

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

COMMISSIONER OF CUSTOMS, CTA EB NO. 2493

Petitioner, (CTA Case No. 9847)

Present:

**DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

-versus-

**PROGRESSIVE GRAINS
MILLING CORP.,**

Respondent.

Promulgated:

FEB 20 2023

3:34pm

X- - - - - X

D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Customs (COC), through the Office of the Solicitor General (OSG) praying for the reversal of the Decision dated November 18, 2020 and Resolution dated May 24, 2021, rendered by the Court of Tax Appeals (CTA) 2nd Division. The assailed Decision granted the *Petition for Review* filed by herein respondent, Progressive Grains Milling Corp. (PGMC), in CTA Case No. 9847, while the assailed Resolution denied petitioner's Motion for Reconsideration.¹

¹ EB Docket, *Petition for Review, Statement of the Case*, p. 31. 

FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Customs (BOC), vested with the authority to carry out the functions and duties of said office, among which, is the enforcement of importation and tariff laws. He may be served notices and court processes through his statutory counsel, the OSG, with office address at 134 Amorsolo Street, Legaspi Village, Makati City 1229.

Respondent PGMC is a domestic corporation, duly organized and existing under and by virtue of Philippine laws, with principal office at No. 111 Sta. Maria, San Jacinto, Pangasinan. It may be served notices and court processes through its counsel of record, Atty. Reynaldo S. Nicolas, with address at #29 Creekside Drive, Mintcor Southrow, West Service Road, Cupang, Muntinlupa City 1771.

The CTA 2nd Division narrated the antecedents, as follows:

In 2016, [PGMC] was granted a Certificate of Eligibility (COE) to import Nine Thousand Two Hundred Fifty (9,250) MT of Thai White Rice. Pursuant to the COE, it paid in advance all duties in the amount of ₱64,452,699.00.

The National Food Authority (NFA) also issued to [PGMC] an Import Permit (IP) with IP No. MAV-2016-001, dated 15 December 2016, covering the importation of 7,200 MT of Thai White Rice from Benefields Developments Limited (BDL).

On 15 December 2016, the shipment of white rice arrived at Poro Point, La Union. The same was assessed and accordingly released to [PGMC]. However, prior to its exit from customs territory, Jose Guillermo, Acting Chief, Port Operations of the Port of San Fernando, La Union (SFLU), issued a Memorandum stopping the release of the rice upon discovery of *an excess of 603.15 MT* for being not covered by an IP.

In a Discrepancy Report, [PGMC] was assessed customs duties for the excess rice shipment in the amount of ₱4,011,183.00, with a 30% fine equivalent to the shipment's landed cost amounting to ₱4,698,837.00 (for an aggregate amount of ₱8,711,285.00).

On 23 December 2016, [PGMC] requested an IP from the NFA. However, on 04 January 2017, the District Collector of La Union issued a Warrant of Seizure and *am*

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Detention (WSD) against the excess white rice in a case docketed as FLU S.I. No. 01-2017.

[PGMC] manifested its intention to settle and pay the assessed customs duties. Taking cue therefrom, the District Collector of SFLU rendered a Decision dated 19 June 2017. The dispositive portion of the said Decision reads:

...

WHEREFORE, premises considered, it is hereby RECOMMENDED that the Offer of Settlement of the respondent be GRANTED; Provided that, the respondent/consignee/importer shall present a valid import permit for the 603.15 M/T Thai White Rice 5% Broken prior to the payment of customs duties and fine equivalent to thirty percent (30%) of the landed cost and in addition pay storage fee charge thereof.

...

Thereafter, the above decision was forwarded to [petitioner] for review. Meanwhile, the BOC Legal Service followed up and inquired from NFA about the status of [PGMC]'s IP. In response, the NFA sent a letter dated 29 August 2017. The letter states:

...

With regard to your query on PGMC's application for the required Import Permit of 600 MT shipment, please be informed that the evaluation process for the issuance of Import Permit may include the result of BOC seizure/offered for settlement case now pending with your Office. In the event that the resolution of its settlement case be available, may we request that the NFA be provided a copy of this for further evaluation of our Legal Department.

...

In a Disposition Form dated 16 January 2018, the lawyer of BOC Legal Service assigned to [PGMC]'s case recommended the reversal of the Collector of SFLU's decisions therefore, denying the latter's offer of settlement and forfeiting of the 603.15 MT of White Rice in favor of the government.

Acting on the recommendation of the BOC Legal Service, [petitioner] rendered the assailed 29 January 2018 Decision. The dispositive portion thereof reads:

...

WHEREFORE, premises considered, the Decision dated 19 June 2017 of the District Collector, Port of San Fernando, is REVERSED. *om*

Accordingly, the Offer of Settlement of claimant is DENIED and the shipment of 603.15 MT of White Rice consigned to PROGRESSIVE MILLING CORPORATION is FORFEITED in favor of the Government, to be disposed of in the manner provided by law.

SO ORDERED.

...

[PGMC]'s motion for reconsideration (MR) of the assailed Decision was likewise denied in [petitioner]'s Order dated 19 April 2018.²

On June 4, 2018, respondent PGMC filed its Petition for Review which was later raffled to the CTA 2nd Division. On November 18, 2020, the CTA 2nd Division rendered the assailed Decision, which granted PGMC's Petition for Review, as follows:

WHEREFORE, the foregoing considered, petitioner Progressive Grains Milling Corp.'s Petition for Review filed on 04 June 2018 is **GRANTED**. Instead of forfeiture by respondent Commissioner of Customs, petitioner is **ORDERED TO PAY** the assessed customs duties covering the 603.15 MT of white rice in the amount of **₱4,011,183.00**, with a fine equivalent to 30% of the deteriorated value, plus storage fees computed up to 30 June 2017 only. Upon payment, respondent is **ORDERED** to **RELEASE** the subject 603.15 MT of white rice to petitioner.

SO ORDERED.³

The Motion for Reconsideration [Of the Decision dated 18 November 2020] filed by the COC was denied in the Resolution⁴ dated May 24, 2021.

On June 30, 2021, petitioner COC posted his Petition for Review,⁵ which was received by the Court on July 6, 2021.

On December 1, 2021, respondent PGMC filed its Comment on Petition for Review (With Urgent Motion for Immediate Release Under Cash Bond).

² EB Docket, Decision dated November 18, 2020, pp. 55-57.

³ EB Docket, Decision dated November 18, 2020, p. 66.

⁴ EB Docket, pp. 68-73.

⁵ EB Docket, pp. 31-47. *con*

On March 21, 2022, the Court denied PGMC's Urgent Motion for Immediate Release Under Cash Bond, and submitted the instant case for decision.⁶

On April 28, 2022, petitioner COC filed his Verified Omnibus Motion [To: A) Direct the Sale of the Subject Rice Shipments at a Public Auction, and B) Hold the Proceeds of the Auction Sale in Escrow] wherein petitioner prays that the Court allow the subject 603.15 MT of white rice shipments be sold at a public auction pursuant to Section 1144, in relation to Section 102 (gg) of the Customs Modernization and Tariff Act (CMTA), and that the proceeds of the sale be held in escrow pending proceedings in this case.

On June 13, 2022, respondent PGMC filed its Comment/Opposition.

The Court will now resolve the main case before ruling on petitioner COC's Verified Omnibus Motion.

ISSUE

The Honorable Court's Second Division decided in a manner contrary to law and jurisprudence in ruling that the subject rice shipment not covered by an NFA Import Permit may, in lieu of forfeiture, be released to respondent upon payment of duties, surcharges, and other costs.⁷

Commissioner of Customs' arguments

Petitioner COC states that the rice shipment found in excess of the quantity allowed under respondent PGMC's National Food Authority (NFA) import permit (IP) is considered a prohibited importation or contrary to law, hence, subject to forfeiture pursuant to Sections 118 and 1113 of the CMTA. Petitioner argues that at the time of the subject rice shipments, the prior issuance of an NFA IP was required. While respondent was issued an NFA IP, the subject 603.15 MT of white rice was in excess of the quota imposed and as such were not covered or authorized by a valid NFA IP. Thus, the excess shipment of 603.15MT is forfeitable for being an

⁶ EB Docet, pp. 240-243.

⁷ EB Docket, Petition For Review, Ground for the Allowance of the Petition, p. 36. *cm*

importation prohibited by or contrary to law pursuant to Sections 118 and 1113 of the CMTA.

Petitioner states that the CMTA provisions are clear and leave no room for interpretation. Therefore, imports not covered by required permits are forfeitable under the CMTA. While rice is not *per se* prohibited, it was considered a heavily regulated commodity that cannot just be imported by anyone at will. It was thus proper for petitioner to treat the excess rice shipment as a prohibited importation, having been imported without the prior NFA IP.

PGMC's arguments

On the other hand, respondent PGMC states that petitioner merely rehashes basic issues previously raised in his pleadings and which were already exhaustively passed upon, duly considered and resolved in the assailed Decision and Resolution of the CTA 2nd Division.

Respondent PGMC argues that rice is merely a "regulated" and not a "prohibited" commodity; that the seized 603.15 MT of white rice is only about 7.7% in excess of the declared 7,200 MT of rice with NFA IP; and, that the subject excess rice may not be considered a prohibited article because the excess rice is still within the 9,250 MT quota covered by PGMC's NFA Certificate of Eligibility (COE) for rice importation.

Respondent PGMC also states that it was not able to secure the NFA IP for the excess shipment of 603.15 MT because of the issuance of the Warrant of Seizure and detention (WSD) in January 2017. Meanwhile, the NFA itself refused to issue an IP in 2018 for the excess shipment because the quantitative and non-tariff restrictions on rice imports expired after June 30, 2017. Thus, PGMC's failure to obtain such NFA IP for the excess 603.15 MT rice was beyond its control.

RULING OF THE COURT

**The instant Petition for Review
was timely filed. *om***

Petitioner received the CTA 2nd Division's Resolution dated May 24, 2021 on May 31, 2021.

Petitioner had fifteen (15) days from May 31, 2021, or until June 15, 2021 within which to file his appeal before the CTA *En Banc*, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).⁸

On June 15, 2021, petitioner posted a *Motion for Extension of Time to File Petition for Review*, praying for an additional fifteen (15) days from June 15, 2021, or until June 30, 2021 within which to file a Petition for Review.

Petitioner posted the instant Petition for Review on June 30, 2021, which was received by the Court on July 6, 2021.

Thus, the instant Petition for Review was timely filed.

There is no cogent reason to reverse nor modify the assailed Decision and Resolution.

Petitioner COC insists that the subject excess rice shipment of 603.15 MT is forfeitable for being an importation prohibited by, or contrary to law, by express provision of Sections 118 and 1113 of the CMTA, which provide:

Sec. 118. *Prohibited Importation and Exportation.* – The importation and exportation of the following goods are prohibited:

xxx

(g) All other goods or parts thereof, which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

⁸ Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *am*

Sec. 1113. *Property Subject to Seizure and Forfeiture.* –
Property that shall be subject to seizure and forfeiture
include:

xxx

(f) Goods, the importation or exportation of which are
effected or attempted contrary to law, or any goods of
prohibited importation or exportation, and all other goods
which, in the opinion of the District Collector, have been
used, are or were entered to be used as instruments in the
importation or the exportation of the former;

xxx

Petitioner posits that at the time of importation of the
subject rice shipments, an NFA IP is required. Thus, the
excess rice shipment of 603.15 MT, not covered by
respondent's NFA IP, is deemed a prohibited importation and
therefore forfeitable.

The Philippines is a member of the World Trade
Organization (WTO), which imposes certain obligations on its
members with respect to trade and tariffs. Specifically, the
WTO Agreement on Agriculture (WTO Agreement) provides:

Part III
Article 4
Market Access

...
2. Members shall not maintain, resort to, or revert to any
measures of the kind which have been required to be
converted into ordinary customs duties, except as otherwise
provided for in Article 5 and Annex 5.
...

Such prohibited measures include:

... [Q]uantitative import restrictions, variable import levies,
minimum import prices, discretionary import licensing, non-
tariff measures maintained through state-trading
enterprises, voluntary export restraints, and similar border
measures other than ordinary customs duties, whether or
not the measures are maintained under country-specific
derogations from the provisions of GATT 1947, but not
measures maintained under balance-of-payments provisions
or under other general, non-agriculture-specific provisions of
GATT 1994 or of the other Multilateral Trade Agreements in
Annex 1A to the WTO Agreement. 

The WTO Agreement also provides:

Annex 5
SPECIAL TREATMENT WITH RESPECT TO PARAGRAPH 2
OF ARTICLE 4

Section A

1. The provisions of paragraph 2 of Article 4 shall not apply with effect from the entry into force of the WTO Agreement to any primary agricultural product and its worked and/or prepared products ("designated products") in respect of which the following conditions are complied with (hereinafter referred to as "special treatment"):

- (a) imports of the designated products comprised less than 3 per cent of corresponding domestic consumption in the base period 1986-1988 ("the base period");
- (b) no export subsidies have been provided since the beginning of the base period for the designated products;
- (c) effective production-restricting measures are applied to the primary agricultural product;
- (d) such products are designated with the symbol 'ST-Annex 5' in Section I-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and
- (e) minimum access opportunities in respect of the designated products correspond, as specified in Section I-B of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

To implement the foregoing, the Philippines enacted Republic Act (RA) No. 8178,⁹ which removed non-tariff import restrictions on agricultural products, except on rice. With respect to rice importations, the Philippines was able to have its special treatment on rice extended until June 30, 2017.¹⁰ Based on the foregoing, the CTA 2nd Division correctly ruled

⁹ An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, With Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, and For Other Purposes.

¹⁰ Decision on Waiver Relating to Special Treatment for Rice of the Philippines, WT/L/932, July 25, 2014. *am*

that at the time of importation of the subject white rice on December 15, 2016, a prior NFA IP was required.

In this case, there is no doubt that PGMC had a COE to import 9,250 MT of Thai White Rice. PGMC also secured an NFA IP with IP No. MAV-2016-001, dated December 15, 2016, for the importation of 7,200 MT of Thai White Rice from Benefields Developments Limited (BDL).

Unfortunately, the shipment that arrived on December 15, 2016 had an excess of 603.15 MT which was not covered by the NFA IP. Thus, we agree with the CTA 2nd Division that petitioner COC could not be faulted for effecting the seizure of the subject 603.15 MT white rice not covered by the NFA IP.

A suspicious mind may consider that the excess shipment was a scheme between PGMC and BDL to circumvent the requirement for an NFA IP prior to importation.

In *Bureau of Customs v. The Honorable Agnes VST Devanadera, Acting Secretary, Department of Justice, et al.*,¹¹ the Supreme Court explained an unlawful importation as:

In unlawful importation, also known as outright smuggling, goods and articles of commerce are brought into the country without the required importation documents, or are disposed of in the local market without having been cleared by the BOC or other authorized government agencies, to evade the payment of correct taxes, duties or other charges. Such goods and articles do not undergo the processing and clearing procedures at the BOC, and are not declared through submission of import documents, such as the import entry and internal revenue declaration.

However, nothing in the records points to such collusion or fraud that would make the subject importations unlawful. In the instant case, PGMC alleged that it was not aware of the excess of 603.15 MT. Furthermore, respondent PGMC has already paid in advance all taxes and duties and took immediate action to secure the required import permit for the excess shipments. Thus, we affirm the CTA 2nd Division's findings, to wit:

We agree with the findings of the Collector of SLFU that petitioner [now, respondent PGMC] was not aware of the

¹¹ G.R. No. 193253, September 8, 2015. *am*

additional quantity of white rice shipped by BDL. Moreover, the fact that [respondent PGMC] paid in advance and prior to the importation all the taxes and duties covering a total importation of 9,250 MT (amounting to ₱64,452,699.00) clearly suggests the absence of any fraud on its part. Likewise, at the time of [respondent PGMC]'s importation, [respondent PGMC]'s COE limit of 9,250 MT had yet to be exceeded.¹²

Petitioner's swift action in applying for the IP and willingness to settle any duties upon knowledge of the excess shipment further belies any notion of fraud on its part more so, that any custom duties due thereon would have been covered by its advance payment with the LBP.¹³

No willful or deliberate intent to defraud the government can be attributed to respondent PGMC.

Even though the seizure of the excess 603.15 MT of white rice was proper in the absence of the NFA IP covering it, we do not agree with petitioner COC that the subject white rice are prohibited importations subject to forfeiture. In the absence of fraud on the part of respondent PGMC, We find no error in the CTA 2nd Division's conclusion to release the subject white rice shipments upon the payment of the assessed customs duties, fines and storage fees.

Indeed, even Sec. 1124 of the CMTA allows settlement of a pending seizure case, to wit:

SEC. 1124. *Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods.* – Subject to the approval of the Commissioner, the District Collector may allow the settlement by payment of fine or the redemption of forfeited goods, during the course of the forfeiture proceedings. However, the Commissioner may accept the settlement by redemption of any forfeiture case on appeal. No settlement by payment of fine shall be allowed when there is fraud or when the discrepancy in duties and taxes to be paid between what is determined and what is declared amounts to more than thirty percent (30%).

In case of settlement by payment of fine, the owner, importer, exporter, or consignee or agent shall offer to pay a fine equivalent to thirty percent (30%) of the landed cost of the seized goods. In case of settlement by redemption, the

¹² EB Docket, Division Decision dated November 18, 2020, pp. 62-63.

¹³ EB Docket, Division Resolution dated May 24, 2021, p. 72. *am*

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owner, importer, exporter, or consignee or agent shall offer to pay the redeemed value equivalent to one hundred percent (100%) of the landed cost.

Upon payment of the fine or payment of the redeemed value, the goods shall be released and all liabilities which may attach to the goods shall be discharged without prejudice to the filing of administrative or criminal case.

Settlement of any seizure case by payment of the fine or redemption of forfeited goods shall not be allowed when there is fraud, or where the importation is prohibited or the release of the goods is contrary to law.

Petitioner COC relies on Sections 118(g) and 1113(f) of the CMTA to bolster his position that the subject white rice are prohibited importations the release of which are contrary to law. The said Sections provide:

SEC. 118. *Prohibited Importation and Exportation.* – The importation and exportation of the following goods are prohibited:

xxx

(g) All other goods or parts thereof, which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.

SEC. 1113. *Property Subject to Seizure and Forfeiture.* – Property that shall be subject to seizure and forfeiture include:

xxx

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

xxx

The foregoing provisions do not specifically prohibit the importation of rice. There is likewise no other law that prohibits the importation of rice. At most, the subject rice shipments were merely “regulated” and not “prohibited” commodities.¹⁴ There is nothing inherently prohibited in the

¹⁴ *Secretary of the Department of Finance v. Court of Tax Appeals (Second Division) and Kutangbato Conventional Trading Multi-Purpose Cooperative*, G.R. No. 168137, August 7, 2013 Resolution. 

importation of the subject rice. This is bolstered by the Collector of San Fernando La Union (SFLU)'s initial recommendation to accept the compromise offered by respondent PGMC on the condition of securing the NFA IP.

The Court affirms that forfeiture of the subject excess white rice is a disproportionate penalty, given the circumstances which are bereft of fraud, nor involving a prohibited importation. To recall:

However, the Court is not unmindful of the factual circumstances that led petitioner [PGMC] to this precarious situation. We agree with the findings of the Collector of SFLU that petitioner [PGMC] was not aware of the additional quantity of white rice shipped by BDL. Moreover, the fact that petitioner [PGMC] paid in advance and prior to the importation all the taxes and duties covering a total importation of 9,250 MT (amounting to ₱64,452,699.00) clearly suggests the absence of any fraud on its part. Likewise, at the time of petitioner [PGMC]'s importation, petitioner [PGMC]'s COE limit of 9,250 MT had yet to be exceeded.

It is noteworthy that, during the administrative proceedings, a miscommunication between the BOC and NFA arose. Again, We quote the pertinent portion of the NFA's letter to the BOC regarding the update on petitioner [PGMC]'s request for an IP for the uncovered amount of white rice, to wit:

xxx

It is clear from the letter's tenor that the NFA merely articulated the possibility of taking account of respondent [BOC]'s decision on petitioner [PGMC]'s offer of settlement as a pre-condition to the IP's issuance. Unfortunately, respondent [BOC] took the letter as evidence of the IP's non-issuance which ultimately resulted in the denial of petitioner [PGMC]'s offer of settlement.

It should be noted that, when the assailed decision was rendered, the Philippines' special treatment had already expired making the issuance of QRs (such as an IP) prohibited under the WTO Agreement, or at the very least, unnecessary.

Moreover, when the Collector of SFLU rendered his recommendation to approve petitioner [PGMC]'s settlement on the condition that it should procure an IP for the subject white rice, it was already 19 June 2017 or just eleven (11) days shy from the special treatment's expiration on 30 June 2017. Certainly, this left petitioner [PGMC] with no ample time to procure the IP. It is noted as well that the IP's 

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issuance was within the NFA's control not petitioner [PGMC]'s.

Interestingly, the records show that petitioner [PGMC] had already requested for the IP's issuance as early as 23 December 2016 and the NFA acknowledged on 29 December 2016 that it was already in the process of evaluating petitioner [PGMC]'s request. Some of the necessary documentation that the NFA required (for the IP's issuance) was likewise forwarded by BDL although at a much later time. Whether these documents were actually submitted to the NFA was not put in issue in the parties' pleadings. Moreover, the NFA's letter dated 29 August 2018 does not suggest any problem with petitioner [PGMC]'s documents, only that the NFA may await the outcome of the respondent [BOC]'s decision prior to taking any action on petitioner [PGMC]'s request for an IP.

To the mind of the Court, both the NFA and BOC relied on and waited for each other's action thus dilly-dallied into coming up with a decisive determination of petitioner [PGMC]'s pleas. More particularly, the BOC was awaiting the NFA's issuance of petitioner [PGMC]'s IP as a condition for granting its offer of settlement on the one hand. The NFA was expressing the possibility of taking respondent [BOC]'s decision in the forfeiture proceedings prior to issuing the IP on the other hand. As a consequence, if the NFA did not issue the IP, petitioner [PGMC]'s offer of settlement would be denied. While, if the NFA did decide to await respondent [BOC]'s decision (which would, at this point, inevitably be for the offer of settlement's denial due to the IP's non-issuance), it would be hard-pressed to grant an IP over goods already decided to be forfeited in favor of the government.

This Court is equally baffled why the NFA premised the possibility of the IP's issuance on the outcome of respondent [BOC]'s decision when NFA Memorandum Circular (MC) AO-2016-09-005 only requires the submission of pertinent documents in evaluating whether or not an applicant may be issued an IP. Unfortunately, since the NFA was not made a party to the present case, the Court could not go further on this matter more than what is merely necessary to point out.

Given the peculiar circumstances under which petitioner has been placed and with no legal remedy in sight, despite no fault on its part, the Court is not inclined to adopt a stance that would exacerbate its already disadvantaged position against the respondent [BOC]'s resolve to forfeit the subject rice importation.

Although it is true that, at the time of the subject white rice's importation, the same was not covered by an IP; the parties nevertheless did not dispute the NFA's power to issue IPs subsequent to importation. In fact, the original 

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recommendation of the Collector of SFLU to grant petitioner's offer of settlement was conditioned on its successful procurement of an IP. The correspondence between the NFA and BOC further show that the IP may still be issued regardless of the seizure proceedings instituted by respondent [BOC]. *Unfortunately, at the time the assailed Decision 29 January 2018 was rendered, respondent [BOC] could no longer legally obligate petitioner [PGMC] to procure an IP due to the special treatment's expiration.* While this Court cannot direct respondent [BOC] to accept petitioner [PGMC]'s offer of settlement, we also find the forfeiture of petitioner [PGMC]'s shipment unfair and an utterly disproportionate penalty, given the attendant circumstances. ¹⁵ *(citations omitted)*

Thus, We affirm CTA 2nd Division's ruling to release the subject rice shipments upon payment of the assessed customs duties covering the 603.15 MT of white rice in the amount of ₱4,011,183.00, with a fine equivalent to 30% of the deteriorated value, plus storage fees computed up to June 30, 2017 only.

*Verified Omnibus Motion [To: A)
Direct the Sale of the Subject Rice
Shipments at a Public Auction, and
B) Hold the Proceeds of the Auction
Sale in Escrow]*

In *The Bureau of Customs and The Commissioner of Customs v. Jade Bros. Farm and Livestock, Inc.*,¹⁶ the Supreme Court explained that the auction of a perishable property is without prejudice to further proceedings to determine the legality of importations. Forfeiture and auction sale may also be employed as a final sanction after the importation has been adjudged illegal.

In the Petition for Review, petitioner COC questions the CTA 2nd Division's disposition of the case and alleges that the subject rice imports should not be released to respondent PGMC for being prohibited importations. In the Verified Omnibus Motion, petitioner COC prays to be allowed to auction the subject rice shipments in view of their perishable and deteriorating condition.

¹⁵ EB Docket, Division Decision dated November 18, 2020, pp. 62-65.

¹⁶ G.R. No. 246343, November 18, 2021. *am*

However, considering the Court's findings as discussed above, the subject rice shipments are not prohibited importations, thus, forfeiture and auction of the subject rice shipments is a disproportionate final penalty.

With respect to the auction of the subject rice shipment in view of their perishable nature, the following provisions of the CMTA are enlightening:

SEC. 102. *Definition of Terms.* – As used in this Act:

xxx

(gg) *Perishable Good* refers to goods liable to perish or goods that depreciate greatly in value while stored or which cannot be kept without great disproportionate expense, which may be proceeded to, advertised and sold at auction upon notice if deemed reasonable;

xxx xxx xxx

SEC. 1118. *Sale of Perishable Goods during Forfeiture Proceedings.* – Upon motion of the importer of the perishable goods, the goods may be sold at a public auction during the pendency of the forfeiture proceedings. The proceeds of the auction shall be held in escrow until the final resolution of the proceedings.

xxx xxx xxx

SEC. 1144. *Disposition of Perishable Goods.* – Perishable goods as defined under this Act when certified as such by the Bureau, may be sold at public auction within five (5) days, after a three (3)-day notice.

For this purpose, perishable goods shall include goods liable to perish or be wasted, or those that depreciate greatly in value while stored, or which cannot be kept without great disproportionate expense. The Bureau shall proceed to advertise and sell the same at auction upon notice as shall be deemed to be reasonable.

There is no doubt that the subject rice shipments are perishable and have been in storage for more than six (6) years, having arrived on December 16, 2016. Nevertheless, respondent PGMC never availed of the option to have the said shipment sold at public auction pursuant to Sec. 1118 of the CMTA. In fact, respondent PGMC opposes the sale by auction *am*

of the subject rice shipments, as shown in its Comment/Opposition,¹⁷ filed on June 13, 2022.

On the other hand, petitioner COC likewise only attempted to exercise the option to have the subject white rice sold at auction at this late stage of the proceedings.

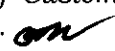
In light of our ruling ordering the release of the subject rice shipments upon payment of the assessed customs duties covering the 603.15 MT of white rice in the amount of ₱4,011,183.00, with a fine equivalent to 30% of the deteriorated value, plus storage fees computed up to June 30, 2017 only, we resolve to deny petitioner COC's Verified Omnibus Motion to sell the subject rice shipment through public auction.

We take our cue from the Supreme Court, which stated:

From an economic standpoint, to require further recourse with the Commissioner entirely misses the essence of the motion for release, which was to secure the imported rice shipments themselves so that they may be transacted for some lawful purpose. Importers like JBFLI are international trade intermediaries that facilitate the free flow of goods, i.e. imported from abroad for further domestic supply and transaction. Imports, such as JBFLI's rice shipments, serve as vital input for domestic trade and services, thus generating value through each chain of transaction, ultimately serving as commodities for end-consumers. The conduct of the October 17, 2014 auction thus deprived JBFLI of the opportunity to generate a profit from trading its rice shipments. While the winning bidder therein might have further transacted the rice, their perishable nature would have quickly diminished the value over time, severely limiting the timeframe within which they could be fruitfully traded. As the Filipino saying goes: "*aanhin pa ang damo kung patay na ang kabayo?*"¹⁸

By analogy, the release of the subject rice shipment, instead of selling the same through public auction, will enable respondent PGMCO to transact the said rice for some other lawful purpose. At the same time, the interests of the government are protected by the order to pay the assessed customs duties and appropriate fines and storage fees.

¹⁷ EB Docket, pp. 253-255.

¹⁸ *The Bureau of Customs and The Commissioner of Customs v. Jade Bros. Farm and Livestock, Inc.*, G.R. No. 246343, November 18, 2021. 

Thus, the motion to sell the subject rice shipments through public auction is denied.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision dated November 18, 2020 and Resolution dated May 24, 2021, in CTA Case No. 9847 are **AFFIRMED**.

Petitioner's Verified Omnibus Motion [To: A) Direct the Sale of the Subject Rice Shipments at a Public Auction, and B) Hold the Proceeds of the Auction Sale in Escrow] is likewise **DENIED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

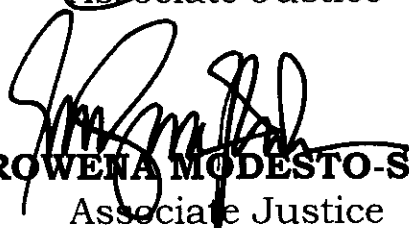
WE CONCUR:

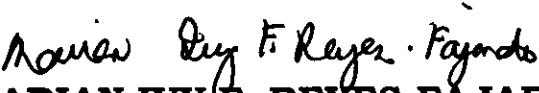

ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice