him and thus he could make no comparisons on the basis of one packet only. With reference to the spreadsheets he mentioned, he said that these contain cut and paste information regarding various emails which were sent to China Shipping in respect of these two shipments and details regarding manufacturing of the cigarettes especially to the Regal where certain characteristics are mentioned in the spreadsheet. These have been found in consignment.

The Court expert, in his report, marked Dok. MB, (fol. 162), came to the following conclusions:

1, *“Illi d-dokumentazzjoni f’isem il-Bristow Potteries Ltd u l- Mдина Glass misjuba fir-residenza ta’ Arthur Ciancio huma foloz u intizi sabiex jakkompanjaw il-kontainers CCLU3137350 u CCLU6518792 (vide pagna 4 ta’ DOK MB1 u pagna 12 ta DOK MB2).*

2. *Illi mill-emails li irceviet ic-China Shipping ghal Change of Destination tal-containers, emails mibghuta minghand Joe Mifsud tal-Falcon Company Ltd f’isem il-Bristow Potteries Ltd u Charles Galea tal- Grand Harbour*

*Promotions Ltd, dawn l-e mails jirrizulta li saru mir residenza ta' Arthur Ciancio tramite l-abbonament li Arthur Ciancio ghand mal-Internet Service Provider – Waldonet.*

3. *Illi mill-Excel worksheet ( ILZ0730)) u l-kontenut ta' dina l-worksheet, (vide Dok MB5 u MB6) jirrizulta li Arthur Ciancio mhux biss kien jaf biz-zewg containers u fuq liema talab ic-Change of Destination imma kien jaf ukoll li l- kontenut ta' dawn kien sigaretti u mhux l-oggetti dikjarati fuq il-Bill of Lading u l-fatturi tal-Bristow Potteries Ltd u l- Mdina Glass Ltd.*

4. *Illi minn Dok MB4 jirrizulta li Arthur Ciancio mhux talli kien jaf b'dawn iz-zewg containers sigaretti u l-movimenti u dokumentazzjoni taghhom, imam kien huwa stess f'isem il Liberty Merchants li talab lid-DHL sabiex jigi moghti d-dokument #127337925, kontenenti l-Bill of Lading f'isem il-Falcon Company u dam meta kiteb "Please be advised that the above BOL was wrongly addressed to the FALCON COMPANY and should be sent to us instead". Ciancio qatt ma seta' kien konsapevoli bil-konsenja lill-Falcon Company.*

5. *Illi f'Dok MB4 pagna 1, jirrizulta li Arthur Ciancio kien jaf bil-konsenja lill-Falcon Company Ltd, tant li bhala Joe Mifsud baghat struzzjonijiet lil Pierre Vella ta' China Contanier Shipping Lines, fejn indika tibdil fil-Bill of Lading, ghal liema tibdil Arthur Ciancio iffalsifika dokumentazzjoni f'isem il-Bristow Potteries Ltd. L-istess ghamel fil-konfront tal-Grand Harbour Promotions Ltd. meta iffalsifika dokumentazzjoni f'isem l-Mdina Glass Ltd.*

6. *Illi inkwantu ghall-analisi komparattiv sabiex jigi stabbilit jekk is-sigaretti humeix prodott iffalsifikat jew prodott originali, l-esponent talab ghall-kampjun orinjalni ta' zewg kartuniet ta' kull marka tas-sigaretti elevati miz-zewg containers, imma ircieva kampjun ta' pakkett wiehed minn tlett marki, ara Dok MB 9 u MB6 pagna 24. Dan il-kampjun ma huwiex*

*bizzejjed sabiex l-esponenti ikun jista' jaghmel l-analisi komparattiv mehtieg, sabiex minn dan l-analisi jsitabilixxi jekk is-sigaretti humiex originali jew foloz."*

**Adrian Grima** gave evidence on the 23<sup>rd</sup> August, 2005 and explained that he is the Managing Director of Bristow Potteries. He has been running his company for the past thirty three (33) years. Being shown document Doc MB2 which was exhibited in an envelope marked fol. 162, he was shown the first fourteen (14) pages of Doc MB 2 which pages carry the logo of Bristow Potteries. On page one (1) there is one (1) letter signed by a certain Charles Catania, on page two (2) there is a packing list, on pages five (5) and the consecutive pages there are invoices issued by Bristow Potteries dated 23<sup>rd</sup> March 2005. With reference to the question being put by the Prosecution, whether these documents are original documents and whether they were issued by his company, the witness replied in the negative. These documents have not been issued by his company. Charles Catania mentioned in page one (1) is not known to his company. He has never traded with a certain Mr German. With reference to Doc MB4 also found in said envelope at folio 162 he was shown various documents, from page four (4) till page thirty seven (37), and he stated that all these document do not belong to his company and therefore he considers them to be false. He doesn't know any of the two accused present in the Court Room. His company has never traded with any of the persons with the name Arthur Ciancio or Aaron Arthur Ciancio. His company has never imported goods from Malaysia. Being asked by the Prosecuting Officer whether his company has ever traded with a locally based company with the name of Falcon Company he said that his company has never traded with this company.

**AIC Richard Aquilina** gave evidence on the 21<sup>st</sup> November 2005. He declared that he had been nominated by Inquiring Magistrate Dr. Miriam Hayman in the Inquiry regarding the seizure of a container containing cigarettes at the Malta Freeport Terminal on the 26<sup>th</sup> March 2005. He presented his report, which was marked as Doc. RA1. He declared that he carried out his duties to his best abilities.

The expert related as follows:

*“Illi b’digriet moghti mill-Magistrat Inkwirenti fis-26 ta’ Marzu, 2005, l-esponent gie nnominat sabiex jirrelata dwar dak li kien instab go Container fil-Freeport ta’ Kalafrana.*

*Illi sabiex jaqdi l-inkarigu lili moghti, l-esponent zamm access fil-Freeport f’Kalafrana fis-26 ta’ Marzu 2005, fis-1.40p.m. u wara dan go “Mifsud Verandahs”, fil-Marsa.*

*Il-Container Nru. CCLU6518792 kien fil-Freeport qrib is-slipway ta hdejn l-entratura originali. Dan tghabba fuq Trailer, ittiehed il-Marsa u l-kontenut inhatt go “Mifsud Verandahs”.*

*Il-Container ta’ 40’0” kien mimli bil-kaxxi tas-sigaretti li nhattu fuq Pallets u wara ddahhlu fil-mahzen u l-kontenut gie osservat li kien:*

...

*B’kollox kien hemm:*

*“Dorchester International”*

*690 kaxxa x65 cartons x200 sigarett = 8,970,000*

*Kaxxa x65 cartons x200 sigarett = 13,000*

*Kaxxa x52 cartons x200 sigarett = 10,400*

*8,993,400*

*“Lambert & Butler”*

*16-il kaxxa ta’ 74 cartons x200 sigarett = 236,800*

*Kaxxa ta’ 68 cartons x200sigarett = 13,600*

*250,400*

*“Silver King”*

*15-il kaxxa ta’ 74 cartons x200 sigarett = 222,000*

*Zewg kaxxi ta’ 74 cartons x200 sigarett = 29,600*

*Kaxxa ta’ 68 cartons x200 sigarett = 13,600*

*265,200*

*L-ammont kollu ta’ sigaretti kien ta’ 9,509,000.”*

**Joseph Said** gave evidence on the 6<sup>th</sup> January, 2006 and explained that he is a Managing Director of the Mdina Glass and he has been holding this position for the last twenty (20) years and he also owns Mdina Glass. He was shown document Doc MB1 and precisely page 1 of this document. Being asked by the Prosecution whether this document is an authentic letter head of his company he stated that it is not. He explained that they do not have a John Grech as assistant marketing manager as mentioned in this document. With reference also to the address printed in this document namely “Qasam Industrijali Ta’ Qali, Misrah il-Parrocca, Rabat” he explained that this is not the correct address of his company. In fact the correct address of his company is Mdina Glass Limited, Crafts Village, Ta’ Qali. With regards the VAT number of Mdina Glass, it is correct, but the telephone and the telefax numbers listed on this document are not. The email found on the said document is also incorrect, however the website address of Mdina Glass is correct. Asked by the Prosecuting Officer whether his company Mdina Glass has ever worked with a certain Michael Jamal of All Trade Logistics found in London, UK, he replied that his

company has never worked with such a person. Reference is also being made for him to view from said document Doc MB1 pages from 2 to 4, this is an invoice consisting of 3 pages. The invoice reference is listed MGM/05/128. He stated that this invoice has definitely not been issued by his company. The code numbers mentioned in this invoice and even the names given to the items listed in this invoice are not the code numbers and the names which they give to their products. He confirmed that this whole invoice is not genuine. Reference was also made to the packing list found from pages 5 to 7 of the said Doc MB 1 and with reference to this document he stated that this packing list too is not genuine. Being asked whether his company Mdina Glass has ever worked with a company named Grand Harbour Promotions Limited his reply was no. Being asked by the Prosecuting Officer whether he has ever worked, sold or bought anything from Arthur Ciancio or from Aaron Arthur Ciancio his reply was no. He explained that as regards the question being put to him by the Prosecution whether he recognises the two accused present in the Court Room he replied that he had never seen these two persons before in his life. Being asked also by Prosecuting Officer whether himself or on behalf of his company he ever gave authorisation or permission to the said accused to print or use or in any way utilise the documents that he was shown, his reply was no.

**PS46 Charlot Casha** gave evidence on the 13<sup>th</sup> March, 2007 and stated that he had been nominated as expert by the Inquiry Magistrate Dr Miriam Hayman and today he was in a position to present his report which was being exhibited as Doc. CCP1. He stated that he had completed the report to the best of his ability.

**Joseph Borg** gave evidence on the 13<sup>th</sup> March, 2007 on behalf of the Comptroller of Customs. He presented as Doc. BJB1 an addition to the original Letter to Prosecute found at folio 18 and 19 of the Court

proceedings. He also confirmed that the signature on the documents is that of the Comptroller of Customs.

**Paul Scicluna** gave evidence on the 16<sup>th</sup> October, 2007 and exhibited on behalf of the Commissioner of VAT a Letter to Prosecute as amended by Court decree given earlier on today whereby this document was exhibited and marked as Doc. SPV1.

**John Mifsud** gave evidence on the 16<sup>th</sup> October, 2007 and he explained that he was the Comptroller of Customs when the charges against the accused were issued and owing to the amendments done today in the Letter to Prosecute of Customs and the charges brought against the accused he presented a translated copy of the Letter to Prosecute on behalf of the Comptroller of Customs in the English language which includes the amendments done today by Court decree. This document was exhibited as Doc. MJC1. He confirmed the values which are found now in the document he had just exhibited. He declared that he was the person who made the valuations which were found now in the documents which he had just presented. He also explained that the signature on this document is his.

**Paul Scerri** gave evidence on the 16<sup>th</sup> October, 2007 and he confirmed that he occupies the post of Comptroller of Customs. On being shown document MJC1, he confirmed its contents and explained that the document consisted of the Letter to Prosecute exhibited earlier on today by the ex- Comptroller of Customs John Mifsud.

**Accused Aaron Arthur Ciancio** gave evidence on the 13<sup>th</sup> July, 2010 and he explained that his name is Aaron Arthur Ciancio and he was born in Victoria, Australia. He was born on the eighteenth (18) of July, nineteen seventy four (1974). His father is Arthur Victor Ciancio and his mother Catherine is from Tasmania. He has one full blood sister and he has three

(3) half brothers and sisters. His mother re-married when he was seven (7) years old. His father is the co-accused in this case. He explained that when he was of the age of seven (7) years his parents divorced, his mother re-married when he was about twelve (12) years of age. At the age of seven (7) the whole family moved from Victoria to Perth then the marriage of his parents broke up at that stage and then he started staying half of the week with his father and the rest of the week with his mother. He lived in this way until he was of the age between sixteen (16) years to seventeen (17) years. He attended primary school in Perth; he went to John XXIII (twenty third) High School which is a Private Catholic School. He finished from this school in the year nineteen ninety one (1991). Then he took various courses in human movement and some small catering courses. During these periods of studies, to be able to attend these courses, he used to go to work. He started in dishwashing and then he moved up to being a waiter. Since he has been always interested in sports he practised tennis and Australian football. He also worked part-time as a trainer one-to-one person with his clients. Practically these training sessions were intended for persons who had suffered a stroke or had high blood pressure or suffered from knee injuries, and therefore he acted as a trainer for these persons on one-to-one basis, basically for rehabilitation. Around the year nineteen eighty nine (1989) or nineteen ninety (1990) his father left Australia. Then when he finished High School in nineteen ninety one (1991) his father left Australia to come over to Malta to buy property here and he came back occasionally for about a year to Australia. Then when he finished High School in nineteen ninety one (1991) his father came to live in Malta. During the time that his father left for Malta he used to live with his mother. In the year nineteen ninety four (1994) he came to Malta for approximately eleven (11) months. Since he considers himself half Maltese, he also looked for the possibility of working here. He worked in Malta in coaching in one-to-one basis and he also worked in the catering business. During his stay in Malta in nineteen ninety four (1994) he lived with his father. He brought with him

from Australia about eight thousand (8,000) Australian Dollars which he had saved, therefore he had some money to start living in Malta. Practically when he acted as coach in Malta he coached in tennis as part time work and used to get about nine (9) to ten (10) Euros an hour in Marsa Sports Club. He worked in catering, on a part-time basis, at the Belleview in Mellieha. Besides coaching in tennis he also had worked in training, to private clients.

As far as he could remember his father's work was always related to International Trade Import-Export. As regards the goods related to his father's work these were different items, he used to see different samples, alcohol, wine, milk products, toys etc. He saw these samples in his father's office and also in the house. He never worked in Australia with his father. During the period of eleven (11) months he mentioned when he was in Malta in nineteen ninety four (1994) he did not work for his father, as regards to the period that he stayed in Malta in nineteen ninety four (1994) he managed to survive because he had brought with him eight thousand (8,000) Australian Dollars, besides that he used to obtain some money from his work and together with his father they used to share expenses in the sense that one week he would do the expenses and then the next week would be his father's turn to do so. From what he could gather during the eleven (11) months he had mentioned that he spent in Malta in nineteen ninety four (1994) his father was importing alcohol. He cannot exclude that his father could have imported alcohol from somewhere else in order to export it. He said that he was never interested in business and he didn't keep his eye on what his father was doing as his trade. After he spent eleven (11) months in Malta then he went back to Australia where he spent about two (2) years and nine (9) months. In Australia he went back to catering and acted as waiter, also he continued his work as a trainer. As regard financial remuneration the training business wasn't bad, this time he managed to save about sixteen (16) to seventeen thousand (17,000) Australian Dollars and that paid for the next trip when he came back to

Malta. He came back to Malta in the year two thousand (2000). He had missed Malta and he didn't really know whether he could remain in Australia or come back and live in Malta. So he came back to Malta and he started working in catering again. He did various odd jobs over the period of two (2) years, amongst which was tiling. In Malta he also continued personal training on one-to-one basis and usually the clients were elderly people. He used also to work in coaching tennis. He trained top players in Malta as regards to tennis and he still does this today. During this period when he came back to Malta in the year two thousand (2000) he lived with his father. He did not work with his father during this period. His father had a big place to live in, this was a Villa. Since before two thousand and five (2005) he and his father did not get on well together and so he used his father's residence only to sleep in and sometimes they had dinner together. The reason he and his father were not getting along well is because they have different opinions in most matters. In the year two thousand and two (2002) he was interested in making some training enterprise. In the same period, his father needed two (2) people in order to make a Company, so his father proposed to him to be a Director to a Company and then he could use this Company as a way to start the business. He said that had never done a business before in his life, he never ran a business and he wanted to start one. Since he loves gardening he wanted to do either a gardening business or a business regards to training. He needed money to finance the business. He told his father about this problem of money, who told him that he would help him but actually he never did. Since he did not have enough financial backing to start his business he never did start this business. So as regards Liberty Merchants Ltd. he was Director in name only, but he had no idea what this company did.

In two thousand and three (2003) he went back to Australia, lived with his mother for a couple of weeks then came back to Malta again. During this short period in Australia, he did not work. His relationship with his mother

was good. He then came back to Malta. From the year two thousand and three (2003) to date he has remained in Malta, because of this case, which has started in two thousand and five (2005). When he came back from this brief period in Australia, he coached tennis on a one-to-one basis and worked in catering. He also did training for special cases especially to elderly people. During his return to Malta he lived with his father. As of the year two thousand and five (2005) he has lived by himself. He is Manager of Melita Wine Bar. He said that his father never did assist him financially. His father had a hard upbringing and he wanted each of them to look after himself. His father never involved him in his business. In the Villa which his father possessed, there was a particular room which served as an office where his father worked. Through all the period that he has been in Malta he never worked for his father. He does not know how to do business. He was not involved in his father's business and he did not know what his father was doing with his business. He believe it was in two thousand and five (2005) it was about eight (8:00) to nine (9:00) in the morning when he was living at his father's house the door knocked he heard his father say "the police, get up". He walked outside and he noticed plainclothes policemen, he explained plainclothes policemen because his father told him that they were the police and he also told him that the police had a warrant. So this is why he has mentioned that they were policemen. The policemen entered his father's house and they made a search. The police from his father's house elevated computers and documentation and files of his father. Then the police came to the house they noticed his presence. He had no idea what was going on. He was worried about his father and he did not know what was going to happen to his father, so he called a friend of his father, whose name he could not remember, and this friend of his father told him to call Dr Emanuel Mallia which he did. Then he met Dr. Mallia in Gozo. He told Dr. Mallia what happened and he told him that he did not know, he told him that all he knew was that he was taken by the police. Dr Mallia asked him other questions but he did not

know what to say, and he did not know what to say because he did not know what his father had been doing especially at that time he and his father were not getting along well together. The following day, that is the day after the police had arrested his father, the police came back to his father's house and took away some other objects from the house. He was arrested a day or two after. He was asked questions by the police, which he answered in the manner he was advised by his lawyer, that if he's asked questions he replies that he has been told by his lawyer to say nothing. This was the type of reply he was giving to the police during the interrogation. Being asked whether he was told by the police at the commencement of his interrogation that he had the right to remain silent, he said that he was not sure if the police did tell him this right or not. Being shown page 2 of Doc. MB4, he confirms that he had never seen this document before this case had started. He can confirm that the first time he saw it was only recently, when it was shown to him by his defence council.

As regards to the merit of this case, in relation to the cigarettes, what he can tell is that before this case was started he knew nothing about these things, the most he knew was that he had saw a few cartons of cigarettes in his father's office. He was never involved in the business of cigarettes or of containers filled up with cigarettes and he hasn't done any business. He has always been employed but never worked for his father, besides this he used to act as trainer for persons on a one-to-one basis. The most he knew about his father's business was that he was involved in import-export but he did not know anything relating to cigarettes. In fact his father used to distance him from his work.

The same witness in the same sitting under cross examination explained that the address of his father's villa was 44, W. Lassel Street, Qortin, Mellieha. As regarding to the question being put to him by the Prosecuting Officer about what did he know about the company Liberty Merchants of which he

was Director, he explained that he didn't know anything about this company. Being asked whether he knew anything about Japan Mediterranean Agency Ltd., he said that he knew about this company and he believes that he was one per cent (1%) share holder of this company; though he was not director of this company. He didn't know what this company does as regards business. Being asked whether he knew about Grand Harbour Promotions Ltd, he replied that he never heard this name before. Being asked whether he knew anything about the company with the name Falcon Company, he answered that he knew nothing about this company. Being asked whether he knew that Liberty Merchants Ltd. had done any business with Mdina Glass, Play Mobil and Bristow Potteries, his reply was in the negative, he didn't know anything about this, he had never heard of these companies except for Liberty Merchants Ltd and Imdina Glass Ltd.

As regards to his father's study at the villa in Mellieha he remembered that in his study there were many shelves with various samples including cigarettes. There were two (2) computers in his father's study. He had used one of these computers to e-mail his mother and not for business . Being asked by Prosecuting Officer whether he knew that during the search by the police at his father's residence they found an external hard drive in his father's villa, he replied that afterwards he was told that the police has found this external hard drive, he didn't remember in which room the police had found it. Being asked whether he remembers that actually this external hard drive was found in the back of the veranda on the floor, he replied that he didn't know anything about it.

The same witness in the same sitting under re examination explained that his father had told him that as regards to the formation of the Liberty Merchants Company he needed a second director to form the company, he was his son and therefore he felt that he had to sign as a Director to do a

favour to his father. Besides he thought that his father was giving him the opportunity that he could utilise this company for his future business. Except for the fact that he accepted to be a Director of Liberty Merchants Ltd, he didn't know anything about it. He didn't know what this company did or even whether if it still exists or not.

As regards to the Company Japan Mediterranean Agency Ltd his father had told him that this company had been opened for his sister Lea Ciancio who was in the tourism business. As regards to her work in Australia his sister Lea used to work with the disabled and she is a Manager of a company that cares for Down Syndrome patients and she still works in this establishment today in Australia. His father had told him that he proposed the creation of this Japan Mediterranean Agency Ltd for this scope that his sister Leah Ciancio could start a business in the Tourism Industry. This is all he knew about this company, he didn't know that this company is dissolved. Being asked whether today he's financially dependent on his father, his reply was in the negative. He lived separately here in Malta from his father and they do not see each other often.

**Adrian Mallia** gave evidence on the 7<sup>th</sup> November, 2014 and explained that he works with the Malta Freeport and he had been working with them for the last twenty two (22) years. He occupies the post of Operations Manager. He explained that the charges that are collected by the Malta Freeport are only those charges related to the Malta Freeport itself, for example for the discharge of the container, loading of the container and the storage of the container if required. Malta Freeport does not get involved with VAT and Sisa. He didn't know at what stage the VAT and Sisa would be collected, however it is at a later stage.

With regards to containers in transit he explained that the procedure is a bit different. They receive the whole information about the container arriving

in Malta by the owner of the container, by the shipping line. The original information is called the bubble file, the full details are included in the corporal file. They subsequently wait for the vessel to be physically on sight. They discharge the container onto the land. All the information relevant to that container is stored in their database. When the container has to be reloaded for export they receive a new corporal load, this time instructing them were to load the container and when the outbound vessel is alongside they load this same container. Everything takes place in the Freeport itself.

Most common changes that they get are when they have transport containers, in other words when the destination changes from one place to another. However it is not a common practice that objects or containers arriving in Malta in transit end up on the local market although there have been cases where this has taken place too. As long as they receive their instructions from their clients they follow those instructions. Asked when they would receive the instructions for changing a local import to an in-transit, they usually receive the information with regards to a vessel twenty four (24) or twelve (12) hours in advance prior to the arrival of the vessel. So if any information is going to change with regards to a container that is bound to be discharged it would be between twenty four (24) and twelve (12) hours prior.

He had no idea when Customs and VAT become due should there be a change in destination, that is from an in-transit container being due for the local market.

**John Mifsud** gave evidence on the 10<sup>th</sup> December, 2015. He did not remember the details per se of this case, however he was asked to testify on the workings he made, which he had already did. The Court has just read out the evidence which he gave way back in two thousand and seven

(2007). He was shown the document which was exhibited in these proceedings (fol. 365) and he confirmed that on this document there is his signature and he confirmed its contents. He exhibited the workings on the basis of which the letter was issued. These workings were marked as document CSH.

He said that the situation in question was not normal for them. In order for them to calculate the amount of import duty and excise duty and value added tax, the only logic way he could find was to compare the price of the cigarettes of a similar packet of cigarettes in the shop and that is how he started working. It was a similar brand of cigarettes, a twenty (20) cigarette packet possibly Rothmans, though he was not sure. The normal twenty (20) cigarette packet which was available on the market at the time was one Maltese Lira fifty five cents (Lm1.55) per packet and then he started to compare with the brand Rothmans.

He stated that by then he had left the Customs for eight (8) years; therefore the details can be given by the actual calculation he had made but he couldn't remember the exact brand of cigarettes. One has to realise that most of the charges are excise duty. With all responsibility he can conclude that with his logical reasoning at the time he made the calculations on a similar cost of pack of cigarettes on the market.

Asked if he spoke to any of the representatives of the documents exhibited in these proceedings by Inspector Abdilla, he said that it was possible that he spoke to them and that is how he got the price of a similar packet of cigarettes. Possibly there was a regulation or direction issued by the EU with regards to the cautions which appeared in cigarettes although if he's not mistaken in Malta it was introduced earlier. The cigarettes found in the container were already on the local market.

**Alex Montebello** gave evidence on the 25<sup>th</sup> February, 2016 and explained that he occupies the post of CEO in Malta Freeport Terminals. He can confirm that they work with two types of containers:- Domestic containers which are discharged from vessels and then exit the gate as local import; or otherwise they have transshipment containers which were discharged from main liners and loaded back again on another vessel. Such containers do not leave the Freeport. Such containers are classified as transshipments, although for customs and other entries these may be called in-transit. No taxes are due on any merchandise which is brought to Malta in a transshipment container. He confirmed that taxes are not imposed by the terminal operator but by other entities.

The Prosecuting Officer made his oral pleadings on the 12<sup>th</sup> January 2017.

The Court took cognizance of the note of submissions filed by the accused Arthur Ciancio on the 14<sup>th</sup> March 2017 and that of the accused Aaron Ciancio filed on the 11<sup>th</sup> April 2017.

Considers:

The facts of this case, in short are the following:-

1. On the 24<sup>th</sup> February 2005, the police had received anonymous information that a container full of cigarettes, possibly counterfeit, was due to arrive in Malta in the last week or in the week prior to the last week of February 2005 and that this was due to be transhipped to UK ( as per evidence of AC Ian Abdilla).
2. The Police started with its investigation and together with the Customs officials started examining all containers arriving in Malta via the Malta Freeport, during that said period of time.

3. The container in question was only identified as being a 20 foot container bearing number CCLU3137350 belonging to China Shipping and this arrived in Malta on the 25<sup>th</sup> February 2005 on board the vessel Norasia Hamburg.
4. This container was discharged from the vessel on the morrow, being the 26<sup>th</sup> February 2005.
5. This container had left from the port of Shanghai in China on the 31<sup>st</sup> January 2005 and it was declared as having 510 cartons of promotional toys for a Maltese company with the name Grand Harbour Promotions Limited situated at Knights Templar House, Birkirkara Hill, St. Julians.
6. The Police asked for this container to be sent to Mifsud Verandahs which belong to the Maltese Customs and it was there that such container was opened in the presence of the police and customs officials.
7. From the evidence of AC Abdilla it transpired that the status of this container had changed by means of an email dated 24<sup>th</sup> February 2005 sent by Medsea Shipping which is the local agent of China Shipping, the change being from a local import to an in-transit one.
8. It resulted from the acts that the instructions given by Medsea Shipping for the change of status were made allegedly by a non-existent Charles Galea who allegedly called on behalf of Grand Harbour Promotions Ltd. and then allegedly confirmed the instructions given verbally by phone with an email.
9. The container was opened and it did not have the promotional toys as declared in the manifest of the ship, but cigarettes.
10. The police traced this phone call and it transpired that the telephone number was made by Arthur Ciancio from his phone registered on behalf of the company Liberty Merchants Ltd., where the accused Arthur Ciancio is one of the Directors.

11. Also it results from the acts of the proceedings that the email in question was sent from an IP address provided by Waldonet in the name of the accused Arthur Ciancio.

12. A search was conducted in the residence of Arthur Ciancio and a number of documents were seized together with computers and computer related objects.

With regards to the second container, the 40 foot container allegedly containing giftware of Bristow Potteries:-

- a. The police whilst conducting a search in the residence of Arthur Ciancio in Mellieha, came across an original Bill of Lading that made reference to a container addressed to Falcon Company Limited and it transpired from a preliminary investigation carried out by them that the address was fictitious
- b. The container had arrived in Malta on the 25<sup>th</sup> March 2005 by China Shipping Line, and this was originally destined to Malta. Customs officials went on board the ship and once again they were informed that there was a change in the destination from Malta to Felixstone.
- c. The police made investigations with a certain Pierre Vella and it resulted that the ship was given instructions first by phone then by email dated 20<sup>th</sup> March 2005 regarding the change of destination.
- d. The captain allowed the disembarkation for this container due to the investigation that was being carried out.
- e. This container was opened and there again it did not contain gifts but cigarettes.
- f. An inquiry was opened and a number of experts were nominated to help the Inquiring Magistrate.

The Prosecution upon the investigation carried out by its good self, felt that it should issue the following charges in relation to Arthur Ciancio and his son Aaron Ciancio.

It is to be noted that in the note sent by the Attorney General on the 4<sup>th</sup> August 2008 (fol. 418) the accused are not accused with the same charges that the prosecution had given initially. The court is only going to consider and deal with the charges as indicated in this same note.

In the first place the accused were charged with conspiracy as contemplated in article 48A of the Criminal Code which provides that *“Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act”*. Sub section (2) of this same section adds that *“the conspiracy referred to in sub section (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between each persons.”*

At a first glance it appears that the crime of Conspiracy was introduced into our Criminal Legal System, together with the crime of Participation in Organised Criminal Groups, by Act 111 of 2002. However it must be pointed out, that whilst the crime of Participation in Organised Criminal Groups was completely alien to our legal system until a few years ago, the crime of Conspiracy was already in existence, though with limited application. Prior to the year 2002 a person could only be arraigned in Court accused of Conspiracy if such conspiracy was directed to an offence against the safety of the Government, as witnessed in Article 58 of the Criminal Code.

However, the notion of Conspiracy already existed in our Special Offences Legislations, such as the Dangerous Drug Ordinance, the Medical Kindred Profession Ordinance, the former Exchange Control Act.

In fact in the case delivered by the Court of Appeal in the names **Il-Pulizija vs Ronald Agius**<sup>1</sup> it was held that:-

*“Ir-reat msejjah bhala 'associazione a delinquere' fil-ligi Taljana huwa kompletament differenti mir-reat ta' tentattiv ta', jew ta' komplicita` fi, reati ta' kuntrabbandu. Fil-ligi taghna, ghall-anqas sal-lum, ghadha ma tezistix il-figura ta' "conspiracy" jew "assocjazzjoni" biex wiehed jikkommetti reati in generali. Il-figura ta' "conspiracy" jew "assocjazzjoni" fil-ligi taghna hija limitata ghal certi reati specifici, bhalma huma r-reati ta' attentat kontra l-President ta' Malta (Art. 55, Kap. 9), insurrezzjoni jew kolp ta' stat (Art. 56), li wiehed jiftiehem biex jgholli jew ibaxxi l-prezz ta' oggett jew il-pagi tax-xoghol bi ksur tal-Artikolu 338(t) tal-Kodici Kriminali, ir-reat ta' bejgh jew traffikar fi drogi (Art. 22(1)(f) tal-Kap. 101 u Art. 120A(f) tal-Kap. 31), u reati li ghandhom x'jaqsmu mal-kontroll fuq il-kambju (Art. 39, Kap. 233). Certament la jezisti r-reat generali ta' "conspiracy", cioe` r-reat ta' assocjazzjoni bil-ghan li jigi kommess xi reat jew reati, huma liema huma, u anqas jidher li jezisti fil-ligi taghna r-reat ta' "conspiracy" ghal finijiet ta' kuntrabbandu.”*

In another decision given by the Criminal Court of Appeal in the names of **Il-Pulizija vs Raymond Anthony Bartolo**<sup>2</sup> it was also held that:-

*“Ma hemm ebda dubju li sal-lum, fis-sistema legali Malti, kuntrarjament ghal dak Taljan, ma tezistix il-figura tar-reat komunement imsejjah "conspiracy", cioe' r-reat ta' assocjazzjoni sabiex tigi kommissa attivita' kriminali, bl-eccezzjoni ta' xi ligijiet partikolari fejn jiddisponu*

<sup>1</sup> Appeal 109/2001 decided by the Criminal Court of Appeal on the 7th December 2001.

<sup>2</sup> Delivered on the 25<sup>th</sup> September 2001.

*specifikatament li tali assocjazzjoni, fiha nnifisha, tikkostitwixxi reat, bhal ma tidisponi, per ezempju, l-Ordinanza Dwar il-Medicini Perikoluza (Kap. 101 tal-Ligijiet ta' Malta).*

*B'mod generali, normalment, l-elementi rikjesti sabiex jissussisti dan ir-reat ta' "conspiracy", partikolarment f'dawk is-sistemi legali fejn dan huwa reat 'ut sic': (1) irid ikun hemm xi forma ta' ftehim milhuq bejn tnejn/tlieta minn nies jew aktar (2) bl-intenzjoni specifika li jaghmlu attivita' kriminali.*

*Il-fatti sostanzjali li jirreferi ghalihom l-Artikolu 8(1)(b)(2) tal-Kap. 276 iridu jkun fatti li b'xi mod jirreferu jew jaghtu lok ghar-rekwiziti essenzjali ghar-reat komplut u maturat ta' l-"associazione a delinquere", jew simili. Din, fil-fehma tal-Qorti, hi l-interpretazzjoni korretta ta' l-Artikolu 8 (1)(b)(2) tal-Kap. 276, u mhux li r-reat ta' "associazione a delinquere" f'dan il-kaz in ezami jigi rez reat ta' estradizzjoni l-ghaliex il-fatti allegati huma sostanzjalment fatti li jaghtu lok ghal reat simili f'Malta. Lanqas ma hu korrett li jinghad li jekk jissussistu l-elementi tat-tentattiv jew tal-komplicita' b'riferenza ghar-reat sostantiv li dwaru tkun allegata l-"associazione a delinquere", allura r-reat sottostanti ghal dan ir-reat jigi reat estradibbli. Ma jistax ikun hemm it-tentattiv jew il-komplicita' f'reat meta dan ir-reat mhux reat f'Malta."*

Our Criminal Code provides no definition at all to the offence of conspiracy, in spite of the introduction of such a crime, though **Smith & Hogan** define this crime as ‘an agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means’. The word “unlawful” was used in a broad sense and included all crimes triable in England, even those summarily, it included also some torts, fraud, the corruption of public morals and the outraging of public decency. In this regard it went far beyond the other inchoate offences of incitement and attempt, where the result incited or attempted must be a crime.

In this crime, the material element known as the *actus reus* is the agreement which is not simply a mental operation but involves spoken or written words or overt acts. However, in a land mark decision given, in the names **Repubblika ta' Malta –vs- Steven John Caddick et<sup>3</sup>**, clear direction was given by the judge to the jurors as to the definition of this crime according to our law.

It appears that there are four constituent elements to the offence of conspiracy as indicated by the defence lawyer of accused Aaron Ciancio:-

1. The Act of agreement.

a. In English law an act of agreement must be coupled with the positive desire or determination to complete the offence. **Smith & Hogan** state that there must be the intention to play some part in carrying out the agreement. In England the words “*the agreement*” clearly mean the agreement that is “*a course of conduct*” shall be pursued. We are thus asked to imagine the contemplated course of conduct as having been followed and then subsequently ask, would it, when completed, necessarily amount to or involve the commission of an offence?

However the Maltese Code presents a different picture to the English notion of agreement. The Criminal Code provides that ‘*conspiracy subsists from the moment in which a mode of action was planned or agreed upon between such persons*. Thus, under Maltese Law it is *sine qua non* condition that there should be, not only an acceptance (an agreement of interest and intent) but there must also be an agreement on the mode of action to follow in the execution of the intention.

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<sup>3</sup> Decided by the Criminal Court on the 6<sup>th</sup> March 2003.

The phrase “*any mode of action whatsoever*” should not be understood in that any agreement would suffice. Rather it implies that the mode of acting should have been definitively concluded such that the parties would be in a position to proceed to action without further need of any further deliberation.

In the case **Rex vs Aspinall** (1876) decided in the UK it was held that the ‘*crime of conspiracy is completely committed at the moment two or more persons have agreed that they will at once or at some stage in the future do certain things*’. Thus, contrary to Maltese law, in UK Law the agreement to commit an offence completes the offence of conspiracy. In Malta, it is important that the means to be employed for carrying out the criminal enterprise is already contemplated.

Reference her is made to what was stated by the then Honourable Dr. Tonio Borgin parliamentary sitting number 96 dated 26<sup>th</sup> September 2001, wherein he stated that:

*"Ma hemmx ghalfejn il-Pulizija jirrekordjaw in-nies biex ikun hemm l-ftehim imma jekk mill-fatti jidher li l-ftehim sar, allura f'dak il-kaz, hemm r-reat."*

## 2. The wrong doers agreeing.

a. Under our legal system, there has to be two or more persons who agreed on the same thing. One person alone cannot be found guilty of conspiracy. The Criminal Code provides the exact parameters of the Maltese Offence of Conspiracy in that ‘*whoever in Malta conspires with one or more persons, in Malta or outside Malta, for the purpose of committing any crime in Malta, shall be guilty of the offence of conspiracy to commit that offence*’. It is to be noted that Conspiracy is being attached to crimes in general, provided they “*are liable to the punishment of*

*imprisonment*”, however it transpires that the prosecution is accusing wrongdoers with this crime particularly in relation to organised crimes such as Money Laundering and Drug Trafficking. There may also be Court Proceedings going on in different countries at the same time. This crime can thus give rise to people taking part in the same offence and yet not know each other as conspirators. In fact this was the case in the ongoing compilation of evidence being held regarding drug trafficking, importation of drugs and conspiracy, that was being heard against nineteen accused persons in the names **Pulizija vs Mario Camilleri et**, where one of the accused, namely Romeo Bone, is facing charges both locally and in Italy. Interesting to note that in the Carmelo Borg Pisani case (1930’s), Borg Pisani was found guilty of conspiracy to overthrow the Government, even though he did not know the other conspirators. He was the last person to be executed.

It is also possible that the agreement agreed upon is forwarded through a third party, provided that they are all working under one common action, leader or goal.

In the judgment in the names **‘Ir-Repubblika versus Godfrey Ellul<sup>4</sup>** the court held that:

*“Din il-Qorti eżaminat bir-reqqa t-tieni stqarrija ta’ Philip Magri u x-xhieda li ta waqt il-guri u tistqarr li minnhom ma jirriżultax li gew ‘ikkumbinati jew miftehna mezzi’ li bihom l-appellant u Magri kellhom jimxu sabiex ibieghu jew jittraffikaw medicina perikoluza”.*

We find in **Archbold:-** *‘The essence of conspiracy is the agreement. When two or more agree to carry out their criminal intent, the very plot is a criminal act itself’* - **Mulcahy –vs- R** (1868) L.R. 3 H.L. 306 at 317; **T –**

<sup>4</sup> Decided by the Court of Appeal on the 17<sup>th</sup> March 2005.

**vs- Warburton** (1870) L.R. 1 C.C.R 274; **R –vs- Tibbits and Windust** (1902) 1 .K.B. 77 at 89; **R –vs- Meyrick and Ribuffi** 21 Cr.App. R 94 CCA. ‘Nothing need be done in pursuit of the agreement’ - **O’Connell – vs- R.** (1844) 5 St.Tr.(N.S.) 1.’ ‘*The agreement may be proved in the usual way or by proving circumstances from which the jury may presume it*’ - **R –vs- Parsons** (1763) 1 W.Bl. 392; **R -vs- Murphy** (1837) 8 C&P 297. ‘*Proof of the existence of a conspiracy is generally a ‘matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them.’*’ - **R –vs- Brisac** (1803) 4 East 164 at 171, cited with approval in **Mulcahy –vs- R** (1868) L.R. 3 H.L. 306.

3. The purpose agreed upon.

a. This element is specifically dealt with in the Criminal Code. It provides that ‘*who ever in Malta conspires with one or more persons, in Malta or outside Malta, for the purposes of committing a crime in Malta..*’ Thus it is important that the persons so agreeing agree to commit a crime in Malta. Thus it appears that the liability for conspiracy is tied to an in-built jurisdiction mechanism. The Maltese Courts can only exercise jurisdiction provided that the offence of conspiracy takes place in Malta and the agreement relates to the commission of the crime in Malta. The crime of conspiracy is committed the moment an agreement is made, this means that there is no such thing as ‘*withdrawal from conspiracy. But if an accused person signalled his disassociation from the conspiracy, this could serve to relieve him part of the guilt for the subsequent commission of the completed offence.*’

4. The formal element - the mens rea.

a. There must be an agreement as to how to carry out the offence. These are not preparatory acts at all, but an agreement on a mode of action as defined in the law itself. It is not the commencement of the execution,

like in the case of an attempt as contemplated in the Criminal Code. In other words it is imperative for the Prosecution to prove that Cassius and Brutus agreed and intended to commit an act, that they agreed on the way to proceed with that offence, and that the offence is in violation of a particular law. In other words it is imperative that both parties have the *mens rea* otherwise there is no conspiracy. The agreement is the *actus reus* of the offence conspiracy.

From a preliminary examination of Section 48A, it appears that the concept of conspiracy has general applicability provided that the crimes '*are liable to the punishment of imprisonment*'. This contrasts severely to the United Nations Convention against Transnational Organised Crime and to the EU's joint Action criminalising participation, where the offence of conspiracy only extends to serious crimes subject to a minimum term of imprisonment of four years.

In this case the Court feels that the prosecution did not bring forward any evidence indicating that the accused had in any way conspired with one or more persons in Malta or outside Malta for the purpose of committing a crime and therefore should not be found guilty of this charge.

In the second case the prosecution charges the accused with the offence contemplated in Article 83A of the Criminal Code namely Promoting, an organization of two or more persons with a view to commit criminal offences.

The material elements of this offence are the following:-

1. That a person promotes, constitutes organises or finances an organisation
2. The organisation has to include 2 or more persons.

3. The aim of such organisation has to be the commission of criminal offences.
4. The criminal offences which the organisation is aiming at committing must carry out with them a punishment of imprisonment of four (4) years or more.

This article was modelled on the Italian Article 416 of the Italian Penal Code and therefore reference should be made to what the Italian legal writer Antolisei says on this matter. He states that:-

*“Associarsi per commettere un solo delitto non integra la fattispecie in esame.”*

And further states that:-

*‘L’associazione per delinquere presenta qualche affinità con la compartecipazione criminosa, ma ne differisce profondamente. Nel concorso di persone, infatti, l’accordo fra i partecipanti è circoscritto alla realizzazione di uno o più delitti nettamente individuali, commessi i quali l’accordo medesimo si esaurisce e, quindi, viene meno ogni pericolo per la comunità. Nell’associazione a delinquere, invece, dopo l’eventuale commissione di uno o più reati, il vincolo associativo permane per l’ulteriore attuazione del programma di delinquenza prestabilito e, quindi, persiste quel pericolo per l’ordine pubblico che è caratteristica essenziale del reato’*

Therefore if one were to examine in detail what Antolisei states, this crime is different from that of conspiracy and even from that of complicity. There can never be an association if the persons themselves do not bind themselves to commit themselves to carry out other crimes. In fact the

court of Appeal in its judgment in the names **Il-Pulizija vs Fabio Zulian ommissis et**<sup>5</sup> delivered on the 12<sup>th</sup> May 2015 held that :-

*“Ma jistax ikun hemm assocjazzjoni wkoll jekk dawn ma jintrabtux li jikkommettu ‘piu` reati’, li tfisser diversi reati. Mhix semplicement il-konfoffa, jew il-conspiracy biex jitwettaq reat partikolari. Reati li jkun mezz ghall-fini, jew konsegwenzjali ghal reat wiehed ma jinkwadrawx l-assocjazzjoni, anche jekk hemm diversi persuni involuti.”*

Antolise states that:-

*‘Associarsi per commettere un solo delitto non integra la fattispecie in esame.’*

In the case under examination the prosecution did not prove in any way that the accused were involved in making any agreement regarding promotion constitution of an organised or financed organisation. It’s enough if the court were to state that the prosecution provided no financial transaction that were involved.

The prosecution had to prove as was stated in the case **Pulizja vs Darren Debono**<sup>6</sup> by the Courts of Magistrates that “ *huwa car minn qari ta’ dawn id-disposizzjonijiet li dak li qed jigi projbit permezz taghhom huwa l-formazzjoni ta’ u l-appartenenza f’ghaqda bejn zewg persuni jew aktar liema ghaqdiet ikollhom l-iskop li jwettqu reati (fil-plural) li ghalihom jistghu jehlu aktar minn erba’ snin prigunerija.”*

Thirdly the accused are charged with the crimes contemplated in Article 183 known as Forgery of public, commercial or private bank documents by

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<sup>5</sup> Decided on the 12th May 2015.

<sup>6</sup> Decided on the 11th September 2013.

a person not being a public officer, and the malicious use of false documents. As per Article 184 of the Criminal Code.

Article 183 provides that “*Any other person who shall commit forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove, shall, on conviction....,*”

Here the prosecution has to prove that that the accused or one of them committed forgery of a commercial document by counterfeiting, altering the writing or signature by feigning any fictitious agreement, disposition, obligation or discharge or by insertion of any such agreement. The defence lawyer of Arthur Ciancio states that this crime can never be proven because the documents that were proved to be fake are of a private nature since they purported to be issued by limited liability companies, that is Bristow Potteries and Imdina Glass when in actual fact they were not.

With all respect the law does not state that the commercial documents have to be issued by a public entity. The law talks about public documents or...commercial documents.

In this regard the Court makes reference to the following conclusions reached by the court expert namely:-

1.“ *Illi d-dokumentazzjoni f’isem Bristow Potteries Ltd. u l-Imdina Glass misjuba fir-residenza ta’ Arthur Ciancio huma foloz u intizi sabiex*

*jakkompanjaw l-kontainers CCLU3137350 u CCLU6518792 (vide pagna 4 ta' DOK MB1 u pagna 12 ta DOK MB2).*

*2. Illi mill-emails li irceviet ic-China Shipping ghal change of destination tal-containers, emails mibghuta minghand Joe Mifsud tal-Falcon Company Ltd. f'isem il-Bristow Potteries Ltd. u Charles Galea tal-Grand Harbour Promotions Ltd., dawn l-emails jirrizulta li saru mir-residenza ta' Arthur Ciancio tramite l-abbonament li Arthur Ciancio ghandu mal-Internet Service Provider – Waldonet.*

*3. Illi mill-Excel worksheet ( ILZ0730)) u l-kontenut ta' dina l-worksheet, (vide Dok MB5 u MB6) jirrizulta li Arthur Ciancio mhux biss kien jaf biz-zewg containers u fuq liema talab ic-Change of Destination imma kien jaf ukoll li l- kontenut ta' dawn kien sigaretti u mhux l-oggetti dikjarati fuq il-Bill of Lading u l-fatturi tal-Bristow Potteries Ltd. u l- Mdina Glass.*

*4. Illi minn Dok MB4 jirrizulta li Arthur Ciancio mhux talli kien jaf b'dawn iz-zewg containers sigaretti u l-movimenti u dokumentazzjoni taghhom, imam kien huwa stess f'isem il Liberty Merchants li talab lid-DHL sabiex jigi moghti d-dokument #127337925, kontenenti l-Bill of Lading f'isem il-Falcon Company u dam meta kiteb "Please be advised that the above BOL was wrongly addressed to the FALCON COMPANY and should be sent to us instead". Ciancio qatt ma seta' kien konsapevoli bil-konsenja lill-Falcon Company.*

*5. Illi f'Dok MB4 pagna 1, jirrizulta li Arthur Cianco kien jaf bil-konsenja lill-Falcon Company Ltd, tant li bhala Joe Mifsud baghat struzzjonijiet lil Pierre Vella ta' China Contanier Shipping Lines, fejn indika tibdil fil-Bill of Lading, ghal liema tibdil Arthur Ciancio iffalsifika dokumentazzjoni f'isem il-Bristow Potteries Ltd. L-istess ghamel fil-konfront tal-Grand*

*Harbour Promotions Ltd. meta iffalsifika dokumentazjoni f'isem l-Mdina Glass Ltd.*

In the Criminal code under the heading of crimes relating to falsification of private and public documents there is no mention as to the intention that is required for the existence of such crimes with exception to the crime envisaged in Article 180 of Chapter 9 where the accused are charged. However this does not mean that '*dolus*' is not necessary.

As was held by our court judgments namely in the judgment delivered by the Criminal Court of Appeal in the names "**Il-Pulizija vs Paul Galea**<sup>7</sup>":

*"Id-differenza bejn il-falz materjali u l-falz ideologiku hi spjegata mill-awturi b'dan il-mod: filwaqt li fil-kaz tal-falz materjali d-dokument jigi ffalsifikat fl-essenza tieghu, fil-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioe' fil-kontenut idejali tieghu (ara Antolisei F. Manuale di Diritto Penali – V.VI n.2296 – 829). Ikun hemm falz materjali meta d-dokument ikun wiehed mhux genwin (jigifieri jew meta l-awtur apparenti ma jkunx l-awtur rejali tad-dokument jew meta d-dokument ikun isubixxa alterazzjonijiet wara l-formazzjoni definittiva tieghu), mentri fil-falz ideologiku, ghalkemm id-dokument ikun genwin "non e' veridico, perche' colui che lo ha formato gli fa dire cose contrarie al vero". Ghall-finijiet tad-dottrina in tema ta' falsita' jkun hemm dokument kull fejn hemm kitba, attribwibbli ghal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' fatti jew ta' volonta' (Antolisei F. op.cit p594). S'intendi b'kitba wiehed ma jfihimx biss is-sinjali alfabetici, izda tinkludi dawk numerici, stenografici u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta' nies. Il-kitba f'dan is-sens tista' issir kemm bl-id, kif ukoll b'mezzi mekkanici, b'mezz*

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<sup>7</sup> Delivered on the 17th Ottubru 1997.

*indelibbli jew li jista' jithassar u fuq kwalsiasi mezz li jista' jiehu imqar temporanjament il-messagg ...”*

In the case under review it is evident that there exists the material falsity as explained above in that the accused Arthur Ciancio fabricated a document purporting it to be issued by a different person, which document was destined to mislead and purport the addressee to be a person totally different. Likewise the accused Arthur Ciancio also sent emails which were fabricated as indicated by the court expert. Such documents were all fabricated on the computer registered in the name of Arthur Ciancio.

The fact that the co-accused Aaron Ciancio is the son of the accused Arthur and lived in the same house does not qualify as a ground upon which the court can also attribute guilt. The prosecution has to prove its charges *ut sic* in regard to each accused individually. It brought not one piece of evidence in regard to AARON CIANCIO, THAT HE WAS IN ANY WAY INVOLVED in this crime.

The prosecution also charged the accused with the crime contemplated in Article 188 of the Criminal Code namely of making False declarations or giving information to a public authority.

The Court of Appeal in the judgment delivered in the names **Il-Pulizija vs Karl (Carmal) Azzopardi**<sup>8</sup>, held that:

*“Skont l-artikolu 188 tal-Kap 9, m’hemmx ghalfejn id-dokument ikun falz. Skont dan l-artikolu huwa bizzejjed li wiehed jipprezenta dokument li jkollu taghrif qarrieqi. Jigifieri, hawn m’hemmx bzonn li jinholoq dokument falz (ex novo) jew li dokument genwin (bhal, per eżempju xi certifikat tat-twelid*

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<sup>8</sup> Decided on the 1st November, 2013.

*ikollu xi dettalji mibduljin). Xejn minn dan kollu. F'dan il-kaz huwa t-taghrif li kien fih id-dokument li kien falz”.*

The Courts of Magistrates in its Criminal Jurisdiction held in a judgment delivered in the names **Il-Pulizija vs Tonio (Antonio) sive Tony Debono**<sup>9</sup>, explained the following :-

*“Il-Kodici Kriminali fid-definizzjoni tar-reati li jaqghu taht l-intestatura ta' falsifikazzjoni ta' skritturi pubblici jew privati, ma jaghmel ebda referenza ghat-tip ta' intenzjoni rikjest ghall-ezistenza ta' dawn r-reati, salv ghall-artikolu 180 tal-Kap 9, li l-imputat mhux akkuzat bih. Pero' dan ma jfissirx li fir-reati li jaqghu taht din l-intestatura d-dolus mhux necessarju.”*

In fact Profesor Mamo explains that:-

*"an intention merely to deceive, that is to represent as genuine a document which is known to be false, is sufficient...or perhaps more correctly it can be said that the intention to defraud or alter the rights of others does not require to be proved, because such intention is presumed by the law from the very fact of the forgery of the document in any one of the manners specified by law."*

According to Carrara it is not enough if he who falsifies a document had the intention to falsify but it is necessary that he who falsifies knows that it is contrary to law and that it can potentially cause harm.

What is important according to Professor Mamo, is that:

*"the document must appear upon the face of it to have been made to resemble the true instrument, not necessarily or exact resemblance, but*

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<sup>9</sup> Decided on the 22nd March, 1999.

*such as to be capable of deceiving persons using ordinary observations according to their means of knowledge."*

The Court in the names **Il-Pulizija vs Michael Carter**<sup>10</sup> held that:

*"l-Artikolu 188 jikkontempla kaz ta' falz ideologiku u mhux falz materjal kif jikkontempla 181 u 182"*.

Il-Qorti fis-sentenza fl-ismijiet **Il-Pulizija vs Raymond Caruana**<sup>11</sup> explained the difference between material falsity and ideological falsity:-

*"id-differenza bejn il-falz materjal u l-falz ideologiku hi spjegata mill-awturi b'dan il-mod: fil-waqt li fil-kaz tal-falz materjali d-dokument jigi falsifikat fl-essenza materjali tieghu, fil-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioe' fil-kontenut ideali tieghu (Antolisei, Manuele di Diritto)."*

In this case the accused Arthur Ciancio created these documents as described above in order to gain an advantage and misled the authorities from the true contents of what was in the Container. The advantage would have been one of tax evasion since the duty on cigarettes is much higher than that on toys.

As stated by Dr. Martin Bajajda. all the documents relating to falsification with respect to Bristow Potteries and Mdina Glass were retrieved from the residence of Arthur Ciancio.

With regards to these crimes of falsification, it results that the co-accused Aaron Ciancio had no relation. There is no signature of his on any of the documents seized by the police, no body indicated him as an accomplice or

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<sup>10</sup> Decided by the Criminal Court of Appeal on the 7<sup>th</sup> December 2001.

<sup>11</sup> Decided by the Criminal Court of Appeal on the 9<sup>th</sup> June 2010.

that he knew what his father was doing. The fact that he was living in the same house as the accused is not enough for this court to establish guilt on his part.

The accused were also charged with importing a large number of cigarettes as described in the seizure note exhibited by the police without paying the due taxes.

From the documents exhibited it does not transpire that the cigarettes were destined for the local market. The accused Arthur Ciancio nomine had asked for a change of destination in other words from Malta to Felixstowe before the police intervened. The request was made by means of a fraudulent email in February whilst the container was seized in March. Therefore as Alex Montebello, CEO of Freeport stated, taxes are not due in Malta when the containers are in Malta at Malta Freeport for transshipment purposes. The containers were taken off the vessels and put in Mifsud Verandahs upon the request of the police. According to Section 2 of Chapter 37 of the Laws of Malta, no duty is to be levied on goods that are not meant to be imported in Malta. The situation would have been very different if the containers were on land once intercepted by the police.

The Court is not saying that there is no crime because as can be evidenced from an examination of this judgment the court is finding the accused Arthur Ciancio guilty of a number of charges, but it cannot find him guilty of importation since he never intended to import such merchandise into Malta.

The Court saw the relevant conviction sheet of Arthur Ciancio and took note that it had no conviction registered on it.

**The Court saw the relevant Articles sent by the Attorney General namely Sections 18, 48A and 83A (1), (4) and (5), 183, 184 and 188 of Chapter 9, Sections 18, 60 (a) (b) (k); Sections 62 (a) (b) (i) (k) (m), 68 (1), 69 (1) (2), and Paragraph (a) of the Proviso of Section 62, of the Customs Ordinance Chapter 37, and Articles 16 (1) (j) and 17 (A) of Act XV1 of 1995 of the Laws of Malta, 60 (a) (b) (c) (f) (g) (h) (j) (k) and paragraph (a) of the Proviso of Section 62, of the Customs Ordinance Chapter 37, of the Laws of Malta and decides to find the accused ARTHUR CIANCIO as Director of Liberty Merchants Limited guilty of the charges as described in article 183, 184 and 188 of the Criminal Code and condemns him to a period of imprisonment of two years suspended for 4 years in terms of Section 28A of Chapter 9 of the Laws of Malta and not guilty of the other charges and acquits him from them. The Court also declares the accused AARON CIANCIO not guilty of any of the charges and acquits him accordingly.**

**The Court however orders the confiscation of the contents of the containers being kept at Mifsud Verandahs.**

**The Court upholds the request of the prosecution to condemn the accused Arthur Ciancio to pay the court expenses of the court appointed experts and this within one month from when he is called up to do so by the Registrar of the Criminal Courts.**

**The Court orders that a copy of this judgment is sent to the Director of the Criminal Courts so that he may collect the expenses of the court experts from the accused Arthur Ciancio nomine.**

**Dr Consuelo Scerri Herrera LL.D.**  
**Magistrate**